Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue

Z. Kutena


A thesis submitted in fulfilment of the requirements of the degree of Doctor of Philosophy

School of Applied Social and Human Sciences
University of Western Sydney

2004
Statement of Authentication

The work presented in this thesis is, to the best of my knowledge and belief, original except as acknowledged in the text. I hereby declare that I have not submitted this material, either in full or in part, for a degree at this or any other institution.

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Z. Kutena
Acknowledgements

There are many people to thank for this journey...

My Mother and Father who were to introduce me to many of the peoples of Earth, and who first gave me the opportunity to learn and assimilate cultural layers of being within a diversity of life.

My immediate family, of brothers and sisters and children which extends and includes families and friends of the many with whom I have walked this journey and shared laughter, tears, sorrow, pain and joy, and whose understanding supports the meaning of my effort. Importantly there are also my Elders, both Indigenous and non-Indigenous, Grandmothers and Grandfathers, Aunties and Uncles around the world who have all held the space within which I have been learning.

There are also members of the academy, and my supervisors whose challenges and questioning have required that I crystallize and refine my argument. The many authors of seminal texts which underwrite my own journey of understanding, providing insight to Indigenous perspectives and discourse. Those who have been walking a similar journey and whose voice and perspective have served to further my own story and explain international processes and events. And there are the Indigenous leaders, internationalists and officials who have provided me with opportunities for learning and exchange within multilateral and bilateral fora, and supported my involvement.

Then there are the many friends and individuals within neighborhood and in community, or attending meetings, conferences, summits, think tanks sessions and as part of e-mail exchanges who have all served to further and extend my knowledge and thinking. People whose voices, perspectives, and knowledge have all required an accommodation within my journey applying self to some of the many questions which challenge our humanity.

There are also many people I would like to thank personally for the richness they have given, as a kindness or gentle reassurance; sharing a journey within community around Australia; finding a strategic and supportive text at a time of exasperation; retrieving my thesis when my computer crashed; facilitating travel and experiences overseas and participation in official processes; providing me with the warmth of a home when I was away from my own abode; for the steadfastness of friendship and a belief in my capacity to learn and understand at a level of profundity; for the opportunity to extend my research and the means of support during my candidacy; for the hardships which have served to bring into relief what are important priorities, or a deeper understanding of self; for the days and nights of discussion and exchange and of song and dance; for the opportunities to learn and exchange cultural protocols; for the forgiveness and generosity shown for my human failings; for the many cultural and sacred journeys in various regions of the world as a blessing and acknowledgment for the spirit of country; and for participation in the Kari-Oca and its great teaching which began my journey of Indigenous conscientisation.

To each of you, and to all,

Thank you…
ABSTRACT

This thesis is the story of the Indigenous peoples’ movement and of their journey to attain human dignity and justice internationally, regionally and nationally. It is also the story of diminishment and of conscientising agenda.

I have written this thesis as a non Aboriginal person who has been invited by Indigenous peoples from all regions of the world into a diversity of local, national and international contexts and experiences (community based and inter-governmental). My role has been that of a participant observer, a facilitator, translator and interpreter of political and cultural dialogue.

Participating within Indigenous arenas of activity for more than a decade, ongoing study of relevant literature, and an engagement with documents, legislation and conventions provide the basis of analysis. Perspective and insight is also informed through involvement in the dialogue at inter-governmental and community levels, and knowledge gained through relationship with Indigenous peoples’ in various regions of the world.

Big Brushstrokes paint a broad canvas of macropolitical fora in which Indigenous peoples have been actively working to create newer and inter-linking standards and mechanisms offering a good ecological order to humanity.

International dialogue and academic debate are also addressed revealing both the complexity and vital necessity of politically accommodating the bio-cultural diversity of Indigenous peoples. Contrasting the inter-connectivity of the international Indigenous agenda with domestic negotiation, clarity regarding political activity and current strategies are highlighted. The result is an appreciation of the limited framework within which Indigenous peoples’ are often forced to pursue their aspirations and dignity.
The methodology chosen borrows from the Indigenous world. Through storytelling a narrative unfolds, incorporating the voices of Indigenous peoples, individuals who are engaged in global reform processes, and academics who are recognized for their knowledge of Indigenous perspectives or critically contribute to insight. As an inter-cultural analysis of dialogue, this thesis is both informed by other knowledge as well as an eclecticism of European discourse.

The thesis aims to challenge, to decontextualise and recontextualise knowledge and thinking identifying the inherent assumptions in discourse, and the points of divergence in understanding and worldview. Also revealed are the strategies and methodologies by which a separately informed vision for humanity is repeatedly thwarted and confused at all levels of negotiation and agreement. Examination of specific considerations within dialogue reveals relevant aspects of world politics.

Case studies provide a detailed analysis of processes claimed to provide Indigenous peoples with human equality, but which simultaneously serve to deny them rights and justice. The Case studies which include Africa, Asia and the CANZ Bloc countries of Canada, Australia, and New Zealand, serve to ground analysis and make explicit the critical disconnect between international and national dialogue, between objectives and outcomes, and constructed and imposed representation, and culturally lived identity and voice. They also reveal the inherent and historic nature of institutional processes and thinking which results in the ongoing diminishment of Indigenous peoples’.

The central contention of this thesis is that the global project of sustainability and stability requires a paradigmatic shift in thinking, values, priorities and intent. It is further argued that to achieve this, multilateral processes need to be informed by those parts of humanity whose cultures are inherently more sustainable and who retain knowledge vital to existence because it is collaborative with nature and yet are at risk.
The thesis concludes on a hopeful note returning to the conscientised perspective of Indigenous peoples and others actively working to create a ‘better world’ and listing the paradigmatic shifts continuing to occur within dialogue. Also shared are the Indigenous meta-rules of relationship, which provide another way of understanding existence and ones place in the world. These serve to explain ‘right action’ pointing the direction and approach by which humanity might seek to re-orient their existence towards a future that provides for the continuance of diversity as the wellbeing for all life on Earth.
# INDIGENOUS PEOPLES: TOWARDS AN INTERCONNECTIVE AND CONSCIENTISING DIALOGUE

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<tbody>
<tr>
<td>ABC</td>
<td>Australian Broadcasting Corporation</td>
</tr>
<tr>
<td>AIATISIS</td>
<td>Australian Institute of Aboriginal and Torres Strait Islander Studies.</td>
</tr>
<tr>
<td>ANZUS</td>
<td>Australia New Zealand United States Treaty</td>
</tr>
<tr>
<td>APRN</td>
<td>Asia-Pacific Research Network</td>
</tr>
<tr>
<td>ATSIC</td>
<td>Aboriginal and Torres Strait Islander Commission (Australia)</td>
</tr>
<tr>
<td>BCSD</td>
<td>Business Council for Sustainable Development</td>
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<tr>
<td>CANZ</td>
<td>Canada, Australia and New Zealand</td>
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<tr>
<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CERD</td>
<td>Convention for the Elimination of Discrimination (the same as document referred to in full as ICERD)</td>
</tr>
<tr>
<td>CESCR</td>
<td>Covenant on Economic, Social and Cultural Rights (a.k.a. ICESCR)</td>
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<tr>
<td>CHOGM</td>
<td>Commonwealth Heads of Government Meeting</td>
</tr>
<tr>
<td>CIA</td>
<td>Central Intelligence Agency</td>
</tr>
<tr>
<td>CNN</td>
<td>Cable Network News (USA)</td>
</tr>
<tr>
<td>COICA</td>
<td>Confederation of Indigenous Organization of the Amazon Basin.</td>
</tr>
<tr>
<td>CRT</td>
<td>Critical Race Theory</td>
</tr>
<tr>
<td>DAA</td>
<td>Department of Aboriginal Affairs, Australia.</td>
</tr>
<tr>
<td>DNA</td>
<td>Deoxyribonucleic acid</td>
</tr>
<tr>
<td>doCip</td>
<td>Indigenous Peoples Centre for Documentation, Research and Information.</td>
</tr>
<tr>
<td>DPI</td>
<td>The Department of Public Information of the United Nations</td>
</tr>
<tr>
<td>ECE</td>
<td>The UN’s Economic Commission for Europe</td>
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<tr>
<td>ECLAC</td>
<td>Economic Commission for Latin America and the Caribbean</td>
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<tr>
<td>ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<tr>
<td>EEC</td>
<td>European Economic Community</td>
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<tr>
<td>EFTA</td>
<td>European Free Trade Association</td>
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<tr>
<td>ENB</td>
<td>Earth News Bulletin (e-journal of IISD)</td>
</tr>
<tr>
<td>ESCAP</td>
<td>Economic and Social Commission for Asia and the Pacific</td>
</tr>
<tr>
<td>ESCWA</td>
<td>Economic and Social Commission for Western Asia</td>
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<tr>
<td>FAIRA</td>
<td>Foundation for Aboriginal Islander Research Action</td>
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<tr>
<td>FAO</td>
<td>United Nations Food and Agriculture</td>
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<tr>
<td>FOCAL</td>
<td>Canadian Foundation for the Americas</td>
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<tr>
<td>FOE</td>
<td>Friends of the Earth</td>
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<tr>
<td>FoEA</td>
<td>Friends of the Earth Australia</td>
</tr>
<tr>
<td>G7 / G8</td>
<td>Group of seven /eight leading industrial nations. USA, Japan Germany, Britain, France, Italy, Canada and as the eighth, Russia.</td>
</tr>
<tr>
<td>G77</td>
<td>Group of 77 (an association of nations primarily from the developing world and now comprising many more than 77 member states)</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<tr>
<td>GEF</td>
<td>Global Environment Facility</td>
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<tr>
<td>GIFTS</td>
<td>Global Initiative For Traditional Systems… often has ’of health’</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>GMO</td>
<td>Genetically Modified Organism</td>
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<tr>
<td>HR</td>
<td>Human Rights</td>
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<tr>
<td>HREOC</td>
<td>Human Rights and Equal Opportunities Commission (Australia)</td>
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<tr>
<td>IAITPTF</td>
<td>International Alliance of Indigenous–Tribal Peoples of the Tropical Forests</td>
</tr>
<tr>
<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICERD</td>
<td>International Convention for the Elimination of Racial Discrimination (also CERD)</td>
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<tr>
<td>ICFD</td>
<td>International Conference on Financing for Development</td>
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<tr>
<td>IDA</td>
<td>International Development Association (part of the World Bank Group and a UN specialized agency based in Washington DC.)</td>
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<tr>
<td>IDRC</td>
<td>International Development Research Centre</td>
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<td>IFC</td>
<td>International Finance Corporation</td>
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<tr>
<td>IISD</td>
<td>International Institute for Sustainable Development</td>
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<tr>
<td>ILD</td>
<td>Institute of Liberty and Democracy</td>
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<tr>
<td>ILO</td>
<td>International Labor Organization</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund (UN Specialized agency headquartered in Washington DC.)</td>
</tr>
<tr>
<td>INGO</td>
<td>International Non-Governmental Organization</td>
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<tr>
<td>IPR</td>
<td>Intellectual Property Rights</td>
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<tr>
<td>ISE</td>
<td>International Society for Ethnobiology</td>
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<tr>
<td>ITTA</td>
<td>International Timber Trade Agreement</td>
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<tr>
<td>ITTC</td>
<td>International Timber Trade Council</td>
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<td>ITTO</td>
<td>International Timber Trade Organization</td>
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<tr>
<td>IUCN</td>
<td>International Union for the Conservation of Nature</td>
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<tr>
<td>IWGIA</td>
<td>International Work Group for Indigenous Affairs</td>
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<tr>
<td>MAI</td>
<td>Multilateral Agreement on Investment</td>
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<tr>
<td>MDB</td>
<td>Multilateral Development Bank</td>
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<tr>
<td>MIGA</td>
<td>Multilateral Investment Guarantee Agency</td>
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<tr>
<td>NACC</td>
<td>National Aboriginal Consultative Committee</td>
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<tr>
<td>NACCHO</td>
<td>National Aboriginal Community Controlled Health Organization</td>
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<td>NADOC</td>
<td>National Aborigines Day Observance Committee</td>
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<td>North American Free Trade Agreement</td>
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<td>NAIHO</td>
<td>National Aboriginal Islander Health Organization</td>
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<td>NASDAQ</td>
<td>National Association Securities Dealers Automated Quotation (US index)</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<tr>
<td>NGLS</td>
<td>Non-Governmental Liaison Service of the United Nations</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>NSGT</td>
<td>Non-Self-Governing Territory</td>
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<tr>
<td>NSW</td>
<td>New South Wales (Australia)</td>
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<td>NT</td>
<td>Northern Territory (Australia)</td>
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<tr>
<td>OAS</td>
<td>Organization of American States</td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner of Human Rights, United Nations</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>PBS</td>
<td>Public Broadcasting Service (USA)</td>
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<tr>
<td>PRGF</td>
<td>Poverty Reduction and Growth Facility</td>
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<tr>
<td>RAFI</td>
<td>Rural Advancement Foundation International</td>
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<tr>
<td>SALT</td>
<td>Strategic Arms Limitation Talks</td>
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<tr>
<td>SBS</td>
<td>Special Broadcasting Services (Australia)</td>
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<tr>
<td>SID</td>
<td>Society for International Development</td>
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<tr>
<td>South</td>
<td>Term often used to mean developing countries.</td>
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<tr>
<td>TABD</td>
<td>Trans-Atlantic Business Dialogue</td>
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<td>TNC</td>
<td>Transnational Corporation</td>
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<tr>
<td>TRIPS</td>
<td>Trade-Related Aspects of Intellectual Property Rights</td>
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<td>TRR</td>
<td>Traditional Resource Rights</td>
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<tr>
<td>UDCD</td>
<td>Universal Declaration on Cultural Diversity</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNAC</td>
<td>United Nations Association Canada</td>
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<td>UNCED</td>
<td>United Nations Conference on Environment and Development (the Earth Summit)</td>
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<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNESCO</td>
<td>United Nations Educational Scientific and Cultural Organization</td>
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<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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<td>UNFF</td>
<td>United Nations Forum on Forests</td>
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<td>UNGASS</td>
<td>United Nations General Assembly</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UNPO</td>
<td>Unrepresented Nations and Peoples Organization</td>
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<td>USA</td>
<td>United States of America</td>
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<td>United States Agency for International Development</td>
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<td>World Business Council for Sustainable Development</td>
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<td>WCI</td>
<td>World Council of Indigenous Peoples</td>
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<tr>
<td>WFP</td>
<td>World Food Programme of the United Nations</td>
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<tr>
<td>WGDD</td>
<td>Working Group on the Draft Declaration</td>
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<tr>
<td>WGIP</td>
<td>Working Group on Indigenous Populations</td>
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<tr>
<td>WILPF</td>
<td>Womens International League for Peace and Freedom</td>
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<tr>
<td>WIPO</td>
<td>World Intellectual Property Organization</td>
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<td>WRI</td>
<td>World Resources Institute</td>
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<td>WSSD</td>
<td>World Summit on Sustainable Development</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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<tr>
<td>WWF</td>
<td>World Wide Fund for Nature (called the World Wildlife Fund in the United States)</td>
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<tr>
<td>WWW</td>
<td>World Wide Web</td>
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Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue

VOLUME I

INTRODUCING THE JOURNEY

ACROSS

A MACROPOLITICAL CANVAS

Z. Kutena
PhD. Thesis in Social Ecology
University of Western Sydney, 2004.
FIGURE 1.1  The Journey As A Landscape: illustrating the bringing together of peoples and processes of conscientisation
Chapter 1: A Journey Begins

This thesis explores a new paradigm and consciousness being evolved and articulated by Indigenous peoples’ and the processes by which they and the vision they offer humanity are continually being diminished. Despite advancements and a rhetoric of inclusion, Indigenous peoples are still denied the equality of their human dignity, justice, and a voice. This thesis emanates from a journey of some 15 years living and working with Indigenous peoples from various regions of the world as a translator and interpreter in a variety of fora and as a consultant and facilitator of Indigenous peoples’ initiatives at community and inter-governmental levels.

The nature of process and the language being used in political and technical meetings, particularly those involving translation at inter-governmental levels, did not allow for the profundity of meaning contained within the Indigenous voice to be expressed or heard. While I was adept at expressing the issues and points shaping a particular meeting, I was constantly aware that the un-stated within an exchange which is provided by a party’s own cultural subtext, often required additional explanation if ‘meaning’ was to be exchanged. Indigenous leaders also aware that Europeans were unfamiliar with their perspectives often resorted to replying with questions in order to shift dialogue to a newer contexting. These experiences were to bring me into a journey in which I have continued to gain deeper understanding of Indigenous perspectives and their cultural agenda.

The catalytic event which was to totally shake my worldview was the United Nations Conference on Environment and Development (UNCED) in Rio and more particularly
the Indigenous peoples’ World Conference on Territory, Environment and Development which took place just outside Rio and was held two weeks prior to the UN event. Immersed within culture, open to their voice and its meaning, and sharing of their experiences and my own within the unique contexting of a traditional and purpose built village within the rainforest, shifted me in ways which I knew I would need to think about for many years before I would truly understand.

Returning home to Australia, my journey and learning was to continue when Aboriginal people offered me hospitality within their communities, but now there was another twist. Given that the Indigenous peoples of Australia are amongst the oldest continuous cultures in the world, why was their politic seemingly so different from the one I was familiar with at international levels? How was it that where they also have a profound philosophical understanding of Cosmovision contained within their ‘Dreaming’, wider society was unable to truly appreciate what was being denied and destroyed? And was this destruction deliberate or inadvertent? If the later, was it systemic? And if I was not to ascribe negativity to intent, how was it that well meaning people, politicians and bureaucrats were still deleteriously affecting Indigenous peoples’ lives and wellbeing?

What also of the link many acknowledge between Indigenous cultures and the existence of biodiversity? The importance of this link is well established within the international arena and elaborated within the Convention on Biological Diversity. What about their human rights? The conditions I witnessed and lived in were often worse then those found in the impoverished Third world. What impact would their self determination mean? And what of Indigenous claims that we cannot give them rights because they have always had them, it is just they have never been respected? What also of the vision contained within the Indigenous politic? Corporations appear to have taken advantage of the wealth of knowledge of Indigenous peoples, while denying them the authority of its authorship.

These initial questions were to shape the nature of my journey. There was an additional layer of inquiry which had to do with my own learning and the new ways of seeing I had
been developing. What was it I had learnt and how would I understand it? And even more challenging how would I share it? And here too were other questions. Was it my place to share? I am not Indigenous, so why did I think I had anything to contribute? I would ask this of the many Elders and Indigenous colleagues and friends. All they would say was ‘keep going, you’re supposed to be doing this’. As I write I now recognize what I have done within this thesis is in effect take the same role I am known for in the many contexts I have been invited into, as an inter-cultural facilitator of exchange. But in this case the context has been academia.

This understanding has been deepened through relationship with Indigenous Elders in Australia and other countries who have generously shared and provided me with opportunities for cultural learning. Academia provided a different type of learning. This thesis reflects these two broad approaches and divergent world views. It encapsulates this inter-cultural journey of learning in a diversity of contexts and seeks to express the profound meaning contained within the Indigenous voice.

As my journey in knowledge progressed, the thesis became a much larger project. This was almost an inevitable consequence given the scale and breadth of my own life experiences in numerous countries and cultures, and the holistic nature of Indigenous perspectives and knowledge which speaks to the many challenges we collectively face as humanity. Further reflection led finally to three fundamental considerations. The First is of identity. Who are we in a globalizing world, and how do we accommodate diversity? The second is of relationship and inter-relationship. How do we create peaceful co-existence within the human family and with all life on Earth? The Third describes historic and contemporary processes of the globalizing man made system owned by the dominant; processes of diminishment; of ‘other’ peoples, knowledge and cultures and of the living world. While many agents of global reform are supportive of the Indigenous/Tribal peoples involvement within international discussion leading to global change, there are also interests and groups who feel the participation of peoples is a threat.
Given the substantive body of excellent literature, institutional material and reports available within the academic world which articulate not only the inadequacies and inequities of the First world’s system, but also documents and analyses the history and development of national frameworks for and on behalf of Indigenous peoples, this thesis will not look to again cover these areas of study. Rather it seeks to build on this material providing insight to the international Indigenous peoples’ movement and their activity to have their rights recognized and reform the dominant hegemony.

Consequently, this thesis argues that the international Indigenous movement is an inceptive spearhead of global reform and illuminates their participation and footprint within the newer framework of conventions elaborated within the United Nations. The continued activity of Indigenous peoples and their clear articulation of newer notions and perspectives have engendered significant changes within the international arena and the elaboration of newer standards and Law.

Some of these Conventions which recognize Indigenous peoples’ rights include: ratification and recognition of their distinctive rights within a number of UN member states; the rewriting of operational directives by UN Agencies and the World Bank to include Indigenous considerations; the adoption of resolutions by the European Parliament to provide consideration of Indigenous peoples within their international activity; and the elaboration of a draft Declaration on the Rights of Indigenous peoples by the Inter-American Commission on Human Rights.

Throughout the International Decade of Indigenous Peoples (1994-2004), an increasing number of those marginalised under capital’s globalisation have begun to recognise the values and vision inherent in the Indigenous peoples’ agenda and increasingly identify with their resonance. In essence this thesis will show how the Indigenous peoples' agenda mirrors the challenges faced by all humanity, and that the insights gained within their perspectives provide a vision for a sustainable future and the wellbeing of all.
1.1 Importance And Relevance Of Intercultural Analysis

As the essence of this thesis explores the nexus between cultures, engagement requires the role of an intercultural interpreter and cross-cultural translator. The need for inter-cultural interpretation within dialogue is two fold. Firstly, Indigenous peoples’ knowledge and worldview is ‘its own thing’; it is a ‘completeness unto itself’. Second, European engagement with Indigenous perspectives has tended towards processes through which Indigenous knowledge is re-narrated, categorized and defined in terms consistent with European thought. This activity diminishes Indigenous peoples while hindering Europeans from learning and understanding. Intercultural interpretation assists to explain the divergence in thinking and worldview, such that parties to a dialogue are provided with orientation regarding the other’s meaning.

Battiste and Youngblood Henderson who argue that Indigenous knowledge must be allowed to remain outside Eurocentrism, outside its representation, and outside its disciplines, also see the processes to which Indigenous knowledge is subjected as hindering understanding. They write:

…rather than attempting to understand Indigenous knowledge as a distinct knowledge system, researchers have tried making Indigenous knowledge match the existing academic categories of Eurocentric knowledge. They have relied on these categories for comfort and security, instead of embarking on an intellectual adventure to connect more deeply with Indigenous ecologies. The viewing of Indigenous knowledge and heritage through Eurocentric categories is the result of the researchers’ formal training and of their belief that these categories are universal standards. These processes cause the researchers to miss the real adventure on this journey and distract them from developing deeper insights that might lead them into a vast, unforeseen realm of knowledge. For knowledge to flourish, scholars need to see Indigenous knowledge as a new sui generis path, as a new opportunity to develop greater awareness and to discover deeper truths about ecologies and their forces.
This thesis seeks to preference the Indigenous voice, which emanates from distinct worldview and knowledge but which the thesis argues, is continually being diminished and silenced in all dialogues concerning their human dignity.

Collaborative inter-relationships within and between other living systems require newer approaches in thinking and values impacting on both knowledge and identity. Interestingly, the synchronous advent of newer information technology (IT), with processes of globalization which on one hand has allowed the wealthy and powerful to accelerate the rate at which they change our world, has also provided for increased information and knowledge exchange between Social movement groups. Manuel Castells suggests this later process involving sectors and populations is allowing for newer network societies to emerge (see New Zealand Case Study, 18.2, p.526). The catalyst for these newer constructs are often a shared concern with the inequity and injustice that many peoples and societies experience as values and priorities are diminished and marginalized by the globalizing juggernaut of dominant self interest.

1.2 The Importance Of The Indigenous Peoples Movement

There is considerable and contentious debate about to whom the term ‘Indigenous peoples’ applies. Ascribing the term to a group of people potentially implying their entitlement to a range of rights has meant that debate over a definition has been an ongoing consideration. While the outcome of these negotiations may be a further diminishment of a group of humanity there is some consensus over the number of Indigenous peoples.

According to the United Nations there are 300 million Indigenous peoples living on Earth, although supportive organizations sometimes cite a larger figure of 500 million. Some 50 million live in tropical forests and there are said to be 5000 different peoples (nations/tribes) around the globe. A majority of this diversity of peoples also live in tropical forests. While the total number of Indigenous peoples equates to roughly 4% of the Earths population, Indigenous peoples represent 95% of the world’s cultural
diversity and over 50% of the population in areas of high diversity. Indigenous peoples live within the world’s richest biodiversities.

Moreover there is a recognition that it is because of the continued existence of Indigenous peoples in these regions and territories that the biodiversity exists. The two are interlinked and interdependent. There would be no biodiversity if there was no cultural diversity of Indigenous peoples. The late Andrew Gray expressed this inter-relationship eloquently:

‘Until Indigenous peoples are at the centre of environmental conservation there will be neither biological diversity nor cultural diversity in the world.’

The United Nations Goodwill Ambassador for the International Year of the World’s Indigenous Peoples in 1993, and Nobel Peace Prize recipient, Rigoberta Menchu-Tum provides another perspective on the same inter-relationship:

‘To understand Indigenous peoples is to understand cultural diversity throughout the world.’

The Indigenous peoples’ movement has posed a major challenge to colonial power and thinking at the beginning of the 21st century. Their agenda embodies a distinctive sui generis, which ethnobotanist Darrell Posey describes as ‘a system that is unique and does not belong to an existing category of Intellectual Property Rights (IPRs).’ The Indigenous agenda stimulates the need for a profound re-evaluation of many fundamental concepts which underpin western thinking and knowledge.

Expressing an amplified worldview, Indigenous peoples have championed many conscientising concepts and ideas. Some of these include: cultural diversity, collective rights, forest protection, traditional knowledge and resource rights, self determination, self reliance, traditional systems of health, of agriculture, of water, women’s rights and food security, capacitation of youth, cultural and linguistic rights, as well as
environmental standards and assessment, and law and justice, while also providing us all with new ways of understanding nature. Interconnectedness was enriched with insight that the more species in relationship (diversity), the healthier and more stable the whole. Biodiversity as both dialogue and an ensuing Convention all emanated from Indigenous politics.\textsuperscript{14}

\[ \text{‘Perhaps the most enduring legacy of Indigenous peoples’ activity has been their very methodology of political activism, and forms of representation, both of which ensure their effectiveness. Government officials and agency heads remember the commitment of leadership to consultation with their peoples’ at village/community level, and their refusal to be pushed into a unilateral decision in a meeting without undertaking this process with their peoples. In effect, the Indigenous agenda speaks to a deep human need within us all for a voice in and a say over, where humanities future lies and how it might look’.} \text{\textsuperscript{15}} \]

The challenges contained within the international Indigenous movement are central to newer dialogue. Indigenous peoples’ cultures not only represent the continuance of diversity, but their worldview and philosophy, when engaged with, has the potential to alter one’s way of being in the world. To state it another way is to say within an Indigenous perspective and understanding of living systems sensibility, relationship shifts from adversarial competitiveness to collaborative inclusiveness. Indigenous peoples who already operate within a universal consciousness which they term \textit{Cosmovision} are simultaneously sui generis cultures integral to specific biodiversities, or cultural localities.

Indigenous peoples’ mobilization has engendered a political flux within which international law, nation-states, and institutions are being called on to accommodate their aspirations and worldview. Internationally, the Indigenous peoples’ agenda is seen as a conscientisation in dialogue. This conscientisation centres on a newer understanding that not only is our global architecture (institutions and agencies) in need of
democratization and reform\textsuperscript{16}, but the future currently being elaborated by dominant capital interests is unsustainable socially, economically and environmentally.\textsuperscript{17}

Dismissed and derided in its infancy,\textsuperscript{18} the Indigenous agenda increasingly impacts on international, and nation-state activity. The transnational quality of the Indigenous movement resides in a self constructed Fourth World which shares much of the experiences of those living in Third World conditions, while borrowing some elements of First World styled, International NGOs.\textsuperscript{19} Other groups and societies have been quick to ‘identify’ with the central tenant of their political vision and see the potential the Indigenous peoples’ movement offers.\textsuperscript{20}

The potency of the Indigenous peoples’ movement is that it is both a polity couched in another worldview and a transformative philosophy. Indigenous perspectives challenge long held beliefs and assumptions underpinning hegemonic knowledge and thinking. It is not surprising therefore, that dominant political, social, economic, legal and scientific perspective’s all see differing issues arising from within this movement, and that receptivity to them is uneven.

Benedict Kingsbury writing in the \textit{American Journal of International Law} touches on the breadth of challenges and perspectives emanating from a consideration of the Indigenous peoples’ agenda. Where his examination focuses on legal argument, paraphrasing allows for the introduction of intercultural amplification and contextualization.

‘While liberal political theorists struggle to accommodate Indigenous notions of autonomy and self determination’,\textsuperscript{21} many see Indigenous peoples embodying an identity not solely keyed to the individual and the nation-state; but rather as groupings that attest to a life ordered by an intelligible cosmology. In other perspectives, Indigenous peoples offer a counterpoint to consumptive consumerism through sustainable development, and ecological alternatives embedded within cultural knowledge of specific biodiversities. ‘In many settler
societies, Indigenous peoples are seen as offering something to make society whole’.\textsuperscript{22} Within legal circles, Indigenous peoples’ aspirations probe the meaning of equality and justice. The structural limitation and historic justifications of legal decision and authority are also challenged.\textsuperscript{23} Transnationally, Indigenous peoples are seen as ‘kin’ to a growing civil society movement\textsuperscript{24} similarly seeking to engender global change.\textsuperscript{25}

Where Civil Societies by definition are held to be agents of change active within national contexts, increased international networking is resulting in a movement operating outside the state similar to that of Indigenous peoples.\textsuperscript{26}

The Indigenous peoples’ movement at the international level has created new standards within United Nation’s law. ‘Combined, these documents manifest an Indigenous vision...for all people to read, and unleash the power of a vision of an ecological theory of a good order and human rights.’\textsuperscript{27} As the world’s environmental and human crisis accelerates questioning the sanity of capital’s rationalising/ speculative/ techno/ scientific/ chemical/ urban modernity, the Indigenous agenda which resonates a deeper humanity, is increasingly seen as offering a wisdom which could assist guide the re-orientation of international mechanisms towards sustainability and wellbeing for all. The UN conventions and instruments the Indigenous peoples helped create can be understood as the keel in a raft of new international laws which potentially balances the excesses of capital’s globalisation and provides an ongoing future for humanity and our home in the universe; Mother Earth.\textsuperscript{28}

The advent of representative Indigenous voices internationally presents a clear challenge to the legal and political premise on which many modern nation-states were founded. However, dated discourses of race, religion, identity and history which accompany discrimination and xenophobia often result in a continuing need to deny Indigenous peoples experience of co-existence.\textsuperscript{29}
While many ‘non-indigenous’ peoples around the world have some knowledge of the dynamics between the Indigenous peoples, government and wider society within their own national borders, the scale, significance, and relevance of the Indigenous agenda within the international arena is often less appreciated. Although essentially limited by definition to Indigenous peoples within international instruments, many more hundreds of millions of ‘Tribal peoples’ and others still living ‘traditional landed existences’ around the globe, resonate with the movement. These peoples also often desire many of the aspirations articulated by the Indigenous political movement.

Even in First world contexts such as Canada where Indigenous peoples have been forced to live with the consequences of colonization, Indigenous peoples retain inheritance of cultural identity and knowledge. Battiste and Youngblood Henderson write that within these contexts ‘culture’ is viewed by many Indigenous people as ‘a fluid concept of interactive and negotiated consciousness’, which ‘values and celebrates their cognitive heritage’. They define heritage as ‘a complete knowledge system with its own concepts of epistemology, philosophy, and scientific and logical validity’, but note that Indigenous peoples do not see their ‘complicated consciousness and way of life as an exotic, closed or internally uniform realm’. They continue:

‘Indigenous peoples’ forced and voluntary interactions with other peoples and their views of life have created an Indigenous consciousness that is a web of intertwining heritages and thoughts. Indigenous consciousness is dynamic. It tolerates diversity as it seeks to create opportunities to secure and enhance the qualities of Indigenous living. The ways Indigenous peoples relate to their ecologies and to others honours their heritage and their knowledge, especially as embodied in their languages. Yet, most Indigenous peoples also want to belong with dignity to humanity and to be at home in the global community. They want to participate in the future on an equal basis with others and to have their worldviews and heritage respected.'
Indigenous peoples further advocate that international reform should also accommodate multi-ethnic, pluri-cultural and multi-linguistic societies, and that diplomacy shift to inter-cultural dialogue.\textsuperscript{32} This thesis argues that the requirement is conscientisation as a means by which to change the dialogue and effect outcomes, and aims to show the pattern of relationship and the ongoing historic nature of dominant approaches.

\section*{1.3 Structure Of Thesis}

The purpose of thesis writing has been to create a cohesive narrative, a holism within which to contextualise and make sense of the many disparate and complex experiences and learnings which have been my journey. The thesis seeks to highlight the issues, assumptions and perspectives which often serve to confuse dialogue and examine how the Indigenous peoples’ agenda challenges us to reflect on ‘who we are’, ask ‘how we relate’, and question ‘by what authority we act’.

This thesis centres on the dialogue and often confused political processes, which hinder Indigenous peoples from attaining the equality of their human dignity. It identifies the methodologies, the arguments and the strategies which serve to hold in abeyance any forward movement by humanity towards a world order that is sustainable\textsuperscript{33} and stable\textsuperscript{34}.

The thesis examines the Indigenous peoples’ agenda at various levels of engagement, spanning the experience of Africa, Asia, the CANZ bloc which is comprised of Canada, Australia and New Zealand, and South America. Each chapter examines dialogue at the various levels of power, as well as within a geographic locality or region. Each chapter reflects the positions and argument, the voice and language within which the issue of Indigenous peoples’ human dignity and right to equality and justice is being addressed.

While each chapter or dialogue is self contained, they are also linked to each other and present emergent patterns that inform relationship(s) between Indigenous peoples and those representing the entities and institutions which act in the interests of dominant nation states. Reflexivity illustrates that many of the same obstacles encountered by
Indigenous peoples are those equally hindering the rest of humanity from elaborating a peaceful inclusive world of diversity.

In addition to providing greater understanding of the Indigenous peoples’ processes and voice, the thesis is equally a critical reflexive analysis of dominant values, thinking and praxis. The thesis uses methodologies consistent with Indigenous approaches which seek to conscientise, re-contextualize, and reframe dominant perspectives, self-narratives and practice.35

This study might also be understood as a piece of music each chapter being a section within a whole score, through which melodies or themes are again re-visited and given slightly differing form and interpretation.

The main body of the thesis is divided into three volumes. VOLUME 1: INTRODUCING THE JOURNEY ACROSS A MACROPOLITICAL CANVAS uses ‘Big Brushstrokes’ to paint a landscape which situates organizations and fora, as well as introduce ideas, themes and groups. As a broad canvas it provides an overview of the history and development of evolving and often parallel dialogues within the macropolitical arena, while painting a context for on-going, current and unfolding international events. Included with the appendix is a detailed timeline of international events dating from 1945 through to 2005, which provides the specificities of the evolution in global dialogue and discourse.

VOLUME II: examines international activity and the arguments around Indigenous peoples’ human dignity and justice in greater detail. DIALOGUE WITHIN INTERNATIONAL FORA of the United Nations has been shaped by a need to determine their rights as Indigenous people, and to define to whom these newer standards apply. Regional dialogues linked to these same considerations illustrate the many complexities the Indigenous Peoples’ Working Group within the UN had to consider to achieve workable outcomes.
The effectiveness of Indigenous peoples within multilateral fora has resulted in international jurisprudence being extended to internal minorities. Where 2004 represents the end of the International Decade of Indigenous peoples, and a final negotiation on their Declaration of Rights has yet to be achieved within the UN, governments within the CANZ bloc have sought newer discourse to address the situation.

The challenge of Indigenous peoples’ legitimate claims and of their rights as internal minorities has meant that dominant political theory requires re-examination. VOLUME II also examines DEBATE WITHIN THE ACADEMY and a newer political discourse to emerge from academia. While the ensuing politic of ‘Indigeneity’ may in fact hold as a solution in a number of contexts, the thesis challenges the claim that this discourse has universal relevance. This section contrasts a divergence in political articulation and vision and argues that the dominants need of an accommodation often determines the voice preferred within exchange, and that this may result in articulation potentially inconsistent with the need for diversity. Also questioned is the intent of the dominant, and the outcome of any negotiation even if conducted under this newer political framework. The voice of Indigenous academics serves to underscore critical perspective. This volume also highlights the issue of representation and levels of politicization.

VOLUME III presents case studies from within the CANZ block, comprised of Canada, Australia and New Zealand. While each study reflects the nature of dialogue within specific national contexts, they also demonstrate the shared nature of policy utilized within this grouping of First world settler nations. In effect what emerges is the pattern by which THREE CASE STUDIES reveal ‘…THE ONE SOLUTION…’ and continuing diminishment.

Canada which generally leads the political discourse and defines the process, illustrates the confusion which can result from divergence in voice, and its instrumentality, which, it is argued, leads to the continued diminishment of Indigenous aspirations.
The Australian case study examines the use of legal frameworks which have been devised to provide ‘land rights’, but which simultaneously deny rights while delaying any need for a resolution. This section also examines a second dialogue which is said to result in ‘reconciliation’. Here again the thesis argues that this mechanism will not achieve its stated objective.

The New Zealand case study, in which the Maori represent a significant proportion of the population, examines cultural discourse and identity, both of which are contained within the newer constructs of network societies. A psychological framing reveals the complexity surrounding ‘authenticity’ and ‘diminishment’. The case studies draw together and ground the various themes and perspectives developed within the thesis. Together, all three case studies provide an historic overview of on-going dialogue, the methodologies of containment and pattern of diminishment.

The conclusion will revisit the meeting places within the journey of this thesis, highlighting the meaning expressed along the tracks which are my methodology through a political landscape. Provided also as a final sharing, are the Indigenous meta-rules of relationship which underpin the living world. These are offered as part of a hopeful vision for the future and a newer paradigm as they reveal the order inherent to a living systems sensibility and another consciousness in which the physical manifestation of spirit is the diversity of life on Earth within a sacred circle of existence.

It is hoped this thesis will conscientise readers to another vision being offered to humanity by Indigenous peoples, and will stimulate debate and provide challenges, particularly for those who have not had the experience of being in another cultural paradigm, one which is marginalized and stigmatized, but which also contains a deep knowing and understanding of both our place in the universe and the knowledge by which to live collaboratively with Mother Earth.
John Gray writes: ‘The spread of new technologies throughout the world is not working to advance general acceptance at international levels that peoples is a collective identity has allowed for the general use of this later lettering to stand as the one term used in English but understood differently in divergent contexts where negotiation is occurring. Consequently I will use peoples, but mean peoples’ simply so that the possessive form which would also carry an apostrophe might be clearer. Where I need to express a singularity of a peoples it will be prefaced with an article, ‘a’ or ‘the’. All quotes will remain consistent with the author’s usage. Further explanation is provided in Chapter 11, p.227, which provides ‘The Story of Definition’.

The term ‘dominant’ is coined in this thesis to describe those who have power within any given relationship. In some contexts it includes Europeans, but in others it may be simply a particular settler society. Other terms which by being paired similarly reflect power relations include western and non-western, as well as occidental and oriental. This definition is by nature loose given the entire thesis traverses a diversity of contexts examining relationships. ‘Dominant’ is often used by Indigenous peoples to mean a group that holds power, owns processes, defines language, and determines and imposes an unwanted reality on them, resulting in their diminishment.

Intercultural interpreter: someone who can contextualise communication between parties embedded in distinct worldview. Good intercultural interpretation leads to an appreciation of the other party’s context such that sameness is understood but divergence in thinking, knowledge and point of view is illuminated. Providing additional explanation; intercultural is made up of ‘inter’ meaning ‘between’ and ‘among’, and also ‘mutually’ and ‘reciprocally’ and culture, (p.793). Interpreter denotes ‘to make out or bring out the meaning of (foreign or abstruse words, a dream etc.)’, as well as ‘to explain or understand (behaviours etc) in a specified manner’, (p.798). Hence there is an additional element within intercultural interpretation which allows the interpreter the space of explaining something outside one or other’s terms of reference.

Cross-cultural translation: This is the translation of words presented within an exchange between parties embedded in separate cultural contexts and the process and intent by which language is translated between them. Cross-cultural translation presumes that the parties are consistent in their use of terms and their meaning. In other words while translation may be ‘the act of an instance of translation, a written or spoken expression of the meaning of a word, speech, book etc. in another language’, there is also the idea that a translator simply relays the message from one to another. ‘Translator’ not only refers to ‘the act of translation between languages’, but is also ‘a television relay transmitter’, hence the idea that the message traverses a diversity of contexts examining relationships. ‘Dominant’ is often used by Indigenous peoples to mean a group that holds power, owns processes, defines language, and determines and imposes an unwanted reality on them, resulting in their diminishment.

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1 Within Indigenous politics the term peoples is a singular noun referring to a ‘collective identity’ of a nation, or tribe, a peoples. Consequently the plural of this word is sometimes written in English as peoples’ to denote more that one nation or tribe consisting of collective identity. Within dominant politics however, peoples is often accepted and understood as meaning the plurality of Indigenous people, reflecting a system of thinking and self understanding of ‘individuated’ identity, and of the homogeneity often ascribed to Indigenous peoples’. This simple explanation goes to the heart of debate about Indigenous peoples’, and their standing within international and national contexts and dialogue. Issues which will be canvassed throughout this thesis and which inform the divergence in voice being examined.

Where initially many in the movement always ensured their writing reflected this differentiation, the general acceptance at international levels that peoples is a collective identity has allowed for the general use of this later lettering to stand as the one term used in English but understood differently in divergent contexts where negotiation is occurring. Consequently I will use peoples, but mean peoples’ simply so that the possessive form which would also carry an apostrophe might be clearer. Where I need to express a singularity of a peoples it will be prefaced with an article, ‘a’ or ‘the’. All quotes will remain consistent with the author’s usage. Further explanation is provided in Chapter 11, p.227, which provides ‘The Story of Definition’.

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The Oxford Dictionary and Thesaurus, Oxford University Press, pp.793 and 798.

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6 John Gray writes: ‘The spread of new technologies throughout the world is not working to advance human freedom. Instead it has resulted in the emancipation of market forces from social and political control. By allowing that freedom to world markets we ensure that the age of globalization will be remembered as another turn in the history of servitude’. Gray, J. False Dawn: The Delusions of Modern Capitalism, p.208 in Foster, J.W. and Anand, A. Eds. (1999), Whose World is it Anyway?, United Nations Association Canada, p.45.


Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.


Dodson, M. Aboriginal and Torres Strait Islander Commissioner, Second Report, 1994. Aboriginal and Torres Strait Commission, Human Rights and Equal Opportunities Commission (HREOC), Australian

Kingsbury points out 'is resisted by adherents of several of the strands of state-nationalism that remain strong in most Western states' (p425). Second: that 'claims of Indigenous peoples are presumptively dubious to those liberals who believe ethnic nationalism and ethnicized politics are dangers to be avoided'. He writes of a Ukrainian government representative who put it that 'claims for preferential treatment for Indigenous peoples would not contribute to inter-ethnic peace and understanding in any society' (p.425). 'A powerful strand of Western liberalism takes the individual as the essential self-determining or at least freely choosing subject, is mistrustful of group-based claims extending beyond nondiscrimination, and call for neutrality of the state and other social institutions with respect to competing substantive view among groups as to what is good and how to live. Nevertheless many political theorists in this tradition have resorted to some conception of “the people” at the least to define the boundaries of a society and there is a
close fit between such “liberal” concepts as the color-blind constitution and some varieties of national projects.’ Kingsbury points out that ‘it would be over simplistic to suggest that there is consensus in the political West, or in the European settler states or the prosperous countries of the OECD, as to the position of Indigenous peoples in national polities and legal systems.’ While political frameworks result in the different standing governments accord ‘Indigenous peoples’, as initially pointed out many recognise that the existing human rights frameworks do not address Indigenous perspectives. Kingsbury, B. (1998), Indigenous Peoples’ in International Law; A Constructivist Approach to the Asian Controversy, The American Journal of International Law, Washington, Vol. 9:414, Issue 3., p.425-426.

Civil Society is a term broadly used to describe the growing emergent groupings of people often networked and working in concert to bring about change. See Vol. 1, 5.2, p.93 for more detailed discussion of Civil Society and its role within fora.

While Indigenous peoples are seen as a social movement they are not included within the UN’s working definition of ‘civil society’, albeit that they may have representative NGOs, or IGOs (Indigenous Governmental Organizations) engaged with the multilateral institutions. Indigenous peoples are accorded a unique positioning as a ‘distinct’ grouping of reforming campaigners. There are historic, legal and political reasons for this. Firstly, Indigenous peoples existence is often denied, and they invariably have no official status within the borders of nation states. Secondly, loss of territories through: incursion by colonisers who justified the land grab by invoking the legal status of ‘terra nullius’, empty land; or by newly created governments and constitutions that simply declared that all land (irrespective of customary law/other forms of tenure) belongs to the state, further provides a ‘distinctive' positioning. Treaties and other constructivist agreements and arrangements may also impact on the separate character of Indigenous peoples relationship with the state. Indigenous peoples inclusion within the United Nations process is on the basis that they form one of four social movement groupings to whom the organisation has opened participation, the other three being: environmentalists, women and youth.


‘Mother Earth’, ‘Pachamama’ as she is referred to in South America, ‘Ruwe’ as she is known in the language of the Tanganekald peoples of South Australia. Indigenous academic, Dr. Irene Watson writes: ‘The Earth is known to us (Indigenous peoples) as a feminine being, a mother. The dimension for loving ruwe is whole; it is circular, not linear. The love of ruwe and its energy moves through all of the organs; it is more than a thought that is sublimated into an ideology that is then used to dominate. Love of ruwe does not change form. It remains the same. Love of ruwe is a way of life; it is practiced and it is sung; the songs of ruwe are sung across the land. Love of ruwe is a passionate and interdependent one, which moves throughout and unifies all things’.


Youngblood Henderson. A commitment to inter-cultural diplomacy was also accepted by UN Members attending the Heads of Government Meeting held in Ulaanbaatar, Mongolia, September, 2003.

33 Sustainable: The United Nations defines sustainable development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’, World Commission on Environment and Development. In ‘Our Common Future’, published by Oxford University Press in 1987.

34 Stability: Within a living systems sensibility and consciousness ‘stability’ occurs when relationships respect the meta-rules of relationship. Instability may result in ‘sickness’. The Meta-rules are further explained as the thesis progresses and are incorporated in a final analysis within the Conclusion. See Vol.3, 20.3, p.602.

35 See next chapter ‘Finding Frameworks’ in which I explain the need to borrow and incorporate Indigenous methodologies.

36 For many Indigenous Peoples of Turtle Island (North America) the symbol of the circle or ‘Medicine Wheel’ is fundamental to understanding this Earth/nature worldview. The Medicine Wheel which must remain balanced as it continually spins is central to many Indian teachings. Also known as the ‘Sacred Hoop’, it is comprised of the four cardinal directions and winds: east, south, west and north; of the four elements: fire, water, earth, air; the four seasons: spring, summer, autumn, winter; the four symbolic races of mankind: yellow, red, black and white; and the four dimensions of human nature: emotional, physical, spiritual and mental. Taken from paper Restorative Practices. Indigenous Roots of Restorative Conflict Resolution Practices; Overview of Current Trends; Review of a Few Processes, June 2001, Grandfather William Commanda. See web site: www.circleofallnations.com
Chapter 2: Finding Frameworks

In a traditional academic arena the methodology used in this thesis would be described as dialogic\(^1\) and multidisciplinary because while it uses a socio-culturalist perspective and ethnographic voice, it simultaneously draws on a diversity of disciplines including, philosophy, sociology, theology, history, political and economic theory, psychology, linguistics, physics, biology, literature, cultural studies, and music. Additionally and central to this thesis, however, is the knowledge which informs United Nations processes of global change and reform, and the perspective of Indigenous peoples who have often been central to the project of global conscientisation.\(^2\)

In order to contextualize the experiences of my journey through political landscapes and give voice to those perspectives which I have gained from living and working with Indigenous peoples, was the need to find new frameworks. The challenge of contesting realities, worldview and knowledge necessitated other lenses by which to present and explain the divergence in vision Indigenous politics offers.

Senora Pocaterra, a respected international Indigenous leader and elected South American governmental representative provides the perspective and standpoint from which to view this thesis and its contents. Speaking at the Secretariat of the World Council of Indigenous Peoples in Canada in 1997, she presented two inter-connecting circles. The First represented the world of the dominant with its values and thinking. The second, represented the rest of humanity in which is located Indigenous - Tribal peoples and their cultural worldview. The space between where the circles overlapped represented the international dialogue and processes of systemic global dis-location / integration. In Ms. Pocaterra’s analysis the continual pressures from the one circle to subsume the other increases the volume and dynamic of the intersecting space. The challenge in her view was which circle’s values and vision for humanity would ultimately succeed.
Such a view distills the project of this thesis. The diagram serves to situate the dialogues which shape global processes and my role as an inter-cultural interpreter. This is not to describe the dominant world or even the Indigenous-Tribal world, but rather to facilitate insight to the exchange which is occurring within the intersection of the two circles and other key dialogues which might affect these same processes.

My approach seeks to avoid research in dominant terms, which often centers on the others ‘disadvantage’ and ‘issues’ within an imposed and problematical framework. Rather, this thesis presents the Indigenous voice as a philosophically informed ‘way of being’, reflected and expressed as a political movement sitting at the table and in dialogue within the intersection; a politic and voice which carries within it the seeds for a renaissance in human thinking.

Many of the academic frameworks one might expect to apply often did not fully accommodate the holistic perspective and knowledge that I was seeking to share and
express. Albeit that some of the conceptual frameworks within social ecology dealing with a sense of place, community development and organizational change, environmentalism, cultural change and the study of political ecology provide some capacity for insight. Social Ecology which seeks to understand and explain the transformative nature of inter-relationships between the personal, social and environmental resonates an Indigenous appreciation that ‘everything is relationship’, even if it does not fully accommodate Indigenous perspectives and knowledge.

Feminist frameworks provide a further example in which difficulty arose from a divergence in self understanding of what it is to be ‘a woman’; of one’s authority, position and role within family, community and wider society. Here worldview as an understanding of contexting and of one’s nature is distinct.

From an Indigenous perspective feminist agenda has tended to reflect the asymmetric power imbalance of structured existence. That is to say, feminism appears to be predominantly concerned with gaining an equality of women within the globalizing system determined by men. It does not address the equality of an autonomous but inter-dependant ‘women’s space of being’ of her knowledge as a balancing within an enfolding parallel or as a walking with men.

This gender politic emanates from women who have always had as an ‘inheritance’ their own means of continuance within society and culture. Peoples who did not go through a period in which women were denied the right to property or means of continuance, nor her knowledge, nor found it automatically subsumed by men’s authority, as often occurred in the Third world during colonialism and may again today when economic modernity arrives. Gaining a voice has not been easy. When the world’s women were invited to participate within UN processes Indigenous women were originally not considered or included in the Beijing Conference. It took the intervention of several UN member Governments (lobbied by the Indigenous Woman Caucus) before an invitation was extended and space was created for them at the event.
Feminist methodologies which have freed-up the rigidity of previous academic approaches and thinking to knowledge are useful, but this thesis goes beyond the notion of gender as ‘difference’ within discourse, or concern with exclusion from economic opportunity within the globalizing formal economy. This is not to say these are not concerns, but rather to explain that the challenge this thesis explores is a shift in consciousness and self understanding within which Indigenous woman stand strong in an encyclopedic knowledge of their cultural localities, of relationships with other living systems, and of their families, communities and peoples; a worldview within which they carry equal if not sometimes more authority than men, because they represent continuance of life and of conveying language and culture and knowledge and worldview.

Cultural studies which are also part of social theories were also examined. But here too there were limitations. Not because perspectives were irrelevant, but rather because they reflected an Anglo-centric appreciation of what culture is. Indigenous peoples maintain their understanding of culture is distinct from that in dominant discourse. This said however the ‘imagined community’ and the ‘hybridization of identities’ integral to cultural studies do resonate with a ‘virtuality of identity’ Indigenous peoples associate with modernity, and the subordination of diversity to newer economic identities implicit through political templates of ‘ethnic’ integration.

Where cultural studies address ‘racism’, this often becomes an examination of the associated narratives which accompany integration. This may serve to create some tolerance within the wider community, but ultimately it remains part of discourse which seeks to have the barrier constructed on ‘difference’, tolerated and accepted. The ‘difference’ is there and remains, but it will no longer be the barrier it has been. Such a worldview and understanding diverges from Indigenous epistomy in which the starting point of all thinking is the ‘sameness’ of ‘livingness’ and a holism which does not separate or fragment; perspective and thinking which are developed further as the thesis unfolds. Indigenous reframing would not see the barrier as separating difference, but rather as representing a boundary between variations of the same thing. This is a boundary where that which is common and shared resonate, allowing for good exchange; exchange which mutually benefits and enriches. Hence the boundary, depending on its nature, may not have
any fixed representation, rather characteristics so that ultimately current theoretical frameworks concerning culture are inappropriate.

Peace Theory was another framework examined particularly as a concern with direct and structural violence, with non-violent resistance to racist assumptions and structures, with reconciliation and peace building, with multiculturalism and social justice, all resonate with the Indigenous agenda. Indeed much in this agenda at international levels might be said to reflect the values of Indigenous approaches which center on ‘dialogue’ as a reciprocity and exchange of ideas and meaning. Where peace theory diverges though is in its presumption that ‘progress’ as dominantly defined, remains the overall objective of all humanity. Peace theory proposes how processes of integration might be better managed, such that conflict which spins into violence might be avoided. Peace theory neglects to address the paradigmatic worldview and vision being articulated and elaborated by a vast humanity for whom dominantly benefiting ‘development’ no longer represents or addresses collective imagination.

The commonality across the various approaches is ‘race’. Race is seen by many Indigenous academics as the overriding and pervasive lens through which most research into Indigenous peoples is conducted. Both Battiste and Youngblood Henderson point out that this lens results in a falsity of understanding, while simultaneously allowing dominant interests to relegate Indigenous knowledge to a sub category of race studies. Race theory usually contexts research into Indigenous ‘differences’ from mainstream existence, while inherent paternalism results in the focus of this research being the ‘issues’ which problematise them as Indigenous people within policy.

Within the CANZ bloc (Canada Australia and New Zealand) where national contexts and relations inform dominant perspectives, Indigenous peoples are viewed as substance abusers, alcoholics, underachievers, educational dropouts, and communities suffering early morbidity and infant mortality at alarmingly high incidence. This then becomes who they are and tends to define why and how dominant society inter-acts with them. As an Indigenous person might explain, their uncle may be an alcoholic, and their brother in jail, their cousin may have committed suicide and their sister lost a child through sickness, but
this is not their identity. The focus and objectives of Indigenous research diverge significantly from dominant approaches and will be explained momentarily.

The centrality of race in each of the theoretical frameworks ultimately led to Critical Race Theory. This framework allows for a divergence in worldview and thinking, for a shift in consciousness and recognizes that legal and political institutions are integral to processes which deny human dignity, equality and justice. Critical Race Theory often results in analysis which dissects pieces of legislation and policy, illuminating the inherent assumptions which have remained unstated, but are explicit in the resulting text of these institutional processes.

Critical Race Theory legitimates an engagement with divergent worldviews which inform contesting realities. As a journey across political landscape in which voices reflect distinct levels in consciousness, my methodology needed to illustrate both what is the same and that which differs if only to further understanding between the parties to dialogue. Inter-cultural interpretation has been central to this project. A requirement to both honour Indigenous approaches to research and remain consistent with their priorities has also meant that my methodology also reflect their agenda.

Linda Tuhiwai Smith provides such an approach. Her research model is based on the metaphor of ocean tides (see Figure 2:2 over page). The themes and sub projects which inform Indigenous peoples’ social movement constitute the research agenda, connecting local, regional and global efforts. Tuhiwai Smith writes:

The research agenda is conceptualized here as constituting a programme and a set of approaches that are situated within the decolonization politics of the Indigenous peoples’ movement. The agenda is focused strategically on the goal of self determination of Indigenous peoples. Self determination in a research agenda becomes something more than a political goal. It becomes a goal of social justice which is expressed through and across a wide range of psychological, social, cultural and economic terrains. It necessarily involves the processes of transformation, of decolonization, of healing and of mobilization as people. The
processes, approaches and methodologies – while dynamic and open to different influences and possibilities – are critical elements of a strategic research agenda.\textsuperscript{7}

The metaphor of ocean tides reflects ‘the movement, change, process, life, inward and outward flow of ideas, reflections and actions’, which are represented within her chart by the four directions, decolonization, healing, transformation and mobilization.

\textit{They are not goals or ends in themselves. They are processes which connect, inform and clarify the tension between the local, the regional and the global. They are processes which can be incorporated into practices and methodologies.}

\textbf{FIGURE 2:2.}

\textbf{The Indigenous Research Agenda}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{research_agenda.png}
\caption{The Indigenous Research Agenda}
\end{figure}

The diagram also reflects four major tides, of **survival, recovery, development** and **self determination**, which Tuhiwai Smith notes are ‘the states of being that Indigenous communities are moving through’.

*It is not sequential development - the survival of peoples as physical beings, of languages, of social and spiritual practices, of social relations, and of the arts are all subject to some basic prioritizing. Similarly the recovery of territories, of Indigenous rights, and histories are also subject to prioritizing and to recognition that Indigenous cultures have changed inexorably. Recovery is a selective process, often responding to immediate crises rather than a planned approach. This is related to the reality that Indigenous peoples are not in control and are subject to a continuing set of external conditions. In reality this means that specific lands and designated areas become a priority because bulldozers are due to start destruction any day now.*

While the same priorities inform much of the global Indigenous movement, an amplified contexting of *Cosmoconsciousness* adds another level in consideration, this being the continuance of cultural diversity and of all life as wellbeing.

This level of concern is reflected in the inter-cultural realm of diplomacy and exchange that Dr. Marie Battiste and James Sa’ke’j Youngblood Henderson speak of. Their perspective and study builds on knowledge of the remarkable energy Indigenous peoples have devoted to establishing inter-cultural protocols and of the future these potentially offer. This agenda and its inter-cultural nature move beyond processes addressing systemic discrimination introduced by colonization.

*Intercultural diplomacy must empower a fair and just space between cultures that must be respected and honoured... New attempts must be made to create intercultural venues for dialogue and cooperation, to empower intercultural diplomacy, and to prevent ethnic warfare, separatism, and apartheid. Our shared future can be a proud one. Together the international and national communities, institutions and legal systems can open the greatest era of cooperation,*
understanding, and respect among diverse peoples of the Earth and forge a true renaissance. Only a global effort can ensure that respecting Indigenous heritages and perspectives is an integral part of all that we do. In this process, everyone has a powerful and indispensable role. And when we meet these challenges, the judgment of history will be that each intellectual tradition met and respected the others’ heritage and knowledge. Together this honor and respect will lift our cultures and heritage into a fair global order and into a new and higher level of civilization the world needs. We cannot afford not to do it.\(^9\)

The additional layering being added is a point of view in which the project becomes universally relevant for all humans, or to state it another way, it transcends the Indigenous non-Indigenous dichotomy implicit to current dialogue.

This inclusive approach is consistent with the philosophically informed project of many Indigenous peoples who see ‘conscientisation’ as the vital priority, if life is to continue as wellbeing. Activity shifts to an international agenda concerned with the survival and quality of all life on Earth. This transcendence is central to the politic of a majority of Indigenous peoples, particularly those for whom the project is continuance as distinct cultural peoples within territorial consideration. These are peoples who are still substantially sustained by their own knowledge, environments, labor, economies and trade.

The larger project of ‘conscientisation’ also informs the politic and thinking of many Indigenous peoples within First world and CANZ bloc countries. While these peoples, in comparison to their brothers and sisters in other regions of the world may be systemically dependent, they nonetheless are often committed to recovering their ways of life and, as Tuhiwai Smith’s model illustrates, to a future in which they determine their own development consistent with more traditional priorities and values which do not create sickness and destruction but which have sustained them through the devastating impacts of colonization and which now hold the keys to healing and a renaissance of being.

This thesis seek to illustrate that while dominant political and legal processes continue to cast Indigenous peoples and their aspirations as a competitive agenda, the voice of
Indigenous peoples represents the very journey all humanity will ultimately arrive at if we are to have continuance as wellbeing. The same research agenda which Tuhiwai Smith presents becomes a self-reflexive exercise for all people, societies and groupings. A journey of profundity as it often brings up many deep seated assumptions, not only about Indigenous peoples, but also of Eurocentric knowledge and worldview.

The desire to write a thesis which met the objectives of transcendence and conscientisation meant that I needed to find other ways of explaining my approach as a research methodology. Australia’s Aboriginal peoples provided both the metaphor and the frameworks to describe the journey through political landscapes and access meaning. Within this landscape meeting places already exist (see figure below). These are represented by the dialogues to which both Indigenous peoples and non Indigenous interests are party. As meeting places these become localities which have a tangible form, being both embodied by people and of landscape, geography, history, and of legal and political frameworks but which also, as a meeting represent an exchange of ideas, concepts, notions and thinking emanating from distinct cultural contexting. As an intercultural document this thesis needed to accommodate and communicate such an exchange.

**FIGURE 2:3 The Dialogues as Meeting Places – based on Tuhiwai Smith’s Research Model**
In a sense this thesis sits within a project that desert peoples in Australia refer to as Nintila, a term that can mean both ‘to teach’ and ‘to learn’. As a term, ‘Nintila’ can mean both to teach and to learn, because Pitjantjatjara peoples recognize that all communication is an exchange. No one party to dialogue has all knowledge or superior knowledge. One party, however, may have more wisdom, and it is this authority which is respected within exchange. My thesis seeks to give voice to Indigenous perspective and ‘knowing’ within political articulation. This voice is often not heard because the result of dominant processing generally involves agenda setting, ascription to, and a narration of Indigenous peoples. Dominantly defined processing and assumptions lead to contestation as a conflicted politic, rather than that of a dialogue, of exchange, of mutuality and of respect. Nintila then provides a framing for the inter-cultural quality and nature of the exchange being presented.

The overall structuring of my thesis as a series of dialogues is also explained by Indigenous approaches. This structure had to allow for canvassing of complexities contained within each meeting place and its locality while simultaneously expressing the global and transcendent. The structure also had to provide the thesis with its own holism reflecting the knowledge and perspective being shared. I needed a form which would allow one to make localities explicit but which did not fix meaning. Music provides both the metaphor and approach. Understanding my thesis as a piece of music comprised of varying melodies within song also resonates with Aboriginal practice. Given that exchange takes place within locality which is both embodied, and abstracted through language, music allows one to shape and make form explicit within flux. Music provides movement, the continuum central to Indigenous consciousness which is reflected in the verb centered languages of many Indigenous peoples.

A metaphor of music also allows for multiple relationships between ideas, thoughts, notions, concepts and themes. These are the chords implicit to dialogue. Each chapter becomes an examination of the chord and of its relationship to locality (space) and the voice (identity and worldview) of those party to exchange. Each chapter might be seen as a study on the variation of the chords, of the complexities which are the dialogue. The overall relationship of each chapter or chord to each other provides an overall pattern which
highlights further complexities and seeming inconsistencies. This pattern is of itself a song or melody which becomes familiar and remains with the reader.

Music also allows for tonality and hue within language and perspective. This provides another dimension to analytic processing and hopefully the experience of engaging with this thesis. It can be a powerful approach, particularly when it is coupled with an examination of the case studies in which existence is made explicit through an engagement with voice, policy and/or legislation and discourse which directly impact on lived realities.

Where Tuhiwai Smith, has used the ocean and its tides to create a research model, reflecting the sea faring nature of Maori, I have sought to remain consistent with the Cosmoconsciousness of Indigenous Australians. Here, it is ‘country’ which provides the model. Importantly ‘country’ may also include reefs, mountain ranges and valleys within the ocean and seas of salt water dreaming, or the sweet water bodies of rivers, lakes and billabongs. Water does not negate relationship. All is referred to as ‘country’ because this is the belonging of Earth; a belonging of this life. As Bird Rose writes: ‘Country is the nexus of individuals, social groups, Dreamings, nourishing relationships, birth and death.’ A complexity of relationships of self and of locality and of their inter-relationship with still more localities in other country provide the framework. Within country and as a metaphor of universal ordering, Indigenous peoples in Australia speak of boundaries, strings and tracks which come together at meeting places.

2.1 Boundaries As Strings

In Western discourse boundaries are about ‘differences’ which ‘separate’. Boundaries are a border which divides, a ‘no mans land’, another construct from within which two groups of people, who are separated by the boundary, are contrasted. The elaboration of this methodology which is ‘border discourse’ is that any one who might live between and in no mans land, may be held to be in-authentic.

By way of contrast, in an Aboriginal worldview, boundaries are those Dreaming tracks which link localities and ‘bring together’ illustrating and reflecting the shared relationship
between them. These boundaries are not about contrasting or separating. Boundaries link what is the same within a landscape that is varied. Bird Rose’s use of a geographic analogy in the first instance provides greater clarity.

Bird Rose writes: Tracks and songs are the basis to Aboriginal maps and are often called ‘boundaries’. To say that there are boundaries is to say that there are differences; the universe is not uniform. Unlike European maps on which boundaries are lines which divide, tracks connect points on the landscape, showing relationships between points. These are the boundaries that unite. The fact that a Dreaming demarcates differences along the line is important to creating variation, but ultimately a track, by its very existence, demarcates a coming together. Dreaming creativity made possible the relationships which connect by defining the differences that divide.¹⁴

Boundaries then are tracks which bring together. They link meeting places or localities illustrating relationship. This is the structure of my thesis. Storytelling becomes the boundary or track across the political landscape. The dialogues and their contexts represent the points within landscape which the journey brings together. Each dialogue has its own set of inter-relationships which in turn create variation within the same one Dreaming.

A second point is that the Aboriginal type of boundary, expressed as strings, creates sets of identities which cross-cut each other. The geographic regions based on deserts, river, and coast are clearly distinguished through ceremony lines of initiation. Each ceremony demarcates a series of languages which is differentiated from others. …A string forms a set which, in other contexts, is broken up. Every string defines both difference and similarity, and as the tracks cross-cut each other, forming elaborate webs and stories, so people assert their rights and obligations both to differ and to come together.¹⁵

This second point is also reflected within the structure of my thesis. Within the narrative each dialogue is interpreted to illustrate both what is the same and what it is that differs between two divergent worldviews and their knowledge. Each dialogue has its own
language and terminology. In the case of this thesis, newer language has also been required in order that those walking the journey through the political landscape understand that there is a song and a Dreaming. As an interpretative analysis each dialogue is broken up, or to express this academically, the knowledge and thinking contained within each locality is decontextualised and recontextualised both within its own locality and within another dialogue. This means, knowledge is revisited in various contexts or dialogues. For Europeans this initially may appear to be repetition, but in fact it’s reappearance within another dialogue and setting not only honours its multiple relationships but also expresses the nuance of understanding, the hue and tone that shifting contexts and perspective illuminates. Strings or themes cross cut the story creating a web of ideas and inter-relationship. The story then is a complexity of resonances which brings together the whole within a political landscape.

Importantly this approach also gives voice to multiple identities. Woven within the narratives are the voices of politicians, academics, and Indigenous peoples many of whom are directly involved within macropolitical processes of change from within specific contexts or dialogues. These have been used to further my own story, and to address perspective which may not currently inform discourse. Identity again resonates knowing and as such, dialogues express the divergence of voice which often creates confusion or is instrumentally used to silence ‘others’. The dialogues are thus an interplay between the dominant world and its structured thinking and the Indigenous world of culture and ceremony.

Both emanate from the same political landscape and are in relationship with each other. The First or dominant is the world of noise, a diminishment of a sacred and living universe. The second which is currently being shouted down represents an amplified understanding of existence and contains the knowledge which creates cultures of harmony. Reconciling the two has been the challenge, as both are extant within landscape and as expressions of worldview simply reflect on who is telling the story and their purpose.

The need to revisit a personal journey of the past 15 years while undertaking deeper learning through both academic study and cultural teachings is the need to understand
where I’ve walked with profundity, and a need to share. Where the thesis and its chapters are understood as the political landscape, my voice and role within it is of an inter-cultural interpreter, and of translation. It is both of the landscape and of the many contexts with which I have relationship. My voice is that of an invited participant, a facilitator of meaning within dialogue, who has been given time-out, to write from the space of a related observer. Writing has also been punctuated by occasions where I have again been asked to participate within dialogue or invited to further cultural learning.

Bird Rose again provides another level of understanding on my process. Where Dreaming strings fix country and people, demarcating human and geographic identity ones relationship to a string or track is concerned with sharing. It is of people coming together, generating each other as equals through exchange. She writes that the term often used by Aboriginal peoples from central Australia to explain ones relationship with a string is ‘Fifty’. ‘This is one of the most eloquent Kriol terms, clearly highlighting the difference between Aboriginal and European concepts of boundaries. She explains it is probably derived from the English expression ‘to divide things fifty fifty’.

This insight further explains my need to share. There being two levels here. Firstly as the track or string being shared is a political Dreaming, the thesis both seeks to make fifty the Indigenous voice, while also addressing the lack of equality which discourse and global architecture deny the majority of humanity. In other words my sharing seeks both fifty of song and fifty of human dignity as the relationship with string.

There are reasons for following traditional methodologies of sharing knowledge. Firstly as someone who has had the privilege of learning within Indigenous cultural contexts and been the recipient of generous exchange I am wanting to give back. The requirement is reciprocity. An honoring that again makes ‘fifty’ my relationship to string. In the First instance therefore, the honoring is of my relationship with Indigenous peoples, colleagues and advocates who are familiar with the concept of dialogues. Some may already be party to one or other dialogue. Others may be aware of a dialogues existence but have no access to participation within it or the information which flows from it. The aim then is to share
knowledge inter-culturally from within the variations of locality with which I have relationship, while expressing the song which brings them together.

What is being shared also differs from the project which is generally associated with western academia. Indigenous peoples are well aware of the issues with which they live, so they have no need of yet another study which sets out to explain them or their lives. What they are looking to understand is the pattern which contains and diminishes their identity and existence. Understanding pattern capacitates the individual, community and peoples.

David Mowaljarlai a traditional owner and Elder from Derby in Western Australia supports this perspective. He explained Indigenous thinking in the following manner:

‘Pattern thinking is Aboriginal thinking. There is no big boss. Patterns are about belonging. Nothing is separate from anything else. This land is not separate from nature, people, the heavens, and ancient stories. Everything belongs in the pattern. There is no ‘ownership’ in pattern-thinking. Only belonging. Money cannot buy bits of pattern. Power runs all through a pattern. It cannot be sold. It is not separate from pattern.’

At this level of engagement, this thesis then is about the specificities, the methodologies which are the pattern of historic and on-going relationship. The political landscape being the Dreaming within which specific localities or dialogues represent the locus of exchange. Another reason for my approach is to honor the cultural contextualizing within which I have been learning. Writing, and chapters, structure and a de-contextualizing of an issues based form, are my accommodation of western approaches. Song and pattern and multi-dimensionalism of changing boundaries and contexts within shifting time frames are the space of Indigenous understanding.

As the perspective I am seeking to give prominence to is the conscientised Indigenous voice, it is imperative that they remain culturally contextualized, particularly as this voice articulates a separately informed philosophy and politic. Furthermore as Indigenous processing is ‘meaning’ focused, there is a need to engage at this level of dialogue. The
requirement is to avoid the frameworks within which Indigenous peoples are continually placed linking them to problems and failures. My approach is to facilitate an understanding of the transcendent space of their dialogue at the level of profundity which is their cultural voice.

This also explains why I have often chosen to place theoretical discourse within the endnotes of each chapter. Not because it is irrelevant, on the contrary. Discourse explains the depth of engagement within western thinking. Discourse generates an understanding. However its culture is historically embedded and as such it remains of a separate project of intellectual specialization and by this nature is often devoid of the holistic appreciation that is Indigenous peoples’ ways of understanding. Indigenous peoples, like many other colonized peoples, see discourse as an instrumentally devised knowledge used to legitimate one part of humanities power over others.

In contrast, Indigenous approaches to dialogue involve understanding and identifying meaning which then allows all parties to resonate song. This expresses a divergence in political project. The Indigenous one utilizes collaborative approaches and preferences these to conflicted activity which creates chaotic realities and unjust and unbalanced existence.

Placing dominant discourse within the endnotes gives it a locality within the amplified project of Indigenous political process. The locality of an endnote is often the place of divergence in thinking that informs the dialogue. It may also be an explanation of an Indigenous concept or a further strengthening of a point being made. Endnotes then are an integral part of understanding the exchange taking place within a dialogue and chapter providing inter-cultural insight. However as they are generally a ‘going into’ as a specialization of thought, I have chosen to stay with the rhythm and flow of the dialogue. End noting makes the location of this knowledge easy to access for readers, and fulfills the academic requirement that I illustrate my knowledge and engagement with the various discourses and relevant literature.
This approach has a further elaboration. As the text shifts between contexts and boundaries expressing voice, theoretical frameworks footnoted within one locality may within a next context or dialogue be given precedence within the narrative. This allows for a revisiting which honors multiple relationships within the web being woven. It occurs because each locality has its own identity and geography but in essence remains a variation of the same Dreaming. The themes being expressed are both the same and different. To return to the musical analogy, each dialogue is a variation of the same notes within a chord. What differs is the centrality or accent of each in separate contexts. The Dreaming or song is thus a variation of melody within each context. Hence ‘sameness’ and ‘difference’. This methodology strengthens the inter-connectivity of narrative or the strings which crisscross dialogues and contexts within the entire political Dreaming. As the story unfolds, there is a convergence in thought and ideas. What is hopefully achieved is a shared understanding which allows for autonomous harmony and for jazz.

This additional technique again reflects other cultural approaches. Within Indigenous thinking, knowing is often derived by jumping boundaries and contexts within a notion of time Bird Rose refer to as ‘everywhenever’. Gray referred to it as ‘invisible time imbued with spirit’. Aboriginal peoples within Australia call it ‘onetime’. Many Europeans find this approach difficult to comprehend, the rational mind being inherently linear and of sequential time/space.

Indigenous peoples are process oriented. In effect their worldview and language are of the verb. This is why Battiste and Youngblood Henderson argue that ‘Eurocentric structures and methods of logical entailment and causality cannot unravel Indigenous knowledge or its processes of knowing. These methods (those of the European) derive from a noun-centered language system, and they are ineffective in verb-centered Indigenous language systems.’

Indigenous peoples’ languages give voice to a conscientisation that existence is processes and ones experiencing of them. The world is not structured by nouns, rather by a continual enfolding within which entities are located as relationship. As Indigenous colleagues often explain only relationship endures. Humans will always be in relationship to each other and
to all the other living systems of Earth (as long as our species and others survive). Bird Rose also confirms this consciousness. She writes: ‘Individuals come and go while the relationship between categories of people, and between people and country persist.’ This is another reason for discourse being located within the endnotes. Discourse is essentially of fixed knowledge which supports systemically structured and linear identity and existence.

Jumping boundaries in contexts and time is a functioning of a consciousness which understands that everything is a verb. Indigenous peoples inhabit the ‘enfolding and implicate order’ described by quantum physicist David Bohm. When one’s worldview is conscientised to understand that the universe is not comprised of ‘nouns’ and ‘fixed truths’, one’s ‘way of being’ must reflect ‘meaning’. Jumping boundaries and contexts in time becomes the processes by which meaning is made explicit in the moments of exchange that are relationship.

Indigenous peoples often derive great humor by jumping contexts and boundaries particularly when that being shared is held to be a truth and by shifting contexts it is shown to be a non-sense. This communication / consciousness technique is also why many Europeans find it hard to engage in and follow conversations/language with Indigenous peoples. European processing is often viewed as being ‘the other way around’ by Indigenous peoples. Where Indigenous perspectives make complexity simple to understand, European thinking makes simple things complex.

Another departure from standard thesis writing is the borrowing of another technique from Indigenous peoples. Often the methodology used to share one’s perspective and understanding is a spoken form within which an individual expresses genealogy, of self and of one’s truth. This approach is about sharing one’s essence. Where knowledge is also its own property, ideas have genealogy which can be shared; a genealogy which illustrates its essence (as opposed to its instrumental use). Maori refer to this oration as a Korero. Within dialogue I have sometimes resorted to a written form of Korero as a means of explaining the genealogy of a concept across time. This allows for telescoping, or an
enfolding within the context of the discussion. Korero brings into the moment the ‘everywhennow’ of an idea.

Linda Tuhiwai Smith\textsuperscript{32} elaborates more fully on a number of points relevant to the methodological and theoretical approaches I employ within my story. She confirms that the primary reason for conducting research within Indigenous contexts is to benefit Indigenous peoples. Her own journey has been to explain and create newer academic discourse which honors and reflects Indigenous methodologies of inquiry and learning. These frameworks provide Europeans with understanding while simultaneously retaining both the cultural integrity of the exchange, and Indigenous ‘authority’ of their knowledge. Tuhiwai’s study allows many of us seeking to express Indigenized perspectives an easier journey, her footsteps a clear path within the vastness of methodological landscape.

### 2.2 Critical Race Theory

As stated at the beginning of this chapter, the theoretical framework within academia which most closely reflects my processing is Critical Race Theory. Perhaps the reason for this lies in the insight provided by Battiste and Youngblood Henderson. They explain that most scholars make the mistake of presuming the path to Indigenous knowledge starts with race and racial knowledge which they write is a ‘false perspective’ resulting in attempts to incorporate Indigenous knowledge as a racial subset. ‘\textit{It does this because acknowledging Indigenous knowledge as an alternative to Eurocentric thought would limit the universal validity of the Eurocentric worldview. This bias distracts researchers from the real issue: discovering the processes of Indigenous knowledge, not what is already known.}\textsuperscript{33}’ In other words, because the dominant lens for understanding is and has been race, it follows that the framework seeking to deconstruct this approach and its knowledge is Critical Race Theory.

As a radicalized discourse it centers the voice of the marginalized, of knowledge emanating from other cultural contexts, of perspective that has been informed by other experience often through an engagement with dominant ideology or discourse. Critical Race Theory challenges the dominant hegemony while illustrating that there are other ways of understanding and of viewing the world and events.\textsuperscript{34} Consistent with radicalized discourse,
‘the epistemological challenge being mounted... is not solely about racism, it is about the nature of truth and reality.’\(^{35}\) Where the political landscape is central to my own thesis, legal and institutional architecture also come in for critical gaze.\(^{36}\) As a multidisciplinary contextualization of dialogue, however, this thesis is further informed by newer material, perspective and information. This consists of the studies and reports emanating from multilateral dialogues resulting in knowledge and discourse which has often moved beyond their academic frameworks.

As Peter Gowan \(^{37}\) explains in his analysis of the political gamble Washington has been engaged in since the collapse of the Soviet Union, there is a great deal of knowledge emanating from these processes which neither political or academic institutions have either addressed or incorporated.\(^{38}\) The failure to engage with this knowledge was also the reason given by Jerry Mander and Edward Goldsmith to explain why they felt it necessary to publish an anthology of edited papers which made ‘The Case against the Global Economy’, bringing together in one text, the insight, knowledge and perspective of those who have been party to global processes.\(^{39}\)

The United Nations Association of Canada similarly felt it necessary to publish the history of Social and Civil Movements within macropolitical dialogues. This text consists of the ‘other’ knowledge which contextualises major global events while detailing the activity and strategies of those working to engender reform. ‘Whose World is it Anyway?’\(^{40}\) brings together more specific documentation of the processes within United Nations contexts. In effect it also contains knowledge and perspective which First world governments, their academia and their media have denied, ignored or refused to engage with.

A new methodology is being elaborated, which centers other knowledge and an Indigenous approach of exchange, while elaborating another space within which their voice might be shared.

I see an analogy between the processes being engaged in and the ones employed in weaving and crocheting. Here the snake coils on itself until a base is created. Then the sides are built up. Or to use academic language, the hermeneutic spiral commences its climb, circling
on itself while amplifying the space it contains, with the stitch continually being worked to link the previous level to the one above. By this process all the issues are worked through while being drawn up into the next layer. In the end a basket is created. Its top lip representative of a circle of shared understanding. As a basket however it is cupped and supportive and open to containing the meaning which those who are familiar with it, might now choose to give it.

While this may seem too broad a proposal for thesis writing, weaving as a method and a process of stitching is the same at any stage within journey and as such meaning is imbued at every level. Furthermore, this is the scale and scope of the thesis, the global or macropolitical level at which Indigenous peoples have been conscientising dialogue. It is at this level that solutions are required because the challenges are also global. Fire, Water, Earth and Air are common to all life. These are the shared elements of Mother’s creation.41 The human family is now faced with an urgent need to embrace the responsibility of ensuring continuance of wellbeing.

The gap between theorized academic frameworks and the newer knowledge emanating from multilateral contexts may be part of the reason for the difficulty I have encountered within the academic sphere. From the perspective of the world’s peoples who identify with and live contesting realities to that of modern First world existence, dominant discourse is still an inherently colonialist project. Tuhiwai writes:

*From the vantage point of the colonized... the term ‘research’ is inextricably linked to European imperialism and colonialism.*42 The form that racism takes inside a university is related to the ways in which academic knowledge is structured as well as to the organizational structures which govern a university. The insulation of disciplines, and the systems of management and governance all work in ways that protect the privileges already in place.43

While discourse may have originally served to preserve the exclusivity of white Anglo Empire, its ‘use by date’ for want of an expression, may be imminent if it does not
accelerate an absorption of newer and culturally diverse thinking which better suits the challenges we face in common.

The time spent overseas during periods of uncertainty while writing this thesis, researching in the National Archive of Canada, and the invitation to address a Plenary Session of the United Nations’ Civil Society Forum and attend the Heads of Government meetings subsequent, as well as participate in other international and regional conferences and meetings, have all served to underscore my certitude for the need of newer perspectives. Indigenous peoples have been the inceptive spearhead of newer discourse and thinking. Indeed their activity has served to inform a growing civil society movement which similarly seeks the reform of global mechanisms and a shift in the values which inform activity. The shared project of humanity is to ensure that the global architecture now operates in the interest of all life. Indigenous peoples’ philosophies which result in cultures collaborative with nature offer another politic and vision for humanity.


Global conscientisation is a political process. It results from an engagement with the newer thinking, information, studies and material emanating from macropolitical dialogues and conferences addressing global issues. It might also be said to refer to the awakening encountered when internal barriers to hearing the ‘others’ voice are understood and addressed, resulting in an awareness that the global architecture and its operation are embedded in dated discourse, attitudes and thinking and as such are unjust and iniquitous and in need of reform. There is also an implied understanding that once this awareness is achieved, the individual will act to assist and to improve matters wherever they can in their daily lives. Berman is the reference for the claim that Indigenous peoples have been the grouping most responsible for newer standards within the UN. Berman, Howard R. (1993), “...Never Drink from the Same Cup.” Proceedings of the conference on Indigenous Peoples in Africa, Tune, Denmark, 1993, Centre for Development Research (CDR), and International Work Group from Indigenous Affairs (IWGIA), Copenhagen, CDR/IWGIA Document No. 74, p. 317.


This is a term I have coined in order to explain another understanding emanating from Indigenous peoples Cosmoconsciousness in which all of life is in relationship. Most readers would be familiar with words such as ‘ecology’, ‘environment’ and ‘biodiversity’, but each of these have already been defined and carry meaning associated with multiple discourse. As an initial understanding then ‘Livingness’ refers to the collective of all living systems within a living system and their parts.


Intercultural interpreter: someone who provides explanation such that meaning is understood. Inter-cultural interpretation requires that the interpreter have a facility with language and knowledge of the cultural contexting and worldview from which communication emanates. These provide the interpreter an ability to know the points at which understanding does not occur within an exchange, in order that explanation might be provided, facilitating a forward movement within the shared project of understanding meaning. The ‘mutuality’ inherent within intercultural interpretation is experienced as beneficial to parties. Extended exchange often provides parties with a depth of insight into each others contexting and worldview. See also Endnote 3, p.17 for additional explanation.

‘Billabong’, an Australian term (probably of Aboriginal origin), for an ox bow lake.


Ibid., p.55.

Cultures of harmony is a reference to sui generis Indigenous cultures of holistic knowledge and worldview. Additional perspective is provided by Cajete who explains that ‘Indigenous peoples view harmony as a dynamic and multidimensional balancing of interrelationship in their ecologies. Disturbing these interrelationships creates disharmony; balance is restored by applying appropriate actions and knowledge. Thus knowing the complex natures of natural forces and their interrelationships is an important context for Indigenous knowledge and heritage. No separation of science, art, religion, philosophy, or aesthetics exists in Indigenous thought; such categories do not exist. Thus Eurocentric researchers may know the name of a herbal cure and understand how it is used, but without the ceremony and ritual songs, chants, prayers, and

Endnote 3

Indigenous Peoples: Towards an Interconnective and Coscientising Dialogue.


Ibid., p.55.

Ibid., p.55.

Ibid., p.55.


In this context ‘Dreaming’ might be said to reflect the space of shared aspiration and vision of Indigenous peoples. Dreaming however has other meaning within the cultural contexts of Aboriginal peoples within Australia.

Deborah Bird Rose probably writes one of the clearest understandings of ‘Dreaming’ and it takes an entire book to fully explain. For the purposes of this thesis: Dreaming is born of the Earth, as is life. Dreaming has its own viewpoint and track. Dreaming has its Law. Dreaming can travel. Dreaming is onetime. It is ‘everywhenow’. Bird Rose makes a distinction between Dreaming and ordinary events but points out that they also intersect. This thesis then is a Political Dreaming. See Bird Rose, D. (1992), Ch.12, ‘Life Time’, Dingo Makes Us Human, Cambridge University Press, pp. 203-217.

Ibid., p. 217.


Ibid., p.40.


My explanation of Korero is somewhat superficial, although sufficient to be useful for a facilitation of inter-cultural interpretation. It does not however convey the profundity contained within Maori understanding of Korero, which has other cultural levels of meaning.


Ibid., p.259.

Critical Race Theory has its origins in Critical Legal Studies which began in the 1970’s, ‘as a concerted attack on the legitimacy and authority of pedagogical strategies in (American) law schools.’ As Landson Billings explains, the failure however to include race within their critique frustrated legal scholars of colour. Critical Race Theory’s departure from mainstream legal scholarship was its starting premise that racism was the norm in American society, its use of storytelling to analyse myths and presuppositions, the argument that the existing legal paradigm could not provide civil rights because its very dependence on incrementalism would not provide the changes required, and a fourth perspective which pointed out that it was ‘whites’ who had been the primary beneficiaries of ‘civil rights’ legislation. See Ladson-Billings, Gloria, ‘Radicalised Discourses and Ethnic Epistemologies’ in Denzin, Norman K., and Lincoln, Yvonna S. Eds. (2000), The Handbook of Qualitative Research, Sage Publications Inc., London, p.264
Chapter 2: Finding Frameworks

37 Peter Gowan is Senior Lecturer in European Studies at the University of North London. He is co-editor, with Perry Anderson, of the Question of Europe, and an editor of the New Left Review and Labour Focus on Eastern Europe.
40 Foster, J. and Anand, A. (1999), Whose World is it Anyway? Civil Society the United Nations and the Multilateral Future, United Nations Association of Canada. Email: info@unac.org
41 For many Indigenous Peoples of Turtle Island (North America) the symbol of the circle or ‘Medicine Wheel’ is fundamental to understanding this Earth/nature worldview. The Medicine Wheel which must remain balanced as it continually spins is central to many Indian teachings. Also known as the ‘Sacred Hoop’, it is comprised of the four cardinal directions and winds: east, south, west and north; of the four elements: fire, water, earth, air; the four seasons: spring, summer, autumn, winter; the four symbolic races of mankind: yellow, red, black and white; and the four dimensions of human nature: emotional, physical, spiritual and mental. Taken from paper Restorative Practices. Indigenous Roots of Restorative Conflict Resolution Practices; Overview of Current Trends; Review of a Few Processes, June 2001, Grandfather William Commanda. See web site: www.circleofallnations.com
43 Ibid., 133.
Chapter 3: Storytelling And Ones Own Journey

Where Boundaries and String serve to explain an Indigenous methodology of spatially relating ideas and thoughts, events and experience, Critical Race Theory\(^1\) offers a dominant doorway through which to argue the legitimacy of my approach within this thesis. This theory challenges the cultural logic of the Eurocentric paradigm, addresses multiple consciousnesses, gives voice to the marginalized and enables the challenging of mainstream orthodoxies.\(^2\) Critical Race Theory addresses the relationship between the ‘knower and the known’,\(^3\) between ‘knowledge and worldview’\(^4\) and importantly analyzes political ideology and discourse as a social artifact which operates to create and legitimate the continuance of dominant society.\(^5\) One of its key features is storytelling.\(^6\) Storytelling is also a methodology used by Indigenous peoples.\(^7\) So as a journey weaving between the contesting realities of dominant and Indigenous worldviews, storytelling becomes my methodology as it allows me to present other information which is often omitted or neglected in instrumental discourse.

Storytelling allows me to share knowledge from within a journey and bring into the discussion knowledge which is currently outside legitimated academic frameworks. Storytelling connects the past with the present, provides a contexting informed by other experience, information and knowledge,\(^8\) and reframes thinking and events. More importantly, storytelling is a way of representing the ‘diversities of truth’\(^9\) Which resonates with a central premise of this thesis, that the source of much global distress is the challenges and conflict that rapid globalization demands. These processes of themselves create tension between parts of humanity who live in contesting realities.

My journey through political landscapes necessitates a reframing of the project.\(^10\) This thesis is concerned with a conscientised and transcendent politic of Indigenous peoples which offers a good ecological order for all life.

Storytelling from within dialogues allows for several levels of interpretation and understanding at the same time and accommodates differing levels of consciousness.
reflected by voices to the dialogues. The reader is free to choose which layer of ‘meaning’ they connect with. Because storytelling also provides new information and knowledge, it can trigger a recontextualisation of one’s own knowledge. Story telling both reframes knowledge and challenges its limits by requiring a shift in perspective.

In the context of this thesis the understanding I have sought to give preference to is a perspective conscientised by Indigenous philosophies and worldviews.

I am asking the reader to move through a doorway into another landscape, described as an ‘uncharted world’ by Battiste and Youngblood Henderson in which the European will have ‘no mental map’ by which to navigate.11

I say doorway and not window because the latter allows the reader to sit on one side peering through while imposing their own order on what they see. The window approach serves to explain the nature of engagement which results in the problematic at the heart of Eurocentric perspectives and discourse which remain resolutely rooted in itself filtering and determining the point of view, order and understanding of what is being observed such that new knowledge (which may be unknown to the academy, but known to others) simply becomes an addition to preexisting knowledge, the observed remaining fixed and of structured order. This underscores a position which says there is only the one way to be in relationship with other bodies of knowledge and worldviews. Such presumptions never require the Eurocentric to genuinely operate inter-culturally.

3.1 Divergent Ways Of Knowing

The divergence between an approach which demands one enters the landscape of this thesis and that of a window simply through which to peer at its contents, is central to understanding this thesis as a journey. In a sense it is the window approach which results in much of the thinking informing the positions outlined in the many dialogues re-presented in this thesis. To take this a step further, this is the divergence between engagement as an analytic process or one more commensurate with Indigenous
processing of resonating essence. This is important because most academics already have a context and pattern within which their knowledge sits. The connections between thoughts, ideas and notions have already been filled in and worked through.

Within dominant ways of understanding and knowing, the task is to find a way to rationalize how another body of knowledge is added on and brought in under existing frameworks, explaining why it can be argued that research is not culturally neutral. The project of knowing is not ‘meaning’ focused; rather it is most often concerned with generating and legitimating another set of ‘fixed truths’.12

In the dominant world knowledge is often seen as having a right way of being in relationship, and whole slabs of it in relationship tend to produce the same answer. Indeed much scientific inquiry is designed to achieve exactly this outcome. This is because Europeans tend to see knowledge as something abstract, something other than themselves. Knowledge is theoretical and strives to be objective.13 Knowledge is categorized as hierarchy.14 Education extends the story of one knowledge resulting in individuals who through specialization have more ideas and thoughts connected within a contexting which is legitimated as ‘the’ contexting for thought. In other words its epistemology 15 has been learnt and remains consistent as a boundary and context. Dr. Gregory Cajete, a Tewa Pueblo educator provides an Indigenous perspective:

‘the Eurocentric system of classification limits objective knowledge of the universe. From the Indigenous vantage point, the process of understanding is more important than the process of classification. Generally speaking, Indigenous thought classifies ecological phenomena based on characteristics observed through experience; such classifications rely on a high degree of intuitive thought. Eurocentric science, in contrast, “relies more on properties that are inferred from necessary relationships in the structure of the objects classified.”16
Indigenous peoples maintain that European processing which operates in a noun centered language and patterns of thinking, creates sets of fixed properties which define a category. In contrast Indigenous processing which is concerned with characteristics which themselves are not fixed as a list, results in modalities which remain open.

It is often said that Indigenous knowledge is holistic. An Indigenous person’s mind operates much like cyber space with ‘bits’ being continually recombined in new and interesting patterns within exchange. Knowledge is not fixed within categories as such, because it is known that knowledge is dispersed throughout the living universe. In an Indigenous worldview, knowledge is its own property. Knowledge exists whether man knows it or not, because all parts within a living system within the one living system have knowledge. As Bird Rose explains, in an Indigenous epistomy, ‘living systems operate as a system because their parts are conscious, communicate of themselves, act and react, and as a matter of self-interest and free will adhere to the same set of understandings.’

There is no fixed context of knowledge. There is only viewpoint. Bird Rose confirms this perspective explaining that all parts within living systems have viewpoint, including country.

‘The viewpoint of country is like the viewpoint of any other part; it is unique, self-centered, and interconnected to other like units which are also unique and self-centered.’

Viewpoint leads to an understanding that ‘all parts of the system have their own worldview. That one’s own view may be most important to ones own life, does not mean that the world is focused on humans as a species or on one country ... over and above others. An essential part of human culture is to know that ... other parts have their own view. Once one understands, one can learn the system from any point. The trick is to know what one is encountering.’
This is why ‘Indigenous peoples will tell you that contrary to modern thinking the world is not chaotic and random, but rather ordered and intelligible.’ ‘In other words it is only some human societies, which do not know this and thus continually believe they are separate to the living world.’ ‘Mother’s richness and bounty is such that knowledge of her nature is dispersed throughout creation giving rise to the diversity in human culture.’

The disembodied approach of Eurocentric understanding is also why Indigenous peoples often experience dominant knowledge as a ‘dead language’. It is experienced as being devoid of the recombining in moment expressive of essence that gives exchange its song. Or to rewrite this another way, it is devoid of spirit within the moment of exchange which gives meaning to the essence of that which is being expressed. This is also why Indigenous peoples often see even newer discourse as an extension of historic practice which dehumanizes peoples and seeks to make neuter and inanimate the living aspect of that which is being researched.

Marie Battiste and James Sa’ke’j Youngblood Henderson summarize the divergence between European and Indigenous knowledge by identifying the difficulties that arise in providing explanation. They identify three problems associated with the need to define Indigenous knowledge.

The First problem is ‘that Indigenous knowledge does not fit into Eurocentric concept of ‘culture’.’ As they explain:

‘In contrast to the colonial tradition, most Indigenous scholars choose to view every way of life from two different but complimentary perspectives: First as a manifestation of human knowledge, heritage and consciousness, and second as a mode of ecological order. They continue: ‘Based on our experience, we reject the concept of culture for Indigenous knowledge, heritage and consciousness, and instead connect each Indigenous manifestation as part of a particular ecological order.’

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The second problem they identify is also associated with one of the points I made above about knowledge being dispersed throughout the living universe and not categorized.

‘...Indigenous knowledge is not a uniform concept across all Indigenous peoples: it is a diverse knowledge that is spread throughout different peoples in many layers.’ ‘Those who are the possessors of this knowledge often cannot categorize it in Eurocentric thought, partly because the process of categorization is not part of Indigenous thought.’

The third problem is the notion that one is one’s knowledge, and as such it cannot be disembodied.

‘...Indigenous knowledge is so much a part of the clan, band, or community, or even the individual, that it cannot be separated from the bearer to be codified into a definition.’ This contextualization or embodying of knowledge ‘makes it a sensitive subject of study and discussing it out of context may be viewed as intrusive and insensitive’.

This embodied nature of knowledge also serves to explain my choice of methodology. Storytelling becomes the sharing of my journey acquiring knowledge and of the contexts and dialogues wherein relationship to knowledge and notions were inter-culturally challenged. Storytelling allows me to present knowledge with all its layering. The control storytelling provides the storyteller, raises the all important questions of who I am? What my values are? Why I am undertaking this project? For whom I am doing this thesis and of my intent? The space of my sharing then, the values which imbue my relationships, and the centrality of identity and knowledge base, are all vital within this project.
3.2 My Space Of Being.

Who am I and how do I understand my space of being? In answering I again apply an Indigenous approach. My genealogy is that of a Czech Australian. I am the daughter of a post war political refugee and a fifth generation Celtic Australian mother. Like all Czechs, my father’s lineage is partly of church records which date back to the 1700s and oral history of earlier times. I know the valley and the village in Bohemia where as a descendant of a Slavic tribe I have belonging. I know my family stories and the heartaches and triumphs, the meaning which informed Dědeček and Babička’s (Grandfather and Grandmother’s) life and world.

My Mother’s family and my own birth however place me firmly within the continent of Australia. On my Mother’s side are ‘free’ settlers, farmers and publicans, timber cutters, teachers, professionals, construction engineers and civil servants. In my late teens my Grandmother and Grandfather were central to my life. I am blessed to have had this time with them.

I was born in Darwin, and spent the first year of my life in this outback town (now a city) open to the cultures and languages of this country. Traversing the continent twice from Darwin to Sydney through the centre, were my earliest journeys. These travels shadowed my father’s work for the Commonwealth Department of Works in the Northern Territory and later Papua New Guinea where my sister was born. This move was to set the pattern of our early life. Joining the United Nations my father’s work was to take us to a diversity of countries, in Africa, South America, continental Europe (where my brother was born) and Asia, where we again were immersed in cultures and languages. From earliest memory my worldview was being shaped by both the macropolitical dialogues of ‘de-colonization’ and national ‘independence’ which were my parent’s contexting, and the lives and values, the languages and knowledge, the worldview and cultures of my friends and playmates and their families. The fact that my father was an ‘independent expert’ consulting to newly created nation-state governments and not departing colonialist interests, saved us from relationships tinged with racism.
and Imperial perspective. Rather, we became witnesses to their interplay in a multiplicity of contexts and dialogues.

By the time I was 12 we had already lived in ten countries, and my journey had seen my feet walk more than a dozen others. My father’s retirement from international life coincided with my completion of high schooling and the beginning of an adult journey within multicultural broadcasting and communications. This period deepened my understanding of contested realities. Creating new television programming and its content allowed me to engage with cultural diversity while expressing sameness as a means of addressing racism. It also provided me with opportunities of internationalizing my credentials.

Based in London in the late 1980s and early 1990s and while working as the Head of Communication for a global initiative which sought the protection of the global commons and the establishment of the International Court of Justice, Indigenous peoples from around the world began to make contact with me. Undertaking small roles to assist facilitate meetings and translation gave way in time to a full time involvement within the secretariat of the Indigenous organizations responsible for hosting and coordinating the Indigenous peoples’ ‘World Conference on Territory, Environment and Development’, the Kari-Oca, Rio de Janeiro, 1992. This event which brought together representatives of some 700 diverse peoples of Earth, from every corner, landmass, ocean and latitude, preceded the United Nations Earth Summit, or UNCED. It resulted in a consensual Declaration and Earth Charter which gave expression to Indigenous voices on the same critical issues that the UN’s Agenda 21 addressed. Agenda 21 as an ensuing UN document is often referred to as the blueprint for sustainability.

Immersed again in the cultures and processes of my childhood, these experiences were to have a catalytic effect on my own sense of being and worldview. Returning to Australia in 1993, my journey was to continue. Indigenous colleagues began inviting me to attend events or to come and stay in their communities with their families and peoples. On one occasion this involved a journey of nearly a year’s duration traveling...
the territory and outback with an Aboriginal friend and living within a number of communities. Time has been interspersed with culturally delegated roles and official activity in international contexts. Overseas travel again linked me with the groupings which shape international dialogue and the various governments which support them. My network was also being extended on personal levels with Maori and Pacific peoples. Meanwhile I was learning from Elders\textsuperscript{28}, and Grandmothers\textsuperscript{29}, while also following the dialogue at macropolitical levels. Regional, national and local politics were also to inform this part of my journey and in 1999 academia invited me to undertake Doctoral studies.

Throughout the process of writing I have continued following the post Rio dialogues. These discussions follow up on the Agenda items laid out in 1992, and center on the creation of newer standards and global mechanisms to deal with a range of issues. These events are often referred to as the ‘+5’s’ and ‘+10’s’ signifying the number of years after Rio that newer discussions took place. By 2000 international activities had resulted in the Millennium Development Goals.\textsuperscript{30}

In 2001, the UN held a major world conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance when it became clear that a major hindrance to advancing newer standards and agenda was systemically embedded racism. Historic narratives, legal and political systems, policy and economic methodologies and governance structures, beliefs, attitudes and discourse which all end up preferencing only one part of humanity were brought to light.\textsuperscript{31}

In 2002 the UN held its Third World Summit in Johannesburg.\textsuperscript{32} Where previously those attending global events had raised critical perspective, by the time of the World Summit on Sustainable Development (WSSD), advocates of change came armed with alternatives and doable and practical plans which would provide the steps towards a peaceful and sustainable future. Throughout my doctoral candidacy, I have acted as what could best be described as an ‘information clearing house’ for groups. In 2003, I was also invited to Canada to complete the ‘fome’ and ‘finding aid’ for the records of the
World Council of Indigenous Peoples held in the National Archives. In 2004 the final year of the Decade of Indigenous Peoples I am completing my thesis for submission prior to a final agreement on the Declaration of Indigenous Rights within the UN being achieved.

For me, life has been and remains a journey in cultural learning, and always as the ‘other’. Continually shifting contexts and boundaries has meant that I am ‘process’ oriented and ‘meaning’ focused. This results in an identity which both belongs ‘nowhere’ and at the same time ‘everywhere’ I am relationship.

Within academic frameworks this space of being resonates with both Outsider and Insider research. This leads to a duality of space. The First representing an approach which aims to be value free and objective, and the second reflective of a shift by the researcher to the position of a participant of the context being studied. The tension that this duality creates illustrates the vital and critical requirement that a researcher be continually reflexive.

Tuhiwai Smith explains that while feminists have made insider methodologies much more acceptable within qualitative research, within Indigenous contexts there are differences to be considered. Indigenous academics carry additional responsibility and live with the consequences. Accountability remains embodied in the person, as opposed to the arms length immunity that disconnected existence provides Europeans.

In my own case, the outsider-insider, insider-outsider nature of journey, has always required self-reflexivity. This began in early childhood as a way of reading ones environment allowing for rapid assimilation within the ever changing cultural contexts being presented. Self-reflexivity was how you mediated. Intuiting the response, demeanor and temperament of those around you was how you initially found your space of being; the one that allowed you to ‘flow into’ and establish relationships which nurtured and validated growth and learning. Seeing yourself through the eyes of those around you quickly established your capacity to merge or acculturate self with context.
As a fluency learnt in childhood it has remained part of my way of being and processing, as it allows me to derive meaning and belonging in continually changing boundaries and contexts. 35

The disciplines of ethical precepts and respect have long been instilled within self as part of navigating between contesting realities. Not to incorporate or elaborate them would be to quickly find yourself on the outside because you had transgressed sensibilities which you were expected to know and abide by. Within the many traditional cultures and contexts I grew up in, this was how Elders taught. Not being of a culture did not excuse you, or preclude you. The requirement was to absorb and to learn and to seamlessly fit in to locality of culture and peoples. This was the expectation within my family. My father had wanted us to be international citizens.

As an adult additional considerations inform my journey. Where this thesis emanates from contexts with which I have relationship, there are leaders; Elders, Grandmothers and Grandfathers to guide and orient my work. The reassurance this provides is immeasurable. Counsel can be sought when I become unclear about what I can and cannot share, or that which I have sufficient authority to speak about and or address. Indeed this thesis has been because of their encouragement and trust. A blessing I seek to honor. The nature of cultural concepts and notions being shared have been determined by what is already in the public domain and presented by Indigenous Academics, and those others who have also been authorized to share learning.

Finding my voice in academia has also been a challenging part of my journey. This may be due to my European heritage which meant that academics were often incredulous of my knowledge and relationship. My credibility was questioned and they were wary of my right to speak up and address global political discourse from a ‘space of being’ that resonates Indigenous perspectives. Within the English speaking world I am not well known in those spaces where Indigenous and non-Indigenous academics and officials intersect, as most of my journey within settler nations has been at grass-roots level, within the cultural contexts of peoples and their Elders, or at an international level. This
has meant that the grouping to which non-Indigenous professionals might turn to, to check my bona fides and ascertain if I was who I said I was, yielded little which might allay their concerns.

This said however, I remain relationship within the many communities where I have walked and within international contexts where I am known by both individuals and groups which inform these dialogues. Invitations to participate in Intergovernmental meetings with Indigenous leaders, and more recently a UN conference in Ulaanbaatar have emanated from these relationships with officials and peoples.

The exposure and knowledge that empathic relationship results in also informs my voice. While I originally sought to remain neutral and objective (a requirement of scientific inquiry within academia), even hopeful, my voice is of its experiencing and of its journey. As such it may on occasions be sad, and at other times angry. Particularly when, as a reflexive text, it becomes evident that colonial objectives of containment are still in play.

Aware of the devastation and pain wrought within family and communities for peoples globally by the denial of human dignity, it is difficult not to be blunt, or to provoke and to challenge. People are suffering and dying while those who have the power to alter relationship and imbue them with other values are either complacent or part of cynical and deliberative policy and activity. Either way it is a diminishment of our collective humanity and as this thesis will show entrenches a position which hinders the world from moving to an inclusive and sustainable future of peace and wellbeing; a future which values the diversity of both humans and species because this is the richness and substance of life.

Dr. Irene Watson, a traditional owner and custodian of the Coorong and a member of the Tanganekald peoples, expresses a similarity of need and view when describing her own voice. One which has been inter-generationally informed by the needless pain and suffering which results from relationship with people who themselves were brutalized
and traumatized and disconnected from their own land and being. As she explains, to speak in her voice ‘is an act of survival and resistance to a long and continuing struggle, against the rape and murder of the Mother.’

I will write in a voice that is mine. A voice which may be constructed by others as being a bit preachy, a bit angry, a bit sad, a bit desperate, entirely soulfully spiritual, dogmatically creationist. It is all of this and more, as I work towards a more ‘perfect’ place, a place that is still for me a long way off; that is a place where the grandmothers sit.

Study and my ongoing learning within cultural contexts have allowed me to pull out my entire eclectic library of experience and knowledge and integrate it all through the process of writing. Albeit that it is the last part of my journey through political landscapes at the invitation of Indigenous peoples which provides the material of the thesis. This stage of my journey however has been the one which has necessitated that the library be re-ordered and freed. In a sense study has allowed me to take out each file and chapter and examine it in light of my latest learning. A process which has required de-contextualizing and re-contextualizing of their contents and much additional cross referencing.

My knowledge might now be said to have been digitalized ready for the fun of recombining in the moment. This also explains the reasons why I borrow so heavily from Indigenous methodology and ways of knowing. Knowledge is now held in a three dimensional web of interlinking nodes, of ideas, of contexts, of events. Each thread is its own resonance. Exchange can now start anywhere within the knowledge and unfold within the consciousness space that is shared by those present. This may also explain why Indigenous peoples are an oral culture. Meaning is that which imbues the moment of exchange within specific contexts within specific relationships. This is why understanding is not derived from fixed knowledge or a set context of inquiry, as in the case of some scientific experiment. Once meaning is expressed within exchange, it becomes a shared knowing of relationship.
This sort of mind map is something akin to the milky way, in which stars birth and change within an unfolding firmament. Mary E Clark’s explanation of Indra’s Net Gestalt also serves to provide understanding of a worldview in which everything in the universe is seen to belong to a single, interconnected whole (see figure 2:3). Clarke writes:

*Indra’s Net is... a metaphor for a world of connectedness, of interacting, interdependent entities, whether they be human bodies, an economy or other social arrangements, an ecosystem, or a galaxy. Within each entity, the parts are likewise interdependent, and it is their reciprocal interactions that keep the whole universal functioning. Indeed, each part, each entity contains the whole, is the whole, and nothing can survive apart for the whole. No entity is unconnected to, unaffected by, all the others.*

Here too the project is conscientisation.

*Indra’s net is not merely a quaint poetic image derived from an ancient Buddhist Sutra; it is a symbol for a heightened consciousness of the world and interlocking life force we abide within. It implies a world view prompting an open-ended compassion towards mutually dependent life forms.*

Within Indigenous frameworks, the structure is not fixed, nodes swell and change form, recombine and birth others much like celestial entities of the firmament. In other words, just like stars, what is seen or understood, what is known is in fact what has already been. The process of ‘Knowing’ occurs after something has happened. This is why Indigenous peoples have championed the precautionary principal. It is a plea for *wisdom*. One might then argue that my thesis is obsolete before it is finished, and in a way that is so. What persists though is its meaning which the reader is invited to access through engagement with the multiple relationships of knowledge and information which is a dialogue, or chapter.
FIGURE 3.1 Indra’s Net Gestalt: A Connected Universe

Depicted as a jeweled net where each jewel is connected to and hence reflects upon the other. Clarke writes: ‘No one entity can be its discrete, autonomous “Self” independent of its connectedness within the whole of reality.’

Chapter 3: Storytelling And Ones Own Journey

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2 Ibid., p263-277.
3 Ibid., p.266.
4 Ibid., p.258.
5 Ibid., p.263.
6 Ibid., p.268.
8 Ibid., p.144.
13 Professor Emeritus, Jerzy Wojciechowski explains that the notion of ‘objectivity’ is part of the ideal of western culture. He writes: ‘This ideal was a logical complement to the ideal of theoretical knowledge, the two justifying and reinforcing each other. Both belong to the conceptual order. ‘ …The notion of objectivity and the distinction between objectivity and subjectivity are products of reason, conceptual distinctions with foundation in reality. These notions were conceived in ancient Greece and became the cornerstone of Western rationality. Wojciechowski also makes a distinction between Theoretical and Practical Knowledge, pointing out that in Antiquity until modern times, this distinction seemed well founded. Later in his cutting edged thesis The Ecology of Knowledge, Wojciechowski writes: The rise of modern science and the belief in progress were consequent upon a fundamental change in views about the nature and purpose of knowledge. With the new perception of knowledge went an attitude towards nature. Together they produced a new Weltanschauung which became the mindset of modern times. He identifies Francis Bacon as an initiator of the modern age. Bacon realized that nature when properly used could be a source of immense riches…but to achieve this aim it was necessary to develop an efficacious science of nature… to turn the mind away from ‘sterile’ reflection on abstract problems as had been the custom until then and employ it gainfully in the development of practical knowledge (p.52). Wojciechowski points out that one of the consequences of this shift, is the ecological predicament, another is the inequality among nations. Wojciechowski, Jerzy, A. (2001), Ecology of Knowledge, The Council for Research in Values and Philosophy, Washington D.C., pp.43-44.
14 Wojciechowski explains that a relationship exists between the producers and users of knowledge and the product of their intellectual activity, and that this interdependence results in a knowledge system. He writes: The knowledge system is a subsystem of the culture system composed of knowledge…. The culture system is, in turn, an element of the existential system of man… and that this in turn means that the knowledge system is an element of a hierarchy of systems i.e. of a system of systems. Ibid., p.78
15 Epistemology from GK. episteme, knowledge, being a branch of philosophy which investigates the origin, nature, methods and limits of human knowledge. The Macquarie Dictionary, Revised Edition,1995, Published by Macquarie Library, p.596.
18 Ibid., p.223.
19 Ibid., p.221.

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21 Australian Aboriginal peoples refer to something as being ‘dead language’, when no spirit or song is resonated in exchange. Something is dead language when the message being communicated does not resonate with meaning. For example, dominant societies ‘way of living’ is also said to be of ‘dead language’.

22 In elaborating Indigenous Research Methodologies, Maori academic Linda Tuhiai Smith writes of one approach she calls ‘Remembering’. It centers on peoples coming together to remember, to create their own internal story from the fragments of scattered families, institutionalization and inter-generational loss. A painful journey as it involves the remembering of the impacts of colonial policy and discourse which dehumanizes and destroys cultural practice and peoples. Smith, L.T. (1999), Decolonizing Methodologies – Research and Indigenous Peoples, Zed Books, p.146.


24 Ibid., p.35.

25 Ibid., p.35.

26 Ibid., p.36.


28 ‘Elders’ are those people or individuals within a peoples or community who have authority. Elders provide guidance for the smooth functioning of the group ensuring the experience and activity of all is a shared wellbeing.

29 ‘Grandmothers’ is used as expressed and understood within Indigenous contexts. Within these cultures Grandmothers (and Grandfathers) are the teachers; the embodiment of lived knowledge and wisdom.

30 The Millennium Declaration, UN Doc. A/RES/55/2 was adopted by the General Assembly at its 55th session, in Sept. 2000, and sets out the goals all member countries agree to achieve by 2015. There are eight goals: Eradicate extreme poverty and hunger; Achieve universal primary education; Promote gender equality and empower women; Reduce child mortality; Improve maternal health; Combat HIV/AIDS, malaria and other diseases; Ensure environmental sustainability; and Develop a global partnership for development. See UN web site: <www.un.org> The Millennium Goals are located on the home page.

31 The United Nations’ Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, 31 August – 7 September, 2001. Documents and outcomes can be accessed through UN site: <www.un.org> select language, and then go to ‘previous conferences and meetings’.


34 Ibid., p.137.

35 I provide additional understanding on this approach to learning and ‘knowing’ a bit later in this chapter, but as an initial perspective it accords to some degree with Wojciechowski’s description of ‘sense knowledge’. He writes: ‘Sense Knowledge is biologically necessary and determines to a large extent the mode of existence of the given organism. Senses tell an organism its status in the natural order of things … Scholastics call this function the estimative sense. Where intellectual knowledge can, and indeed does grow, sensation remains stable and does not increase. Sensation remains stable in animals and humans alike.’ He continues explaining that this level of knowing has largely been ignored in European knowledge systems and writes: ‘Unfortunately, modern, post –Cartesian philosophy ignored this aspect of cognition. …because the intellect is a semi-independent faculty in relation to the senses and superior to them, humans can conceive the intellect as a fully autonomous and self-sufficient entity.’ The very conclusion Wojciechowski points out Descartes came to, naively thinking of himself as a realist. He writes of Descartes: ‘Having transferred the source of certitude from the senses to the intellect, Descarte liberated the intellect from the measure of the senses and ignored the estimative sense and its function. Had the intellect been the only faculty involved in human behavior, the consequences of Descartes’ choice would not have been so drastic.’ Wojciechowski explains it was drastic because the two faculties which determined behaviour are: intellect and will. He writes: ‘The intellect presents objects or aims as desirable, the will

36 I am using ‘relationship’ as a noun.

37 An Indigenous nation located in South Australia.


39 Ibid., p.28.


41 This is to know something, not simply as an idea or thought, but at a level of profundity. Knowing is attained after something has occurred and been experienced. Knowing emanates from understanding communication; that exchange consistent with the 2nd meta-rule of ‘response’. Bird Rose’s insights provide additional material to engage with. In an Indigenous perspective ‘information’ which is ‘dispersed through time and space’ and is either ‘positive’ or ‘negative’ becomes the basis on which one ‘comes to know’, the accepted/understood being that all individuals and species ‘know’ or can know because they are alive and conscious, and because they have learned to understand. (p226) Acting wisely requires knowing what is happening. The profundity of ‘knowing’ however will not be revealed until after a thing has happened. Understanding is a process in which one waits to see what flows from an event which happens such that ‘knowing’ is built up over time. (p.226) Hence practical wisdom (as defined by Adorno and Kant) suggests that peoples sometime decided ‘no’ to an action/thing event because the ‘known’ (built up over time) associated with something is that it should not be allowed to happen. This explains the reason for the original and commonsense meaning of the ‘precautionary principle’ championed by Indigenous peoples. Instrumental then to this process of ‘coming to know’ is ‘information’.

Communication becomes the process by which ‘information’ is disseminated to assist in ‘understanding what is happening’, the ‘what flows from an event’ determining the lived understanding by which knowing gains another level of profundity. The key to information lies in Bird Rose’s use of the term which she defines with reference to Bateson. In her analysis ‘information’ is ‘difference that makes a difference’. She writes: ‘differences that do not make a difference are noise’. ‘Many things happen that are only noise, but one does not know this instantly’. ‘One has to wait to find out’. (p.226) Consequently if we define ‘information’ as ‘difference that makes a difference’, we might now agree that where/when that which flows from an event is simply ‘more of the same’, or ‘an accelerated/re-enforced version of the same’ ‘as lived’, we have only communicated noise. Perhaps this is a perspective dominant media/communication conglomerates might appreciate.

Bird Rose again: ‘People discuss events, try out different meanings, suggest alternative contexts and interpretations and, with time, sometimes arrive at a decision about what a particular event means’. (p.226) Consequently where communication increasingly provides information which maintains and proposes only one meaning, and emanates from and supports only one context and interpretation (all of which are the dominants), humanity in my view will be doomed to repeat more of the same. Information that makes a difference would take us somewhere else/new = paradigmatic shift. The right to determine context and meaning is also central to understanding Indigenous notions of Autonomy. Bird Rose writes: Autonomy includes… that no person or group has the right to impose context and meaning on another person or group. See Bird Rose, Deborah, (1992) Dingo Makes Us Human, Cambridge University Press, Cambridge, p.226.
Chapter 4: Resonance and Song.

The multidisciplinary nature of this thesis, the need of a global perspective and the level of challenge posed by divergent worldviews has meant that I have needed to find the keys by which to understand the dynamics which currently results where conflicting realities meet. Ordering my knowledge, or giving them a hierarchy is not anymore the primary processing or project. Understanding is now about meaning, and yet there is a requirement to show how the two worlds or bodies of knowledge have been integrated internally.

How do you fit or reframe the many discourses? Where is the moment when the framework shifts dimensionally? How do you reconcile and bring together in one document, notions of the sacred, conflicting politics, distinct way of seeing the world, and divergent understandings of ones space of being? How do you communicate these when knowledge and realities are contested? How do you move seamlessly from being objective to subjective and back again without losing your thread? How do you reflect other consciousness? There had to be some keys. My question now centered on which strings or boundaries are they in relationship? Which tracks brought together and illustrated the relationship of this knowledge.

The three tracks; the resonance I came to were Identity, Relationship and Authority. I arrived at these after distilling the challenges that Indigenous peoples present from within a holistic space of self understanding. I formed the view that their agenda challenges us to reflect on ‘who we are’, ask ‘how we relate’ and ‘question by what authority/knowledge we act’.

So while the landscape is a political Dreaming and the dialogues are the meeting places, within these exchanges the resonance which provide insight are Identity, Relationship and Authority.

The three terms also internally resonate each other, expressing a chord. Identity is expressed in relationship which was in turn an expression of one’s authority or knowledge. Any combination of relationship between the three can also be explained.
4.1 Singing Strings

Identity: as a notion not only sits in relationship to its own discourse, but also that of culture and belief, philosophy and physics, history, geography, biology, psychology, language, communication, economics and political theory. But there was another challenge. Identity discourse within the dominant world is constructed identity predicated on ‘difference’. In contrast Indigenous frameworks for understanding self are of ‘sameness’. To explain: when the whole world is comprised of rainbow serpent, or DNA, \(^3\) such that everything is a physical manifestation of spirit, \(^4\) and ones culture is predicated on this conscientisation, then everything is the same. Difference is ‘variation’ and becomes ‘shape’. \(^5\)

Identity then is of the philosophical contexts within which one is relationship. Here was another divergence in self understanding. Where Indigenous peoples are country, settler identity operates within a disconnect. Anglo settler identity is primarily limited to human to human relationships predicated on ‘difference’ as a means of excluding whole groups from the national project, and as such it is generally devoid of relationship with other living systems and consciousness of these relationships. Dr. Watson contends that this is why they lack any understanding or respect for our Mother. She writes:

*We and the land are one. When you take it from us you kill the spirit that gives us life. We end up as shells of human beings, living in other peoples’ countries. The colonizers, who came to our ruwe, made no connection spiritually to our lands, nor did many of them have an Aboriginal or spiritual connection to the ruwe of their own ancestors. What connection existed for many had been severed centuries ago. They had become shells of human beings, and their own loss or alienation made it easier to rape and plunder the mother, because they did not know her as mother; to them she had become something else, she was another commodity that was now dispensable in their growing consuming society.* \(^6\)
Within an Indigenous world then, humans are one living system comprised of a diversity of parts keyed to a diversity of inter-relationships of geography, and ecosystems, whose identities, languages and cultures are derived of this self awareness and understanding.\(^7\)

Life is comprised of autonomous conscious ‘livingness’ in relationship. Or as has already been explained it is comprised of living systems within living systems; the parts of which all know their own law within the one law, which on Earth, is Mothers Law.\(^8\)

As conscious livingness, all parts in relationship communicate of themselves and are in exchange with everything else. Difference as discourse within identity construction is from this reframing, seen as a project of dominant self narrative instrumentally devised to again legitimate the exclusion and marginalization of peoples who’s country or livingness is colonized and re-narrated.

**Relationship:** also explains and brings together the same eclecticism of discourse. Indeed relationship is a boundary itself, the space that brings together, the meeting place within which exchange occurs and parties to it may be enriched. Where however identity is still predicated on an ‘us and them’ dichotomy, relationship remains stuck in its discourses of difference. Relationship within political contexts therefore becomes those of power and of dominance and diminishment.

This again diverges from the understanding of relationship within Indigenous perspectives. Life has inherent laws which govern relationship providing ecological order. Anthropologist Deborah Bird Rose who has spent years living within community and whose work again provides insight which retains cultural integrity, identified 4 meta-rules governing relationship. These are *Balance, Symmetry, Response* and *Autonomy*. David Suzuki’s work illuminates the first of these and within the integrity of his text *The Sacred Balance* resonates the other three.

These meta-rules are best understood after engaging with the challenges that the Indigenous agenda presents as a process of understanding which the journey of this thesis provides. The dialogues are processes which decontextualise and recontextualise...
knowledge at an inter-cultural level with the objective that political dialogue shifts to a higher plane. The meta rules therefore become the substantive of the final chapter; a summarizing and retelling of the entire thesis from within the holism of an Indigenous perspective.

While the meta-rules are mentioned here, throughout the thesis the qualities of relationship remain those currently experienced within political dialogue; these being dominance and diminishment. This is because those who are dominant frame any dialogue between parts. All of humanity and life is currently subjected to the worldview and values of the First world. This worldview continually reduces inter-relationships either with other humans or all living systems to one of power. Power as force. The meta-rules detailed later are the aspiration being shared. The requirement of newer discourse and again perhaps the opportunity for future study.

The terms ‘dominance’ and ‘diminishment’ are also used because they express Song. Within Music theory, a diminished modality sits between both a major and minor key. Consequently the resolution of diminishment may go either way, much as the choice facing humanity, the modality being ‘raised’ to achieve the key of joy, or the note being ‘dropped’ by another semitone to expresses the space of requiem.

**Authority:** is the third string. As a resonance, authority is concerned with worldview and knowledge. In other contexts authority is concerned with power. Indeed authority also serves to express the boundary of contesting realities. A boundary which centers that which is exchanged in relationship and which in turn emanates from identity. How does this sting resonate within dialogue? Particularly as the dominant world remains firmly rooted in its ‘us and them’ dichotomy and the instrumental use of ‘difference’ to provide the fault lines along which conflict may be generated. What also of their narratives which remain historically imbued with the justification of winners, and of their discourse which is presumed universally relevant? What does one do with knowledge and perspectives outside these frameworks? That knowledge is not
understood by one part of humanity does not mean it is not knowledge, or a shared reality.

Here again was the issue of dominance and diminishment; the values of relationship. Here too was the issue of identity. Operating in ‘difference’ hinders those with authority from understanding their role is not about power, even though this may be how they experience it. The separation and conflictualization that dominant perspectives impose on societies leads to a hierarchical preferencing of knowledge and ‘way of life’. Differences serve to delineate who is included and excluded and power as force is used to impose this construct. When these approaches are reframed within an inclusive philosophical contexting which sees all humanity as one family, and as being the same, another divergence results.

To understand is to again engage in Indigenous epistomy. As previously explained to be the same is to have the same shape. Bird Rose again provides further elaboration.

‘To be the same, minimally, is to share a shape and hence the potential to share a culture. To be different, is initially, to have a different shape, a different physical being’. ‘Out of that shape emerges other differences-animals of one shape, one species, share a language, a set of ceremonies, certain kinds of food, a way of life. In Kriol this specific way of life is termed ‘culture’. This usage is similar to that of many anthropologists; it differs primarily in identifying culture as a necessary part of life. We are not different from other species by having culture which they lack: we are different in that our culture, like our shape, is different from theirs’.

Having the same shape then (as other human) and being able to share a culture is the reason why man’s system as culture, has such potency. But this does not mean it is necessarily authoritative. Authority as Indigenous peoples mean it is leadership which proposes positions and action that benefits all parts of a system. An argument could be made that as First world dominance is increasingly power which benefits one part, themselves, it is not authoritative leadership, only a structurally legitimated notion of leadership. Its dominance is the imposed or threatened use of destructive power.
4.2 Politics And Cultural Order

Where politics expresses one’s identity and culture or worldview, which in turn defines your relationships, then the solution as this thesis will illustrate becomes political. Reading philosophy and politics was another challenge. Here too I found my internal knowing was not answered. Where much was being made about the ‘clash of civilizations’ my own experiences did not result in the same view that culture was the source of conflict.

How does one then include culture as a resonance and boundary which brings together while simultaneously allowing it to express divergence. Perhaps it lay within an appreciation that culture also reflects ones world view and self understanding of life and purpose. That is to say culture reflects the level of consciousness of a living system and its parts.

Conflict then was not the result of the usual list of reasons, these being ‘differences’ in race, religion and belief, ethnicity, gender or class and now culture. The source was not even simply a matter of values. It was about authority, and knowledge. I returned to my previous string and understanding of authority and developed it further.

Conflict was about the framework/philosophy within which one understands how life is ordered and where authority is located. It is about the Laws which govern ones internal and external world and an experiencing of it. The Laws which reflect ones consciousness and which in turn inform both self understanding and action. Thus I came to the three laws by which humanity currently lives. This schema in my view allows each peoples the dignity of their cultural identity and locality, while simultaneously throwing into relief the nature of contesting realities. It also expresses the divergence in consciousness. This schema honors an understanding that ‘everything is relationship’. A perspective shared by both Indigenous peoples and social ecologists.
4.3 Law As A Space Of Being

Man’s Law, God’s Law and Mothers Law are the three laws I have identified as the order by which peoples and societies live. These laws have been part of my journey outside the parameters of this thesis. They can be explained to a level that makes them a satisfactory tool for analysis; a framework which allows one to shift simply between worldview and voice within the narrative of this text. They become a shorthand for divergent or parallel spaces of being, allowing one to jump boundaries and contexts with facility. To return to our musical analogy, they become the key in which a string resonates.

These laws are not fixed categories and neither are they being preferenced. Being provided is a set of characteristics which brings together societies of cultural and geographic diversity; characteristics which resonate the themes which will be developed within this thesis. These laws reflect worldview and thus level of consciousness shared by parts of the one human family. Law which underwrites the order they understand and live and which in turn informs the thinking and criteria by which choice/decision is made and action taken.

**Man’s Law** is secular law. It emanates from the Roman notion of ‘rogo’. The oath men took to follow the rules they agreed between themselves. Consciousness in this worldview is ‘between men’. Man’s law is the law written by man to legitimate or de-legitimate an activity or group. Man’s law is embedded within institutional structures which have the authority to enact and impose Man’s law. Or to put this another way, Man’s global system as architecture and its operation are based on Man’s law. Within Man’s law legimated knowledge informing action is generally ‘created knowledge’ contained within discourse, the ‘ologies. Its authority is institutional and of ideology or the ‘isms’.

Within Man’s Law security and order are of institutional authority. Only those with a role legitimated by these institutions are seen as being able to impose authority. Human
societies which operate in Man’s Law presume that institutionalized authority legitimates its use of destructive power. In contrast any other grouping of humanity which might similarly resort to the use of destructive power are caste as rebels and terrorists.

In this world, neither man nor woman has authority. Authority is hierarchically situated within the institution or extended to those who best reflect the attributes of ‘wealth, power and status’.

Societies of Man’s law reflect masculine energy, thinking and worldview. Language and thinking also tends to be neuter in preference to feminine. This world operates in the noun, and fixed truths, and is linear in both thinking and understanding of time. This is the world of the legitimated knowledge of academia and that which informs popular culture, and communications/media. This is where the discourses of ‘difference’ figures large. It is also the framework within which all discourse is being challenged.13

Within settler nations Man’s Law presumed there was no law before the colonist arrived, there was no sacred before institutionalized religion brought it, and held that all life of human form was subhuman or in extreme cases not human. In Australia, Aboriginal people were categorized with the flora and fauna of the continent. Man’s Law also presumes there is no economy, no trade or exchange, no system of governance and order and no relationship with land which results in a collectively agreed belonging to/with specific territory. These limitations in worldview and understanding of other humanity still informs activity, policy and the relationship of settler nations with human beings from other cultures and localities.

Importantly Man’s law is continually open to being rewritten. Therefore it can accommodate the shift in consciousness which will result from the amplification in knowledge and worldview that inter-cultural exchange potentially provides.
God’s Law emanates from a notion the Greeks term ‘logos’. God’s Law is the world of the sacred word. Of one’s word and handshake. The witness is God, and your worth is your word, your bond. Action must accord with one’s word. Logo is an ‘in God’ consciousness of peoples. Life is contextualized as being within God. Societies of God’s law may have religious leaders but essentially everyone acts to respect and fulfill one’s obligations and responsibilities in accordance with the sacred of word, and of teaching.

God’s law became necessary when humans began living in settled enclaves. Where previously they lived as tribes within separate territories as clans (family, extended family), the advent of villages as centers of exchange where unrelated groupings now lived in proximity as settled populations, meant new laws were required in order to create harmonious societies, or civil existence. God’s law is a sacred law of the world, a code of conduct, providing order where humans no longer live directly in relationship with other living systems. Albeit that their cultures, identities, and language often remain linked to, and dependent on this knowledge and activity. God’s law as traditional systems of existence are often directly linked with nature’s cycles, providing meaning through ritual and celebration linked to landscape and ecology.

In God’s law, authority tends to be vested in every man, who as head of household and through his relationships with other men provide the order and security for family, community or society, as a ‘space of being’. Armed force where it exists in these nation-states are either comprised of local men, civilians, or are the legacy of former chapters of nation state creation. (Most readers will be thinking of the Middle East and current events in Iraq, but the Israeli are also a civil army as are the Swiss and the former South African military, albeit that these last three as societies of man’s law are provided legitimacy).

In the world of God’s Law, men experience imposed re-ordering by those who live Man’s law as a diminishment of their role within society, and of their worldview and order. As a disembodiment of authority, ‘order’ is open to being in ‘other’ interests. Authority may now be counter his family and people, the space of being within which
enfolding of self inter-generationally has provided the known world of meaning. Exo-order\textsuperscript{15} may also engender existence which is counter life.

**Mothers Law.** This is the sacred law of Earth within creators living universe. Bird Rose writes of it as Earthborn Law. Mother Law is the ‘living law’ of this existence.\textsuperscript{16} It is a philosophically conscientised space of being wherein everything is in relationship. Mothers law is a Cosmoconsciouness.\textsuperscript{17} It is a distinct philosophical experiencing of the world and universe and our place within it. This world operates within a conscientisation of the enfolding or implicate order identified by quantum physicist, David Bohm. This world is comprised of verbs. There is no fixed truth, only viewpoint. This law is concerned with living systems within living systems comprised of the physical manifestation of spirit which is birthed through Mother. Indigenous peoples’ cultures, their ways of living, their languages and knowledge are all of the respect and love of Mother. Life is born of the love of Father Sky and Mother Earth. This worldview operates in ‘onetime’ and is concerned with the continuance of wellbeing of the diversity of culture as life.

In this worldview everything is in relationship to everything else and as such humans are born into family relationship with creation. In this worldview earth\textsuperscript{18} is an expression of self and understood as self. There is no separation. In this conscientisation women and men provide the balancing, symmetry and response as autonomous parts of the same one living system. Both women and men have authority. Colonization and the disruption of a peoples own balance and relationships have often served to see imbalance in family result. The journey of this thesis will continually serve to provide additional perspective from within Mothers Law as dialogue unfolds.

**4.4: A Key Of Dissonance**

Where multilateral dialogues within the UN have sought to vest Man’s law with newer values and conscientisation, rewriting the operational directives of its agencies to reflect these and harmonize standards across the UN, and newer mechanism to manage the
global and shared environmental challenges faced by all humanity, those interests which operate outside Man’s law, or to date have been above it, because they are ‘self regulating’ or only need comply with a ‘voluntary code of conduct’, have created another law which they are currently imposing on nation states everywhere.

The elaboration is of a new law from within Man’s law. The advent of a fourth law and its mechanisms are the newest source of global conflict and impoverishment. This newer law is Dollar Law ($Law), my own term for it. My explanation of it is also written from within a holistic understanding. Through Free Trade Agreements (FTA) and the World Trade Organization (WTO), $Law enshrines corporate rights above those of humans and the environment in either international or national contexts. $Law is concerned with creating a new world order that preference the institutional authority of capital and its entities. $Law is concerned with ensuring that the activities which create the greatest capital are provided surety of continuance, while humanity and other living systems are denied. $Law is a new exo-skeleton which increasingly straightjackets life and narrows options.

In short, $Law reduces all life to a commodity capable of being owned and traded, including humans as genetic blueprints for spare parts. $Law diminishes relationship, as all activity which is not $ focused becomes increasingly irrelevant. Society quickly learns that power is no longer knowledge or even relationship, but simply $’s. Society also understands that should enough $’s be generated it doesn’t matter if the methodology of gaining it is criminal. The worldview of those who promote $Law sees only 20% of humanity gainfully and meaningfully involved in elaborating their lives and future. The rest of humanity will be fed and clothed and entertained with meaningless pursuits.

German economic philosopher Wolfgang Sachs points out that the only thing worse then the failure of the massive experiment of $Law is its success. In this future world, which he describes, ‘longterm benefits go only to a tiny minority of people who sit at the hub of the process and to a slightly larger minority that can retain an economic connection to
it, while the rest of humanity is left groping for fewer jobs and less land, living in violent societies on a ravaged planet. The only boats that will be lifted are those of the owners and managers of the process; the rest of us will be on the beach, facing the rising tide.\textsuperscript{21}

Identities of \$Law generally have no personal knowledge by which to survive within a natural world. Money and Man’s Law or it institutional force mediate their dependence on other peoples’ resources, endeavors and knowledge for their survival. Outside these familiar zones \$Law identities often feel insecure and fearful. \$Identities currently appear to lack values and imagination by which humanity might continue as meaningful life. \$Identities are the beneficiaries of social engineering and the designing of ‘new generations’ for their product. Because \$Identities emanate from Man’s Law, they again preference the masculine and all its versions. \$Law’s newest commodity oriented male is the ‘metro-sexual’.

\$Identities tend to understand continuance through the activity they priorities, namely making money or generating the power to own and control it. \$Law seeks the survival and expansion of its identities so they might feel comfortable everywhere without having to acquire other knowledge, respect other worldviews and beliefs, or gain values consistent with the contexts and cultures this expansion destroys.

These laws are part of a methodology which explains the shifts in consciousness associated with Critical Race Theory. They also allow for the flexibility required to jump boundaries and contexts without losing ones thread, navigating within intercultural dialogue while shifting from subjective to objective and back again; from insider to outsider to insider. The three tracks or strings of Identity, Relationship and Authority also allow for a divergence in worldview and of ones understanding of ones place in the universe and the positions taken in political dialogue. These laws and the three strings again serve to provide meeting places within the dialogues examined.

This chapter has identified the dilemmas I as a researcher have faced. It identifies the framework I evolved as a methodology which encompasses more contemporary than
traditional approaches, employing Indigenous Research Methodology and Critical Race Theory. My framework draws on my unique personal experiences as a participant observer in the formulation of discourse at local, national and international levels. My framework and methodology are somewhat organic which may be viewed as a fault in some domains of the academy, but which is clearly placed in the newer discourses surrounding Indigenous Research Methodologies.

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2 Political Dreaming, see previous explanation provided in Chapter 2, 2.1, pp.32-40, and Endnote 25, p.45.
4 Bird Rose writes that spiritual and physical being are not separate categories. Rather, spiritual identity and awareness are manifested through physical being; if there is no body, then there is no ‘spirit’.

Bird Rose writes: ‘To be the same, minimally, is to share a shape and hence the potential to share a culture. To be different, is initially, to have a different shape, a different physical being’. ‘Out of that shape emerges other differences - animals of one shape, one species, share a language, a set of ceremonies, certain kinds of food, a way of life. In Kriol this specific way of life is termed ‘culture’. This usage is similar to that of many anthropologists; it differs primarily in identifying culture as a necessary part of life. We are not different from other species by having culture which they lack; we are different in that our culture, like our shape, is different from theirs’ (pp.45-46). Having the same shape (as other humans) and being able to share a culture is the reason why man’s system as culture, has such potency. However as it is mono dimensional in thinking, i.e. hierarchical, that culture which currently dominates lacks authority. Authority as Indigenous peoples mean it, is leadership which proposes positions (points of view from within which to see) and action that benefit all parts of a system. From within this reframing, First world dominance might now be seen simply as power which benefits one part, themselves. Hence, it is not authoritative leadership, only a structurally legitimated notion of leadership. Its dominance is the imposed - threatened use of destructive power. ‘Difference’, also become the locus of ‘relationship’. ‘Relationship only exists where there is difference’. Hence relationship between trees and humans, between river and bank, etc.


Mothers Law is explained a bit further on, but it might initially be understood as the consciousness which informs ones relationship with the laws of nature.

‘First World’ is used to mean the world of English speaking modernity. The First World is comprised of settler nations, the USA, Canada, Australia and New Zealand and the UK. Within this thesis I have chosen to use the terms First World, Second World, (which refers to UK, and EU countries), Third World (everybody else) and Fourth World (Indigenous world) because these more clearly express the idea of ‘Worldview’. The UK has deliberately been placed in both the First and Second Worlds as part of its strategic positioning is its dual nature. I have deliberately avoided the more commonly used terms in political and international contexts describing nation states because these in my view remain colonialist and embedded within the dominants ‘progress narrative’. To explain: Where ‘decolonisation’ gave us ‘underdeveloped’; ‘independence’ gave us ‘developing’; ‘freed capital’ gave us ‘emerging’; while the WTO, FTA’s and/or militarily imposed ‘restructuring’ gives us ‘countries in transition’. These are all dominant narratives about the ‘other’.


This is why Indigenous peoples see authority as having a territorial integrity. Authority can only truly extend to the boundaries of that which you understand and know. That which essence you are able to resonate. The proposition that any human can have sufficient knowledge to determine and decide for all humanity, even a majority of humanity, is within such a framing, a preposterous notion. Youngblood Henderson who sees Eurocentric approaches to Indigenous knowledge as a ‘fragmenting of the unity of Indigenous worldviews into the distorted perspectives of arts, sciences, and cultures’ writes: ‘We are not creating a grand theory or a universal conceptualization of Indigenous knowledge or heritage. We are intimately aware that each Indigenous regime is characteristic of the creative adaptation of a people to an ecological order.’ Given the existing ecological diversity, a corresponding diversity of Indigenous languages, knowledge and heritages exists. Battiste, M. and Youngblood Henderson, J. S. (2000), Ch. 2,
‘What is Indigenous knowledge?’, Protecting Indigenous Knowledge and Heritage, A Global Challenge, Purich Publishing Ltd., Saskatoon, Saskatchewan, Canada, p.40-41

12 ‘Rogo’, generally meant to interrogate, to ask to question. However ‘Rogo’, ‘Rogare’ had other meanings when used as a technical term (t.t.)

1. POLITIC t.t. a. Rogare aliquem, sententiam, or aliquem sententian, To ask one (for) one’s opinion or vote: Cicero, obiit, B.C. 43. - b. Rogare legem, or simply rogare (To ask the commons about a law; hence) To bring a plan of a law before the people for their approval; to propose a law, introduce a bill: Cicero, obiit, B.C. 43.; Livius, obiit, A.D.16.- c. Rogare populum magistratum, magistratum, or simply rogare, To propose a magistrate to the people for their choice, to offer him for election: Cicero obiit B.C. 43.; Livius, obiit, A.D. 16. - 2. MILITARY t.t.: Rogare milites sacramento, To ask the soldiers if they will take and keep and oath, i.e. to bind them by an oath, administer an oath to them: Caesar, obiit, B.C. 44. - 3. LAW t.t.: To ask a person if he will promise something in making an agreement; to propose a stipulation of roga me viginti minas, Plautus, obiit B.C. 184. Latin-English and English-Latin Dictionary, by John T. White, D.D. Oxon. (1908), Longmans, Green, and Co. London, New York, Bombay, Calcutta, 1910, p.543. In other words Rogo is the world or consciousness of ‘between men’.

13 Within this thesis ‘discourse’ is used to mean any formalized academic framework emanating from historic categories argued to be the legitimated knowledge by virtue of it being written and it informing the position and self identity of dominants. Discourse is seen as a narrative and body of knowledge which reflects a consciousness and understanding of life and its purpose. The expansion of discourse ultimately becomes processes which legitimate a sameness in viewpoint, resulting in homogeneity and the ‘one way of being’ (as evidenced by modernity, the journey of which, as progress, discourse informs). As if to underscore this point the Penguin Dictionary of Sociology defines ‘discourse’ as ‘the domain of language-use that is unified by common assumptions.’ (p.119). Contained within this idea is the very limitation that Indigenous peoples continually encounter. European language which is noun centred cannot accommodate or fully describe Indigenous worldviews which are conveyed in verb centred language. Battiste and Youngblood Henderson suggest that because of this ‘the best way to understand Indigenous knowledge is to be open to accepting different realities (however one uses this term).’ Indigenous peoples’ worldviews are cognitive maps of particular ecosystems, (p.41). Returning to ‘discourse’, the Dictionary of Sociology also states that: ‘Sociological attention also concentrates on the social function of discourses, most importantly on their ability to close off possibilities. Within a discourse there are literally some things that cannot be said or thought. This means that discourses may have an effect similar to that of ideology. That is, a discourse, as a ready-made way of thinking, can rule out alternative ways of thinking and hence preserve a particular distribution of power’. (p.120). Discourse then seeks to close off and limits what can be said. Again this diverges from Indigenous contexting within which processing seeks to leave open. This divergence is exactly why many academics find it difficult to engage with indigenized perspectives and seek fixed definition. They are used to their knowledge and its inter-relationships which are often replicated by institutional form providing them with an ordered locality and their position within it. Discourse carries within it a characteristic one might describe as ‘structural fixity’, knowledge which does not change and is always the same, no matter from which point of view you look at it. The processes by which discourse is created is theory. In this thesis, ‘theory’ is distinguished from discourse. An explanation for this is provided by Bohm, who writes: the term ‘theory’ is derived from the Greek ‘theoria’, which shares the same root as ‘theatre’, meaning ‘to view’ or ‘to make spectacle’. He continues: ‘Thus it might be said that a theory is a form of insight, i.e. a way of looking at the world, and not a form of knowledge of how the world is’ (pp.4-5). Theory is somehow a step closer to an Indigenous understanding that there is only view point, and no fixed truth because everything is in flux. What theory does not contain however is the profundity at which knowledge is learnt within Indigenous contexts through processes of exchange at the level of intelligible essences. See Dictionary of Sociology (1994), Penguin Books pp.119-120; also Battiste, Marie Dr. and Youngblood Henderson James S., (2000) Protecting Indigenous Knowledge, Purich Publishing Ltd., Canada; and Bohm, D. (1995), Wholeness and the Implicate Order, Routledge.


15 Exo as used in biology to explain the exo-skeletons of crabs and shrimps for example. As opposed to Endo; the endo-skeleton, the inner framework of spine; that which supports the body and ensures each
organ retains its place (order) and has its space (autonomy) to function properly. As an extension of Man’s Law exo-order historically reflected the newer locus of authority for society, namely institutions as has already been explained. In contemporary times, exo-order has become the means by which societies are increasingly straight-jacketed as the law governing order shifts to reflecting the interests of a few who are committed to centralized ideological global power. Exo (Gk,exo outside), p.517 and Endo (Gk, endon within), p.485, Tulloch, S. Ed. (1997), Oxford Dictionary and Thesaurus, Oxford University Press, Oxford.

Mothers Law presents a deeper challenge to understanding the sacred as it re-contextualises both God’s law and Man’s Law. Ruth Lewin, at Sydney University confirms Biblical narratives demonstrate the origins of the first human was out of the fusion between ‘Adama’ (feminine) and ‘Ruach’ (meaning ‘spirit’ or ‘wind’, also written in the feminine). Dr. Ian Young, also of Sydney University, confirms this view and points out that even today, within contemporary Hebrew Texts, the first referencing to ‘Spirit’ in Genesis 1:2 is written in the feminine again using the word for ‘wind’. In other words the spirit of God is birthed through the Feminine, and life is of the elements. This more closely accords with Indigenous epistemologies in which spirit has physical property: all ‘livingness’ being birthed through the feminine, Mother. Other scholarship I have been pursuing outside the constraints of this thesis shows that the ‘Trinity’ was originally written in the Feminine. Examining the Trinity, substitution leads to the following. Father, Son, and Holy Spirit (English) from Theos, Logos, Pneuma (Greek meaning God, Word, Wind), from the Hebrew Elah and YWHY (the ending of which is feminine), Davar (word or sing), Ruach (feminine for wind), from the Aramaic YWHY (Fem. ending), Mimra (fem., ‘word’, ‘sing’), Ruach (Fem. ‘wind’, ‘breath’). This more closely accords with Indigenous cosmology within which Creator, Song, Wind might be better understood as Meaning, Singing, Breathing, the verb denoting the universal continuum of Mothers Law.

The problematic of Christianity is its historic epistemology in which nature/body/birthing sings the absence of the creator. Absence becoming Desire, which in turn became Passion. Passion being the Crucifixion and suffering. Suffering becoming Salvation, (Conversations with Dr. Ruth Lewin, Sydney University, 2000). Thus it can be argued that the modern man made system which creates suffering is a reflection of that country which has greatest power within man’s system namely the USA, and that it represents the most Christian country of the modern era, albeit that libertine politics and secularism are said to inform the nation state. To explain, if salvation is achieved through suffering, what the US/Dominant system currently achieves is the salvation of those who have systemic power (the freedom they keep saying they provide), while the suffering is carried/lived by everyone else and the living systems of Earth. In other words their system disconnects the basis on which salvation is achieved through a system which insulates its beneficiaries while imposing it on others. Hence a secularism and a religious fundamentalism at one and the same time.

‘Land’, which in political and legal frameworks is termed ‘territory’ and which Aboriginal people within Australia refer to it as ‘country’.

Mander, J. and Goldsmith, E. Eds. (1996), The Case Against the Global Economy, And For A Turn Toward the Local, Sierra Club Books, San Francisco.


Chapter 5: The Canvas in Big Brushstrokes

The spider weaves her web in the cosmos
Each thread an interconnecting resonance

This section sets out in broad brushstrokes the contexting within which the dialogue between nations and peoples is occurring. It provides backgrounding on the United Nations as an institution at the centre of multilateral process of reform, the development and activity of social movements, as an overview of the international arena within which Indigenous peoples are active and contributing to a conscientisation of humanity. It also identifies institutions and their relationships within the macropolitical landscape, and other groupings and social agents working to bring about global change.

The landscape reflects a Eurocentric view. A structuralist and hierarchal perspective in which power resides at the top and diminishes as we descend through the layers of man made institutions;\(^1\) from larger international bodies dealing with macro considerations to governments, national institutions, local authorities, communities, the family and ultimately the individual. Such a perspective is often referred to as ‘the vertical’. Within this thesis I will often, much as a crochet hook, weave between the different levels in an attempt to draw through and illuminate the impact of various threads of activity, by differing agents, and amplify the resonance these have created, engendering global change.

While the underlying assumptions of structuralised power, practices and procedures within and across the vertical are being challenged little has changed. In effect it could be said that the system which is dominated by European thinking and values continues imposing and reimposing itself around the world with questionable results when viewed from the perspective of ordinary people.\(^2\) Not surprisingly those that benefit most are often least willing to see the inherent injustices and inequities of this systemization, or their complicity. Moreover the accompanying discourses of race, gender, class and
religion while often historic still imbue societies and thus contemporary political systems.

The new millennium, serves as a marker and provides a view that humanity must take stock and begin to find a new way forward which will allow all peoples to live in peace and in harmony with each other and creation. This vision has resulted from the endeavours of a great number of players within various political arenas. In order to comprehend this evolution in global aspiration it is necessary to provide a brief outline of the main structuralised arenas of power, their institutions and the shifts occurring within them. Reforms resulting from the ever-increasing ability of many groups, including those which dominate the hegemonic, to question their own sui generis.

5.1 The United Nations: A Global Meeting Place

Internationally, the United Nations is generally seen as the only mechanism we have to normalize and negotiate a sustainable, secure and just future. There is awareness that the scale and urgency of challenges facing humanity are global, and that solutions will require everyone’s involvement. As an historic organization this requirement to accommodate newer thinking and knowledge has engender stronger resolve. Achieving the revitalization and thus relevance of the UN has been the objective of the Secretary General’s Global Reform Agenda, launched in 1997. In the ensuing years the international community (with a few exceptions) have been constructively working as part of this revitalization. Newer frameworks and agreements have been negotiated, engendering a trend toward collaborative relationships by states.

Hindering the ability of the UN to achieve these goals has been the historic nature of the organization. Established in the post war era, 50 years ago, the United Nations has needed to address several levels of concern. The First centres on the organizations own endemic structures reflecting the historicism of power relations between nations, a hierarchy of members determined by post war considerations and levels of development.
The United Nations’ General Assembly which is comprised of all member states also reflects historic inter-relations. Intended as a democratic forum of inter-governmental exchange and dialogue, each state (country) has one vote when deciding multilateral agreements. While this essentially looks democratic, in practice, economic dependency on foreign capital, compliance with imposed IMF re-structuring; and a political or regional belonging to one or other grouping of nations, have all been known to influence a country’s position. A state’s capacity for wealth creation and the level of security it affords foreign investment is often key to determining their significance within negotiations.

Further undermining the democratic principals and égalité of the organization is the ‘veto power’ extended to only a handful of states. This executive power wielded by members of the Security Council (historically comprised of the USA, Russia, France, Britain and China), often results in a skewing of United Nations activities to conform with these countries specific national interests. The United Nations has often been criticized for not responding to a situation or crisis when the matter may have been blocked by one or other member of the Security Council. The historic determination of this privileged club of nations, and recognition as to the imbalance and impact of this
structuralised inequity has not gone uncriticised. Many have been calling for a reform of the Security Council. Options being promoted range from removing the Council altogether to retaining it, and inviting additional member states to join its permanent forum.

Determining the basis for selection and a vying for position by members has led to further international dynamics. One suggestion that only states with nuclear capacity be represented on the Council resulted in several UN members conducting ‘tests’ towards the end of the 1990s. This round of nuclear detonations only served to further destabilize regions of the world as rival members sought to dominate and ensure their inclusion. The destabilizing effect led to further dynamics in international debate and concern within the organization as a whole.

Amongst reformers and governments discussion continues. Some express concern that the option to extend the Council’s membership would only amplify the ‘interests’ able to veto. A situation which might serve to hinder the UN’s capacity to engender global reform as more and more of the pressing agendas needing to be address are vetoed, and ‘lesser’ member’s concerns are silenced. Since 2001 Security Council activity has been increasingly oriented to a US preoccupation with Weapons of Mass Destruction (WMD). In late 2004, Germany, Japan, Brazil and India all applied for a permanent chair on the Security Council at which time it was also suggested that Africa be granted representation as well.

The structuralised inequity and weighting of nations, not only impacts on Security issues, but also allows a handful of countries to determine and regulate matters pertaining to global monetary systems, economic architecture, governance and development models, peacekeeping missions and their deployment, humanitarian aid / funding / responses, information technology, and any other substantive matter they perceive is in their national interest. This essentially means that where a nation might veto an agenda item, or simply refuse to deal with a matter the UN’s Secretariat and Staff in all its various agencies, are hindered from responding.
FIGURE 5: 2

Committees of the General Assembly and their Functions

General Assembly
Currently 191 member States

- Proclaim new international standards
- Initiate Human Rights studies
- Make recommendations to governments
- Examine ECOSOC recommendations

New York, September and December Session

Committees to study particular themes and to present and report their findings and recommendations.

First Committee: Disarmament and International Security

Second Committee: Economics and Financial

Third Committee: Social, Humanitarian and Cultural

Sixth Committee: Legal

Fifth Committee: Administrative and Budgetary

Fourth Committee: Special Political and Decolonization.

Source: Adapted and translated from original diagram by Florencia Roulet in Derechos Humanos y Pueblos Indígenas, IWGIA, Document 21, Copenhagen 1997, p.16
Similarly, where a Permanent member uses its authority and prestige to assert a ‘dangerous’ situation exists requiring another state be penalised and perhaps, sanctions imposed, the international community is expected to comply. Iraq suffered more than a decade of such sanctions. Perceived injustice on the part of members resulting from some of the Council’s decisions, has led to a growth in the number of voices demanding reform. One suggestion would see the decisions of the General Assembly being provided equal weighting to that of the Security Council. Proponents suggest this would effectively balance outcomes and improve the democratic nature of process.

Other reforms have involved the specialised agencies of the UN (see Figure 5:3 The United Nations System, p.88). A growing awareness of the inter-related nature of agenda revealed the need for internal reforms in order to accommodate cross-disciplinary/agency responses. Opening official inter-governmental processes further to social movements, and NGOs, has served to accelerate a conscientisation of the need for a ‘holistic’ response.

As evolving discourse engendered amplification in cross-disciplinary responses, agencies began revising operational directives and creating newer departments to facilitate continued liaison with social, environmental and political agents driving reform. UN agencies have been working to harmonise operational activity to reflect the values, aims and objectives outlined in the United Nations Charter and the other interlinking Frameworks Agreements signed and ratified by members. These include newer Human Rights and Environmental instruments.

While architectural reforms have been taking place and are ongoing, wider concern centres on processes of ‘democratisation’, and UN membership. As an historic organization set up to replicate versions of hegemonic development, it is not surprising that representation was limited to the colonial map and later de-colonised states. Within a decade of its establishment the United Nations found itself moving towards de-colonization. While the conventions of the UN were illuminated and advanced in their articulation of principles and ideals, the practical operation of the organization owes much to its absorption in the first instance of former colonial administrators; individuals
whose thinking and modus operandi often did not alter after leaving a ‘newly independent’ country and beginning employment within the UN.

It could be argued, that in these instances post-colonial administrators served to skew UN operations so they accorded with imperial practice. Instead of the colony being an outpost in which say, British interests built and developed infrastructure which benefited and enhanced the Empires expropriation of resources, the newer international loop entrenched procedures by which the same companies/interests operated and profited, only now, by pushing the finances through the World Bank and its various inter-development banks, the newly de-colonized country could be billed for the cost of the development. In other words the loop filtered via the World Bank, indebted the country to re-pay the contracted/former colonial interest, for the development.

By the 1980s it was increasingly becoming clear that the result of the multibillion dollar international development activity involving the World Bank was often nothing short of economic, environmental, social, cultural and spiritual disaster for a majority of humanity and the Earth as a whole. Many seeking to reform the UN and its agencies realized that governments could no longer be trusted to act on behalf of amplified agenda, as they had often become complicit with those interests benefiting from entrenched hegemonic activity.

The step to de-regulated capital which essentially de-coupled ‘investment financing’ from diplomatic oversight, and the advent of the World Trade Organization have further served to position governments and states as clients of capital. The new regime in ‘direct foreign investment’ which operates through the WTO reflecting the values of the Washington Consensus, has in the view of many internationalists and experts, become an even more insidious means by which capital and transnational corporations skew all levels of international and national relations to accord with their self interest.
Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.

Chapter 5: The Canvas in Big Brushstrokes

FIGURE 5:3

The United Nations system

Programmes and Funds

- UNCTAD United Nations Conference on Trade and Development
- ITD International Trade Centre (UNCTAD/WTO)
- UNDCP United Nations Drug Control Programme
- UNEP United Nations Environment Programme
- UNICEF United Nations Children's Fund
- UNDP United Nations Development Programme
- UNFEM United Nations Development Fund for Women
- UNV United Nations Volunteers
- UNCDF United Nations Capital Development Fund
- UNFPA United Nations Population Fund
- UNCHR Office of the United Nations High Commissioner for Refugees
- WFP World Food Programme
- UNRWA United Nations Relief and Works Agency for Palestinian Refugees in the Near East
- UN-HABITAT United Nations Human Settlements Programme (UN-Habitat)
- UNFPA United Nations Population Fund

Research and Training Institutes

- UNCRID United Nations Crime Commission
- UNESCO United Nations Research Institute for Social Development
- UNIDO United Nations Industrial Development Organization
- INSTRAW United Nations Research and Training Institute for the Advancement of Women

Other UN Entities

- UNOPS United Nations Office for Project Services
- UN-HABITAT United Nations Programme on Human Settlements
- UNAIDS United Nations Programme on HIV/AIDS
- IAEA International Atomic Energy Agency
- CTBTO Preparatory Commission
- OPCW Organization for the Prohibition of Chemical Weapons
- U.S. Department of State

Functional Commissions

- Human Rights
- Crime Prevention and Criminal Justice
- Science and Technology for Development
- Sustainable Development
- Status of Women
- Population and Development
- Social and Political Development
- Social and Political Commission

Regional Commissions

- Economic and Social Commission for Asia and the Pacific
- Economic and Social Commission for Western Asia

Other Bodies

- Permanent Forum on Indigenous Issues
- United Nations Forum on Human Rights
- United Nations Forum on Public and Private Sector

Related Organizations

- WTO World Trade Organization
- IAEA International Atomic Energy Agency
- OPCW Organization for the Prohibition of Chemical Weapons
- CTBTO Preparatory Commission

Specialized Agencies

- ILO International Labour Organization
- FAO Food and Agriculture Organization of the United Nations
- UNESCO United Nations Educational, Scientific and Cultural Organization
- WHO World Health Organization
- UNRWA United Nations Relief and Works Agency for Palestinian Refugees in the Near East

Published by the UN Department of Public Information
DP/23/8—March 1994
Opening up United Nations processes to social civil groups sought to up-speed the nature of international dialogue. This strategy allowed for the inclusion of newer information and thinking emanating from academic spheres and non-governmental organizations. UN reformers acknowledged that unless international processes included peoples’ representation and social civil networks they were not going to accelerate the changes required. Nor would governments feel compelled to enact resolutions or comply with newer international frameworks aimed at engendering sustainability, protecting the environment and the global commons, provide justice and accountability, or ensure the security and wellbeing of their citizens and societies. Any commitment to newer framework agreements would need societies support if they were to be drawn down meaningfully and legislated by member states.

A further approach to legitimating ‘critical’ social voices within processes was a commitment to newer guiding principal. Often referred to as the measures needed for ‘good governance’ these principals require the UN, it’s agencies, governments, and institutions to operate with ‘transparency’, ‘accountability’, and the ‘participation’ of all stakeholders, including peoples, groups, communities and societies being impacted.

The work of many cross-cultural agents for change within the reform agenda also resulted in an additional consideration. The limitation of the hegemonic impetus of the organization and its sister the World Bank, saw many calling for an equal accommodation and legitimation of other cultures and worldviews. Some saw the reform having to include Western; Eastern/Asian philosophies; and primal and traditional belief systems. Within Asian financial markets, but perhaps relevant for consideration within the UN’s Reform agenda, the accommodation is described as the ‘New World’ being the USA and CANZ bloc countries; the ‘Old World’ comprised of countries with a historic greco/roman imprint, Europe; ‘The Ancient World, which refers to Asia, Latin America and Africa), and the ‘Primal world’ of Indigenous and Tribal peoples. For the purposes of this thesis I have chosen to simply label these same categories the First, Second, Third and Fourth world.\(^4\)
The central commitment of many within the reform agenda is to amplify the cultural impetus of UN activities and support newer pluri-cultural approaches to governance and development considerations. The international community also endorses inter-cultural dialogue and exchange as the means to secure a peaceful future of justice, human dignity and wellbeing for all peoples and nations.

Significant to a contextualising of the Indigenous peoples impact on UN reform processes was the United Nations Conference on Environment and Development (UNCED), in Rio de Janeiro in 1992. The Earth Summit (as it is also known) was a process from which a ‘Blue Print for Sustainable Development’ emanated. This document is known as Agenda 21. Several conventions relating to specific aspects of environmental consideration and sustainability resulted from this process. These instruments will be highlighted in later chapters dealing with the development of newer discourses. The Earth Summit however presented the Secretary General of the Conference with an opportunity of inviting four identified social groups to participate in the UN’s process. These were environmentalists; women; youth; and Indigenous peoples. Participation however was only as a Non Governmental Organization within a separate forum and required accreditation of the organization with the UN. This immediately limited representation making it part of the UN’s structure and process itself, greatly diminishing their impact on official processes.

Indigenous peoples, seeing this limitation employed their own political strategy. They ensured they were accredited to the process as NGOs, but once they were in the UN and official sessions they spoke as peoples, as Indigenous nations. They also ran parallel strategies aimed at consolidating their position on every item of Agenda 21. This approach centred on a consensual document drafted by representatives of some 2000 differing peoples from around the globe. To achieve this they built a traditional village called Kari-Oca\(^5\) 10 minutes from the centre where the UN sessions were taking place. With the assistance of a number of governments, they held their own Conference prior to the UNCED at which they housed and fed the Indigenous representatives. With only pencils and paper and working in five main language groups, into which fed a diversity
of linguistic peoples, they drafted what is known as the Kari-Oca Declaration and Earth Charter. As consensual documents they represent a benchmark in Indigenous aspirations internationally.

By the end of the UN’s Earth Summit in 1992 the international consensus within the United Nation’s secretariat and of a number of governments was that the most effective social movement to impact on hegemonic thinking at the event was that of the Indigenous peoples. Women were to make their mark a few years later in Beijing.

Since then the UN, in concert with social civil networks and governments have been steadily working to advance newer standards and agreements addressing the critical agenda and issues all humanity face. The objective of these processes has been to elaborate a shared future which provides all nations and peoples with human dignity, peace and prosperity. Key dialogues which have been taking place as a series of negotiations are often referred to as the +5s and +10s, indicating the number of years since the agendas original inception. These have led to a greater conscientisation of the mutuality of interest of all members and the need for a democratisation of inter-relationships between nations.

As the international community has been moving towards a framework of common standards, various interests have moved to again retain a separateness from these reforms. As a consequence of the consciousness shift taking place amongst members, historically dominant states are finding it increasingly difficult to retain ownership and control over UN processes and outcomes.

A worrying development taking place is the change in character and nature of criticism being levelled at the organization by global communication conglomerates. This has included allegations of bribery and corruption being levelled at the Secretary General of the United Nations by a member of the Security Council, even though they and their allies were responsible for the program at the centre of any controversy, and approve all contracts. UN staff who serve in an invited and politically neutral capacity with
Chapter 5: The Canvas in Big Brushstrokes

diplomatic standing and safety extended to them by the international community, are now being attacked, kidnapped and killed while serving in the field. This represents a complete change in the global rules by which international affairs are conducted. The most heinous example was the recent murder of Sergio de Meillo and members of his team. A United Nation’s staffer appointed to assist Iraq in its transition to democracy through free and fair elections, de Meillo (who was tipped to be the next Secretary General) had just completed a similar and successful mission in Timor. One can only ask what interests felt his presence was a threat to their own?

Much of the criticism of the UN tends to emanate from that grouping of nations which refuse to sign and ratify newer standards. In 2004 the US began proposing their reforms for the UN. Interestingly what they are suggesting is not really new. Rather it portends a potential return to a previous system of staffing and decision making in which those states who contribute the most as ‘financing’, fill agency positions and win contracts. This system was so unbalanced in favour of rich countries that the practise was eliminated. Recent US appointments to the World Bank and the United Nations have raised new concerns with some members of the international community who question the objective of the current administration.

While the aim of all nations and states are similarly stated, divergence exists over how to achieve them. As violence and destruction accelerate, it may finally be understood that the use of all force serves to create nothing but the continued need for more and more force. This in turn diverts attention, energy and resources away from addressing the real and pressing needs of the global community involving the re-orientation of global mechanisms to other values and practises which engender sustainability, and stability. In the end, the world’s economy can no longer operate as an exclusionary world system which preferences only one part of humanity and their ‘way of being’, while simultaneously reducing all other societies and peoples to a dependant and pitiful level of existence in which their self-determination is diminished by the powerful while the basis of their existence is pilfered or destroyed.
5.2 Other Agents Of Social Change

In order to provide some clarity as to whom and what constitutes a grouping considered a potential agent of change, I will utilize an international definition for ‘Civil Society’ currently in use within the United Nations, (UN). It is borrowed from a United Nations University study on Civil Society, for the UN Association in Canada. This report looks at the UN and Multilateral futures as part of the UN’s Reform Agenda.

For the purposes of this thesis Civil Society is that ““slice of collective life that takes place above the individual yet below the state. It is the sphere of economic, cultural and social interaction...” It includes the “broad collectivity of nonofficial, non commercial and more or less formally organised groups that seek in one way or another to reinforce or alter existing rules, norms and deeper social structures.” These include civil society organisation (CSOs), non-governmental organisations (NGOs), along with social movements like trade unions, peasant organisations, business associations (but not business firms), academia, professional groups, ethnic associations, religious groupings, cooperatives and community organisations. A further clarification would be that civil society organisations (CSOs) refer to a broad panoply of bodies while NGOs is used when referring to development, women’s, environmental and human rights bodies engaged with the multilateral institutions. Community-based organisations (CBOs) is used when speaking about groups at the community level who may not have a national or international formation”.8

This definition provides for wide inclusion, empowering individuals at all levels within the vertical. Government and commercial entities are excluded. Although, included are business associations, which have a capacity to shape and influence local circumstances and responses to change.

The need of a definition reflects the extraordinary flourishing of groupings, and the diversity of voices emanating from within societies around the world. The traditional spheres of activity, namely humanitarian aid, small scale development, animal protection
and conservancy, human rights activists and capital reformers have been joined on the international stage by newer groups. These representational voices advocate a myriad of concerns. They call for specific rights, gender consideration, newer development models, peace and disarmament, capital reform and debt relief, farmers’ and peasants’ rights, cultural relevancy and the primacy of the environment.

As globalization has spread and the impact of trade agreements and capital mechanism have increasingly come into relief, still more groups have begun emerging. These have tended to represent the specific interests of those being impacted on, either socially, economically, environmentally, culturally, or politically. Governmental and media complicity with hegemonic interests have further served to engender some of these newer networked groups.

Cynicism and a view that the information and future being determined for them does not reflect their interests as citizens, but rather those driving the rapid change, has left many more feeling disempowered and disillusioned. This is particularly so in both states with highly educated populations and systemically dependent lifestyle, and those states with societies representing the most marginalised and impoverished of the world. Interestingly however it is these two pools of human existence which engender some of the most dynamic agents for global reform. The First group, by virtue of being from the societies within which hegemonic power resides are often most able to effect and impact on the leverages of the unaccountable determinism. The later, who represent the first to be impacted on and the most severely effected by globalising interests offer some of the sanest alternatives for human existence.

The activities and values of civil society groups are however uneven. It can not be claimed that every grouping, even though presumed to be well intended, does in fact improve a situation, carry out its stated mission, or engender favourable movement of an agenda. Civil society also consist of groups such as white supremacist, the KKK, business associations backing weapons proliferation, evangelists, fundamentalists and scientific groups promoting geno technologies. As the level of civil society activity has
grown, the role of many organization and groupings have evolved, often strengthening their perceived importance and professionalisation.

With some 29,000 international NGOs in existence in 1995\(^9\), the scale and diversity of their activity has not been lost on governments. Increasingly, NGOs are being supported and funded by governments. Particularly those supplying relief aid and development aid, in theatres of conflict and crisis. An article for The Economist noted that the boom in NGOs was because Western governments fund them. Where once these organisations had been charities, official on going funding was resulting in many NGOs shifting their modus operandi to that of governmental contractors.\(^{10}\) The article also points out that ‘governments prefer to pass aid through NGOs because it is cheaper, more efficient – and more at arm’s length – than direct official aid’.\(^{11}\)

The scale of NGO operations have become so large it is claimed by the Red Cross that NGOs now disburse more money than the World Bank. Perhaps this success explains a newer twist within the NGO story. Multinationals and narrow sector interests now establish and fund partisan organisations, albeit that the link is often hidden from local constituents who join as members. Often ideologically informed, these NGOs increasingly create confusion and occasionally undermine initiatives by becoming a conflicting voice within process while seeking media attention for their ‘spin’ on a particular issue or matter.

The vast majority of NGOs however are funded by western governments and as such tend to favour programmes and projects which reflect hegemonic interests. An insight well understood from within a Third world perspective. Southern NGOs often miss out in funding rounds, Western governments preferring to fund their own groups. This results in Northern NGOs determining how local peoples in another country will be assisted. Lacking specific knowledge relating to the theatre of operations, program design has often proved ineffectual, culturally at odds with local values, or both. Moreover the assumptions, values and attitudes of some personnel that ‘fly in’ to oversee or direct a project may, on occasion, inadvertently engender hostility. Sadly the
North/South dichotomy evident at other levels within the vertical, has again been replicated within the family of NGOs. Even Indigenous NGOs were to find the imbalance evident, as a few of their brothers and sisters from the North began positioning with governments and international agencies during the UNCED to be the conduit for development/capacitation funding earmarked for groups in the South.

Some governments within developing countries actively discourage international NGO involvement within their borders. The scenario played out in a number of ‘crisis zones’ in which international NGOs openly jostled for positioning and control did little to enhance their reputation. Another concern of many Third world governments centres on the additional role NGOs can play gathering information on behalf of their own governments within theatres of war and conflict. Conversely, Amnesty International’s work would not be possible if they could not rely on informational flows from the field. Often they are the only group within a particular theatre of devastation.

After the UNCED, governments and international agencies began directly funding NGOs in the developing world. The new operational directive to support small scale rural development, often women’s projects, resulted in many hundreds of new NGOs, particularly in Africa. Program design again tends to resonate hegemonic considerations in order to gain international support. And this has led to a next level in consideration. Increasingly, NGOs which do not emanate from local grass roots and cultures are seen as an extension of a systemic reconfiguration of local life by foreign interests. Foreign NGOs are now often viewed by peoples in the Third world as the ‘benevolent’ face of a newer neo-colonialist project which denies them their human dignity.

For every negative consideration, NGOs do and have had some outstanding achievements. Several have been recipients of the Nobel Peace Prize. Médecins Sans Frontières in 1999, and two years earlier, a coalition of 350 NGOs who had campaigned and obtained, a treaty against the use of landmines. From local groups involved with bush regeneration, to those tackling macro agendas like debt forgiveness and poverty, to others pursuing better human relations and greater tolerance, environmental concerns
and peace, civil society is, and will increasingly play a part in shaping and determining the future of our world.

It is this awareness that has engendered re-newer activity and another twist in the NGO story; the emergence of well funded organizations directly responsive to capital reflecting neo-colonialist ideology and their interests. Their advent increasingly results in reforming dialogue being high-jacked. As a strategy it replicates one of the many methodologies unleashed in the late 1980s and early 90s to undermine and subvert the Indigenous voice within United Nations processes.

5.3 Indigenous Peoples

While Indigenous peoples are seen as a social movement they are not included within the UN’s working definition of ‘civil society’, albeit that they may have representative NGOs, or IGOs (Indigenous Governmental Organizations) engaged with the multilateral institutions. Indigenous peoples are accorded a unique positioning as a ‘distinct’ grouping of reforming campaigners. There are historic, legal and political reasons for this. Firstly, Indigenous peoples invariably have no official status and their existence is often denied. Second, Indigenous peoples are often dispossessed peoples. Their ‘Territories’ having been lost during historic colonization when the legal doctrine of terra nullius (empty land) was invoked, or through more recent state creation processes in which local inhabitants customary ownership of the land and resources and their informal economic activity are denied.

The advent of representative Indigenous voices internationally presents a clear challenge to the legal and political premise on which many modern states were founded. A dynamic which a great number of governments are still trying to find solutions for through newer negotiations with Indigenous peoples living within their borders. Complexity often arises within negotiation. Universal recognition that ‘terra nullius’ was nothing more then ‘legal fiction’ has seen a number of governments scramble to enact new legislation aimed at maintaining national control of land, water and resources within
their borders and territorial waters. In still other examples, the existence of historic ‘Treaties’ with Indigenous peoples has required more deft political negotiation. Within many states, successive government policies of dispossession and genocide, assimilation and/or segregation, further complicate the nature of negotiations. This applies particularly when the wider society, previously or still complicit, either tacitly or explicitly, display remanent psychologies and attitudes which allow the legitimate promulgation of these official policies.

Dated discourses of race, religion, identity and history which accompany discrimination and xenophobia often result in a continuing need to deny Indigenous peoples’ experience of co-existence. In the absence of strong national leadership, this can lead to newer political strategies aimed at ‘containing’ Indigenous aspirations through various measures. Strategies which either hinder Indigenous peoples ability to seek their rights, or legal measures which simply legislate lesser rights further diminishing Indigenous identities and aspirations. Australia provides a clear example of this latter approach, and it is examined in greater detail in Volume III as a case study.

The development and history of the Indigenous peoples movement, which reflects a definable politic, has paralleled the international development of United Nations instruments, and those which provide a definition. Human Rights Expert, Erica-Irene Daes who chaired the United Nations Working Group on Indigenous Populations identified four factors relevant to an understanding of the concept ‘Indigenous’:

(a) Priority in time, with respect to the occupation and use of a specific territory;
(b) The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions;
(c) Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
(d) An experience of subjugation, marginalisation, dispossession, exclusion or discrimination, whether or not these conditions persist.14
While these official criteria have served to guide ongoing debate and process, additional indicia have been evolved within other frameworks. These provide for even greater flexibility of definition potentially allowing newer international standards to be universally applied across differing regions of the world (see Volume 2, Chapter 11).

While many people living a First world existence may have some knowledge of the dynamics that characterise relationship between Indigenous peoples, government and wider society within their own national borders, the scale, significance, and relevance of the Indigenous agenda within the international arena is often less appreciated. Although essentially limited by definition to peoples within international instruments, many more hundreds of millions of ‘Tribal peoples’ and others still living ‘traditional existence’ around the globe resonate with the movement. A 1994 report to the United Nations of the Rural Advancement Foundation International evidences that 80% of the world’s people depend on Indigenous knowledge for health and security and that half rely on Indigenous knowledge and crops for food. These people also desire many of the aspirations articulated by the Indigenous peoples’ political movement.

Officially, there are 300 million Indigenous peoples living on Earth according to the UN, although supportive organisations sometimes cite a larger figure of 500 million. Of the total, some 50 million live in tropical forests and there are said to be 5000 different peoples (nations/tribes) around the globe. While their numbers equate to roughly 4% of the Earth’s total population Indigenous peoples represent 95% of the world’s cultural diversity and over 50% of the population in areas of high diversity. Figures also show that 2/3rds of Indigenous peoples live in Asia.

Importantly at the international level and within newer scholarship there is an acknowledgment that Indigenous peoples live within the world’s richest biodiversities. Moreover there is a recognition that it is because of their continued existence in these regions and territories that the biodiversity exists. In other words the two are interlinked and interdependent. To clarify; there would be no biodiversity if there was no cultural diversity of Indigenous peoples.
A hierarchical view is re-confirmed as an inherent sui generis of western thinking within notions such as the ‘Top Down’ approaches of government, or ‘Trickle Down Theory’ when referring to anticipated benefits from adjustments in international monetary/economic policy.

I have deliberately not specified to whom ‘ordinary people’ refers, as one of this thesis’s aim is to empower the reader, the term is left open. Readers may or may not choose to identify themselves as someone being referred to in the sentence, and resonate the view being expressed.

The United Nations was founded 1945.

Much of Eastern Europe however presents an anomaly as many of these peoples’ cultures are still connected to nature and notions of its sacredness within an Orthodoxy which retains the feminine and includes religious perspective which the great schism within the Christian church and the subsequent journey through history of Western Europe served to diminish within dominant Eurocentric consciousness. Consequently my use of European is more akin to Anglocentrism or dominant peoples (in any landscape) whose activity, way of life and consciousness is devoid of nature as an expression of the sacred.

I was told while in Rio that ‘Kari-Oca’ is the Guarani peoples’ name for the area where Rio De Janeiro has been built.


Website: http://usinfo.state.gov


Indigenous peoples form one of four social movement groupings to whom the United Nations has opened its processes, the other three being: environmentalists, women and youth.


Gray, A. (1991), Between the Spice of Life and the Melting Pot: Biodiversity conservation and its impact on Indigenous peoples, IWGIA Doc. 70, p. iv. Andrew Gray maintains that ‘until Indigenous peoples are at the centre of environmental conservation there will be neither biological diversity nor cultural diversity in the world’, p. iv.
"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has."

Margaret Mead

6.1 Northern Activism

While social activism has existed throughout human history, environmental campaigning as we know it essentially began after the Second World War. It is not until the 1970s and 80s that we see the emergence of popular activist groupings and campaigners. This social activity was a by product of both newer scientific critique and the Vietnam War. The later event, particularly in the United States of America (USA), changed the way in which society thought about itself and their relationship to government and authority. Until then the average citizen had generally subscribed to the patriarchal hegemony and top down hierarchy of knowledge and power. The emergence of dissenting scientists and anti-Vietnam protesters changed this. The individual freed by the 60s ‘love and peace movement’, initially dismissed as politically irrelevant hippies or characterised as dangerous radical students, became aware of their power to effect official policy.

Within the scientific world the 1960s saw the emergence of research which questions the wisdom of human activity which underpinned notions of ‘development’. Rachel Carson’s ‘Silent Spring’ published in 1962 was to conscientise opinion. She was the first to clearly link the use of DDT to the death of birds, highlighting the interconnectedness of the ‘food chain’. Her work illustrated that ‘nature’ had incorporated the effects of a specific human activity on one part of herself and had shown the consequences elsewhere within her living system. The result, being the deadly silencing of birds.
The manufactures of the pesticide were quick to respond. Carson lost her job with the US Fisheries and Wildlife Service and suffered a politically complicit campaign to discredit her. Un-repentant Carson continued her work and is credited along with Paul Ehrlich and Barry Commoner of leading the environmental movement in the 1960s. This was a decade of tremendous change in which ‘public interest groups began asserting pressure on their parliaments to pass legislation dealing with water pollution, solid waste disposal, and pesticide use’. By now the issue had gained international attention. ‘DDT residues were being found in the eggs of Antarctic birds, the oceans were becoming more contaminated and global air pollution threatened climatic disarray.’

Despite calls by the Swedish government and a number of other countries for a UN Conference to discuss the matter, many other countries were resistant. In their view the pollution and environmental damage, a by product of industrialisation, was the responsibility of the rich developed North. Moreover there was concern that environmental questions might slow down their own development. If northern countries imposed health restrictions on world food exports which were grown using high levels of pesticides, they feared a resulting reduction in their foreign earnings. Such a situation might jeopardise international financing of the huge infrastructure and power projects within their countries; activity which characterised development of the period.

A report emanating from the Club of Rome added additional weight to the need for inter-governmental response. ‘Limits to Growth’, clearly showed that at the current rate of development, non-renewable resources were in danger of running out.

Bridging the inter-governmental impasse and the two discourses of ‘environment’ and ‘development’ was achieved by Barbara Ward and Rene Dubois who defined a new environmental ethic in their book ‘Only One Earth’. Commissioned by Maurice Strong, the then President of the Canadian International Development Agency (CIDA), this work demonstrated ‘that economic development and the environment were mutually reinforcing, and not, in the words of the British economist, Paul Streeton, “two colliding'}
bandwagons”. Only One Earth was to provide the framework for the United Nations Stockholm Conference on the Human Environment, June, 1972. This event unleashed new attitudes and thinking and a new optimism, albeit embryonic.

Governments undertook to evolve environmental ministries and departments, and a new inter-governmental agency, the United Nations Environment Programme, (UNEP), was subsequently created. While the Conference agenda had included oceanic and atmospheric pollution, the destruction of whales and the need for monitoring systems, there were two other issues of concern not officially addressed. In his First Memorial Lecture for Barbara Ward 1985, David Runnalls highlighted these as ‘the environmental impact of nuclear power, and as pointed out in the controversial report of the Club of Rome, the danger that we were running out of non-renewable resources’.

Inspired by what had taken place in Stockholm, an increasing number of scientist and academics began working on the intersection between development and the environment. Schumacher’s book ‘Small is Beautiful’, published in 1973 fired another critical shot across the bow of hegemonic development. His study brought social impacts into the mix. He argued that capital and technologically intensive aid (characterised by huge infrastructure projects and/or large scale land use changes) were inappropriate as their impact only served to further impoverish people whose livelihoods were destroyed, an outcome contrary to the ‘improved standard of living’ the development had as its stated objective.

The keying of environmental consideration at an inter-governmental level also resulted in the emergence of the first ‘Green’ parties. These newer political entities, often uncompromisingly highlighted governmental ineptness, complicity, and accompanying lack of will across a number of portfolios responsible for a range of negative environmental impacts. The most famous green politician was Germany’s Petra Kelly, whose ability to articulate and galvanise a growing constituency of thinking, won her party governmental representation. This victory made her a household name around the world. Kelly was sadly to find herself the target of establishment interests who
systematically sought to discredit her personally and politically. After a decade of constant struggle and advocacy, she died. Although her death was attributed to suicide her legacy and inspiration remain.

Meanwhile within the philosophical constructs imbuing intellectual rigour, study continued. Critical examination of systemic thinking underpinning hegemonic human activity resulted in the emergence of newer awareness, with many scholars casting themselves in the role of environmental advocates. Thus we have the emergence of three main arenas of activism; the inter-governmental, the academic, and a public arena of popular activity or ‘themed’ campaigning. While initially seen as independent arenas of activity concentrating on separate issues (a conceptual construct) their confluence in the later part of the 1990s has been the basis of the newer discourses to emerge within multilateral fora.

As events hotted up for the first of the Global Summits in Stockholm (1972), popular groups began to emerge galvanised by both an awareness of the literature and reports, and of the official commitment of the UN Secretariat and several governments to raise environmental issues at an inter-governmental level. The Conferences omission of nuclear considerations galvanised scientists into new activity. The 70s saw the emergence of Greenpeace and Friends of the Earth, which harnessed and amplified the conscientisation of many hundreds of grass roots organisations which had already sprung up in response to community concerns of waste and water management and local pollution. These newer Inter-Governmental Organisations (IGO), daring and imaginative campaigns earned them world attention and headlines. Conservationist Michael Jeffries aptly describes the movement’s development and its evolution during the 1970s and 1980s. I have paraphrased his text simply to condense it to a shorter passage.

Jeffries dates the movements ‘headline grabbing activism’, from a small demonstration on the US-Canadian border in 1969. It was followed by a campaign by Greenpeace which sailed into a US nuclear test zone in 1971. The
following year Greenpeace members were arrested when they attempted to repeat their actions in a French nuclear test zone. Footage of their mistreatment in jail only served to discredit officials further. Several years later, in 1975 inflatables ran the risk of a whaling harpoon to bring world attention to the plight of leviathans. Seal culling in Newfoundland brought further horror to our television in 1977. Jeffries writes of this form of campaigning as ‘Swashbuckling physical bravery, often pitted against the media unfriendly monoliths of government, big business and televisual baddies…’.\(^1^2\)

By the 80s activist had taken to scaling chimneys and had upped the risks. Secret footage was shot and smuggled out of Africa by under cover environmental agents\(^1^3\) highlighting the illegal ivory and fur trades. At sea re-enforced trawlers rammed pirate whaling ships, and with each campaign the activists utilisation of media gained another level of sophistication. The memorable anti-fur poster by trade organisation Lynx which depicted a woman dragging a fur coat in a trail of blood with the caption ‘it takes 50 dumb animals to make a coat but just one to wear it’ epitomises this sophistication.\(^1^4\)

If this early campaigning can be characterised as single issue agendas, the 90s saw campaigners and activists amplify their spheres of concern. Fewer worked on single issues seeing the link between their concerns and that of other groupings within a commonality of emerging issues.\(^1^5\) In two decades of activity a collective consciousness was beginning to emerge. Ozone depletion, acid rain, fresh water, air pollution and global warming all brought into stark relief the interconnectedness and inter-dependence of all human life and nature on Earth. The perspective however is still dominated by hegemonic consideration. It is my contention that as the new millennia unfolds we will see the evolution of a newer campaigning style in which other worldviews, criteria and lenses are used to explain and understand human relationships with creation.
6.2 Southern Activism

"Non-cooperation with injustice is a sacred duty."
Mahatma Gandhi

While environmental activism was unfolding in the Northern hemisphere, within emerging countries, or the South, social activism was a response to ‘development’. Particularly when it was initiated by business interests which had the complicity of a corrupt or indifferent government. Post war monies now freed after the rebuilding of Germany and Europe began looking for new places to invest. British moneys tended to flow towards Commonwealth countries which were proceeding with decolonisation, while money from the USA and the international capital groupings\textsuperscript{16} began to look at South America and Asia. Europe’s colonial powers\textsuperscript{17} also directed capital towards their foreign territories as development investment or to militarily contain internal political conflict.\textsuperscript{18}

The development discourse of the time centred on the transfer of western technology and ‘know how’. Foreign experts would assist the governments of ‘poorer’ countries to determine their future, defining the character and terms of any development. The philosophical underpinning for this activity was patriarchal and hegemonic. Wolfgang Sachs rightly attributes it to Harry Truman’s characterisation of the ‘poorer’ nations as ‘underdeveloped areas’; a term which epitomised the North’s worldview. In describing Truman’s perspective Sachs explains that ‘for him all the peoples of the world were moving along the same track, some faster, some slower, but all in the same direction.’\textsuperscript{19}

Thus the North was able to project its values on other less advanced economies. Governments within many of these developing countries also ascribed to the notion that their peoples’ were lagging behind and that their own cultural worldviews and norms were of less importance than those of the European cultures.\textsuperscript{20}
It should be noted that the ‘humanitarian package’ which often accompanied the arrival of ‘development’ initially sweetened a country’s ‘adjustment’ impacts. Modern synthetic medicines, fresh water, inoculation, basic education and food aid were often experienced as enormously beneficial. Capital meanwhile sought to invest in large infrastructure projects which allowed for the extraction of natural resources, and or the creation of new mono-cropping projects or other land use. Achieving these outcomes however had other impacts. Population transfer and re-settlement programs became a by product of huge projects which altered traditional land usage and patterns of existence, resulting in social breakdown, dislocation and poverty.

In terms of identifying the beginnings of dissenting voices emanating from social groups within the ‘developing’ world, it’s not until the 1970s and 80s that they begin to come to the surface (international appreciation). In many continents grass-root activity had been evident for decades responding to ‘governing’ templates and economic imperatives imposed and legitimated by western interests.\(^1\) Macro political thinking of the time however had meant the concerns and view of local social movements were never countenanced or accommodated. More often then not they were simply characterised as ‘uprisings’ and enforceabley silenced.

The view expressed at the time by Bruce Rich, a senior attorney with the Environmental Defence Fund, and a key figure who helped shape northern activism illuminates the sudden awareness many environmentalists within the north gained during the 80s.

> ‘I was astounded, when I learned a decade ago that in reality the most vigorous grassroots movements to protect the environment are taking place in the developing world – not in the industrialised world. Some of these groups are 15 years old and are not rooted among urban intellectuals in Delhi, although some groups are like that. But many are grassroots and take place among the poorest of the poor’ (Rich goes on to cite other examples from Brazil, sub-Saharan Africa and Malaysia).\(^2\)
The emergence of Southern activist groupings at the international level mirrored ‘an explosion in lending by the World Bank and other multilateral development banks (MDB’s)’. 23 These moneys were made available for ‘large development projects involving agriculture, hydropower and thermal power generation, mining and population transmigration’. 24

Social and environmental impacts caused by ‘development’ in the south, engendered a newer campaign within the north. In 1982 a number of environmentalists in Washington DC held a meeting to identify the major causes of environmental destruction. They concluded that the main culprits were the large projects being financed by the Multilateral Development Banks. 25 With the US government a major shareholder they adopted a strategy of working through government to pressure the multilateral development banks to change their policies and practices. 26 The aim was to change domestic environmental and development aid policies and through this initiative reform the MDBs and World Bank operational guidelines. 27

Governments from the South, economically dependent on the injection of international funds, having signed on to the development hegemony, were less impressed by this activity. In their view development offered a way to raise living standards and provided economic opportunity for their societies. Truman’s analogy still held true for governments around the world. There was only one way forward. Consequently the concerns of the environmental lobbyists in Washington were often disparaged as those of privileged Northerners. In his analysis of this civil activity Jai Sen points out that up to this period

‘the MDB Campaign did not emanate from locally expressed concerns and the campaigners had little direct contact with the people of the regions that were affected’. ‘It was an intervention into a situation rather than a campaign carried out in coordination with local people’. 28
While this holds true, the criticism of ‘elitism’ levelled at the MDB campaigners by government officials, often did not reflect other voices from within the ‘development impact’ countries. When questioned at the time on this point, Rich who was the senior attorney for the campaign replied

‘… Third World groups realise that they have a vested interest in the conservation of their land and resources. They can’t afford to take any other view because the nature of these multilaterally financed projects has been to unleash an incredible devastation on these areas’.29

Joining forces with social groups in the south who shared a common vision changed campaigning dynamics. Rainforests and their wanton clearing for development purposes provided the focus for the emergence of a new transnational civil alliance between environmental organisations in the North and civil entities in the South.30 This alliance was to transform the nature of campaigning.

In Brazil the National Rubber Tappers Council, lead by Chico Mendez, had been fighting against encroachment and forest clearance since 1980.31 As a trade union movement the council was allied with local Indigenous communities similarly searching for ways to defend their territories and forests. In 1985 a couple of supporters of the rubber tappers movement went to Washington to raise funds for their campaign. One of the meetings they attended was with the environmental group responsible for the MDB campaign. Emanating from this exchange a North South alliance was formed.32 With the charismatic Chico Mendez leading the campaigning, environmental advocacy took on a new resonance. US anthropologist Steve Schwartzman who was working with the Environmental Defence Fund at the time noted that:

‘what had been an environmental campaign based on facts and projections and concerns of outsiders now shifted to become much more of a social campaign, organised around people’s lives and their perceptions’. 33
Chapter 6: Weaving Change

The Amazon became an arena of shared concern. Environmentalists, academics, ethno-botanists, economists and artists alike took up the cause. Indian Chief Raoni circled the globe with musician Sting. Brazil’s discounted foreign debt was purchased by northern financial reformers resulting in a ‘debt for nature swap’, and the creation of the Yanomami peoples territory. New academic research refuted the governments claim that hegemonic development was needed for national wealth creation. Studies showed Brazil lost foreign earnings by destroying their forests because national economic accounting did not track or factor in the ‘invisible rainforest produce’ reaching international markets. By the late 1980s these and numerous other alliances between northern activists and Amazonian peoples’ were resulting in the weekly reporting of rainforest destruction. News reports were punctuated by images of whole scale forest loss and reports that ‘Indians’ were being killed by gold miners and other encroachers in their territories. Even worse, on occasion it was claimed the military was used to eradicate local opposition to development.

Environmentalists and activists now resident in Amerindian villages or exposed to local Indigenous peoples and their cultures began to share something else. A new appreciation for the cultural valuing and knowledge the Indigenous had of their forests. Jeffries writes that ‘rainforest campaigns often allied with the rights of Indigenous peoples are credited with bringing native peoples to the centre of conservation’. 34

For the most marginalised groups in South America, namely the Indigenous peoples, the advent of ‘development’ throughout the 1970s and 80s was akin to another wave of genocide. While earlier colonization had left many groups, particularly those on the eastern seaboard decimated, a majority of Indigenous peoples still lived essentially traditional lives. Massive projects which suddenly saw their territories being invaded and opened up for the exploitation of natural resources resulted in their politicisation and their international activity culminating in a global representation at the Earth Summit in Rio de Janeiro in 1992.
6.3 The Indigenous Peoples’ Movement

Anti-Slavery International, originally the Anti-Slavery Society founded in Britain in 1839 to promote the abolition of slavery, sees the term ‘Indigenous’ as a modern 20th century term for the same peoples formally referred to as ‘native peoples’ during imperial periods of the 18th and 19th century. Interestingly an analysis of their work clearly evidences the world wide nature of colonial enslavement and a continuum in the concerns central to Indigenous peoples aspirations today. As the ‘colonised’, Indigenous peoples are still denied access and control of their territories and recognition of their distinctive collective rights.

While modern nation states struggle to appreciate the historic and perpetual nature of hegemonic diminishment policies, Indigenous peoples have consistently articulated the same themes when in dialogue with colonising authorities, from first contact to present date. As a movement, Indigenous peoples became apparent in developed countries during the 1960s. Spurred on by the Black Power and Civil Rights movements and decolonisation processes evident in Africa, groups from the Arctic circle, the United States and Canada, Australia and New Zealand began demanding recognition of their rights.

By the 1970s the Indigenous peoples of North, Central and South America had begun mobilising. Indigenous organisations at both a local and national level sprang up representing their voices. The central themes and concerns were the same no matter which continent Indigenous peoples came from and this internationalising quality lead to the establishment of two major organisation representing Indigenous alliances. The first of these, the International Indian Treaty Council, created in 1974, was formed to seek a legal recourse on treaties, which successive governments in various countries around the world had repeatedly ignored.
Not all Indigenous peoples however had histories which involved formalised negotiation with invaders/colonisers. In the view of these peoples they had never relinquished sovereignty. Moreover a growing awareness of their shared experiences and injustices led many to see that a coordinated approach centring on the violation of their Human Rights would amplify the international agenda, allowing them to pursue collective and cultural rights. Meeting in Port Alberta, Canada in 1975 representatives from Argentina, Australia, Bolivia, Canada, Colombia, Ecuador, Finland, Greenland, Guatemala, Mexico, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Sweden, the United States and Venezuela created a second organisation, the World Council of Indigenous Peoples (WCIP).\(^{38}\)

As awareness of the Indigenous movement grew, other peoples in the Americas, peoples in Africa, Asia and the Pacific also began mobilising. During the 1980s, Confederations of South American Indigenous representation and eco-specific alliances of Indigenous peoples emerged. Anti Slavery also details the growth in Indigenous organizations, many of which were a response to development. A massive Dam project in the Philippines led to the formation of the Cordillera Peoples’ Alliance. By 1986, the Indigenous and Tribal Peoples’ Council of India had been formed and mobilised in Asia. ‘The Ainu in Japan and the Aboriginal peoples of Taiwan from East Asia, the Southeast Asian Indigenous peoples of Thailand, Malaysia and Indonesia and peoples from Bangladesh and Nepal all joined in 1992 to form the Asian Indigenous Peoples’ Pact.’\(^{39}\)

The 90s have seen further developments. Russian peoples formed an organisation which brought together 26 groups from the North. Peoples within East Africa, Central Africa and Southern Africa have also become associated with the Indigenous movement, as have Pacific peoples.\(^{40}\)

These developments in the Indigenous movement were mirrored by activity in the North. As the Indigenous movement has grown newer organisations appeared; organizations generally staffed by individuals with close personal relationships with Indigenous peoples and communities who were supportive of their agenda and the movements growing networks. Northern indigenized NGO’s often straddle the vertical, establishing
relationships with other important northern groupings which could lend support or enjoin activities when and as required. These interlinking networks provided a number of benefits. Not the least of which has been their value as an international response mechanism providing some protection against gross human rights violations by governments, military or private interest militia. Where once, peoples could, were and still are ‘disappeared’, a phone call to a dedicated northern NGO often resulted in the support of major human rights organisations and activity engendering public campaigns, and headlines. Advocacy effectively aimed at the countries foreign officials while pressuring their own governments to intervene.

North/South alliances might also assist to facilitate Indigenous peoples’ representation and participation in international forums, providing funding and technical support. This might range from inter-agency and governmental liaison, to interpretation and secretarial backup. The most valued role these northern indigenised NGOs played was that of sustaining and engendering the recognition for the need of Indigenous perspectives across the various levels of political activity and the evolving international agendas. These NGOs also undertook the publication and dissemination of newer ‘indigenised’ academic study. This activity further legitimatied and amplified appreciation for Indigenous peoples’ perspectives underpinning their collective voices substantively. In this regard, credit and recognition must go to long established organisations like the International Work Group for Indigenous Affairs, and Survival International which have supported Indigenous peoples’ since the early 1960s.

While the Human Rights agenda provided an initial arena for joint advocacy, the Rio Summit which focused on Environment and Development allowed Indigenous peoples to amplify their voice internationally articulating a visionary politic and world view. Participating in all the official UN preparatory Conferences regionally provided the movement with the opportunity of creating a global constituency amongst peoples. A sophisticated strategy aimed at generating a consensual Indigenous response to Agenda 21. The shared experiences of colonisation and/or hegemonic ‘development’ led
Indigenous peoples around the world to support and attend the Indigenous pre-UNCED Conference.

Prevailing attitudes to Indigenous participation in official proceedings varied. A number of governments were greatly concerned. Many felt an Indigenous political manifestation should be contained. This was particularly true of Commonwealth countries. At that time, the Secretariat’s official position was that there were no ‘Indigenous peoples’ within the Commonwealth of Nations. Maintaining this political illusion became one of primary importance to governments of the CANZ bloc. Having successfully ‘managed’ Indigenous peoples’ aspirations in their own countries they were perceived as seeking to contain the international movement by self-determining Indigenous representatives from the South.

A number of governments systematically sought to undermine and destroy the Indigenous movement. Their tactics included the character assassination of Indigenous representatives, co-option, bribery, threats and intimidation. Other governments became party to the same objectives unleashing military reprisals against families and communities, and running political interference. Most distressing to the movement was the use of official Indigenous individuals from within government ranks. Their involvement was often designed to sabotage, duplicate and confuse official proceedings at inter-governmental levels.

Despite all this however, Indigenous peoples, marginalised in the extreme, isolated and often the subject of continuing genocide at home, were able to mobilise effectively with the support of several European governments, and northern groupings. The fact that many of the peoples attending the Indigenous Conference on Territory, Environment and Development, the Kari-Oca, and the subsequent UNCED were the first generation who had had protracted dealings with the west, led governments to under estimate the movements sophistication and effectiveness. Perhaps this was due in part to a lingering discourse of race, or a view that political power was so imbalanced in their favour, that
Indigenous peoples, scattered around the world in isolated and remote locations, with no technical resources or means of communication, stood little if any chance of success.

Governments also under valued the difference in impetus between southern Indigenous NGOs and the other NGOs with which they were more familiar. While northern NGOs were generally motivated by altruism, Indigenous peoples were fighting for survival. Governments had also discounted the level of Indigenous politicisation and their ability to analyse hegemonic activity. They were even more astounded when they began proposing alternative solutions and a new vision.

The outcomes of the UNCED were variable. In addition to Agenda 21, which sought to provide for a sustainable future, addressing both environmental and developmental goals, governments signed onto a number of other agreements and endorsed the creation of several commissions charged with continuing the work begun in Rio.

These included the Rio Declaration on Environment and Development, which defines rights and State responsibilities; and the Statement of Forest Principals. Two conventions were also negotiated; the Convention on Biological Diversity, and the Framework Convention on Climate Change. Both of which were opened for signature in Rio.

The two bodies created within the UN to ensure full support for the implementation of Agenda 21 were the Commission on Sustainable Development and the Inter-agency Committee on Sustainable Development. The later was set up under the Secretary-General in 1992 to ensure system-wide cooperation and coordination in the follow-up to the Summit.

The Commission on Sustainable Development was established ‘as a means of supporting and encouraging action by Governments, business, industry and other non-governmental groups to bring about the social and economic changes needed for environmentally sustainable development. It’s mandate is to review
implementation of the Earth Summit agreements, to provide policy guidance to Governments and major groups involved in sustainable development and strengthen Agenda 21 by devising additional strategies where necessary.\textsuperscript{41}

From an Indigenous perspective, and many of the NGOs who had been part of the process, the summit resulted in a win for governments and multinational interests. Rather then providing for a genuine commitment to the environment and the sustainability of life, governments had opted for a continuance in ‘development’. Wolfgang Sachs succinctly describes the outcome. ‘Sustainable development’ became a call for the conservation of development, not the conservation of nature.\textsuperscript{42}

The Indigenous peoples’ movement however had achieved a number of significant outcomes. Even though governments sought to ignore and deny the existence of their Kari-Oca Declaration and Earth Charter, they had irrefutably shown the world that as peoples they still existed, that they share a world view of value, and that they were the knowledgeable custodians of the Earth’s richest biodiversities. As the UN’s Commissions began their work, the inextricable link between Indigenous peoples’ cultural diversity and biological diversity was accepted.

\textbf{BOX 6.1: Evolution in International Advocacy for a ‘Better World’}.

- The 1970s gave us an understanding of the environmental impacts of development.
- The 1980s gave us single issue activism and some appreciation of the social impact of development and the natural limits of development.
- The 1990s illuminated the structural, hierarchical and hegemonic character of development and a growing awareness that the system itself creates imbalance, injustice and impoverishment while disempowering.
- 2000+ growth of civil society, commonality of inter-connective agenda, and cultural enrichment of dialogue, accompanying a shift towards Intercultural Diplomacy.
6.4 A Divergence In Voice

The International Indigenous peoples’ movement owes it beginning to the Indigenous peoples of the Americas. Northern peoples pursuing the recognition of Treaties were joined by strong voice from the south from within nation states which have already run the gambit of western economic and democratic governance transfer, first as aid and then development. Given the language of those states perceived to be promulgating the western capitalist model as an exclusive self-prioritising system is English; it is not surprising that the politics of Indigenous peoples has invariably been conducted internationally in other languages. Further more the ever-increasing number of peoples that ‘identify’ with the values being articulated by their agenda has seen others raising their voice in unity with those of their brothers and sister; voices from Africa, Asia and the Pacific.

Indigenous voices belonging to the international Indigenous peoples’ movement, and those from ‘emerging’ countries, increasingly see the international arena as the sphere within which to initiate a ‘new dialogue’. Their strategy is to vest the dominant hegemony’s institutions, legal instruments and activities with new meaning and values with a view to bringing about global reform. In short, they see their growing international movement as a political force dedicated to bringing about change on behalf of all humanity.

“…. The Indigenous-tribal peoples of the world have agreed through our various undertakings to redouble our efforts to create better relationship with the State governments; this is fundamental if we are to undertake joint actions which will benefit all of humanity”. 43

In comparison Indigenous peoples within the First world states, USA and the CANZ bloc countries (Canada, Australia and New Zealand) tend to utilise the international arena differently from their Indigenous brothers and sisters in the South. The main reason for this is the nature and character of legal and political processes which are
designated to contain negotiation and dialogue at the national level. By this means existing UN documents remain non-binding on these governments, which steadfastly refuse to ratify them. Consequently while the documents often inform Indigenous activity within a national landscape, some leadership central to internal processes view the international arena as a mechanism of ‘last resort’, or another level to be used when negotiations within their nation state break down.

While many groups are also part of a mobilization which seeks self determination in terms more consistent with conscientised perspectives available at the international level, leadership has tended to draw upon international instruments as a way of either pressuring their governments or determining the next strategy to implement which will result in further consideration within their nation state framework and/or result in resource ownership and its development or compensation. Outcomes reflect a tendency towards a ‘partnership’ with the dominant hegemony.

At international levels where newer frameworks exist potentially providing Indigenous peoples with self-determination, the Indigenous peoples’ movement gives clear voice to another vision.

“The right to free self-determination is another of our aspirations which we demand should be respected, that is to say, the right to decide our future. The Indigenous-tribal peoples of the world,… do not accept the influence of outsiders who tell us what we should do, what our priorities are and who wish to submit us to a progressive incorporation within a society which has always marginalised us. To permit this would be to leave aside our cultural practices and identity as Indigenous peoples” 44

As the international Indigenous peoples’ movement has grown to include Africa and Asia and Indigenous alliances are joined by international, regional and local NGOs from the North and South, First world governments have moved to accelerate their processes of ‘negotiation’ and ‘partnership’ with their own Indigenous peoples, promulgating their
right to ‘economic development’ while holding in abeyance ‘other’ rights and considerations. It can be argued that all they are seeking to do is put money towards a bigger pie, so that a few Indigenous peoples get a bit. In a sense this is the same strategy being articulated within the World Economic Forum by the US and its allies. The consistency of thinking within the dominant hegemony holds both at the marco and micro levels. This process, which is in full swing in Canada and New Zealand, is similarly being promoted in Australia.

In Summary, it is important to recognise that not all Indigenous peoples currently articulate or manifest the ‘identifying’ Indigenous politic being articulated as a force for global change. Even though a leadership may know their cultural identity, often limited national frameworks and dialogues, and historically diminishing policies coupled with representational mechanism often evolved, funded and legitimated by government, hinder ability to clearly separate and articulate Indigenous aspirations. This divergence in voice which is both reflective of the diversity of peoples within any one landscape and the globe generally will be further explained as we progress through the political landscape of dialogues being examined within in this thesis.

Again a reminder that this analysis is not exhaustive, rather as previously indicated what is being provided are the broad themes which shape the hue and form of on-going negotiation and dialogue. Understanding however also requires an initial examination of relationship and the themes which inform them.
The Anti-Slavery Movement, Suffragettes and the Women’s Movement, and Trade Union Movements are amongst the first examples of Northern social advocacy groupings. With a few noted exceptions such as the creation of national parks to save the Sequoia in 1890, environmental organising generally began after the second world war. WWF or the World Wide Fund for nature is a typical example, although unlike the women’s movement and unions which represented the concerns of ordinary people, WWF reflected a new sensitivity on behalf of the royal houses of Europe and millionaires who until their conversion had been hunters of the East African game they now sought to protect.

Encyclopaedia Britannica, CD Rom.


Ibid., p.50.

Ibid., p.50.

Founded in 1968 in Rome, The Club of Rome describes itself as ‘a global think tank and centre of innovation and initiative’. ‘As a non-profit, non governmental organisation (NGO), it brings together scientists, economists, businessmen, international high civil servants, heads of state and former heads of state from all five continents who are convinced that the future of humankind is not determined once and for all and that each human being can contribute to the improvement of our societies.’ See: <www.clubofrome.org>


David Runnalls was the research associate for the book *Only One Earth*, and is recognised as one of the founders of EARTHSCAN (IIED) the environment news service, and for joint authorship with the World Resources Institute for the ‘World Resources Report’, 1986.


9 Campaigns at this time generally centred on targeting a specific issue and grouping responsible for an offending behaviour, but which had a global resonance. i.e. save the tiger, stop the dumping of nuclear waste, or end the ivory trade.

10 Wapner, P. (1996), *Environmental Activism and World Civic Politics*, State University of New York Press. Wapner provide an excellent analysis of northern activism, showing its development from local concerns with waste management, to a newer awareness of toxic seepage from dumps and resulting subsoil contamination of waterways, coupling this awareness to the development of advocacy at local, state and finally federal levels.


12 A campaigning initiative of the Environmental Investigation Agency based in London.


15 Corporate political grouping such as the Davos Group, the Bilderberg Club, the Trilateral Commission and the International Chamber of Commerce.

16 Historically these have included; France, Germany, Belgium, The Netherlands, Spain and Portugal.

17 This was particularly true of colonial Africa which saw numerous armed conflicts in the 60s. The legacy of this period and the fight for control of the continents rich resources continues today across this continent.


19 Within Developing countries, Government personnel and leaders are invariably drawn from the ranks of western educated professionals who return home after usually attending British, European or American Institutions; either academic but often military.

20 If we factor in the struggles of Indigenous peoples it can be argued that grass-root activity is centuries old.


22 Such as the InterAmerican Development Bank and the Asian Development Bank.


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This campaign was initiated by the Environmental Policy Institute, the National Wildlife Federation and the Natural Resources Defence Council, later the Environment Defence Fund. 


Jai Sen provides a fuller account of how this alliance was created in his analysis ‘A World to Win – But Whose World is it anyway?: Civil Society and the World Bank, the view from the “front”: case studies’, in Foster, J.W. and Anand, A. Eds. (1999), Whose World is it Anyway?, Ottawa: United Nations Association in Canada, pp.337-390.


Ibid., p.7.

Ibid., p.8.


Ibid., p.8.


Ibid., p.174.
Chapter 7: Diminishment Of First World Indigenous Peoples

This chapter broadly examines the dynamics between those negotiating on behalf of dominant interests and society, and Indigenous peoples within differing regions of the world. The next two chapters seek to provide a general overview of the themes and forces that influence and shape any dialogue. They reflect the complexity of an infinite number of variables and specificities involving differing histories and current considerations. Although description may appear as a catalogue of negative comment, from an Indigenous perspective this is the reality of lived experience throughout a history of relationship with dominant society in settler nations, and former colonial contexts.

Within the First World, governments regularly borrow policies and strategies from each other sending high level missions to each others countries to ‘study and report’ on newer approaches. While this chapter essentially focuses on Australia, a shifting of countries reveals other perspectives, albeit that outcome may differ. The lived realities of Third World Indigenous peoples are examined next in Chapter 8. In covering four regional groupings of peoples; First World, South America, Africa and Asia, this introduction to diminishment seeks to provide in big brushstrokes the canvas and contexts in which the dialogue between Indigenous peoples and the world’s hegemonic interests are being played out. Each region represents a differing phase and chapter of the same historic end game, in which the dominant win and the rest lose. The following material is to introduce the many themes or threads which will be developed further as the journey of this thesis progresses.

7.1 Aboriginal Peoples Within First World Countries

Indigenous groupings within First World countries, USA, Canada, New Zealand and in particular Australia, have tended to ‘political activism’ within the legal framework of their nation states. Specific reasons and events which shaped this ‘activism’ vary from country to country, but in general terms, it reflects these nation states residual status of
Anglo-Empire and the impact of historical policy. In Canada, Australia and the USA, ‘assimilation’ saw Indigenous peoples forcibly removed from their families and communities. New Zealand never officially implemented ‘removal’ albeit children did find their way into institutions. The scale on which it occurred however, does not match that undertaken as policy in the other countries.

Maui Tepou, a colleague from Aotearoa (New Zealand) recently explained the history of his peoples as being forced to shift from living an existence he represented with a circle, to that of a square. The first he called living in the world of ‘Free Roaming Spirit’ and the second, representing current reality, as ‘The Life of the Square’; a regulated, rigid and imposed structure. As our wide ranging sharing and discussions continued through the night, the issue of Maori and Aboriginal organisations was broached. Within his ‘Korero’ ¹ many of these institutions and their processes are a function of the square, a shadow box thrown over the circle aimed at smothering Indigenous identity and culturally consistent social structures and knowledge. A similar perspective concerning the relationship between capital and government was expressed by John Smith when he declared that ‘government was but the shadow of capital’.

FIGURE 7:1 Shadow Box Existence

Source: Based on original concept and diagram by Maui Tepou
7.2 Diminished Representation

An insight that many Indigenous organisations and structures might be perceived as a function of systemic hegemony is fundamental to appreciating the framework and processes in which much Indigenous politics within the First World is expressed. An historic overview provides some explanation. From an Indigenous perspective shadow box organizations are often the only legitimised mechanism through which to express one’s voice. In a sense some of these organisations have by default become the only arena in which Indigenous leadership, frustrated at the inequity and injustice of the imposed and persistent colonial system, can have an impact on government. Other strategies which might involve civil society in addressing the perpetual nature of discrimination have also tended to be ineffectual, except on a few historically notable occasions.

From government’s perspective shadow boxes, which they fund and control, provide a mechanism, a safety valve for an expression of legitimate grievance, while simultaneously providing litmus regarding the level of politicisation and thinking bubbling-up within communities and peoples. Such a perspectives underscores their instrumental use in keeping any leadership focused on the agenda government chooses to propose or implement. As these mechanisms became historically established, government has generally come to view them as the legitimate expression of Indigenous aspirations. What is often missed in official circles is the Eurocentric nature of dialogue and its processes, and the role the shadow box casts over a majority of Indigenous peoples who still know and choose to live in accordance with the values and philosophies of the circle.

Another historic aspect of lived reality also impacts on the nature of organizational representation. While communities and peoples still retain strong distinctive identities, leadership may be disconnected, often a legacy of having been ‘removed’, and ‘institutionalised’. A childhood in which the negative values assigned to Indigenous
peoples may have been internalised. This leadership may on occasion be unable to separate out the confusion created by shadow box activity and cultural identity.

Representation and voice are such elemental aspects of a wider dialogue on identity, that it is again revisited in greater detail within subsequent chapters. Volume 2 provides an opportunity to canvas the nature of political representation, while the New Zealand Case Study in Volume 3 becomes the landscape within which to examine identity discourses and develop further insight. As a broad brushstroke however, it could be said that there are two resonances within the dialogue on identity. The First encompasses those who still live in community and who remain the most marginalised but often retain a greater connectedness with tradition, cultural knowledge, language, philosophies and values. The second group includes those who as a consequence of history and imposed policy had to evolve and adapt simply to survive. This group has often suffered the greatest impact of colonization and accompanying dispossession. Their survival has been contingent on their assimilation into a hostile and prejudicial system of existence in which options have been largely non-existent or are limited. This group has tended to be amongst the group within official bureaucracy and organizations.

Having said this however it is important to realize that this does not describe all Indigenous individuals engaged or active within these arenas, or belonging to an organization. Additionally, in more recent time there has been a growing tendency within First world countries for organizations and institutional groups to articulate and express newer indigenized agenda. This trend has accompanied an internal movement towards a re-vitalization of culture and language by Indigenous peoples and processes that have served to create newer linkages between diverse groups. These include community based, institutionally active (often urban groups) and those who retain traditional knowledge. Increasingly, Indigenous peoples in the First World are seeking to revitalise their identity in accordance with their own culture touchstones, negating historic processes of assimilation and integration.
7.3 The Dialogue Of Containment

Political and legal frameworks are such inherent elements of inter-relationship, that they have continually shaped the lived experience of all parties to any dialogue involving Indigenous peoples. The three case studies in Volume 3 provide detailed examination of these frameworks but for the purposes of this section which paints the broad canvas, a brief description of events is provided.

With *terra nullius* found to be legal fiction by the Australian High Court, a door was opened which might have potentially legitimated recognition of Indigenous peoples relationship with ‘country’. The Mabo judgement recognised the Meriam peoples common law native title as traditional owners of Mer Island in the Torres Strait. This situation set the conditions for newer strategies by interests which perceive Indigenous rights as competitive to their own. The limited nature of parties to any negotiation over land and resources and their expropriation and use became a potential weakness in Agreements; particularly where these had been negotiated by commercial and governmental officials omitting local community representation.

A first response to Mabo was the elaboration of Native Title legislation. Processes and peoples were diminished when all dialogue was reduced to legal considerations; Eurocentric notions and linguistics, and often expertise of a dated anthropological nature, resulting, some argued, in a lengthy unworkable framework of limited agreement.

To counter both Mabo and the now unresolved, and continually frustrated court processes dealing with Native Title claimants, resource industries sought some level of assurity by signing regional agreements with key organisations. This strategy, provided a limited and systematised process through which it might be claimed consultation with the ‘traditional owners’ had now been undertaken. Responsibility for this consultation became that of Aboriginal organisations, which provided capital interests with the means to remain at arms length. This move did away with any need to deal substantively with
the High Courts decision. An interim measure, until further governmental or political responses could be officially taken to provide clarity which favoured capital interests over peoples’ rights.

At the organisational level these newer regional agreements and procedures were seen by many leaders as a chance to ‘really represent their peoples and do good by the traditional owners’. The level of diminishment to which Australian Aboriginal peoples are subjected becomes clear on reading a sample agreement, and this is contrasted with those being elaborated between capital interests (often the same transnational resource group) and other Indigenous peoples in other parts of the world.

The second official response to Mabo took place after a change in Federal Government. The Howard government elaborated and implemented a ‘10 point plan’, which essentially did away with any need to ‘consult’ Indigenous peoples, while wresting consideration of resources from any claimants. This newer legislation was so profoundly unjust that it resulted in Australia being cited by the United Nations Human Rights Committee for breaching its international commitments and implementing racist policy.

Processes of diminishment also explain the manner in which any legitimated leadership is simultaneously discounted. Australia again provides the example. While claimants pursue their land rights under a Native Title process, parallel negotiations take place. These discussions can be characterised as a regional or local negotiation, in which resources are first identified, their economic exploitation is devised by government and capitalist interests, and any subsequent negotiation with Indigenous stakeholders becomes a fight to win some form of compensation, royalties or employment within the commercial development. A process termed ‘partnership’ in which ‘Native Title’, or ‘belonging to land’ and the ‘communities life’, becomes financial compensation, royalty cheques and at best some small stake in the dominant’s activity.

Community voices, which often embody the ‘Indigenous politic’ found at the international level, may be further silence when governments ‘hand pick’ Indigenous
leadership and authorise then to negotiate on behalf of all Aboriginal people. Often the outcome is an agreement which many in the community regard not only as unjust, but often, contrary to their wishes.

In other instances where Leadership may emanate from community and carry cultural authority other strategies may be employed. These may include relentless pressure being applied until they comply and sign off on commercial developments, or national agreements. Indigenous leadership may also find themselves the subject of official police inquiries and even court cases involving alleged ‘criminal behaviour’ of which they are often later acquitted. For representation, particularly those living in isolated communities, compliance with any police led activity is viewed as a paramount concern to one’s wellbeing, and that of your family and community; inter-generational history being the learning, and current incarceration rates the salutary reality of existence.

7.4 Partnership

Within Australia, it can be argued that ‘partnerships’ and ensuing agreements do not comply with the basic standards being articulated by the government’s own dominant hegemony at the international level. A report by the United Nation’s Secretary General maintains that group ownership should be recognised in law. Furthermore:

“in areas where the Indigenous peoples are living, claims to territory have to be resolved before any partnerships are formed”. “The four-stage processes for land agreements are, claim, recognition, negotiation and partnership.”

The Australian approach to partnership negotiations, also characterises the methodology often used by Canada and New Zealand, although the existence of ‘treaties’ in these settler nations have added to the mix of political containment strategies. In these countries negotiations over Native peoples’ heritage of land and resources has involved many more players within official negotiations. These negotiations include leaders whose politics represent both a dominant hegemony and those more consistent with the
international Indigenous voice. Despite this however, negotiations within these nation states have tended to achieve little for Indigenous peoples. Representation within negotiation may be that of officially appointed individuals who community often feel do not legitimately represent them or their interests, or they may be traditional leaders who have little previous experience of negotiation with government and are reliant on legal advisors or others, often from a government department. Containment of negotiation may be further achieved by government through its strategic use of funding, process, language and frameworks, which generally elevate those voices promoting or compliant with ‘economic development’ as a function of ‘national’ interest which accords with transnational agenda.

Consequently Indigenous peoples articulation from the First World has by circumstance had to pursue differing strategies to negotiation. The Nunavut Agreement between the Canadian Government and Inuit peoples indicates that any recognition of the peoples’ right to territory was contingent on a ‘management agreement’ which provided for a continuance of mining, drilling and exploration; the establishment of conservation and research activity and foundations; and a governance framework which echoes Eurocentric political norms. It should be further noted that this agreement between Government and Indigenous peoples, is being challenged by groups who were not party to the negotiation; peoples’ who also claim traditional ownership to areas included within the lauded ‘hand back’.

In comparison Southern Indigenous voices simply state:

_There can be no partnership until our rights are recognised; our collective rights as peoples to our territories; our free access and control over our resources; and our prior and informed consent before entering into any partnership. These prerequisites to partnership are extremely important, but in themselves are not sufficient; the right of Indigenous peoples must be recognised and respected throughout the process of collaboration with states or other economic interests._

(Note, the introduction of their own terminology, ‘process of collaboration’).
7.5 Manageability

Australia has similarly pursued strategies that provide for co-operative management with leadership. A systematised approach which has been in place for nearly two decades, and which it might be argued has served to hinder genuine engagement or consideration of Indigenous peoples’ aspirations. The occasion and event which led government to pursue the next level in strategy was the political activism surrounding the creation of a Royal Commission into Black Deaths in Custody. This strategy not only silenced genuine activism and the articulation of community voices from around the nation, but as will be explained, it simultaneously set the conditions for a manageable leadership.

By the mid 1980s, events and activism were in full swing. Social movement groups, the media and Aboriginal peoples began to pressure the government to investigate the growing number of Aboriginal peoples dying in Police Custody and while in Jail.

1987 was a defining moment for the Aboriginal movement. In the two decades since the historic referendum (1967), the Aboriginal political movement had gone from strength to strength. Tranby College had opened its doors, and the Aboriginal Legal Service and Medical Services had begun in Redfern. There was a new energy, there was possibility. Many from within the Aboriginal leadership already consolidated within these organizations began to position around the boards and potential roles being established to assist the government with a Human rights ‘inquiry’ into deaths in Custody. At the same time however, other members within the movement, in particular the women and mothers of those who had died, were determined to achieve a ‘commission’ and to this end took their case to the international arena. As one Indigenist activist explained:

‘An inquiry would not require the Judge hear witnesses testimony, where as a Royal Commission which has more wide ranging powers not only had to call witnesses and hear their testimony but it also had to provide them with protection. This was seen as a vital necessity by the families of those who had died, as they feared ‘racist’ backlash from the ‘whites’ in the rural communities where they live, and the police.’

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
The first of two events to push the Australian government into a Commission was an Aboriginal women’s maiden address to the Subcommission on Human Rights’ Working Group on Indigenous Populations in Geneva in July of 1987. The second was a riot in Brewarrina, the result of community outcry at Lloyd Boney’s death in custody. He was the sixteenth Aboriginal to die in custody in that year alone. In Geneva political pressure was brought to bear when South Africa, the USSR and finally the USA made official complaints against Australia. Other countries, notably Belgium and Sweden, were also monitoring internal events in Australia.

Twenty four hours after these two events, which occurred within days of each other, Prime Minister Hawke announced a Royal Commission. Returning to Australia, the activist and the families who had begun the organisational movement, found themselves being targeted by both government and some Aboriginal leadership, who wanted them out of the arena. The organisation’s phones were apparently tapped by the Australian Security and Intelligence Organisation (ASIO). A view confirmed by international colleagues who attempted to ring.

There were regular ‘break-ins’, and two separate fires set. Documents, films, tapes and photos were all stolen. Members of the families were intimidated by phone and in one instance, by a man with a gun. Those who had been most active were made aware they were under surveillance. The Commission was not able to provide protection despite being required to do so. The police would not attend the ‘break-ins’ or fires and refused to make-out any reports.

This moment can be seen historically as the instance in which, their historic movement which had been building throughout the 60s and 70s, re-energised by the US Civil Rights movement, was co-opted. The occasion when voices from within community where intimidated and silenced despite supposedly being protected by the nations highest law. The occasion in which political activism was replaced by co-operative management.
Having acted to sideline the ‘politically active’ within the Aboriginal movement, the Australian government sought to ensure that the process would not result in further international embarrassment. Australia held off signing the enabling ‘Optional Protocol’ to the United Nations Human Rights Declaration until 1992 thereby ensuring none of the information emanating from the Royal Commission could be used internationally. This again seriously limited Aboriginal activism effectively corralling it to partaking in official process, with the hope that combined pressure would bring beneficial results. With more than two decades gone since the Royal Commission, Aboriginal peoples are still demanding the government address the matters raised by the commission and implement its recommendations.

### 7.6 Reconciliation

Designed to bring about better understanding between Aboriginal peoples and wider society, Reconciliation as a national processes under the Howard government has engendered newer resolve within Aboriginal leadership. This has in part been due to the reaction by millions of Australians to a report by the Human Rights and Equal Opportunities Commission. *Bringing them Home*, catalogued a shameful history of official policy and complicity in the destruction of Aboriginal families from which children were forcibly removal. Many Australians felt an apology should be made to Aboriginal peoples on behalf of the nation. The Prime Minister however refused. This stance coupled with his government’s policies and legislation which contravene the High Courts findings, the Commissions recommendations, and Australia’s international Human Rights commitments, provided the nation as a whole with an opportunity to reflect on an essentially Apartheid system.

With hundreds of thousands of ordinary citizens prepared to walk for reconciliation and an apology,\(^5\) accompanied by statements from former Prime Ministers, Judges, academics and leading advocates similarly pointing out the injustice of the Howard government’s policy, Aboriginal leadership’s articulation which resonates their cultural values and identities has been more clearly heard and appreciated.
Canada provides a similar picture. Here the Federal Government has generally dealt with four major groupings at the national level. The Assembly of First Nations, The Metis National Council, the Inuit Tapirisat of Canada (Inuit Tapiriit Kanatami), and the Congress of Aboriginal Peoples. 6

Legitimated by the Canadian Government and often dependant on a level of government funding, these organisations have also had to be responsive to government agenda, although several decades of *indigenizing process* has seen activity increasingly shift towards greater community responsiveness. Process and its outcomes again reflect the character of some Indigenous leadership and the nature of their political identity. Leadership may on occasion be drawn from Aboriginal men and women who grew up in Government institutions called ‘Residential Schools’, after being separated from their families, and peoples.

Recognition of governments complicity in creating the conditions for diminished identities within the peak Indigenous organizations and the need for a ‘healing’ of the peoples, were key elements in the development of the ‘renewal’ initiatives within the Canadian Governments Aboriginal Action Plan 1998. This plan extends the Canadian governments ‘partnership’ beyond the key groups to now also include “Non-Status and off reserve peoples and Aboriginal woman, Aboriginal youth and Elders; and Aboriginal business and social organizations” (Hon Jane Stewart). In her speech on the occasion of the unveiling of “Gathering Strength – Canada’s Aboriginal Action Plan” January 7, 1998 Ottawa, Ontario, The Honourable Jane Stewart, the then Minister of Indian Affairs and Northern Development, not only apologised to the Indigenous peoples of Canada for past injustices, but also took responsibility for them.

Citing the findings of their ‘Royal Commission on Aboriginal Peoples’ she stated:

‘*The main policy direction, pursed for more than 150 years, First by colonial and then by Canadian governments, has been wrong*.’ Stewart continued:
The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at residential schools, and who carried this burden believing that in some way they must be responsible, we wish to emphasis that what you experienced was not your fault and never should have happened. To those of you who suffered this tragedy at residential schools, we are deeply sorry.

The Minister also announced the governments undertaking to assist address the resulting problems:

*Our commitment began today, with the Statement of Reconciliation and the $350 million for healing to address the legacy of physical and sexual abuse at residential schools.*

This part of the governments new action plan stems from reading the community voices and testimony within the commissions report, an ‘historic body of work (which has) had a tremendous personal and institutional impact’. One which the Minster acknowledged had clearly ‘transformed the Commissioners, as well as the ideas and understanding of others, including myself’. Their apology and the money to initiate healing programs and revitalize communities was a genuine attempt to redress the problems.

In the same address, the Canadian government also made a commitment to ‘Strengthening Aboriginal Governance’, ‘so that communities have the tools to guide their own destiny and to exercise their inherent right of self government’, and to ‘Developing a New Fiscal Relationship’, that provides a stable flow of funds in support of transport and accountable community development’.

Their fourth commitment ‘to sustain the growth of strong, healthy Aboriginal communities, fuelled by economic development and supported by a solid basic infrastructure of institutions and services’ was also a genuine attempt to improve living
conditions and opportunities. From the perspective of the international Indigenous peoples’ politic the call is for ‘self-determination’ within their territories, and ownership and control of their own resources, rejecting any ‘outside’ advice or influence regarding their development.

7.7 Blaming The Diminished

Australia, under the Howard Government is now seeking to borrow and implement the Canadian model with an additional ‘spin’ which reflects badly on government and illustrates the thinking and attitudes which imbue some officials.

One prescription which hinges on the argument that Indigenous ‘substance abuse’ is due to ‘welfare dependency’ has seen an Indigenous leader promoted nationally. His solution advocates families sign a contract that allows government to re-direct a percentage of their weekly social benefit to a trust fund. The managers of this fund in conjunction with the family themselves would help decide how it should be spent.

It can be argued that Noel Pearson is repeatedly promoted by the Howard government because his solutions do not require a shift in official government policy. Rather they appear to reverse and confuse the requirement that policy move from welfare dependency to a rights/entitlement based approach. Complicit with nationally defined economic interests, government has again chosen to ignore its representative duty of care of Australian citizens, preferring to blame the marginalised and diminished for their predicament. Given the knowledge within official circles of the amplified agenda at the international level which recognises Aboriginal peoples’ ‘difference’ and rights to territory, traditional knowledge and resources, and cultural identities one might be forgiven for thinking the government perhaps mean spirited.

Elevating Noel Pearson’s prescription also perpetuates negative myths concerning Indigenous peoples. As an official strategy it simultaneously ensures a limiting of the criteria being considered to engender beneficial change in Aboriginal peoples’ situation.
Government can now point to a high profile Aboriginal individual saying, ‘the reason why Aboriginal peoples are drunks and substance abusers is because they get welfare benefits’. Pearson has also been widely reported saying that they (Indigenous peoples) need to ‘wake up’ to themselves and start entrepreneurial endeavours. This perspective feeds into another political position often articulated by officials. This being that the resolution of reconciliation is not justice, but rather new processes referred to as ‘practical reconciliation’ in which Indigenous peoples learn to be self sufficient within the dominants economic paradigm with few rights being achieved.

As a political accommodation subsequent chapters provide additional insight on this dominant approach which remains integrationist. The Australian case study in Volume 3 provides detailed examination of the legal frameworks which serve to ensure national consistency across all levels of government. A reframing of subaltern history however provides an initial response to the view that Indigenous substance abuse and violence might be addressed through integrationist economic development which denies Indigenous peoples their identity rights.

### 7.8 The Rule Of Empire

Government’s readiness to lock Aboriginal families into contracts which siphon part of their benefits into a trust fund is of some concern. The trust, or its managers, in conjunction with families are to determine how their moneys should be spent. Overlooking the essential paternalism of the idea, any analysis of the history of Aboriginal trusts, co or part managed by governments might raise concern. Aboriginal peoples are still inquiring where the moneys are that they earned as salaries, which church groups, mission managers, government authorities and private institutions collected ‘on their behalf’ throughout the century. In one example, a recent study by Rosalind Kidd entitled The Way We Civilize reveals how Indigenous moneys were continually appropriated and reapplied by the Queensland Government to fund state development.
Given the level of complicity capital interests, government, town councils and businesses, local authorities and other settler-dominant groupings have in diminishing Aboriginal entrepreneurial activity, I might be suggested these trusts may not benefit Aboriginal families in the long run. Noam Chomsky’s insight on the Rule of Empire that native peoples never be allowed competitive development only complementary roles should ring loudly with Aboriginal leadership. Their own subaltern history illustrates this statement is true.

Richard Trudgen’s publication which provides a cross-cultural appreciation of Aboriginal perspectives and the destructive and confusing impact European influence and behaviour has on communities and peoples, also highlights the rule of Empire. Why Warriors Lie Down and Die 9 catalogues a series of traditional economic activities the Yolnu peoples of Arnhem Land were forced out of by Europeans. Dependant on trade with the Macassan and neighbouring clans, Yolnu economic independence was either legislated out of existence or commercialised by European self interest. Trepang-fishing and trade was stopped in 1906 by the South Australian government which established and then revoked Macassan fishing licences, and both pearling and the crocodile skin trade are now controlled by dominant interests. 10

Traditionally Yolnu understood their environment in a complete and intimate way. They were highly skilled artisans, hunters, producers and traders and also had many other skills. Then in the mission days they turned from their traditional enterprises and directed their high levels of mastery to learning Balanda11 trades. They became builders, plumbers, painters, electricians, boat captains, deck hands, fishermen, stockmen, house-keepers, clerks, administrators and so on. Many were able to hold their heads high as they competed equally with Balanda in their chosen trades.12

Since the 1970s, Aboriginal men have also lost these ‘newer’ roles to Europeans. Chomsky’s insight that any ‘competitive’ activity which provides ‘natives’ with an economic base be obliterated by colonial interest, holds true. Trudgen also comments
that there are now more Europeans working in Yolnu territory than the peoples themselves. Europeans moving into these roles have again diminished Yolnu self reliance and ability to provide for family, with disastrous consequence.

‘What happens is this: the dominant culture takes over the roles that the men traditionally fulfilled. In Arnhem Land, economic resources and political function – the province of men – have been stripped away. This has left them feeling they have nothing to live or work for. They feel there would be little change in their community if they weren’t even there: “Not even my family would miss me if I was to die.” They believe that “no-one would even notice”, and they say to themselves, “I’m a failure.”’

Trudgen succinctly re-states the true historic reality of Aboriginal existence. ‘Virtually the only economic activity that Yolnu have left is welfare.’

Internalised negative self image and value continually re-asserted by dominants through word and deed and informing of every aspect of their imposed system, is the root of endemic problems. Trudgen’s study further proves that dependency is a product of learned helplessness.

‘Learned helplessness occurs when the people lose their economic independence and become dependent on welfare programs. Through these programs they experience loss of roles, loss of mastery and hopelessness. These in turn translate into destructive social behaviour, including neglect of responsibility, drug abuse, family violence, self abuse, homicide, incest and suicide.’

Addressing this reality however will not simply be fixed by creating a few additional roles for Aboriginal peoples. Questions also arise as to the nature of the jobs any government would be seeking to create and the layers of ‘integrating exercises’ any Indigenous person would have to undergo to be considered worthy of employment.

Trudgen explains that Aboriginal people who have recently graduated from newer Aboriginal education programs may lack understanding of the courses they have just
completed. His insight being that imposed values inform what is termed Aboriginal education such that the curricula is disconnected and bears little relationship to the values or thinking contained within Indigenous cultures or languages. I would argue that here again the shadow box fulfils its political function of cultural diminishment.

Trudgen also points out that having undergone this ‘education’, Aboriginal graduates are further confused. Core knowledge they grew up with is discounted while being ‘educated’, a process which also diminishes their appreciation of further cultural learning, and for the knowledge which still informs the thinking, language and view of Elders and those remaining in community. Peoples for whom they are then expected to implement government programs. The next question arises as to the nature of the programs themselves which lack consistency with Indigenous values and worldview.

He argues, as I do that the denial of government to address the inequity and injustice of its own thinking and system is at the core of all Indigenous peoples’ problems, and should be the real focus being addressed. It is this very insight which led the international movement to appreciate that an aspect of their politic must be directed towards conscientisation and the de-construction of linger myths, such that the clarity of the mirror they held up would provide a shift within that culture which continues to dominate and diminish. This process is as much an inner journey as an external one.

At the United Nations level moves to ensure that Human Rights standards are universally applied resulted in official processes to address this same issue. Endemic to diminishment is a perpetuation in assigning negative values to others. The consequence of which is a failure to understand and appreciate diversity. In 2001 the UN held its Conference on Racism, Racial Discrimination, Xenophobia and Related Injustice to address their impact on all levels of exchange and dialogue between nations and peoples. While the Conference proved a successful international and regional conscientisation process, the Australian Government sought not to engage with it or include their citizenry within its processes.
While Trudgen’s work is essentially a cross cultural examination of the history and reality of Yolnu existence, my own field work around Australia leads me to add that these same processes of diminishment have also been the experience of all other Aboriginal peoples, albeit that the nature of traditional economies and later ‘new life’ roles may have differed. Further more, the values informing colonial activity and the now dominating hegemony similarly diminish other Indigenous peoples globally. Again the specifics of history and circumstances, economic activity and relationship vary, but the end game is the same.

Subaltern history evidences that most of Australia’s largest rural sector economies would never have been established without Aboriginal labour. Cattle barons, pastoralist, mining and even the timber industry all owe their early establishment and success to the hard work of Aboriginal peoples. This factor is never truly recognised by policy makers and wider society. All Aboriginal peoples’ are inter-generationally aware of the pattern of injustice and marginalisation the dominant pursue. ‘Every time we get something going, they only come along and knock us down, so why bother’.  

National dialogue in Australia continues to centre on Aboriginal peoples’ economic development, without providing rights or justice. The model being borrowed continues to seek to integrate Indigenous peoples, their communities, lands and knowledge into the national architecture on terms which retain historic power inequity. It might be argued that negotiation and processes said to involve recognition of treaty rights or land claims appear to still ensure a Eurocentric shadow box is established. And that this provides a framework of existence through which capital and governmental interests can contain and manage affairs. Chomsky’s insight that ‘natives’ be allowed to evolve complementary activity but not have ownership of any competing economic development, ensures the only roles available support European interests.

Addendum

Pearson’s perspective that welfare payments or ‘sit down’ money are to blame for Aboriginal alcoholism and the anomie many within Indigenous communities suffer, has
potentially opened the door for further governmental diminishment. Within weeks of being returned to power in the 2004, the new Minister for Aboriginal Affairs, sought legislative changes to so called ‘passive’ welfare. Under this scheme Aboriginal people will lose payments if their children do not attend school, and undergo regular health checks. Payments are also to be linked to work as ‘active’ welfare. A proposition which a number of Indigenous leaders point out will disadvantage many within isolated and remote communities where there simply are no ‘jobs’ or opportunities for work when a conventional definition of what this constitutes is adhered to. The essential paternalism of this newer government strategy and its punitive nature again reflect on the Howard government, and as some Indigenous leadership suggest, the failure of their policy of ‘practical reconciliation’ over the past two terms in office.

Implementing policy is a newly appointed Indigenous leadership whose primary focus is economic development and employment opportunities as part of mainstream activities. While previous leadership which had been elected by community were focused on a national rights based agenda and hoped to further negotiation of a ‘Treaty’, the change in representation now facilitates capital stimulation at a community level on an individual and corporate basis.

7.9 Making A Buck From Indigeneity

The conflicted relationship between Europeans and Indigenous peoples is the locus of any complimentary role Indigenous peoples might be encouraged to develop. On the one hand the dominant diminishes their identities and refuse to acknowledge their rights, while on the other, seeking to utilise this same difference for their own gain. Indigenous peoples around the world regularly comment on the hypocrisy of the conflicted relationship. Indigenous representative, Minnie Degawan, a Kankanaey of the Cordillera peoples in the Philippines writes:

‘It is indeed a sad commentary on our times when governments only recognise our existence as distinct peoples if there is the possibility of cashing-in on our perceived
‘exoticness’, as in the blatant use of Indigenous dances and songs to attract tourists, but would go to all means to deny our existence when our rights are involved, as in the case of the Draft Declaration.\(^{17}\).

Australia also exemplifies this appropriation of Indigenous peoples’ identity and culture. The multimillion dollar Indigenous art market exemplifies some of the problems also evident in other industries now wanting to utilise ‘Indigenous’ images. Galleries may provide traditional and contemporary artists with canvas and paint, but often they have not benefited equitably from the sale of their work. Lacking any national recognition of their cultural rights; symbols, dreaming stories, traditional themes and knowledge are open to exploitation, the government preferring to allow commercial interests to ‘self regulate’ any excesses.

Tourism and Eco-tourism now similarly hope to benefit from a few complimentary Aboriginal roles. One might cynically comment that this is not because major operators or hotels had thought to offer these opportunities to Aboriginal peoples in the past; but rather because overseas visitors keep explaining that it is the Aboriginal culture and peoples’ they want as their experience of Australia. It might also be argued that the recent development of ‘bush-tucker’ products, for restaurants and by manufacturing industries producing jams and condiments based on traditional knowledge, all further exemplify cultural appropriation. Tour guides, performers, story tellers, and faces for photo opportunities are all being encouraged both by economic interests and governments. ‘Aboriginality’ as an economic value to other interests has now resulted in government often supporting and funding parallel industry programs which provide basic training so that a potential employee has the ‘necessary skills’ to meet European expectations.

National parks, scientists, and researchers might also provide Indigenous peoples with some role within their initiatives or jurisdiction. The film industry too has rediscovered the Aboriginal world. 2001 saw no less then 3 new (Australian) feature films released by major names within mainstream industry. A contrast to the many Aboriginal writers,
performers and producers who for decades had sought to have their own films and scripts developed. Some will find a role within mainstream endeavours, but many Indigenous people will see the dominant’s desire to tell their story for them as a process which may further diminish their own voice. Again, the one mediated by Eurocentric interests tends to dominate. The Entertainment/government arts industry similarly provides a few opportunities for cultural dance, performers, writers, actors and musicians.

Aboriginal people who have an extraordinary capacity for ‘generosity of spirit’ have always been glad of opportunities. This is why the Eurocentrism and power inequity which imbues every relationship and negotiation must be acknowledged as a factor contributing to Indigenous peoples’ diminishment. These same values inform the relationship of dominants when dealing with Third world or emerging countries. At this level of relationship between ‘us and them’, negotiation can be characterised as development that in debits the nation’s peoples without having to recognise, legitimate, or accommodate differing cultural, social, economic or natural systems such that its citizens do not equitably benefit from the resources and development within their country. The same mechanism is extended to consideration of Indigenous peoples.

Perhaps the quip by the Chairman of ATSIC 18 to the former Minister for Aboriginal Affairs, on SBS TV’s ‘Insight’ program, aptly sums it up. Discussing the means of creating Aboriginal economic development he responded to the Minister’s suggestion:

‘So what are you saying… that we’ll mortgage all our country back to get ourselves out of poverty – is that what your saying? We can’t enjoy the resources of… (our country). We can’t enjoy full rights of native title on our country. Yet you’ll mortgage it and we’re to buy it off you? 19
Chapter 7: Diminishment Of First World Indigenous Peoples

7.10 Confusing The ‘Other’

While much of the First world’s Indigenous peoples’ are having to struggle under systemic layers of political and legal containment at a national level, Anglocentric agenda and narratives, and a legacy of diminished historic relationship, Third world peoples have tended to be more resolutely focused on self-determination, as both a national and international dialogue framed by multilateral considerations.

This has meant that dominant First world interests which use the multilateral fora to their own advantage, have often been central to strategies which have sought to diminish and contain Indigenous voices from within the Third world. In 1992 at the time of the Earth Summit attempts were made to try and sabotage negotiations. Officially legitimated ‘Indigenous’ voices were sometimes used to confuse and duplicate processes and outcomes, resulting in a view by some leaders, that these officially supported individuals were working against the interests of the international Indigenous movement.

The desire to continually frustrate and confuse Indigenous articulation at all levels and deny them their self-determination, is still being pursued by many governments. Analysis tends to suggest the aim is to push Indigenous peoples towards an increasingly capitalistic approach, in which the means of survival is to marry consumerism, the economic system and its neo-capitalist project. A future in which values and identity are reconstructed in accordance with external priorities. Life becomes a ‘way of being’ in which values are consistent with those interests driving the WTO which simultaneously seek to diminish and frustrate recognition of Indigenous peoples’ ‘collective rights’ and ‘traditional knowledge rights’. This is in direct contrast to the international Indigenous agenda, which sees collective and traditional knowledge rights as integral to any consideration of Indigenous peoples’ identity.

Within the international Indigenous peoples’ perspective the nature of the dominants economic/development model is perceived of as part of the problem and a system needing reform. A view similarly being articulated at the international level by
economists, financial experts, scientists, world leaders, governments, political parties, institutions, think tanks and many Civil Society groups. A publication of the United Nations Association of Canada which documents much of the activity within the macro political envelope assisting to engender reform, provides a clear description of current conscientisation.

‘While the role of the state is changing, the global organizations to which they are ceding much authority are far from being democratically accountable to citizens. Further there is a significant gap between governing economic organisations, and the agendas and objectives which emerge from the United Nations global conferences of the past decade.’

Secretary General Kofi Annan, speaking at the World Economic Forum in Davos in 1999, stated that the choice was between ‘a global market driven only by short-term profits, and one with a human face.’

Debate on how to create a ‘people-centred economics for the 21st century’ has seen the emergence of three broad schools of reform. Each reflects the degree to which their government/capital interests are complicit in driving the current system and benefiting from its operation.

- ‘It's in the wiring, not the architecture': an approach held by the US government and its allies’, which essentially seeks a continuance and expansion of their system and standards of regulation. ‘The core objective of this groupings approach is to transform developing countries financial systems using Northern standards’; ‘strengthen the IMF’; ‘and encourage private creditors to take part in responding to crises with bail out packages’ for developing countries. (In other words, more of the same, only it’s expanded and more tightly regulated in favour of capital and its players.)
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• ‘Back to Bretton Woods’; ‘which advocates tougher controls on capital movements’, the institution of a Tobin Tax or some form of tax which would ‘permit greater controls at the national level’, with greater accountability and ‘more voting power for developing countries’ required of regional institutions, the Bank and the WTO. (An approach which seeks to skim money out when capital transactions occur and open the mechanisms up for some Third world participation. But essentially, it all goes on as before.) And finally a Third approach.

• It’s the development model stupid! The “Development” school argues that it is not just the regulation of the model which must be changed but the model itself, the assumption of globalization. They call for a “fundamental re-orientation of an economy towards a more inner-directed pattern of growth that would entail, in many ways, a reversal though limited, of the globalization process.” Instead of foreign investment and export-led growth as the institutional engines of the economies, they suggest that international financial institutions must assist and support the “de-globalization of domestic economies,” putting the emphasis on domestic savings and investment, progressive taxation systems and the domestic markets. This strategy, it is suggested, permits a strengthened linkage between domestic economic development and equity.122

Indigenous peoples further advocate that international reform need also accommodate multi-ethnic, pluri-cultural and multi-linguistic societies, and that diplomacy shift to inter-cultural dialogue.23

Dominant interests continue to frustrate Indigenous voices while seeking to consolidate additional parties to their potentially re-jigged economic system which hopes to benefit from the resources bound up in peoples’ collective and traditional knowledge rights. Simultaneously however they are not prepared to recognise Indigenous-Tribal peoples’ authorship or dependence on these for their own survival. Neither do dominant interests countenance the aspirations of a global constituency of societies and a majority of the
world’s Indigenous peoples. Billions of peoples who by choice and preference want to retain their traditional systems of existence, land, languages, cultures and identity and determine their own futures and development. The dominant world currently appears to offer only diminishment or death.

From the perspective of many cultural peoples, particularly those being diminished through capital’s globalisation, First world countries are dependant on the Third world because their modern ‘way of being’ and their system remains exploitative and destructive, reflecting the historic nature of its intent and global architecture which was built on genocide, slavery and colonialism.

‘They’re coming and taking our land because they trashed their own, cut down all the trees… poisoned the water and air and put concrete and chemicals all over it. See, their culture… they don’t know how to live with nature.’

Indigenous peoples have consistently reflected on the lack of understanding and wisdom of those who came and colonized. As far back as 1854 Chief Seattle lamented the diminished understanding and values of Eurocentric culture in his address to the US Senate; a prophetic speech given to mark the transfer of ancestral Indian lands to the Federal Government.

Chief Seattle noted that for the white man one portion of land was the same as the next. ‘The earth is not his brother, but his enemy, and when he has conquered it he moves on.’ Chief Seattle also spoke of the ‘connectedness of all things’, explaining that ‘whatever befalls the earth befall the sons of the earth.’ He reflected on the white man’s need to own God while not understanding they shared the one God. Nor his ability to understand that even white men could not be exempt from the common destiny of their actions. He mourned white mans whole sale slaughtering of living creatures and pointed out that when all the animals, and all the forests and trees were gone ‘it will be the end of living and
Chapter 7: Diminishment Of First World Indigenous Peoples

the beginning of survival.’ Philosophically, the values and dominion of the white man and his destiny was an ‘incomprehensible mystery’ to Chief Seattle; one which still confounds a great number of the world’s Indigenous peoples. ²⁵

As international and national discussions are ongoing there are no clear outcomes. In light of this, it will be argued throughout this thesis, that the requirement is **conscientisation** as a means by which to change the dialogue and effect outcomes. As a first step within these processes, the aim here is to show the pattern of relationship and the ongoing historic nature of dominant approaches.

It should be noted that the international Indigenous peoples movement are not arguing for a dismantling of the interdependent global system, but rather that these ‘man made mechanisms’ be vested with new notions and values so that they can engender a more equitable, just and sustainable world for all humanity. This long term strategy which they have been pursuing has already engendered new international standards and Law.

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¹ ‘Korero’ is a Maori concept and word. While I am using it to refer to a way of speaking, an oration in which essence and genealogy are expressed, within cultural contexts it carries more profound philosophical meaning.


⁴ Explanation supplied by Aboriginal activist, name with held as requested.
This is a reference to a national event initiated by government at which a widely canvassed ‘Declaration of Reconciliation’ was to be officially handed over to government during a celebration called ‘Corroboree 2000’ held at Sydney’s Opera House. In the lead up to this event it became increasingly clear that the Howard Government was now less committed to Reconciliation processes and would not be apologizing to the continent’s Indigenous peoples as many expected. In protest some 500,000 marched across the ‘Harbour Bridge’ to demonstrate their own support for Reconciliation and to illustrate their desire that an apology be officially extended to Aboriginal peoples so that forgiveness and healing might follow. See also, Australia Case study in Volume 3.

Two additional organizations complete the government’s compliment of key bodies. These are the Native Women’s Association of Canada, and the Council for the Advancement of Native Development Officers (CANDO).

HREOC, Human Rights and Equal Opportunities Commission, Second Report 1994, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Government Publishing Services, Canberra, 1995, p.9. One might argue however that although this tends to characterise the way in which current negotiation is perceived, the real dialogue is actually one concerned with justice and equity.

One might argue however that although this tends to characterise the way in which current negotiation is perceived, the real dialogue is actually one concerned with justice and equity.

Kidd, Rosalind (1997), The Way we Civilize, University of Queensland Press.


Trudgen provides the following definition in his ‘Glossary’: Balanda is used to refer generally to non-Aboriginal or European people. It comes from the word ‘Hollander’ or ‘Ballander’. When Aboriginal people from Arnhem Land first met white people in Sulawesi, Macassar (Ujung Pandand or Makassar), they saw the ‘Ballander’, so the word for white person became Balander. Balander in the people’s language has both a singular and plural sense like the English word “sheep”.

A repeated sentiment shared by many Indigenous colleagues.


The Aboriginal and Torres Strait Islander Commission, a statutory body of elected Indigenous Commissioners disbanded by the Howard government in 2005.


Name with held as requested.

Chapter 8: Diminishment And Third World Indigenous Peoples

The Indigenous peoples of the South have a different history which has allowed for the development of a strong ‘identifying’ Indigenous politic. Third World Indigenous peoples live in nation states which invariably gained independence under the United Nations de-colonisation agenda. Countries which themselves are accorded the status of ‘other’ by the First world which maintains supremacy. Consequently, Indigenous peoples living within the Third world are amongst the most marginalised humanity, while bearing the greatest impact of any countries ‘emergence’ through internationally assisted or financed ‘development’. Again a reminder the following section is a general overview which aims to provide an amplified contexting of the major themes contributing to international dynamics being played out in various regions of the world.

8.1 An Overview Of Latin America

Despite the additional centuries of colonisation, compared to the histories of Australia and New Zealand, the Indigenous peoples of Latin America have remained more resolutely ‘outside’ the dominant hegemony. Indigenous peoples with Latin America were and still are more likely to endure slavery then gain equity and justice. A report by Anti-Slavery International, entitled Enslaved Peoples in the 1990s establishes that slavery, or debt bondage, sexual slavery and child slavery all continue to form part of Indigenous peoples’ experience within countries of Latin America. As Catholic countries, the civilising of the ‘native’ was left to the church. Consequently the Indigenous peoples of Latin America have seen every manifestation of ‘foreign’ religion arrive within their lands to ‘convert’ them and ‘save’ them.

A further distinction of the Indigenous peoples of Latin America arises from the pattern of colonisation and settlement by other ‘ethnic’ groups. Prior to the 1950s and 1960s ‘development’ of Latin American countries had been a slow and gradual process.
This pattern changed when western capital, freed after the reconstruction of Europe looked to other countries for ‘safe’ investment. Development was sold to the countries elite and government as modernising their backward countries. Technological transfer, (as it was then called) funded by development aid brought about a huge acceleration of environmental degradation in mining and timber initiatives. Within a few decades, crippled economies and governments were unable to repay their huge international debts. These events were also accompanied by a population explosion which saw the introduction of family planning and contraception programs in which Indigenous women become the predominant grouping to endure this ‘transfer’ of western patriarchy. Ecofeminist and political activist Ariel Salleh, writes that ‘40% of Brazilian woman are sterilised and an Indian National Family Health survey records the average age of female sterilisation in that country as twenty-six.’

Countries which elected governments oriented towards progress which benefited their own societies when in negotiation with Northern interests, were on occasion vilified by the US. Governments across Latin America came and went with the US often using its military and CIA to ensure representation favoured their interests. Those leaders which agreed to the North’s terms were supported and assisted in maintaining their populations and peoples’ voice of discontent. Governing as a function of US power, the full impact of the model being borrowed and implemented tended not to be considered.

There had been warning signs which had not been heeded. President Truman’s Speech to Congress on June 24, 1949 should have provided some insight. His words more truly reflect the intention of this ‘assistance’ to South American countries. ‘One of the chief purposes of technical assistance (was to) create conditions in which capital investment can be fruitful.’

These official pronouncements by President Truman led Paul Sweezy a contemporary critic of the then US governments policies to conclude, ‘that the object of the point 4 program (the forerunner of USAID programs), is pretty clearly the encouragement and protection of American foreign investment, not the balanced development of backward
Interestingly by the time it came to the establishment of the United States Assistance and International Development Agency (USAID), the language was clearer. One of its articles states that the main objective of aid is to make foreign countries safe for American investments.

This ‘development’, which Latin American governments embraced unleashed another chapter of Indigenous genocide, forced resettlement, racists, economic and political exclusion, and legal and militarist methodologies for dispossessing them of their lands. These formed some of the formidable and all too familiar armoury used to try and destroy Indigenous peoples.

It is important to appreciate that within South America, the distribution of wealth is extreme and often a function of historic colonialism. The small group who are the establishment represent a wealth which until more recently and in some quarter was disproportionate to that found in First world countries which have tended to have a large middle class. A second feature of South American life is the ordinariness of political conscientisation. Where First world societies could be said to be politically complacent and tend only to become conscientised when their own comfort is diminished, as a general rule, and as one colleague explained, ‘everyone in South America is born political and has an opinion’.

Clearly able to separate and analyse the political landscape and the divergence in identity between those pursuing adaptive strategies and the great majority who remained opposed to integrationist and assimilative approaches, Indigenous peoples in Latin American might be seen to be better placed than their counterparts in First world nations to analyse the Western paradigm. Having a cultural touchstone, and an economic base gave them an independence, and hence ability to stand/remain ‘outside’ the dominant hegemony being imposed and critique its value.

A third factor also explains their general difference from the Indigenous peoples of the CANZ block. In many instances the inaccessibility of the environments in which they
live, protected them. In Brazil, the accelerated exploitation and devastation of the forest, only truly began after a joint World Bank/Brazilian Government funded highway began being bulldozed through the Amazon, opening it up for ‘commercial’ exploitation in the 1960s. Incursion until then had been slow as the prevailing view held by the ‘other’ ethnic groups within the nation state was that these regions were hostile and dangerous. A consistent view also found in other South American countries of the Amazon basin. Many would not venture into Indigenous areas for fear of being speared with a poisoned dart and killed, or worse, have their heads severed and shrunk. Local mythology, underwritten by anthropologists and church missionaries spoke of the horrors which awaited anyone entering Indigenous lands.4

This provided the Indigenous peoples time to observe and analyse each successive wave of incursion. After the Church, the military came, then timber cutters and miners, and heavy equipment directed by companies off shore, which devoured the earth and plant life. With the gradual improvement of access to previously ‘in-hospitable’ regions by hydroplane, powered boats and the car, a new wave of anthropologists returned to observe and document Indigenous peoples ‘customs and habits’. These scholars were quickly followed by ethno-botanist seeking new pharmaceutical resources and ‘cures’ for cancer and AIDS. Darrell Posey, a well known ethno-botanist and author was amongst the First to begin research work in Belem, Brazil. Decades of exposure to Indigenous peoples has seen him become a strong proponent of ‘traditional knowledge rights’. Note here again a new terminology is being introduced by the international Indigenous movement who refuse the dominant hegemonies limited concept and term, ‘intellectual property’.

Soon, governments in Latin America employed an old strategy and applied it to a new situation. They offered the poor of ‘other’ ethnic groups the opportunity of owning land. Interestingly this strategy, for which governments gained popular support, began to backfire by the late 1970s and early 80s causing some political instability or a threat of civil unrest in a number of Latin American countries. Having helped to ‘open up’ the Indigenous lands with the promise it would give them a better life, the ‘poor’ began to
realise the soil would not allow them to grow sufficient food. Nor would the parcel of land they had staked a claim to, support the livestock intended.

Author and activist June Nash writes that this reality began to hit the ‘agrarian’ poor at about the same time that Latin American governments shifted gear, ‘reorienting development towards markets of global consumption and international financing. In simpler terms, national planners philosophically embraced structural adjustment which governments around the world are using to transgress their responsibility for the poor.’

Mexico and the war in the Chiapas exemplify the problem. In her overview of the events which lead up to the outbreak of war in Mexico, Nash who has worked and lived in Latin America since 1957 further writes:

‘This breaking of the social contacts by the national government with the ‘campesinos’ and the Indigenous peoples, and the abandonment of ancient agrarian reforms, united the ‘campesinos’ and the Indigenous peoples in opposition to the state’.

In Brazil, rich and powerful families who represent huge land holdings began finding themselves not only being targeted by Indigenous peoples but also the object of the now relocated poor. Pointing to their amassed wealth they also began calling for more equitable land tenure legislation. Here too, an alliance and unity is being formed between the agrarian poor and Indigenous peoples.

The push for the unification of the Americas as one free-trade block was a further challenge to some governments. The foreign debt crisis of the late 1980s early 90s which led a number of Latin American countries to threaten they would not repay World Bank loans indicated a growing awareness within official circles of the inequities bound up in the dominant hegemony and its architecture. The Indigenous peoples’ perspectives and analyses gained a new currency with some government members. Particularly when the
environmental, social, cultural, economic and political costs became clear, and negotiation began with the International Monetary Fund (IMF) which imposed further stringent ‘bale-out’ conditions. These conditions severely impacted on society’s quality of life, reducing many more to poverty.

Governments in many Latin countries began to fall, being replaced by a new ‘elite’ schooled in economic rationalism and free trade economics enshrined in international and regional trade agreements (GATT and now WTO). These political and economic realities coupled with the new alliances being formed by Indigenous peoples and campesinos, as well as a realisation that the marginalised invariably represented a majority vote within the nation state, have led to re-alignments within Latin America.

The 1990s have seen a proliferation of Indigenous peoples political parties and the signing of international instruments on Indigenous peoples rights, by the governments of several Latin American countries. These include Mexico, Bolivia, Colombia, Costa Rica, Guatemala, Honduras, Peru, Paraguay, Ecuador and Argentina. Having begun to make political gains ‘on their terms’ the Indigenous peoples of South America have been engaged in nation state events, characterised as a period in which efforts are directed to giving ‘life’ to international agreements and instruments throughout the internal political profile. They have also continued their role within the international arena working with other brothers and sisters within the movement:

‘We support the call for an international movement to defend Mother Earth, a movement which our Alliance is fully committed to. We call on all Indigenous peoples to stand firm in the struggle to retain and recover our lands and ways of life.’

Chapter 8: Diminishment And Third World Indigenous Peoples

8.2 Africa And Asia

Indigenous peoples, who occupy the most resource rich regions of the world, are often the first to experience the impact of macro economic development policies. Evolved by foreign interests and implemented with the complicity of ‘elites’ within a targeted country, they give legitimacy to the mechanisms and steps taken to wrest land and resources from local communities. This is usually undertaken in the name of ‘assisting’ an ‘emerging’ nation to join the ‘modern’ world. The first phase generally involves the privatisation of land. The African continent parts of Asia, and New Guinea which are currently in this phase, provide examples and insight to this process. In order for the emerging nation state’s government to implement multinational projects, involving a commodity capable of being listed on the stock exchange, eg wheat, rice, livestock, gas, oil, timber, or minerals, traditional forms of land tenure under customary law, or subject to community ownership must be ‘dealt with’ internally by the Government.

Applying western law, in which customary or communal ownership has no standing, the land is regarded as ‘belonging to no one’ and therefore available to the government. Methods of achieving this may vary from legislative changes accompanied by the forced removal and resettlement of Indigenous peoples (Rwanda, Molluccas and Aceh), to the final removal (extermination) of Indigenous peoples and communities who inhabit the required land. Examples include the aerial bombing of the Indigenous peoples of the Cordilleras in the Philippines, military extermination of tribes in the Chittagong Hills of Bangladesh, and the Karen peoples of Burma/Thailand.

The re-orienting of land towards activity which benefits international stock-exchanges, further tends to impoverish local peoples, as the substance originally grown and locally marketed, usually by woman are destroyed, creating poverty, famine, and the destruction of local communities.

Many more Indigenous groups in Africa have been alienated from their land as a ‘direct consequences of ill-formed and short sighted Western conservationists creating
‘protected areas’. The creation of ‘wildlife’ parks and reserves, not only marginalised local communities destroying their lively hood, but until recent adjustment in transnational environmental policies, often resulted in greater environmental degradation and a reduction in animal life. While national parks are often a legacy of colonial periods, the governments of most independent African countries have continued the practise. A study by Paul Wapner illustrates that these new reserves effectively set the social conditions for poaching making ‘local inhabitants almost victims of conservations efforts’. In his book, ‘Environmental Activism and World Civic Politic’, Wapner dedicates a whole section to the work of the World Wildlife Fund (WWF) as it is called in the United States, (know as the World Wild Fund for Nature, WWF elsewhere) in which he clearly details the link between the organisations paternalistic management policies and increased poaching in Sub-Saharan Africa.

Recognition of their complicity in bringing about these destructive conditions resulted in a new approach by the WWF. Called the ‘Administrative Design of Game Management Areas’, conservationist with governments now seeks to ‘enlist (local) communities in the struggle to protect wildlife’. The solution involves a revolving fund, which provides employment to formerly excluded local peoples as ‘village scouts’.

This approach, which it can be argued simply resulted in Indigenous peoples again being subjected to the dominant hegemony in the name of ‘conservation’ led the International Alliance of Indigenous-Tribal Peoples of the Tropical Forests to ‘pursue a dialogue with conservation organisations to try and get them to revise their policies towards Indigenous peoples and protected areas’. The focus of these discussions was to find ‘ways of better defining the obligations of conservation organisations that deal with Indigenous peoples’. At the time officials of the World Conservation Movement Union expressed reservation. ‘The World Wide Fund for Nature International responded by adopting its own policy on Indigenous peoples and conservation which explicitly recognises (Indigenous peoples)… rights to … territories and to free and informed consent about what happens on them.’ By the late 1990s Indigenous peoples had established newer relationships with conservationists and scientists. This has seen
Indigenous peoples become an integral component in a number of large scale regional projects. Indigenous peoples have also established newer criteria for determining the ‘wellbeing’ of ecosystems, and are often directly involved in carrying out environmental impact assessments and project analysis.

Another approach by which government may consolidate private/individual ownership of land is a transmigration policy. This involves the resettlement of ‘other’ ethnic groups in Indigenous peoples traditional areas. Transmigrants to the ‘new territories’ bring different social, cultural and economic imperatives, which are often more consistent with government’s interests. ‘Land grabs’ are either assisted (eg. Indonesia’s resettlement program on Moluccas, and Aceh) or are unofficially sanctioned. Any unrest being played out within the Indigenous peoples traditional territory.

Should the internal turmoil become an issue internationally, the government may send in its military to ‘keep the peace’ (eg. Timor, Niugini Irian Jaya – formerly West Papua). The objective of transmigration is simply to ‘swamp’ the original peoples, making them a minority grouping within their own territory/country, while simultaneously replacing the local economy. The threat or continual presence of military and the degree of repressiveness generally results in two responses. Local peoples will either employ adaptive strategies, or will resolutely oppose. The more force exerted by the dominant, the greater the likelihood that opposition will similarly resort to militancy. (Israel has continually employed a strategy of transmigration, re-settling successive waves of migrants from Europe, the Americas, Africa and more recently Russia. The former Soviet Union utilised this strategy extremely effectively to keep member states loyal to central government. China has also employed it in Tibet, and Mongolia.)

By 1996 a number of Asia countries had either joined the dominant hegemony’s mechanisms of international capitalism and/or were seeking membership to the “NIC Club” the Newly Industrialised Countries Club. While Hong Kong, Singapore, Taiwan and South Korea had already established themselves as regional economic powers, ‘economic tigers’ the ‘clubs’ seeking membership to this ‘club’ included Thailand,
Malaysia and Indonesia. Upgrading your standing, or joining ‘the club’ usually requires governments to accept the dominant paradigm’s ‘whole package’ which includes ‘democratisation’. Within Asia however many governments cite ‘Asian values’ as the basis for levels of non compliance with western demands. In order to secure natural resources which drive economic development, capitalised interests and authoritarian leadership may look to establish a pro-government voting majority within a region. In instances where local peoples resist development, force may be used to subdue them.

The size of the original peoples population and the level of politicisation and activism Indigenous-Tribal peoples and the general populace manifest, usually determines the period of social dislocation a government ‘manages’. It may also reflect on the willingness of NGOs and others to take up their cause, and the priority they ascribe to their cause. In Mexico and Guatemala, the Indigenous peoples’ declaration of war has impeded the implementation of various developments while proving catalytic to a ground swell and backlash to the Free Trade Agreement. The battle of their African brothers on the Niger Delta did not prove much more than a hiccup to international interest which continued pumping oil. Even Shell’s implication in the death of Ken Saro-Wiwa, President of the Movement of the Survival of Ogoni Peoples, at the hands of the Nigerian government did not caused much in the way of a popular backlash with the citizens of First world countries.

The next phase of capitalistic transfer, generally involves the emerging countries ‘elites’ in negotiations over the exploitation of natural resources. These negotiation, usually centre on ‘development’, which will assist foreign investment and associated corporations establish their interests within a country. A multilateral/regional fund/bank invariably provides a capital loan for the infrastructure, eg roads, rail or ports, through which ‘produce’ can be exported. These negotiations, depending on the ‘political security’ of the government at the time, may also involve a local government company or authority, invariably owned by members of the ‘elite’ in a co-venture. If the countries leader is encountering civil instability, the offer of military advisers and/or hardware is often extended. To the dominant hegemony, it is irrelevant how a situation is
maintained, the objective is ‘to make foreign countries secure for investment’, thereby ensuring capitalism’s increasing wealth and power.

African states and many more countries and regions of predominantly Indigenous-Tribal peoples have more recently been subjected to mercantile military or mercenaries activity. When private capital was essentially de-coupled from diplomatic processes in the UN, a private enterprise solution to ‘security of investment’ was found. The synchronicity and advent of ‘Sandline’ in Britain in 1990 and other private military corporations such as Blackwater in the USA, can not be easily overlooked. Capital interests no longer able to contain local resentment and hostility to the impact of their activity began regularly employing these enterprises. This often led to the local population being subjected to increased militarism and conflict. The complicity of capital and government officials in Third world countries, and the blatant use of mercenaries (alleged to often be given a stake in the commercial venture they are being used to secure), has resulted in calls for newer international standards. In an unprecedented move in November of 1999, some 103 countries voted within the United Nation’s General Assembly to include draft resolutions which prohibit governments from interfering in another state’s internal affairs.

‘By a draft resolution on the use of mercenaries as a means of violating human rights and impeding self-determination (document A/C.3/54/L.27), the Assembly would urge all States to take the necessary steps, and to exercise the utmost vigilance, against the menace posed by the activities of mercenaries. It would also urge States to take legislative measures to ensure that their territories and their nationals were not used for any activities related to mercenary actions. States would be urged to cooperate with the Special Rapporteur on mercenaries.

In addition, the Assembly would request the United Nations High Commissioner for Human Rights to take actions publicizing the adverse effects of mercenaries and to provide advisory services to States affected by mercenary activities. It would request
the Secretary-General to invite Governments to make proposals towards a clearer
definition of mercenaries, requesting the High Commissioner for Human Rights to
convene expert meetings on the matter.

The draft proposal is sponsored by: Algeria, Angola, China, Costa Rica, Cuba,
Democratic People’s Republic of Korea, Egypt, El Salvador, Eritrea, Ethiopia, Fiji,
Iceland, India, Iran, Iraq, Libya, Niger, Nigeria, Sudan and United Arab Emirates.  

By this resolution the world community had as a majority demanded that the United
Nations now address the use of ‘terror’ as a tactic to subjugate and eliminate local
opposition to foreign interests within a sovereign nation.

As the inheritors of a ‘culture’ that tracks its own origins to the Romans and which
historically prioritise the values of dominance, western nations are slow to relinquish
this aspect of international relationships. Within the USA, one third of the entire
economy is dedicated to and dependant on military consideration. This may explain an
impetus for conflicted relationships.

This scenario, in which foreign capital and their corporate interests seek to dominate and
determine another nation states future, is being played out and is at different stages
around the globe. Then in 1997 a new sophistication, world money, a Third of which is
floating in the market, was jigged to free fall the ‘cost’ of currency. Asian economies
collapsed undoing decades of economic gain. Russia was also melted down and various
internal nations such as Albania were further subjected to criminal influences which
destroyed national economies. Yugoslavia posed the next challenge. Governments and
civil society everywhere began to contemplate a seeming deliberativeness in activity.

As Peter Gowen and many other observers suggest events such as these are part of a
repertoire of policy referred to as ‘shock therapy’. This includes a series of destructive
methodologies used by capital interest to ultimately impose a financial regulatory
framework and system of governance in another nation, to suit their own interests.
Meanwhile the world community turned up to the UN’s Conference on Racism, Racial Discrimination, Xenophobia and related intolerances, where a call to address the lingering and pervasive legacies of colonialism was expressed. Settler nations were identified for continuing to follow both foreign and internal policies which promote exclusionary practices. This event was followed by the Third World Summit in Johannesburg, or the World Summit on Sustainable Development. Still hindered by powerful capital interests, the world community clearly articulated an alternative vision, which would allow a shift from dated economic and development models. There were also renewed demands that all UN member governments enjoin themselves to the multiple Conventions and frameworks being elaborated as global standards and agreements. These included commitment to the Kyoto Protocol, the establishment of a permanent International Criminal Court and other mechanisms which would potentially require capital and transnational interests comply with international Human Rights standards and newer Environmental mechanisms.

When September 11 occurred many of the world’s people were sufficiently sceptical of dominant claims to believe the ‘intelligence’ that followed in the wake of the understandable shock and grief that US citizens felt. As one commentator suggested, ‘they speak now as though the world is unsafe. Have they not understood that for everyone else it has always been unsafe’. The push for pre-emptive war in Iraq on questionable evidence has in the view of many internationalists significantly undermined the legitimacy and rectitude of white settler-nation dominance. It remains to be seen if this leadership which represents the ‘coalition of the willing’ will regain the global authority and position previously held within diplomatic circles. Some doubt their ability to deal with their own internal decay. They may retain super power status just by the sheer force they are able to wield, but will they regain the trust and respect they once had?

As conscientisation has expanded, so too the strategic power of the capitalist/military cabal; the dominant force currently shaping international events. Within conflict zones there is increasing scepticism on the part of social movements, who question what is...
meant by ‘freedom’ and ‘justice’. Particularly when their experience of processes said to provide these, are accompanied by a rise in militarism, and the wholesale destruction of their living environments and societies. Many within the Third world wonder when there will be any respite from the havoc being wrought. Award winning author and Human Rights advocate Arundhati Roy gives voice to their concerns.

It is becoming clear that violating human rights is an inherent and necessary part of the process of implementing a coercive and unjust political and economic structure on the world. ... Increasingly Human Rights violations are being portrayed as the unfortunate, almost accidental fallout of an otherwise acceptable political and economic system. As though they’re some small problem that can be mopped up with a little extra attention from some NGOs. This is why in areas of heightened conflict – in Kashmir and in Iraq for example - Human Rights Professionals are regarded with suspicion. Many resistance movements in poor countries which are fighting huge injustice and questioning the underlying principles of what constitutes “liberations” and “development”, view Human Rights NGOs as modern day missionaries who’ve come to take the ugly edge off Imperialism. To defuse political anger and to maintain the status quo.

Speaking as the recipient of the 2004 City of Sydney Peace Prize, Roy provided clear insight on the cynical shift occurring within international language and thinking which again results in a newer level of human diminishment.

Almost unconsciously, we begin to think of justice for the rich and human rights for the poor. Justice for the corporate world, human rights for its victims. Justice for Americans, Human rights for Afghans and Iraqis. Justice for the India upper castes, human rights for the Dalits and Adivasis. Justice for white Australians, human rights for Aboriginals and immigrants (most times, not even that).

This section has provided a general overview of the broad canvas that is the macropolitical arena. It places institutions, social groups and organizations, and paints
the themes and events unfolding within this space while examining inter-relationships and lived realities in differing regions of the world.

Big brushstrokes has also provided background on the Indigenous peoples movements in national and international contexts, and explained the historical and contemporary circumstances which result in a divergence in voice. Also discussed was the development of agenda, and the movements and social groups instrumental to processes. It further contextualised the emergence and vital relevance of newer mechanisms and standards. This section illustrates the diversity of fora which exist and serve as centres for dialogue within the macro-political arena.
Chapter 8: Diminishment And Third World Indigenous Peoples

3 Ibid.
4 Source: various Indigenous leaders of South America.
6 Ibid., p.8.
10 Ibid., p.86.
12 Ibid. p.142.
13 Ibid., p.143.
15 16 November 1999, UN Press Release GA/SHC/3562 ANNEX, Vote on Mercenaries Impeding Right for Self Determination. The Third Committee (Social, Humanitarian and Cultural) approved the draft resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (document A/C.3/54/L.27) by a recorded vote of 103 in favour to 16 against, with 32 abstentions as follows: In favour: Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Cameroon, Cape Verde, Chile, China, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cuba, Democratic People's Republic of Korea, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Ghana, Guatemala, Guinea, Guyana, Haiti, India, Indonesia, Iran, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Senegal, Singapore, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe. Against: Belgium, Canada, Denmark, Finland, Georgia, Germany, Hungary, Iceland, Japan, Luxembourg, Federated States of Micronesia, Netherlands, Norway, Sweden, United Kingdom, United States. Abstain: Andorra, Australia, Austria, Croatia, Cyprus, Czech Republic, Estonia, France, Greece, Ireland, Israel, Italy, Kazakhstan, Latvia, Liechtenstein, Lithuania, Malta, Marshall Islands, Monaco, New Zealand, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Sierra Leone, Slovakia, Slovenia, Spain, The former Yugoslav Republic of Macedonia, Ukraine. Absent: Albania, Bolivia, Bosnia and Herzegovina, Bulgaria, Chad, Comoros, Dominica, Fiji, Gabon, Gambia, Grenada, Guinea-Bissau, Honduras, Kiribati, Lesotho, Nauru, Palau, Rwanda, Solomon Islands, Tajikistan, Tonga, Turkmenistan, Uganda, Uzbekistan.

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue

VOLUME II

DIALOGUE AND DEBATE

WITHIN INTERNATIONAL FORA

AND

THE ACADEMY

Z. Kutena
PhD. Thesis in Social Ecology
University of Western Sydney, 2004.
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Chapter 9: An Unfolding Of Indigenous Peoples’ Identity And Values.

The history of relationship between Indigenous peoples and colonialists still informs dialogue today. Isolated and subjected to often brutal regimes of containment, many Indigenous peoples have been dispossessed and have endured centuries of suffering and diminishment. The advent of an International forum within which to present the lived realities of existence and the denial of their humanity was to have a catalytic effect on international thinking, and Indigenous peoples’ themselves.

This volume begins with a brief historical overview of the Indigenous movement within multilateral forums. It then engages in the substantive of the dialogue through which Indigenous peoples have elaborated newer standards. As will be shown, historical contexting affects outcomes and underscores a divergence in voice which can be instrumentally used to create confusion. One of the most succinct overviews on the earliest history of Indigenous peoples’ participation in the international arena is provided by Tapan Bose. I have used his material extensively within the first part of this volume as his is an authoritative voice emanating from cultural context as a participant observer. Additional material has been drawn from a report by Anti-slavery International entitled, ‘Enslaved peoples in the 1990’s’.

This chapter sets out the context and need for activity within the international arena by Indigenous peoples. Their journey in the United Nations has not been an easy one, despite the commitment of governments to the principals of the Universal Declaration on Human Rights. James Sa’ke’j Youngblood Henderson provides insight on the experiences of Indigenous peoples. His voice further expresses the hope that Indigenous peoples share, and the vision they have carried and honoured against adversity.
Examination of the dialogue within the United Nations will explain the broad strategies which have served to contain any gains achieved. Exchange between Indigenous peoples and officials were to have a profound effect on thinking and attitudes, particularly when Indigenous peoples began sharing another vision. Political frameworks, however, would require newer standards in order that they simply reflect the identity and inheritance of Indigenous peoples and provide the basis on which human dignity be assured. The journey, which has been long and arduous, continues today.

9.1: A Brief History Of Indigenous Peoples Within Multilateral Fora

Tapan Bose a leading human rights activist writes that the development and history of the world’s Indigenous-tribal peoples' movement has paralleled the international development of instruments which provided a definition. Professor Berman notes: ‘The greatest influence on the development of international standards has come from the Indigenous peoples’.4 This synchronous phenomenon of standards and definition is a direct result of Indigenous peoples' articulation of their ‘identity’ and ‘values’ and their ‘vision’ within forums of international dialogue.

The need for new laws and definition is a requirement of the imposed system which remains embedded within Man’s Law. It is not a requirement of Indigenous peoples’ who know who they are and how they want to live. New standards were required in order to finally recognize and ensure Indigenous peoples’ dignity and humanity. The tension in these requirements is the locus of the dynamic brought to the international dialogue by the Indigenous peoples’ movement.

Bose begins with the earliest representation of Indigenous delegations within macropolitical fora pointing out that the Indigenous peoples’ movement owes it origins to the peoples of the Americas and a history that reaches back to the League of Nations. International concern for Indigenous peoples however was an even earlier phenomena. ‘It began in the first half of the nineteenth century as concern for Aborigines or tribal peoples in the colonies.’5 The Aborigines Protection Society, (now Anti-Slavery
International), was established in London in 1837 to ‘protect the defenceless and promote the advancement of uncivilized tribes,’ particularly ‘other victims of colonizing enterprise, who, though not actually slaves, were exposed to treatment as bad as the state of slavery involved.’ \(^6\) Antislavery International maintains that ‘the history and struggle of Indigenous peoples for recognition of their rights has been intimately connected to the phenomena of slavery.’ \(^7\)

Bose points out however, that while historic concern was aimed ‘at the ruthless oppression and genocide of the “Aborigines” or the “tribes” in the distant colonies’… ‘these pioneers were limited in perspective, that they accepted that these people were primitive and backward and campaigned for “protection” on humanitarian grounds.’ \(^8\)

After the First World War in which a number of minorities in Europe and the colonies suffered ill treatment, the need for standards was addressed by the League of Nations and included in its Covenant.

‘Between 1920-1950, several Indigenous groups of North America sent their representatives to the League of Nations and to the UN. They submitted memoranda to the UN Human Rights Commission demanding the recognition of their right to self determination. These delegates however, were not entertained. Nor were their memoranda accepted. All of the ILO and UN’s work continued to be essentially protectionist.’

‘In the UN, decolonisation as a principal of “self determination” was only accepted after lengthy debates in the General Assembly in the 1960’s. Even then it made clear that “self determination” as decolonisation did not apply to “internal” collectivities.’ ‘The so-called ‘Blue water and Salt waters’ mind-set limited decolonisation only to “overseas territories”.’ \(^9\)

This limited definition and application of the right of ‘self determination’ effectively meant that Indigenous peoples were excluded from consideration within any
‘decolonisation’ process. It left only ‘minority rights’ and ‘discrimination’ open to Indigenous peoples as the avenues by which to pursue their rights within the UN. The 1960s saw the emergence in Europe of the International Work Group on Indigenous Affairs (IWGIA), and Survival International, both of which ‘took up the campaign against the genocide and ethnocide of Indigenous populations in South America.’

In the 1970s Mr. Willemsen Diaz at the UN’s Human Rights Centre in Geneva assisted to incorporate Indigenous issues within official agenda. His efforts led to a study into the discrimination of Indigenous populations by the Subcommission on the Prevention of Discrimination and Protection of Minorities Rights.¹⁰ ‘The study was authorized in 1972 with Mr. Jose Martinez Cobo as the Special Rapporteur,’¹¹ ‘By 1975 some of the pioneering organisations such as the World Council of Indigenous peoples and the International Indian Treaty Council were formed.’¹² These organisations began lobbying governments in Western Europe and the UN itself. The government of Norway was the first to be convinced. It was followed by the Netherlands and then other European countries.¹³

*Finally in 1982, at the initiative of Theo Van Boven of the Netherlands, who was then the head of the UN Human Rights Centre, and with the support of some of the European states a UN Working Group on Indigenous Populations was set up as a pre-sessional working group of the Subcommission on Prevention of Discrimination and Protection of Minorities.¹⁴ (The story of this working group will be returned to a bit later in this chapter)*

*It should be noted that the entire credit for getting the UN to accept Indigenous issues on its agenda goes to the Indigenous groups of North America and some of the pioneer European NGO’s who were concerned with the genocide of Indigenous populations in South America. At this stage no Asian or African NGO’s or Indigenous peoples’ organisation was involved in this effort. Even the Australian Indigenous peoples did not join the effort until the 1980’s.¹⁵*
Aboriginal peoples of Australia may not have been active within UN forums until the late 1980s, but within national contexts they did contribute to the development of the Indigenous movement in the 1960s. This was a period in which ‘Indigenous peoples from the United States, Canada, the Arctic, Australia and New Zealand argued vehemently for the recognition of their rights’ within national contexts.\textsuperscript{16} Anti-Slavery International’s report points out that while ‘Indigenous peoples have existed for thousands of years, … a proliferation of organisations arose during this most recent period, influenced by the processes of de-colonization, the Civil Right and Black Power movements and by the increased financial support for Indigenous initiatives.’\textsuperscript{17}

While international activity and a commitment to ‘decolonisation’ had engendered a United Nations International Convention on the Elimination of all Forms of Racial Discrimination (ICERD 1965) and the elaboration of two newer United Nations Human Rights Covenants in 1966, the first providing Civil and Political Rights (ICCPR), and the second Economic, Social and Cultural Rights (ICESCR); within Australia, Aborigines were treated as the subject of a national referendum. The outcome of this event held in 1967 saw the Commonwealth Government of Australia given authority to make laws on behalf of the peoples’ who would now, for the first time, be included in the national census.

\section*{9.2: Processes Of Decolonization}

Since the United Nations moved to universalise its Human Rights Conventions, First world countries have been grappling to come to terms with the shift in global consciousness. A political mindset of ‘blue water, salt waters’ ensured that previous ‘decolonization’ processes had not provide ‘self determination’ to internal collectives.\textsuperscript{18}

Consequently national dialogue within the US and CANZ bloc are rooted in and characterized by this interpretation. Where the international community has moved to elaborate newer frameworks specifically addressing the rights of internal collectives (minorities) including Indigenous and tribal peoples (see next chapter), much discussion
in the First World is still framed by the UN Covenants of decolonisation (1966). Official policy has therefore remained essentially integrationist.

The historic nature and fixed character of official perspective has had other repercussions through the years. When Indigenous organizations are responsive to government agenda and narratives discussion is often frustrated. Through these processes, political expression tends to become a function of opposition and resistance to an overpowering system. It may also reflect a conflicted identity which results from historically imposed conditions that required adaptation. 19

Indigenous leadership is often required to focus on matters initiated by government within processes they own and dominate, on terms they dictate in a language and thinking inconsistent with Indigenous perspectives, values and cultures. Experience leads to a view that dominant activity is squarely aimed at diminishing peoples and that substantive problems created for Aboriginal peoples will not be dealt with unless wider society demands a better deal for minorities. ‘Integration’ on dominant terms only becomes a consideration when the cost of continued exclusion (politically, economically and socially) becomes overwhelmingly evident (see Volume 3 and the Canadian Case Study). Wider society has still to understand how the system operates to continually marginalise and silence aspirations.

The voice of Indigenous brothers and sisters from the South, and particularly those within the Spanish-speaking world, emerged on the international stage in the 1970s. Spanish speaking Indigenous peoples had however been active within national contexts throughout the history of colonisation. As peoples similarly subjected to genocide and ethnocide, they were to bring an additional element to international discussion. This articulation linked their reality to the activities of western development. Importantly, Southern voices, in particular those from within the Amazon, enriched the international dialogue with newer environmental perspectives, concepts and language.
Concerted activity had already resulted in international recognition that national application of Human Right standards and other normative UN Covenants did not protect Indigenous peoples. The inconsistency between Covenants which provide Civil and Political rights, and Economic, Social and Cultural rights with those contained in other Conventions (ILO 107) which recognized the existence of ‘Indigenous, tribal and semi-tribal peoples’ but which prescribed ‘integration’, were highlighted. By 1971, the United Nations’, Economic and Social Council (ECOSOC) had authorized the Subcommission on the Prevention of Discrimination and Protection of Minorities to study the problems of Indigenous peoples’ and had appointed a Spanish speaking Rapporteur.  

While much of the English speaking world tends to think of the international Indigenous peoples’ movement as a relatively new phenomenon, a consequence of a later engagement with their international agenda, the majority of the world’s people and their successive governments (Third World Countries) have been directly involved, (throughout the history of the UN), in negotiation over the extent to which their identities, values, cultures, and means of existence need to be relinquished in order to gain ‘independence’ and ‘benefit’ from western development.

This aspect of the ‘unequal negotiation’ of international development-deals between Third world and First World state representatives is invariably missing from western consciousness. Negotiation tends to centre on financial terms, which are often perceived as favouring the dominant’s interests. Many academics, forums, and reports had all shown inconsistencies and failures and the limits of the development model being foistered onto the Third World.  

It is probable that the advent of the Spanish speaking Indigenous peoples’ voice as a strong, clear, philosophically informed ‘identifying’ politic within the international dialogue in concert with initiating northern NGOs, key North American Indigenous organizations and European governments precipitated acceleration in global conscientisation. Professor Bergman views again underscore such a perspective. ‘The
greatest influence on the development of international standards has come from the Indigenous peoples’.  

The growth and spread of Indigenous peoples' manifestation across differing regions of the world and the movement's articulation in several international languages has been accompanied by a self reflexive conscientisation of governments, academics and often sectors of mainstream societies which function and belong to a particular linguistic grouping. The impetus for Indigenous peoples' manifestation has also determined the order of the conscientisation. Until recently, and during the elaboration of newer standards within the UN, the main language of the international Indigenous peoples' movement was Spanish, with some work in English. Currently the movement has increasingly used other official UN languages, while the UN Working Group on the Draft Declaration conducts proceedings in English.

9.3: Dialogue In The UN: A New Space Of Conscientising Exchange

Indigenous leader and academic, James Sa’ke’j Youngblood Henderson, who was party to the initial summer talks held in Geneva in 1976 provides insight on events from the Indigenous peoples perspective. ‘Our Indigenous international movement began as an effort to expand friendships and relationships, and to learn from each other the road to humanity and equality under the law’. Activity centred on ‘finding ways to convince institutional people and the powerful to accept our humanity and our peoplehood’. He continues:

‘To Eurocentric legal eyes, we were the ghost beings of terra nullius, the savages who refused to assimilate and who were the subjects of anthropology not law. Our only salvation resided in assimilating into something we were not. We wanted to live as humans and to be protected like all peoples. We did not exist as imitative Europeans, we wanted to live as Indigenous peoples with our teachings. We did not desire to be disconnected from our ecological homeland or to create a better sociological “identity” in modern diasporic thought’.  

By the 1980s, Indigenous peoples from the South had also begun establishing their own organisations. These internationally representative Indigenous organisations were often ‘confederations’ of already existing Indigenous peoples’ organisations representing a peoples. The emergence of these confederations elevated an Indigenous representation and voice emanating from communities; a leadership invariably consistent with the peoples own societal structures, cultures, identity, language and territorial consideration. The additional resonance this Indigenous leadership brought to the international dialogue was a critical analysis of western development models and international financial mechanisms.

They also began amplifying international discussion with new notions and concepts, which emanate from their own distinctive cultural perspective. Grappling with these concepts has often required that new terms be coined, the most notable example being ‘Biodiversity’. Kingsbury writes of the Indigenous peoples’ movement as a ‘form of resistance to modernization and globalisation, particularly to the convergence and homogenisation they threaten to bring on.’ Confederated organizations often brought together peoples from within several neighbouring countries within a regional ecosystem or region of the world, the Amazon, Pacific, Asia and Africa. Other Alliances often brought together a global community of Indigenous peoples of specific environments. The most notable being an alliance of rainforest peoples.

As relationships across the Indigenous world evolved they became a voice of shared expression. The combined efforts of Indigenous organisations, governments and the Human Rights Centre in Geneva resulted in the establishment of an annual Working Group on Indigenous Populations under the auspices of the Subcommission on the Prevention of Discrimination and Protection of Minorities. This Subcommission, which was established in 1947, sits within the United Nations Commission on Human Rights (see Figure 10.1). The Subcommission on the Prevention of Discrimination and Protection of Minorities consists of 26 members who serve as experts in a personal capacity, and not as State representatives. Over the years the Subcommission has
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initiated many studies of human rights issues with a view to the development of legal rules and recommendation to the Human Rights Commission.30

Youngblood Henderson confirms the objectives of the Working Group on Indigenous Populations and the shared understanding between experts and the Indigenous peoples' representatives taking part.

'Itser purpose was to review the developments concerning the promotion and protection of human rights and fundamental freedoms of Indigenous peoples of the earth. The Working Group was to give special attention to the developing of new international standards concerning these rights.'31

The advent of the Working Group on Indigenous Populations was to have a catalytic and accelerating impact on the nature and thinking of the UN itself. Silenced at home, Indigenous voices suddenly had an international forum in which to articulate their vision. As discussion ensued, Indigenous peoples found their efforts to ‘unravel and remedy the colonization, imperialism, racism and class structure that defined their daily lives’ met with incredulity and disbelief.32 They continually experienced ‘cultural bias, the interconnected discrimination in the guise of state theories of cultural and biological superiority that result in rejection of the legitimacy and viability of Indigenous peoples’ own values and institutions’.33

As colonized Indigenous peoples collectively voiced shared histories and stories that evidenced legitimate grievances, the United Nations agencies, governmental representatives and human rights experts challenged their vision of humanity and justice.34 Youngblood Henderson explains how the Indigenous peoples’ representatives were often intimidated and threatened. Many were imprisoned or killed after returning home from the meetings. Several Indigenous colleagues who have shared their experiences, survived torture and mutilation and speak with great sadness of the terror and horrific reprisals suffered by their communities.
FIGURE 10.1

United Nations System and Indigenous Peoples

GENERAL ASSEMBLY

THIRD COMMITTEE
- Voluntary Fund for Indigenous Populations
- Committee on the Elimination of Racial Discrimination
- Committee on the Elimination of Discrimination against Women
- Committee Against Torture
- Committee on the Rights of the Child

ECONOMIC AND SOCIAL COUNCIL (ECOSOC)
- Permanent Forum on Indigenous Issues (PFII)
  - Mandated to advise and discuss Indigenous issues pertaining to economic and social development, culture, the environment, education, health and human rights.
- Committee on Economic, Social and Cultural Rights

GENERAL SECRETARIAT
- Functional Commission
- Commission on Human Rights
- Sub-Commission on the Prevention of Discrimination and Protection of Minorities
- Working Group on the Draft Declaration on the Rights of Indigenous Peoples (WGDD)
- Working Group on Indigenous Populations (WGIP)

HUMAN RIGHTS SECRETARIAT
- Center for Human Rights, Geneva.

Denotes a permanent relationship and line of communication.
----- Working relationship with the Center for Human Rights.
Governments following the proceedings negatively ascribed labelling while questioning if they were ‘socialists’ and ‘communists’. A number of governments caste them as dangerous rebels and separatists unleashing military incursions against them. Indigenous peoples’ representatives however, ‘totally rejected these labels’, and continued attending the Working Group.

Youngblood Henderson writes: ‘They insulted our efforts to change the way the “world” thinks about us. When our delegates were killed, persecuted and imprisoned after returning home (from the Working Group) they mocked our efforts to bring terrorists and trouble makers to justice. When we could achieve no visible results because of lack of agreement, the governments spread rumours about our mythical “lifestyle” and sources of funding among our peoples to create dissension.

As discussions progressed, experts advised the Indigenous peoples’ representatives that what they were proposing and the vision they articulated was impossible, given the nature of the multilateral forum and its competing interests. Youngblood Henderson again:

‘They implemented their juridical traditions of humiliating and terrorizing us. They urged us not to hold fast to our highest visions, labelling them impossible.

They urged us to reach a consensus on the lowest common denominator.’

Fear and insecurity raised some doubts, but hold fast they did. Despite the huge cost in human life and suffering, they used the forum to force governments to engage with Indigenous peoples and debate the philosophy of total denial of their humanity. ‘We forced a debate on whether we were entitled to have the dignity of their humanity and personhood recognized by law.’

Central to the arguments was the inability of governmental representatives and UN agencies to decolonise their own thinking. ‘We clashed with governments over whether
Indigenous populations were a “people” or “peoples” in the existing UN Human Rights Covenants in the famous struggle over the “s”. Colonialist discourses inhibited officials from appreciating Indigenous peoples as nations living in relationship with specific territorial ecologies, whose cultures, economies, philosophies, languages, and identities manifest a deep respect and knowledge of the natural world; cultures which teach that ones life is not simply to exist, but a journey in learning to be human.

As the process unfolded, Indigenous peoples’ visions were transformed into ‘exotic UN language and law’. The legal instruments which have ensued since then, reflect the sophistication of the movement and their ability to direct proceedings and vest them with notions and new language which reflect Indigenous peoples’ values and their world view. As Youngblood Henderson explains:

*Based on our consensus, we have created new standards in UN law. The most comprehensive was the Indigenous and Tribal Peoples Conventions in 1989 in the International Labour Organization (ILO Convention 169), which defined Indigenous self-government in national contexts. We created the foundation of an ecological order. We lobbied for a special chapter for Indigenous peoples’ programs in Agenda 21, adopted by the UN Conference on the Environment 1992. We lobbied for inclusion of the traditional ecological knowledge of Indigenous peoples in the UN Convention on Biological Diversity (1992). And we lobbied the UN General Assembly to have the International Year of the World’s Indigenous peoples (1993). We lobbied for a permanent forum for Indigenous peoples, and for an International Decade of the Worlds Indigenous peoples (1995-2004). And we lobbied for a special UN study on how to protect the heritage of Indigenous peoples, their treaties, land and natural resource issues. Combined, these UN documents manifest an Indigenous vision of our humanity for all peoples to read, and unleash the power of the vision of an ecological theory of a good order and human rights.*
Appreciating the interconnectivity of these Indigenous strategies and the ensuing Laws is essential to any real understanding of the Indigenous peoples’ international agenda. The next Chapter will therefore examine these Documents. Analysis will also provide insight on the activities of the present Australian Government, evidencing a pre-emptive politics of diminishment.

9.4: The Process As A Treaty

As the Working Group on Indigenous Populations reached consensus and completed the instruments pertaining to Indigenous rights, a new phase in political negation unfolded.

The final unfolding of the Indigenous vision and theory was the Declaration or Treaty of Indigenous Rights. The Declaration articulated 45 articles, which are minimum standards of Indigenous human rights. It was a first step in a slow journey to justice and respect. Affirming that Indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such” was the deep agreement which began the Declaration.

Article 3 provides: Indigenous 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. The document is both an interpretive tool for applying the UN Human Rights Covenants to Indigenous peoples and a consensually derived Treaty among the Indigenous peoples.46

Describing their Declaration of Indigenous Rights, Youngblood Henderson writes:

‘It is an enterprise of translating hope into insight, and experience into enactment.’47
In 1994, more then a decade after work first began in the Working Group, the Sub-Commission passed the Declaration, and the Human Rights Commission found it consistent with existing Human Rights Agreements, essentially clearing the way for its application to the UN Human Rights Covenants. Official adoption of the Declaration by the Subcommission did not however result in its usual passage towards acceptance as law.

‘We had hoped that it would then go on and be adopted in its entirety by the parent body of the WGIP and on to the General Assembly for ratification into an International Declaration. This would have paved the way for an eventual enforceable convention.’

9.5: Political Negation Of Indigenous Peoples: Their Rights And Their Vision

1994 was an important year for Indigenous peoples. Not only was it the year they completed work on the Declaration of their Rights, but it also marked the beginning of the International Decade of Indigenous peoples; a period in which it was hoped international processes might be geared towards providing internal minorities with self determination as an expression of the equality of their human dignity.

Despite all the experts agreeing that the Indigenous peoples’ Declaration of Rights was consistent with existing international Human Rights standards and should be accepted, political pressure was applied on the Human Rights Commission, halting the documents passage into law. Additionally First world government officials sought and created a new ‘open-ended’ Working Group comprised of 53 state representatives to look into the Indigenous peoples Declaration of their rights. This forum is officially referred to as the UN’s Working Group on the Draft Declaration of Indigenous Rights (WGDD). In some quarters this action is seen as dominant interest high-jacking international process.

One Indigenous leader who had been party to Indigenous processes within the UN writes:
'It was as though 13 long years did not happen and that the world has not progressed an inch concerning the issue of Indigenous peoples as a whole.'\textsuperscript{50}

Worse is the provision for the participation of any Indigenous organization, the so called ‘open-end’ working group seeks to make it difficult for Indigenous peoples to participate in the processes. The term ‘open’ in this case refers only to governments, while Indigenous peoples will have to undergo a long and difficult process just to become accredited to participate in it.\textsuperscript{51}

The requirement that Indigenous representation to this Working Group be organisations with official ECOSOC status has seen these meetings peopled by Indigenous representation essentially from the First or English speaking world.\textsuperscript{52} This representation tends to be of governmental organisations or departments and comprised of members salaried to government. Representation may not even be Indigenous. For example, Australia’s representation is usually European or of another ‘ethnic’ origin, and includes lawyers and/or staff from the Department of Foreign Affairs. Australian Aboriginal representation has tended to be that of an official member of the countries delegation.\textsuperscript{53}

The essentially governmental nature of Australian Aboriginal representation, which is often mirrored by others from the US and from within the CANZ bloc, has on occasion resulted in tension with those attending in their capacity as culturally legitimated Indigenous peoples’ leadership; particularly those attending from ‘emerging’ or ‘least developed countries’ who may have been party to developing the original Instruments. Adding to these stresses has been the pressure exerted by some governments to de-fund the participation of original Indigenous participation.

The UN’s Voluntary Fund for Indigenous Populations\textsuperscript{54} which generally covered the cost of Third world Indigenous participation has increasingly been unable to assist their leadership. Some governments cancelled Indigenous peoples’ passports, or simply refused to provide the necessary travel visas. On other occasions, the required travel documents are only available after the meetings have started or are about to conclude.
Since the mid 1990s, these same obstructing nation-states have also worked to systematically dismantle or neutralize organisations prepared to assist some leaderships attendance and/or facilitate their participation in the official proceedings. In still other processes, Indigenous NGOs seeking inclusion do not attain ECOSOC status, and are thus denied entry to the forum.

Governments have also used their influence to determine who does attend the meetings in Geneva. A continuing strategy of peopling the meetings with a representation which has had no previous experience of multilateral negotiation, or any background on the impetus or history of the original Declaration, further confuses and complicates negotiation. The exotic language of UN documents and an alien process also compound the problem.

Some governments also successfully unleashed an accompanying campaign amongst English speaking Indigenous representation attending the WGDD. This strategy engendered a view that the reason why their brothers and sisters from other continents were not in attendance, was not simply a matter of ECOSOC status, but because they were not sufficiently consensual.

In other words, as one Aboriginal observer from Australia commented ‘they are so busy fighting amongst themselves their attendance would only disrupt proceedings’. What this ‘spin’ achieved was a view that the divergence between the differing Indigenous articulation and those newly arriving to work on the now redescribed ‘draft’ document was not because some official representation was articulating positions which lacked confluency; rather that the Third world Indigenous were divisive.

The differing level of politicisation within Indigenous representation at the international level proves a frustration to outcomes. Resistant governments are quick to exploit issues of ‘personhood and undefined identity’. Not having been part of the previous decades of activity, some official Indigenous representation may lack knowledge and experience of the historical evolution and the human cost involved in elaborating the Document.
Limited to national dialogues, some Indigenous attending the WGDD are unable to contextualise the Declaration or the Working Groups process within the amplified body of UN law and process and are unaware of the activity already undertaken and advanced by other Indigenous peoples. Some states are pleased to exploit these vulnerabilities and to date have been able to stall the acceptance and application of the Declaration of Indigenous Rights.

9.6: ‘Legalese’ And Processes Of Diminishment

More often than not official representatives attending the Working Group are lawyers, who by virtue of this expertise see the dialogue through a legislative lens. In fairness, discussion and negotiation of individual ‘words’ or ‘clauses and resolutions’ are the main activity of the Working Group on the Draft Declaration. But there is a tendency by some Indigenous representatives to context proceedings solely within a thinking and framework limited to human rights as a function of historic de-colonization. A politic reflective of their discussion at home where relationship between Indigenous peoples and officials are still often characterised by a mindset formed in the 1960s.

This dialogue might be better characterised as a conflicted negotiation which at best potentially provides Indigenous peoples a version of their rights as citizens. In other words, Indigenous peoples are being regarded in a manner similar to that of any other ‘ethnic’ group. The critical need for sustainable development and eco-systems conscientisation has seen the international community move beyond this dialogue. In the absence of governmental commitment to other international frameworks, Indigenous peoples remain subject to integrationist processes in which ‘distinct’ rights are watered down or inherent rights are relinquished. (These political processes will be examined in more detail within the case studies, while the international framework which hinders governments from integrationist approaches is dealt with in the next chapter looking at standards).
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The dated focus is additionally legitimated by First world interests, and governments who seek to contain discussion. Ensuring that any consideration be limited to national context in which often even the International Covenant\textsuperscript{56} pertaining to de-colonization may not have full force.

Indeed this perspective also fits with the approach taken by a few English speaking Indigenous representatives who were central to process at the time the governmental Working Group was being established. Unappreciative of the holistic vision already elaborated at the international level within interconnecting instruments, this leadership saw international activity as an opportunity to embarrass government in order to further national dialogue; a limited process and methodology of political activism, as the outcome has been a failing struggle at home.

Youngblood Henderson comments on the systemic flaw within the process, and highlights the source of divergent Indigenous articulation.

\begin{quote}
The debates and intellectual violence of the WGDD reflected the sources of our oppressive existence within the nation states. In Eurocentric thought, the legal system is where the ideal of colonization has taken on detailed institutional form. Eurocentric legal doctrine makes it possible to represent and discuss civilization and its institutions, and thus sustain and develop the privileges of the colonialist. We must grasp the negative role assigned to Indigenous peoples before we can effect positive change.\textsuperscript{57}
\end{quote}

In essence the process as it is currently pursued is a system that legitimates itself and assigns a negative ‘other’ to Indigenous peoples.

\section*{9.7: Negativity Of Identity}

Addressing internalised negative values is a priority both for states and Indigenous peoples themselves. As a matter of justice, states need to recognize and address their
complicity in assigning this value to Indigenous peoples, and enshrining it within their system, such that it informs their relationships with the peoples. The result being that Indigenous peoples are continually problematised and defined within policy as a series of negative issues. The ready acceptance of official explanation by a few key Indigenous peoples attending the WGDD, perhaps indicates an absorption of dominant perspectives and may explain a modus operandi more compliant and responsive to government.

Youngblood Henderson points out that addressing the negative values of Indigenous peoples’ ‘otherness’ requires not only legal re-dress, but a consciousness shift from Eurocentric thinking. He describes the movements initial self-awareness as ‘a fragile generation of “Eurocentric educated” Indigenous peoples’.

We ‘found we could no longer tolerate our cognitive and physical imprisonment of non-existence, our oppressive bureaucratic regimes, the terror and hopelessness, and of being, and the fear that colonizers had imposed on our weary, exhausting daily struggles’.  

Youngblood Henderson’s insight represents the conscientising moment of politicisation many Indigenous peoples’ leadership ultimately reaches. Negativity of identity and compliance might be seen as an extension of a politic of adaptation, the genealogy of which is dated macro-political and development thinking. It may also reflect identities which accept the power inequity. Diminished identity tends to lead to a resistant politic which seeks a partnership within dominance. Such a position accepts that the ‘hegemony of homogenisation’ is the only outcome attainable rather then appreciating that a ‘world of diversity’ is the common objective. The first politic operates in Man’s law, the second, is part of a Cosmovision consistent with Mothers law, which informs Indigenous cultural philosophy, and which it is argued is the law all living systems within the one living system follow as a matter of self-interest.

Governments of First World countries must equally recognize that their need to find an accommodation of Indigenous peoples within their countries, does not exemplify the
situation of Indigenous peoples elsewhere. First World countries have created specific problems for themselves through the continual denial of Indigenous peoples’ rights. This gives rise to a legacy of legal activity which centres on ‘artificial spaces of dialogue’, and disconnected representative mechanism created to facilitate containment. The result is a confused contexting of the Indigenous peoples’ agenda. While euphemisms may have evolved throughout the history of relationship; from policies of genocide towards protection, institutionalisation, removal, incarceration, integration, assimilation, and finally partnership and reconciliation; the end game and perspective of the dominant appears to have altered little. Inter-generationally all these policies have contributed to the internalization of negative identity.

The history and nature of relationship between Indigenous peoples and successive governments is responsible for the articulation of some ‘official’ First World Indigenous representation. Leadership emanating from these countries reflect on the history and treatment of Aboriginal or Native peoples, which it can be argued is essentially one of Apartheid. Governments in First World countries, where contact has been prolonged; daily, direct, invasive and controlling of every aspect of the peoples’ lives; have never needed to formally legislate the model into existence.

The demographic consideration which moved South Africa to enact Apartheid was never an issue in these other countries. The small percentage of surviving Indigenous peoples and the vastness of land mass ensured they remained marginalised, invisible and silent. An accompanying discourse which said that Aboriginal peoples were ‘so primitive that they were dying out’ resulted in the wider society, schooled in this view, simply forgetting to inquire or consider their circumstance or existence. Distance and isolation meant that an ‘unchecked’, ‘unspoken but understood’ and ‘unofficial’ subjugation could be carried out and perpetuated by local authorities, and interests.

The narrative of genocide set the condition whereby Governments, institutions, and wider society all felt they would never be called upon to account or take responsibility for their individual and collective actions. A belief that everyone would ‘die out’ meant
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no one would be left to raise matters. Moreover, the assumed superiority of ‘western civilisation’, led to a belief that any remaining Indigenous peoples would simply want to forget who they were, and become like us. In essence this is the genesis of a politic of denial, one which continues today.

9.8: The Politics Of Denial

In Australia, Indigenous peoples have few formal rights. At a community level, knowledge of ones’ rights is limited to those gained by referendum in 1967. These are understood simply as ‘a right to vote and a right to live in town’ albeit that many choose not to avail themselves of either. Lacking any protection, domestic or external, Indigenous peoples regularly suffered ‘local practice’ often imposed by the ‘dinkum network’ with the complicity of police. Any ‘white fella’ had authority over them and could initiate a sequence of events which resulted in their incarceration, the removal of their children, or their death. Life has been and for many still is a fearful and often terrifying existence.

Indigenous peoples’ internal histories, and newer subaltern national histories, in English, all evidence the synergy of official attitudes and an Apartheid system. In essence, I argue that much of what is currently taking place within Australia, which has galvanized community support and engendered advocacy by groups within the wider community, are simply functions of a newer conscientisation and an internal dynamic aimed at a dismantling of this system.

The Howard Government’s refusal to apologize; Mandatory sentencing laws and official attempts to refute the Human Rights and Equal Opportunities Commission (HREOC) report detailing the history and policy which led to generations of Indigenous children being stolen from their families and institutionalised, all confirm a continuation of earlier approaches. The inactivity in implementing the recommendations, which emanated from Australia’s Royal Commission into Black Deaths in Custody, and it’s
suggested dismantling of Apartheid is one thing. Moving forward from there is yet to be achieved.

What this thesis argues and will illustrate is that the conscientisation needed to advance national interests, after dismantling apartheid resides within the International Indigenous peoples’ agenda. Amplifying the national dialogue to include the ‘transformative philosophies’ contained within the movement would not only address the negative value assigned to Indigenous peoples, but set the conditions for a new dialogue consistent with the conscientisation occurring within United Nations fora. The uptake of principles and values by a wider grouping of humanity and civil society has strengthened combined effort at the World Summit on Sustainable Development (WSSD). This collective world agenda promotes a newer vision which seeks sustainable societies and environments based on re-oriented economic activity and development models keyed to eco-system consideration. The Summit and its agenda is comprised of an inclusive global civil society as a conscientised project which takes aim at an unaccountable neo-capitalist agenda, and at its institutions and mechanisms which create global inequity and injustice. At the same time it advances a range of political and practical measures that have the potential to engender a future of global wellbeing.

9.9: An International Polemic: The End Game

Appreciating the reasons why some governmental officials have sought to frustrate and obstruct the international Indigenous movement points to the polemic increasingly evident within international dialogue. Dominant strategies go further than wanting to simply split the English speaking Indigenous groups from their brothers and sisters in the South. Trying to ensure the contagion of ‘cultural identity’ is not caught by Indigenous leadership is only part of a political strategy which seeks to neutralize global conscientisation, or at least contain it.

Within First World circles, the international Indigenous agenda and its accompanying conscientisation are perceived as a threat to the very system ‘benefiting interests’
promulgate. Despite decades of work and a mountain of literature, scientific and academic studies, and institutional reports which point out the ‘systems’ complete inequity, injustice, and lack of sustainability economically, socially and environmentally, globalising interests driving this hegemony appear determined to impose a continuance of the status quo. While most governments in the world now recognise that global challenges need to be addressed and solutions found and implemented through multilateral negotiation, the election of President Bush Jr. might be seen as having further radicalised capital’s agenda.

As the leader of the world’s only remaining super power, the Bush administration began as it has intended to continue, operating in a conflicted ‘us and them’ dichotomy even though this does not serve the interests of the world community or their own citizens. It might be argued that a world of co-operation addressing the global challenge of sustainable and collaborative co-existence appears not to accord with US interests. On international fronts, the US has continually refused to sign, support or ratify newer multilateral agreements be these on climate change, or the establishment of an international court of justice. It appears there is little recognition that the system, which they dominate and over which they have veto rights, can no longer operate as part of an historically constructed world of dichotomy. The living Earth and all its humanity are one common destiny. Man’s system, which essentially seeks capital’s globalisation cannot any more simply operate in the interests of a few at the cost of all other human cultures and the living systems on which life is dependant.

Events and the responses to September 11, clearly evidence the insecurity of dominating interests and an unwillingness to deal with any self-critical agenda. Lingering imperial national identities, a function of power and dated politics and discourses obstruct their capacity to appreciate they are only another grouping within the one human family. Capital/military power and a need to cling to a hierarchically superior positioning inhibit their ability to recognize that the future of all humanity requires solutions which benefit all.
It appears the First World’s intention is to limit any and all consideration of multilateral agenda aimed at reforming and democratising global mechanisms and inter-relationships between nations and peoples. Self-determination, human rights and environmental standards will be delayed and potentially denied through militarised neo-capitalist agenda, until perhaps such time as this dominant group feel their self interests have again been secured.

As a counter point to the continued devastation wrought by dated political thinking, the alternative vision which conveys a hopeful future is the ‘diversity’ agenda championed by Indigenous peoples. This politic is philosophically based on an understanding that the priority for humankind is a shift to a living system approach. Conscientisation leads to a deeper understanding of the role Indigenous peoples and their cultures play in creating and retaining ‘living diversity’ and of its link to the continuance of all life as wellbeing.

Despite this perspective, self serving interests in control of the institutions which wield power and regulate the global architecture, appear to be promoting the continued integration of Indigenous peoples’, through the guise of ‘economic opportunity’. Representation may also be a legacy of colonial strategies to elevate individuals who ‘can not speak for country’ and pit them against the peoples who can, and who still retain culturally legitimated leadership of Elders and cultural laws of relationship as land. In most circumstances what is not explained to an ‘elevated’ leadership is that the authority, terms and nature of any Indigenous economic development will be such that western interests are again the primary beneficiaries. Here again we return to Noam Chomsky’s insight that the rule of Empire ensures ‘natives’ never evolve ‘competitive activity’, only ‘complimentary roles’.

Decades of ‘imposed’ development led many Indigenous peoples from the South to join the International movement. Indigenous politics which resonates with hundreds of millions of peoples who retain territorial integrity and cultural identity, expresses another vision for humanity. It is an agenda from which many governments within ‘emerging’, ‘least developed countries’ and ‘small island states’ increasingly borrow.
Underestimating and therefore late to comprehend the relevance of Indigenous peoples’ international articulation, some governments are now working to see the entire United Nations Human Rights Commission is overhauled, and the adopted Declaration of Indigenous Rights, now a Draft Declaration of Indigenous Rights, be re-written. The objective is to limit consideration of Indigenous peoples’ rights to historic interpretation of former frameworks and to again contain any Indigenous manifestation and voice at national levels.

9.10: De-Colonization But No Culture: A Journey Towards Diminishment

Australia exemplifies the limited utility of historic Conventions and Covenants to address Indigenous rights. Here, the International Covenant on Civil and Political Rights (ICCPR), the Convention of Economic, Social and Cultural Rights (CESCR), and the International Convention for the Elimination of Racial Discrimination (ICERD) are considered to apply. However these instruments do not provide Indigenous peoples with the international rights that recognise their difference and right to their identity which includes the parcel of ‘specific’ Indigenous rights contained within newer UN standards. By these means, Indigenous peoples would only be able to claim a right to participate within the nation state equal to any other ‘ethnic’ grouping. In short, Indigenous peoples’ would have to forgo the rights potentially available internationally which recognises their claim to territory, collective identity, traditional resource rights, knowledge systems, and their own forms of governance and institutions as legitimate and integral elements of self-determination.

Central to the strategy of diminishing Indigenous peoples’ rights is the elimination of ‘culture’. This historic project which banned language and cultural practise continues today. Without their ‘culture’, Indigenous peoples are simply relegated to a diminished and perpetual identity of the ‘not white’ Australian. This would provide for a status akin to the diminished identity available to Afro-Americans within the US. This identity, which is excluded on the basis of race and has no historic claim to traditional territory, is
relegated solely to inclusion as a diminished ‘economic’ identity; the only identity, it could be argued prescribed by globalising capital interests for all societies, irrespective of race. Given that Afro-American peoples supposedly already enjoy the equality of rights being suggested by government to the Indigenous leadership, their continued exclusion from mainstream opportunities and their marginalised existence makes the limitation of this politic self-evident.

When official processes elevate Indigenous representation which lacks international politicisation, or deep knowledge of traditional cultural philosophies, the transformative values and ecological vision contained and elaborated by the international Indigenous movement within complimentary UN Documents, are often negated. This approach may also ensure that dominant values and priorities are again operationalised within the activity of the more recently establish Indigenous peoples’ Permanent Forum of the UN. Private sector strategies aimed at unravelling the gains some Third world peoples have made since their governments ratified ILO169, a key Convention which binds governments to providing Indigenous peoples the equality of their human dignity (explained in the next chapter) are also being implemented.

Additionally, governments, which identify with the resonances contained within the international movement and those which have supported the redrafting of the World Bank’s operational directives; such that the whole continent of Africa potentially benefits from a newer model of ‘people/human centred development’, are also targeted.

The First World’s belief in their ‘system’, and their preparedness to always resort to militaristic solutions, coupled with ‘emerging’ nations, or newly ‘democratised’ nations dependence on the First World for assistance, will no doubt provide the means by which Indigenous gains may be dismantled within other nations states. Economic assistance or ‘development aid’ may also be the means by which Third World governments are pressured to implement the First World’s systems.
9.11: Human Rights: A Global Commitment

Since the adoption of the Universal Declaration of Human Rights in 1948, human rights have received an unprecedented level of global attention and support. By 1997, the United Nations Secretary General, Kofi Annan had made human rights a central theme of his reform efforts. Women, children, disabled persons, minorities, Indigenous peoples, migrant workers and other vulnerable groups now possess rights that protect them from discriminatory practices. Rights have been extended through groundbreaking General Assembly decisions that gradually established their universality, indivisibility and inter-relatedness with development and democratisation.66

‘While many call for the universalisation of human rights, the nation-states fail to understand the necessity of the equal application of existing human rights to Indigenous peoples. In particular they reject the right of Indigenous peoples to self-determination, since this might lead to unacceptable freedoms for them’. The resistance of nation states is based on their interpretation of state legitimacy and territorial integrity. They ignore the requirement in the Principles of Friendly Relations Among States in Accordance with the Charter (1970), that they only grant such ideas to those states that conduct themselves in conformity with the principals of equality and self-determination of all peoples’.67

With the WGDD due to reach conclusion by the end of the International decade of Indigenous Peoples, 2004, and the UN’s Indigenous Permanent Mission now in operation, states have sought not only to ‘review’ the Indigenous peoples’ Declaration, but to ‘re-write’ it completely so that it again conforms with colonial orthodoxies.68 Collectively however, Indigenous peoples are resisting and rejecting these official moves. They do not accept state authority to appropriate their vision or consensus for their purposes.69 Nor do they feel they should accept Human Rights standards less then those available to other peoples of the United Nations.70 What has been missing from the United Nations dialogues is the active support of enlightened academics from within Eurocentric institutions, the vast networks of NGO’s and the commitment of Civil
Society groupings to support the Indigenous vision and agenda that arguably mirrors our humanity and aspirations for a just and life sustaining future.

9.12: Summary

This chapter has examined the dialogues to which Indigenous peoples have been involved within various fora. More detailed brushstrokes have been added to the broad canvas setting out the processes to which Indigenous peoples have been engaged and the standards in which these have resulted. Also illustrated are the difficulties that obstructionist interests pose. Examination has highlighted both the inherent nature of negative stereotyping in the political activity of some groups, as well as explained the deliberative use of new political processes within the UN to subvert and deny Indigenous peoples their rights and human dignity. This contexting allows for a more detailed examination of the standards which have been elaborated through these international processes, and which at the time of writing, remain unresolved. Or in the language of the international community, remain ‘open ended’, and subject to governments whims and fancies.

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1 Tapan Bose is a leading human rights activist in Asia and has been working with the human rights movement and Indigenous peoples in India for 15 yeas. He is an internationally known film-maker and has made a number of film dealing with the situation of Indigenous peoples in India. In 1984, he published one of the most comprehensive studies of Indigenous tribal peoples of India, ‘Scenario of the 7 per cent’. This introduction has been taken from the IWGIA publication within which his chapter appears. See: Bose, Tapan K. ‘Definition and Delimitation of the Indigenous Peoples of Asia’, in “...Vines that Won’t Bind…” Indigenous Peoples in Asia. Proceedings of a Conference held in Chiang Mai, Thailand, 1995.
7 Ibid., p.5.
8 Ibid., p.41.
9 Ibid., pp.41-42.
10 Ibid., p.41.
11 Ibid., p.42.
12 Ibid., p.42.
13 Ibid., p.42.
14 Ibid., p.42.
15 Ibid., p.42.
17 Ibid., p.8.
19 This identity construction, which is often negative and can be angry and may lead to self destructive behaviour is currently being addressed by many Indigenous peoples in First World contexts. Healing programs are often centred on matters related to ones notion of identity. As a political discourse however, identity is more fully examined within the New Zealand (Aotearoa) case study which serves as the landscape and context within which to ground, and illustrate the impact of identity and divergent theories on emergent cultural dialogue and politics.
21 This list is so extensive, in that the body of work first began emerging in the 1960’s and 70’s in the lead up to the United Nations’ First World Summit on Human Development, Stockholm, 1972, and subsequent World Summits, Rio Earth Summit, 1992, and the Johannesburg Summit on Sustainable Development 2002, that perhaps it would be reasonable to refer readers to the material provided by newer IT sites. Some provide access to reports and academic papers, others are exclusive publishers of academic work, and yet others are participatory sites of idea and knowledge exchange. Most are linked to the United Nations site. Go to: www.un.org, select language and then link to ‘previous conferences and meetings’. Here in date order are all the major events of the UN’s multilateral fora. (See also other web sites listed in references)
23 I have deliberately used James Sa’ke’j Youngblood Henderson’s analysis extensively, because he documents the development of the Indigenous movement within the UN from the perspective of an
Indigenous representative who has been part of the proceedings, describing their journey, their hopes and their aspiration. His rendition of events also accord with my own knowledge and experiences of working with leaders of the international Indigenous peoples’ movement. Furthermore, his version has been accepted internationally, and included in a recent publication of the United Nations Association of Canada.


25 Ibid., p.31.

26 Ibid., p.29.

27 Within western literature, Thomas Love Joy, formerly of World Wildlife Fund, Washington, is often credited with first writing about ‘biotic diversity’, 1980, as a means of explaining a newer conscientisation within scientific circles gained by many academics conducting studies within the Amazon. Michael J. Jeffries (1997: 4 -5), writes that the snappy abbreviation ‘BioDiversity’ is credited to Walter Rosen co-director of the 1986 Conference ‘The National Forum on BioDiversity’, Washington, in Jeffries, M. J. (1997), Biodiversity and Conservation. Routledge, London. Importantly, all Indigenous languages have their own terms which carry an even deeper understanding of living inter-relationship. Where the term ‘biodiversity’ originally carried philosophical and cultural parameters, the processes to which the International Convention of Biodiversity has been subjected, has seen dominant influence diminish its meaning. Scientific definition and interpretation has gained ascendence.


29 The Alliance of Indigenous and Tribal Peoples of the Tropical Forests is as its name implies an alliance between rainforest peoples’ from some 31 countries around the world.


32 Ibid., p.32.

33 Ibid., p.32.

34 Ibid., p.33.

35 Many governments still employ this strategy. Dominant media assists in a macro-political ascription of negativity and even vilification as a homogenising, disconnective device which makes it easier for officials not to engage with the specificities or with peoples’ circumstances and existences on the ground. Military or capital inducement is often used to consolidate a system of governance in the conflict zone, such that it replicates and feeds dominant interests. This strategy is used to bring peoples, land and resources still existing autonomously and self sustainingly outside western control, into the global machinery. At issue are the processes employed (externally imposed) to achieve this outcome, the imbalance of authority (no say), and the lack of choice regarding timing, and often leadership, and of the values which imbue the relationship (terms of negotiation, equity, justice, vision). Dominant narratives often serve dominant interests and are often strategically timed to influence and shape the dynamic of process and position taken.


37 Ibid., p.33.

38 Ibid., p.33.

39 Ibid., p.35.

40 Ibid., p.33.

41 Ibid., p.33.

42 Ibid., p.33.

43 The struggle for an ‘s’ on the end of ‘people’, as in ‘peoples’, was played out over the need for consistency of translation within official UN documents. In Spanish the word ‘pueblo’, implies a distinct people, a peoples. Indigenous peoples around the world maintain their right to this socio-cultural identity
Chapter 9: An Unfolding Of Indigenous Peoples’ Identity And Values.

of a peoples. The problem arose within English translation, the language devoid of any term commensurate with this notion (pueblo), hence the ‘s’ on ‘peoples’. Within the First world the term peoples’ also fits with the self expressed identity of First nation peoples’ in Canada and North America, and the New Zealand ‘Iwi’, who similarly retain a distinct identity from that of wider society.

46 Ibid., pp.36.
47 Ibid., pp.36. (emphasis added)
49 Note the addition of the politically diminishing descriptor ‘Draft’.
52 Pritchard, S. Ed. (1998), Indigenous Peoples the United Nations and Human Rights. Zed Books, The Federation Press. Writing in 1998, Dr. Pritchard explains: ‘At present 13 Indigenous people’s organisations have consultative status with ECOSOC. Of these, only one is from Latin America and two are from the Asia Pacific region, the National Aboriginal Islander Legal Services Secretariat (NAILSS) and the Aboriginal and Torres Strait Islander Commission (ATSIC).’ p.50.
53 Only a couple of Aboriginal individuals from Australia have attended the WGDD as NGO community representatives. Their participation has in the past been assisted by other organisations and institutions.
54 This Special Fund was established to assist Indigenous peoples’ participation in UN meetings. Having established the forums, it was recognised that in order to meet the requirements of UN processes, Indigenous peoples’ who generally lack monetary resources, would have to be able to attend.
55 These insights are the direct result of numerous conversations with Indigenous colleagues from around the world and from within Australia and the CANZ bloc on the WGDD proceedings.
56 These covenants, elaborated in the 1960s to frame processes of decolonization (of Africa/Asia) are a centerpiece of international standards. They include the International Covenant on Civil and Political Rights, and The International Covenant on Economic, Social and Cultural Rights. A third instrument was also added. This is referred to as the International Convention for the Elimination of Racial Discrimination. All three are further examined in the next chapter looking at standards.
59 Man’s Law- see 4.3 Law as a Space of Being in chapter 4.
60 Mothers Law- ibid.
61 The WSSD is a Rio +10 Summit held in Johannesburg, South Africa, August 24th-7th September 2002. Materials, backgrounding, position papers and outcomes can all be accessed by Internet. Go to : www.un.org , select ‘language’ and then ‘previous conferences and meetings’.
62 It is important to note that while civil society groupings active within the WSSD advocate eco-systems approaches, this conscientised articulation often remains wedded to scientific perspectives. In short while it is a step in the right direction, eco-systems approaches are still not consistent with the values of Indigenous peoples’ cultural knowledge or understanding of a ‘living systems’ approach. Eco-systems approaches are concerned with the conservation and management of ‘resources’ in order that capital activity, namely ‘development’ remains ‘sustainable’. Wolfgang Sachs excellent analysis of the processes leading into the Earth Summit in Rio (1992) examines how this understanding became essentialised within dominant discourse. He explains that by the 1970’s an awareness that the ‘long term availability of natural resources’ was as important to continued growth, as ‘capital formation’ and ‘skilled manpower’ resulted in...
a shift in thinking. Long term growth now focused ‘not on the health of nature but the continued health of development…” (p. 9) Succinctly stating the newer project Sachs writes: ‘“sustainable development” calls for the conservation of development, not for the conservation of nature.’ (p.10) In effect eco-system approaches emanate from this same perspective in that the 3 key limitations Sachs identifies still inform dominant thinking and have been retained. Eco-systems approaches now become the newer scientific methodology to address and facilitate these limitations. These being:

1.) Identifying ‘which of nature’s “services” are to what extent indispensable for further development.’ ‘Or the other way around: which “services” of nature are dispensable or can be substituted by, for example, new materials or genetic engineering?’ 2.) How ‘technical and organizational intelligence (can) be concentrate(ed) on increasing the productivity of nature’ which Sachs points out, leads to a view that ‘by changing the running techniques’, the race for continue growth need not be abandoned. 3.) Providing a newer science for environmental programs. To explain: Third world ‘poverty’ linked to ‘loss of nature’, resulted in a view that diverse environmental programming was needed. Third world people struggling to survive were caste as the agents destroying forests, essentially allowing scientists and governments to discount traditional knowledge and practise. The result being that where the focus for environmental degradation should have been the activity of an affluent ‘global’ middle class, third world peoples were equally to be considered as part of the equation. In effect this meant that instead of addressing the structural reasons for third world peoples’ loss of nature, dominant interests simply took the view that ‘humanity in general (w)as the enemy of nature.’ Hence an Earth Summit in 1992 and subsequent mechanisms, which again marginalise Indigenous voices and elevate the scientific. Eco-systems approaches potentially remain a dominant discourse of managerialism or ‘new executive skills’ within environmental programs. Sachs, Wolfgang, Ed. (1993), Global Ecology, A New Arena of Political Conflict. Zed Books, London, pp.10-11.

Simultaneously it must also be recognised that as part of international process and dialogue, dominant interests and governments retain an upper hand, and the outcome of this Summit may not achieve its stated objective, namely a global commitment to principles and the practical implementation of measures which secure sustainability. See: http://earthsummit.open.ac.uk and related links and sites. Documents may also be obtained through UN Site. Go to: www.un.org, select ‘language’ and then go to ‘previous conferences and meetings’.

Afro-American, and Afro-Caribbean groups, present a further potential for confusing an Indigenous politic. Consideration under the 60’s covenants of de-colonisation as racial minorities may not provide for the same outcome as an accommodation consistent with ILO 169. Moreover, Afro civil rights groupings within the America’s tend towards a compensatory politic which emanates from historic slavery. Their voices were well evident at the UN’s inaugural Conference addressing Racism, Racial Discrimination, and Xenophobia (Durban, 31 August – 7 September, 2001) at which they highlighted the 100 million deaths their people endured through slavery, and which some maintain potentially forms the basis for a compensatory claim.

Driving this politic is a need in first world countries to accommodate an Indigenous identity, which historically, and often for survival was forced into adaptive strategies. This group may represent a minority within a global constituency. They are educated, often urban-based communities now devoid of traditional territory, who tend to inhabit officially legitimated representative bodies and organisations. This dynamic is further explored in the Case studies and in particular the New Zealand chapter in Vol.3


Ibid., p.39.

Ibid., p.39.


Chapter 10: An Interconnective Framework Of Standards

This chapter examines newer United Nations standards, and the processes and dialogue which have shaped their content and meaning. Convention No. 169 of the International Labour Organization (ILO), The Convention on Biological Diversity, and the Declaration of the Rights of Indigenous Peoples are three key documents which together provide an interconnective framework. All three documents build on and are consistent with the Universal Declaration of Human Rights. Yet despite this, political process has served to diminish the application of these standards and to call into question their relevance (See previous Chapter 9).

This chapter illustrates that where international Covenants provide political and civil rights, as well as economic, social and cultural rights, there is often no guarantee that citizens will be in receipt of these rights, even if government is a signatory of the instruments. Analysis also seeks to respond to the key arguments often used by government to deny the application of standards. Again being targeted are cultural rights which are seen to conflict with national interests. The story of newer international standards begins with the original focus of the Indigenous peoples’ Working Group in the United Nations.

Antislavery International points out that concern for the welfare of Indigenous peoples began during colonial periods dependant on slavery. International recognition of the need of standards for Indigenous peoples was first addressed by the International Labour Organization (ILO) which ‘works to promote social justice for working people everywhere.’ Established in 1919, its Constitution part of the Treaty of Versailles, the ILO was to become the first specialized agency associated with the United Nations in 1946.1

While earlier attempts had been made to address the situation of Indigenous peoples, it was not until 1957 that the ILO elaborated the first international convention concerned with the ‘Protection and Integration of Indigenous and other Tribal, Semi-Tribal Populations in Independent Countries’. This document, commonly referred to as ILO
Convention No. 107, is noteworthy because it recognized and used the term ‘Indigenous’ within the body of international law.²

The objective and aim of the Convention was to create universal standards which would apply to people within independent countries seeking to ‘integrate populations’ into the dominant society. This aspect of the convention, prescribing ‘integration’ concerned Indigenous peoples, particularly those in Central and South America where governments had signed the Convention. Ratification had produced national frameworks in which integration became the primary consideration of policy and practise, often overriding any other considerations provided for within the Convention.

Some of these provisions included: ‘regard of their customary laws’ (7.1); ‘the right of ownership, collective or individual…over the lands which they traditionally occupy’ (Part II. Article 11); while requiring governments ‘to respect the cultural and religious values which inform the people’s institutions’; allow them to ‘retain their own custom and institutions’ (7.2); pointed out ‘the danger of disrupting the values and institutions of the said populations’ (4.b); and excluded governments ‘from the use of force and coercion as a means of promoting the integration of these populations into the national community’ (2:4).

Furthermore, Article 13:1 states: ‘Procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected within the framework of national laws and regulations, in so far as they satisfy the needs of these populations and do not hinder their economic and social development.’ Twenty-seven nation states ratified this convention. Australia, and the other CANZ bloc countries were not amongst them.

By 1971, many Indigenous peoples from the Americas, had successfully argued that the principles of ‘integration’ was inconsistent with other instruments of the United Nations, namely the Charter of Human Rights and the Covenants pertaining to ‘de-colonization’, which provide civil and political rights, and economic, social and cultural rights.
Indigenous peoples, in conjunction with northern NGO’s and the head of the Centre for Human Rights in Geneva facilitated a re-drafting of the convention. (See previous Chapter 9).

The resulting document, referred to as ILO169 was adopted by the United Nations in 1989 and passed into force in 1991. To date, it has been ratified by 14 countries, again predominately those of Central and South America. At the time of its adoption, a few Indigenous representative from within First World countries, who were new to UN processes, feeling they had not had full access to discussions, organized a boycott of ILO Convention No.169. This led to the adoption of a resolution asking states not to ratify the revised instrument. Canada, Australia, and New Zealand have been happy to comply.

10.1 ILO 169 A Binding Convention: The Doorway To Interconnectivity

The story of Australia’s consideration of this Convention again highlights processes of diminished and confused discussion and political overtures which offer ‘complementary roles’ to Indigenous leaders (see Chapter 7.8 ‘The Rule of Empire’, p.136). Analysis of international processes by Christine Magallanes provides initial backgrounding.

Magallanes notes that while the Convention ‘contains a clear international consensus on a statement of rights that could – in some measure, if upheld – improve the conditions of the Indigenous peoples in these countries, …opposition to ratification on the principled grounds adopted by some Indigenous peoples provides a helpful excuse for these governments not to ratify, or to feel legally bound to uphold such rights, or be subjected to external examination, such as by
the ILO, for compliance.’ She continues: ‘Importantly, some Indigenous representatives from these countries ... have since changed their minds and now argue that Convention No. 169 should be ratified.’

At the time however, from within an Australian Indigenous politic, ILO169 was perceived as a flawed document. Concern hinged on a view that any ratification by government would result in a relinquishment of Aboriginal sovereignty. The basis of this argument centred on an interpretation of international law being pursued by other Indigenous groups within the CANZ bloc who are already party to historic treaties.

Indigenous peoples maintain that their treaties are evidence of their sovereignty and nationhood as they were negotiated and signed with officials representing the British Crown. Furthermore, given these treaties were used by the Crown to counter other colonial powers from historically laying claim to the same territories, underscores their international nature. Within United Nations contexts treated Indian nations cite the preamble to the Charter of Human Rights, which starts with the words ‘we the peoples’ and point out that as parties to international instruments, the Charter also refers to them as sovereign nations.

Australia’s Aboriginal peoples’ devoid of treaties or other international instruments recognizing their nationhood, argued that their sovereignty had never been relinquished, and that ‘terra nullius’, a legal fiction, did not constitute a legitimate basis for the creation of Australia. While this point may hold true, subsequent events have altered the landscape in which Aboriginal politics needs to be considered. When the High Court did away with ‘terra nullius’ in Mabo (No. 2), Government responded with a Native Title Act. Aboriginal consultation on the framing of this juridical instrument, and the processes it facilitates, may provide government with an argument that the Act negates recognition of Indigenous sovereignty.

Some Indigenous peoples have been forced to pursue a politic of a national character, which until more recently, has remained disconnected from international process. This
politic may also be responsive to government rather than anticipatory of official strategies. Isolation and limited opportunities for capacitation further hinder appreciation for the safeguards potentially provided by ILO169. While the Convention may not recognize Indigenous peoples as ‘sovereign’ peoples, or contain all they may feel they want, elaboration does accommodate many elements central to Indigenous aspiration, ‘promoting the full recognition of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions’ (Article 2.2b).\(^9\)\(^{10}\) Ratification by government provides the door through which other interconnective international standards might be drawn down into national contexts.\(^{11}\)

Within Australia, Indigenous leaders who backed the boycott preferred to focus on processes involving the redrafting of the Declaration on the Rights of Indigenous Peoples believing such an approach would lead to more substantive outcomes. However, not being required to sign ILO169 and remaining unrestricted by national legislation, government moved instead to implement a new raft of diminishing legislation and policy within the domestic arena.

Ratification of ILO 169 would have meant that these activities, while no doubt still in play, would have been contained or at least internationally monitored. There would have been a requirement for a national commitment necessitating governmental positions which harmonise with the intent of the international document.

### 10.2 A Missed Opportunity

While internationally, argument and interpretation exists requiring all governments to comply with the intent of ILO 169,\(^{12}\) the call for a ‘boycott’ by Aboriginal political leadership provided governments with a way out and the diplomatic cover within international circles should criticism be levelled at them for not ratifying the Convention.
Chapter 10: An Interconnective Framework Of Standards

The politic of pursuing a dialogue without any domestic or international recognition of Indigenous rights in law, is a weak one.\textsuperscript{13} Focusing on a process that seeks to re-elaborate or re-draft the Declaration of Indigenous Rights, leadership may endanger the gains already made internationally. Two major concerns need to be addressed.

Analysis of the governmental Working Group process reveals that all aspects of the Declaration are being revisited. Additionally, the terms by which the document is being re-assessed varies from group to group. Divergence may exist between officially salaried Indigenous participants, and ‘sui generis’ Indigenous peoples’ representation who reflect other cultural perspectives and knowledge. Some First World Indigenous representatives tend to think of the Declaration as a stand-alone document. They do not understand it as an integral part of other interlinking UN instruments, which together potentially provide Indigenous identity rights.

Importantly, the Declaration as it stands and the process to which it is currently being subjected, are also conflicted. Kingsbury again notes the tension. On the one hand, the process sets out ‘to declare or develop a number of basic principals of fundamental importance to refute and disallow some type of argument made against the claims of Indigenous peoples, to legitimate political and legal claims’. On the other, it attempts ‘to elaborate the meaning of reasonably well-established international standards in special contexts involving Indigenous peoples.’\textsuperscript{14} Importantly, Kingsbury points out:

\begin{quote}
‘On its own, the UN draft declaration, in its present stage of elaboration does not have the primary effect of establishing ‘Indigenous peoples’ as a special category of rightholders enjoying a vast panoply of rights not held by others;…’\textsuperscript{15}
\end{quote}

In other words, this Declaration on its own will not necessarily influence domestic negotiation and provide the rights it contains. Rather, the likely outcome of this politic will be a limited in-systems (domestic) accommodation. Similarly, a politic which depends on the UN Covenants of ‘de-colonisation’ or its Convention addressing racial
discrimination may also not provide full identity rights, particularly when these are not enshrined in national law (see Australian Case Study, Volume 3, Chapter 17, p.423). Furthermore, by perhaps assisting governments to alter the Declaration/Treaty on the Rights of Indigenous peoples as adopted by the Human Rights Subcommission in 1994, the constructivist nature of interlinking UN instruments may be potentially diminish, hindering the degree of systemic reform required of globalising mechanism and their institutions.

While the Declaration of Indigenous Rights may not have the primacy of establishing ‘distinct’ Indigenous rights, the Document adopted by the subcommission in 1994, does elaborate a range of ‘specific’ rights, that Indigenous peoples’ had hoped would pass through the UN system, and become law. Kingsbury precises these as:

“Indigenous peoples have the right to self-determination” (Art.3); “Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as legal systems” (Art.4);

“Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide” (Art.7); Indigenous peoples shall not be forcibly removed from their lands or territories” (Art.10); Indigenous peoples have the right to own, develop, control and use the lands and territories.... which they have traditionally owned or otherwise occupied or used” (Art.26).16

Discussion within Australia’s Aboriginal world on ILO169 occasionally took place in forums dominated by high profile identities. Debate was such that any position was as much about whose view would dominate, as it was about the substantive and any real appreciation of the documents relevance and international contexting. Within national contexts, some leadership were simultaneously involved in other separate discussions with government on Native Title. There was also the possibility of attending sessions of the Working Group on the Draft Declaration in Geneva, as a member of Government’s official delegation.
Personal roles were thus conflicted, leading to internal dynamics between those who had an inside run with government and those who may have had a greater understanding of international events. The later group included individuals who were also unhappy with the new Native Title Act, which contained discriminatory provisions and diminished their rights. This was particularly so when viewed from a perspective cognizant of internationally elaborated Covenants and Conventions.

Consideration of the international Convention was also undertaken by the Australian government. Mick Dobson, writing in his then capacity as the Aboriginal and Torres Strait Islander Social Justice Commissioner of the Human Rights and Equal Opportunities Commission (HREOC), acknowledges that the Commonwealth Government was considering whether or not to ratify ILO169. In his second report, 1994, Dobson wrote:

*The Hon. Laurie Brereton, MP, Minister for Industrial Relations, has carriage of the Government’s action on ILO169. I note that law and practice reports are currently being sought from the Commonwealth and all States and Territory Governments regarding ILO169. Such reports advise on how well current law and policies conform with the requirements of the Convention. They form part of the formal consultative process between the Commonwealth, States and Territories prior to Australia assuming any fresh international obligation.*

Dobson also recognized that ‘ratification holds implications for Australian governments at all levels and for other interests groups’, and that the Commonwealth Government would ‘naturally take into account the views of peak employer and employee organisations such as the Australian Council of Trade Unions and the Australian Chamber of Commerce and Industry.’

With a change in government at the next Federal election (1996), Indigenous peoples in Australia have been subjected to a reversal in political and legislative consideration. It is noteworthy that the present government has been cited for enacting discriminatory
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policy by the Human Rights Committee of the UN. Within the first year of office, the Howard government had begun deliberation on a raft of newer legislation which not only reversed and limited the High Court’s findings in Mabo, and later Wik, but deliberately targeted and diminished any consideration of the potential rights elaborated and contained within ILO169 and the Indigenous peoples’ Declaration of Indigenous Rights adopted by the UN’s Human Rights Subcommittee in 1994.

While carriage of the Government’s action on ILO169 was seen to rest with the Minister for Industrial Relations, the diversity of rights recognized within ILO169 should have required a wider canvassing of opinion by government. It could be argued that the government’s conflicted role as both the ‘authority with duty of care’, and ‘the shadow of capital’ again resulted in a national dynamic which saw capital’s interests re-asserted.

A case might be made that the Howard government pursued a pre-emptive strategy with official processes directed towards locking Aboriginal peoples into a lesser framework, or a domestic negotiation thereby further delaying any genuine consideration of international standards. Additionally, it might also be argued, that in re-distributing and devolving control to the States and Territories of the key departments formerly consolidated under Federal control by the previous Keating government, the Howard government had sought to disconnect itself from its international obligation. This strategy has seen the Commonwealth argue that, as they have no say over State or Territory matters, they are unable to comply with either historic international obligations or the newer international standards.19

In short, confusion in the much of the First World is deliberately exacerbated by governments which play upon the differing levels of Indigenous politicisation and identity. By ensuring negotiation is keyed to governmentally-owned political and legal process, the game becomes one of containing or holding in abeyance existing international instruments providing for a constructivist and systemically reforming discourse, while being seen to provide Indigenous peoples their rights through a
normative accommodation which allows for a continuance in the status quo, and which, it can be claimed, has been consultatively achieved.

10.3 International Requirement Of Government

The prevailing view within international law is that the argument by which national governments claim they cannot be held internationally accountable for matters administered by internal state/provincial governments is spurious. National government cannot sidestep their obligations. With a move towards the universal application of Human Rights standards, such that internal minorities are equally considered, the United Nations Committee on the Elimination of Racial Discrimination ‘has felt it necessary to emphasis that the International Convention (ICERD) places obligations on States to take all appropriate means to combat and eliminate discrimination against Indigenous peoples.’

The Committee has called on States to:

a. recognize and respect Indigenous distinct culture, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation;

b. ensure that members of Indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on Indigenous identity;

c. provide Indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

d. ensure that members of Indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent;

e. ensure that Indigenous communities can exercise their rights in practice and revitalize their cultural traditions and customs, to preserve and to practice their languages.20

The Human Rights Committee has also stated that the International Covenant on Civil and Political Rights (ICCPR) not only protects the cultural rights of Indigenous peoples, establishing and recognizing that they be conferred on individuals belonging to minority
groups, but also requires the states to regard these rights as ‘distinct from and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant.’

The obligation that is imposed on states by Article 27 is expansive. As the Human Rights Committee has explained:

‘A State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself... but also against the acts of other persons within the state party... positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and to practice their religion, in community with the other members of the group.’

Thus the state is required to ensure that all levels of government within its borders comply with international standards and provide positive measures which not only provide equity rights but also the ‘distinct rights’ emanating from Indigenous peoples’ culture and worldview.

ILO 169 elaborates the categories of distinctive rights of Indigenous peoples. The Human Rights and Equal Opportunity Commission’s report (1999), makes it plain that the rights elaborated under ILO169 ‘provides that in applying the provisions of the Convention, “the social, cultural, religious and spiritual practices of (Indigenous) peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals. The integrity of the values, practices and institutions of Indigenous peoples shall be respected.”’ "ILO169 also includes important provisions relating to a number of other issues of concern to Indigenous peoples including land and resources rights, resettlement, collective rights, customary law, development projects, and self governance."
As the only existing and binding inter-state treaty, adoption of ILO 169 should perhaps be considered. There is at this stage no domestic recognition of Indigenous peoples ‘distinct’ rights, or any mechanisms requiring government to adopt legislation ‘in favour’ of Indigenous peoples rights. Perhaps Aboriginal peoples might choose to insist that government enjoin itself through treaty to the international standards, thereby establishing an external mediator, before commencing any Treaty negotiations with the Commonwealth (a strategy being promoted in various quarters), particularly as a Treaty does not automatically change domestic law.25

Unlike an international convention which Magallanes explains, ‘automatically becomes part of common law’ within the three CANZ bloc countries, ‘even when it changes domestic law’; a treaty ‘requires Parliament to pass legislation to give (it) effect…”26 The argument advanced in favour of demanding ratification of ILO 169, is that any leadership is faced with the reality that their voice is diminished and history proves that government favours other interests. Later analysis of Australia’s obligations will show that even current discussions seek to contain Indigenous cultural identity and limit the extent of consideration of rights (see Vol. 3, Australian Case Study). It might be prudent for Aboriginal peoples within Australia to seek an external mediator.27

This said, cognizance of newer international standards requires governments to move towards implementation consistent with their existing Human Rights commitment, whether signatory to them or not. In the case of Australia; which is party to CERD and the two documents of de-colonization, ICCPR and ICESCR; application of both ILO 169 and the rights elaborated in the Declaration of Indigenous Rights are consistent with our Human Rights obligation under international Law. It might then be claimed that an obstructionist position within the UN Working Group regarding the Declaration of Indigenous peoples is simply politics.

This view is shared by Dr. William Jonas and Dr. Augie Fleras.
The standards in these documents cannot be dismissed on the basis that Australia is not a signatory to ILO169 and that the draft Declaration remains merely a draft. These documents do not ‘create’ new rights for Indigenous peoples. Instead they elaborate upon the content of existing standards such as Article 1 of the ICCPR and ICESCR. They apply because ‘the collective and inherent rights to self determination of jurisdictions pertaining to land, identity and political voice have never been extinguished but prevail in international law as a basis for entitlement and engagement’. 28

10.4 Avoiding Compliance

While these arguments are consistent with Australia’s obligations, various strategies employed by government hinder the provisions from being implemented, and thus Indigenous peoples’ rights from being recognized. One such strategy involves delay and pre-emptive legislation. This involves the Government signing on to international Covenants, but not the Covenants accompanying document or ‘optional protocol’. As a signatory of an international instrument, governments commit themselves to undertake to create domestic laws, which harmonise with the International Covenant.

The Optional Protocol is the mechanism by which the international community can scrutinize internal processes of compliance. Often government will sign an instrument and then commence internal negotiations with stakeholders. Invariably the first group to be given an opportunity to advise government as to the impact of an undertaking is ‘capital’, which recommends which aspects of the Covenant might cause them concern; a process we have just seen occurred regarding Australia’s consideration of ILO169.

The second group are those whose function it is to protect or advocate on behalf of the interests of citizens. This second group may or may not be invited to ‘consult’ on the elaboration of newer domestic laws. The result can see a new office or institution created; Environment Minister and department, Aboriginal and Torres Strait Islander Commission (ATSIC), Human Rights and Equal Opportunities Commission (HREOC), Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
Department for the Status of Women, Ethnic Communities Council (ECC) or Federation of Ethnic Communities Commissions of Australia (FECCA), and the Environmental Planning Authority (EPA), often with curtailed powers, and lesser rights enshrined in domestic law.

Under this rubric, government can then claim to have met their obligations without external scrutiny, or an internal dynamic, as invariably the local community or their advocates are never given knowledge regarding the full international undertaking or the instrument which provided the impetus for newer domestic regulation and authorities. This strategy is essentially pre-emptive, because it enshrines lesser institutional mechanism and rights within domestic law, before full consideration of a Covenant or international obligation might be advocated.

Internal competing interests are often pitted against each other to ensure a lesser framework and or body/ institution emerges. Interestingly, the assumption that those with authority can be trusted to enact policy which advantages their societies has also resulted in First world nations not signing international instruments. These governments tend to rely on internal negotiation and domestic law. Often a Constitution or Bill of Rights provides the framework to argue holding newer international standards at bay.

In a number of countries this has left political processes open to being influenced by specific interest groups. The US is a case in point where the disconnect between international dialogue and those with power to determine US policy, has led to the advent of highly politicized narrow sector interests exerting influence on government and often skewing policy in their favour; a process which has allowed unaccountable and self regulating capital interests to remain the dominant force shaping society, its behaviour and values.

Being party to the international instruments mentioned, namely ICCPR and ICESCR, has not seen Australia fully adopt the provisions within its domestic law. In the case of
the International Covenant on Economic, Social and Cultural rights, Australia’s continued delay in its implementation has not only diminished on-going consideration of Indigenous peoples’ rights, but similarly those of women (equal pay, maternity rights), workers (collective representation and bargaining), migrants (cultural and immigration considerations), and the impoverished (national index) within society. In essence, the delay becomes another official process of diminishment and containment. The United Nations Committee on Economic, Social and Cultural rights, on considering the third period report of Australia in August 2000 concluded and observed that there were a number of factors and difficulties impeding the implementation of the covenant.

_In spite of existing guarantees pertaining to economic, social and cultural rights in the State party’s domestic legislation, the Covenant continues to have no legal status at the federal and state level, thereby impeding the full recognition and applicability of its provisions._

This allows Australia, while signatory, to omit Indigenous peoples’ cultural rights from any real consideration. We have already established that this influences the position taken in the Working Group, and as will be shown later within the section dealing with Native Title (Vol.3, Chapter 17, Australian case study) is again in danger of being sidelined in any current discussion pertaining to an accommodation of Indigenous peoples.

Given the extensive nature of rights affected, perhaps the full list of concerns expressed by the UN Committee is worthy of inclusion, as it exemplifies the previous analysis of the strategy of delay. The central focus however will remain a discussion of Indigenous peoples’ rights under international law.

**PRINCIPAL SUBJECTS OF CONCERN**

1. The Committee regrets that, because the Covenant has not been entrenched as law in the domestic legal order, its provisions cannot be invoked before a court of law.

2. The Committee expresses its deep concern that despite the efforts and achievements of State party,
the Indigenous populations of Australia continue to be at a comparative disadvantage in the enjoyment of economic, social and cultural rights particularly in the field of employment, housing, health and education.

3. The Committee notes with regret that the amendments of the 1993 Native Title Act have affected the reconciliation process between the State party and the Indigenous populations who view these amendments as regressive.

4. The Committee notes with concern that the Workplace Relations Act of 1996 favors individual negotiation with the employer over collective bargaining, thereby reducing the role of the Australian Industrial Relations Commission. The Committee is also concerned about the restrictions resulting from the Act with regard to the protection of wages, job security and temporary employment.

5. The Committee notes with concern that homeworkers, who are predominantly women, do not enjoy any form of social protection and are paid substantially lower wages than the minimum wage, therefore compelling them to work excessively long hours in order to earn enough for the daily subsistence of their families.

6. The Committee notes with concern that paid maternity leave is not provided for in law or in collective labor conventions, and that the State party has not ratified ILO Convention No. 103 concerning maternity protection.

7. The Committee regrets that the absence of an officially set poverty line in Australia has deprived the Committee of the criteria it needs to determine the progress achieved over time by the State party in its efforts to reduce poverty.

8. The Committee is concerned that the current Residential Tenancies Act 1987 (in New South Wales) does not provide adequate security of tenure and protection against eviction and arbitrary rent increases. In view of that, rents in Sydney have increased substantially and cases of forced evictions are reported to have taken place, especially as a result of the forthcoming Olympic games.

9. The Committee expresses its deep concern that, despite the guarantees of coverage for all under the Medicare system, the problem of long waiting periods in hospitals for medical services, and in particular for surgery, has not been sufficiently addressed.

10. The Committee notes with concern that no steps have been taken to respond to its 1993 recommendation to strengthen human rights education in formal and non-formal curricula. Furthermore, while the State party has given information relating to the funding of private and public schools, it has not provided sufficient information on the difference in quality of schooling available to students in public and private schools.31
During his term of office, Australia’s Prime Minster has not sought to fully comply with its international obligations such that basic equity rights might be achieved by all citizens.

**10.5 The Competitive Rights Argument**

Non compliance with international undertakings can also be achieved through other means; particularly when government is prepared to play divisive politics along fault lines of ‘difference’. One popular argument which is repeatedly used is that of competitive interests. This argument holds that any recognition of Indigenous rights would diminish or compete with dominant rights and therefore impact negatively on national interests. In other words Indigenous peoples aspirations or rights are presented as a fearful choice. It’s either us or them!

A Parliamentary Joint Committee into Australia’s international obligations found that under CERD, the government was not being asked to mediate between competing interest groups, but rather to guarantee equality in the enjoyment of fundamental rights. A submission from the Human Rights and Equal Opportunities Commission further clarified this view. It points out that under the Convention, State parties are ‘required to balance the rights of differing groups identifiable by race.’ In other words, State parties are not being asked to find a balance between ‘mining, pastoralists, and fishing interests’, but rather between, ‘the civil, political, economic, cultural and social rights of Indigenous and non-Indigenous peoples’.

With the international community committed to the universal application of Human Rights as a fundamental determinant of ‘relationship’, at all levels of human existence, Australia’s national interests might well be best served by joining the UN’s Global reform agenda. Present policies and action suggests however that this government is far removed from the focus and intention of such an agenda.
10.6 Compromising Government Integrity

Another means of avoiding compliance with International undertakings is the argument that any accommodation of Indigenous rights providing for self-determination, compromises government’s integrity.

Professor James Tully\(^{34}\) convincingly argues the contrary, pointing out that it is only when discussion is limited to a historic understanding of de-colonization, as in ‘succession’ or ‘external self-determination’ that this issue might arise, and only should the right to ‘internal self-determination be thwarted by the encompassing society’\(^{35}\). In Tully’s view ‘the exercise of self-determination consists of decolonisation and the recognition of Indigenous peoples as free, equal and self governing peoples under international law, with shared jurisdiction over lands and resources on the basis of mutual consent’\(^{36}\). He points out that such an approach ‘achieves rather than disrupts territorial integrity (if integrity has any normative consent) by amending an illegitimate exclusive jurisdiction into a legitimate shared jurisdiction’\(^{37}\). Tully further argues that this ‘multiple and overlapping jurisdiction is said to be the general tendency of global politics in many spheres’, and that ‘there is no non-discriminatory reason why it should be denied in this specific case.’\(^{38}\)

Two points need to be further clarified. These centre on the notion of ‘shared jurisdiction’ and ‘internal self determination’, both of which are addressed within the argument. Currently Indigenous peoples are the subjects of legislative frameworks which relegate them to internal colonization. Providing a shift towards ‘internal self determination’ which limits consideration solely to the domestic arena, where normative government legislation again frames Indigenous rights by imposing its law with provisions for diminishment, is to retain dominance and thus, does not provide Indigenous peoples with self determination. Tully also argues for ‘the right of a people to govern themselves by their own laws and exercise jurisdiction over their territories either exclusively or shared.’\(^{39}\)
In his final analysis Indigenous peoples’ ‘...will be free and self determining only when they govern themselves by their own constitutions and these are equal in international status to western constitutions. Internal self-determination therefore is not a form of self-determination or freedom. It is a form of indirect colonial rule, not unlike earlier forms of British indirect colonial rule, which Canadians, Americans, Australians and New Zealanders found to be an intolerable form of unfreedom and the justification of their own successful and purportedly universal struggles for freedom. Yet for reasons that do not withstand public scrutiny, they do not hesitate to impose such a yoke on weak and captive peoples within their own borders.\textsuperscript{40}

It might then be argued that ‘exclusive or shared jurisdiction’ over land and resource rights become a subset of Indigenous peoples ‘self determination’. This view goes to the heart of co-existence. In essence, consideration of a ‘shared jurisdiction’ might equally be determined by Indigenous peoples, a decision that the dominant similarly face and to date, have failed. The argument being made is for a politic of equity. The concern with an equity argument is that without internationally consistent domestic law, accommodation may subsume cultural rights such that the nature of peoples’ manifestation is contained by omission of these rights, while a political negotiation centring on models of self governance, held to be equitous is given ascendance. Genuine ‘self determination’ however can only be achieved where cultural perspectives, identities, values and institutions are legitimated.

From an Australian perspective, Indigenous peoples continue to see the future of this continent being a shared endeavour. This is culturally consistent with a view in which there is no separation, and a perspective of former periods of inter-relationship in which they were self reliant, even successfully evolving newer roles while living within their own cultural contexts.
10.7 To Equity Or Diversity

While I agree with Tully, and others that internal de-colonization is a necessary first step for all internal minorities and diminished groups, it may not provide Indigenous peoples with equity. The danger, I perceive, is that when equity is said to be provided by a political accommodation claimed to accord with international law, but only requires an internal negotiation which does not legitimate cultural distinctiveness, this is not self-determination. Achieving equity under these circumstances is to again subject Indigenous peoples to a continuing dialogue by which the level of recognition and legitimation of cultural identity, perspectives and values is dependent on their leadership’s politicization and negotiation skills. Furthermore, government is placed in a conflicted role, being both signatory to international obligation and subject to domestic law and competing interests.

This is the same position it currently holds, which has allowed for and resulted in the inequitous mediation between interests. Perhaps this is why Indigenous peoples might consider ratification of ILO169, which legitimates ‘distinctive rights’, said to be consistent with CERD, ICCPR and ICESCR. This approach would mean that instead of having to undergo lengthy negotiations in two phases; a contained equity and then distinct rights; they re-position themselves and government such that the Commonwealth becomes the instrument by which Indigenous peoples’ achieve full rights as distinct peoples’. To use a metaphor, instead of having to swim upstream to achieve equity (akin to other ethnic groups, but with a bit more self administration = governance) and then climb a waterfall to obtain distinct rights, ratification of the Convention establishes that rights are a given. Indigenous peoples become the subject of international Law. Negotiation then becomes one centring on processes and mechanism of compliance within the domestic arena and across institutions. By contrast, a Treaty negotiation may continue to result in a separated Aboriginal world of governmentally dependent and legitimated Indigenous organisations, through which programs (officially devised) remain the central activity; a newly legitimated process of ‘integration’.

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10.8 Interconnectivity As A Whole

In contrast to the dominant equity model being promulgated within CANZ Bloc Countries, Indigenous peoples internationally are working constructively to have their distinctive rights recognized. These rights provide for an equality of cultural identity, perspectives, knowledge and values. By virtue of the Eurocentric splitting of the holistic aspect of Indigenous identity, these rights have needed to be elaborated within differing inter-connective conventions.

Where equity rights are established by CERD, ICCPR, ICESCR, the document which triggers categories of ‘distinctive rights’, is ILO169. The parcel of ‘specific rights’ were then elaborated and are contained in the Declaration of Indigenous Rights, currently thwarted from passing into law in the UN. Cultural rights, including ‘traditional knowledge rights’ and the protection of sui generis systems are further contained within the Convention on Biological Diversity. In effect both the Declaration, and the Biodiversity Convention might be seen as building on ILO169.

Where the dominant politic is a homogenizing equity politic, the international Indigenous agenda is a ‘politic of diversity’ such that their aspiration seeks to engender greater autonomy, and self-determination for all social groupings and natural systems living within the imposed system of Man’s law. The international movement seeks to engender reform of the globalising system, rather then simply obtain a Eurocentric notion of equity through a positivist dialogue within normative processes owned by the dominant. What is required is substantive engagement and constructivist approaches by which diversity is structurally accommodated. At issue are the values of the system imposed by dominant interests, which contrasts with the viability of a differing vision equally applicable and more consistent with human identity and the lives of the world’s majority.
Where Tully’s analysis regarding self-determination is for equity of Indigenous peoples, I hold short of endorsing his proposal that Indigenous peoples’ need elaborate ‘constitutions’. This matter I consider is for Indigenous peoples themselves to decide. Indigenous peoples already have their own forms of governance. What is required is the recognition of their right to ‘maintain and strengthen their own distinct political and legal systems’, and by extension, to evolve any other should they choose. More often than not, the form most consistent with Indigenous peoples representations has been confederacies of peoples.

Eurocentric political theory, it is suggested, will have to broaden its philosophical base in order to genuinely accommodate the cultural rights and identity of Indigenous peoples. European political theory, which gave us nation states and democracy, also gave us colonization. From the perspective of cultural peoples, the nature of the democratic model and its institutions imposed by European interests often becomes the very mechanism by which they are disconnected from their identity, territory, knowledge and means of autonomous self sustaining existence.43

In effect, European political theory, which underpins the State, works hand in hand with its economic theories, providing the dominant with a disconnecting discourse and an unaccountable, unsustainable homogenizing system, capable of being exported and imposed.44 This and the settler identity will not provide an adequate solution. Indigenous perspectives and notions are such that even the mutually used terms of self-determination, sovereignty, and autonomy are understood differently.45 The continual game of dominantly defining these terms so they remain consistent with Eurocentric discourse and compliant to normative approaches, confuses some Indigenous articulation within the First world.

Hindering academic appreciation of a need to engage directly with Indigenous peoples are the voices of individuals who similarly use Eurocentric language and thinking but are thought to express or represent Indigenous peoples’ viewpoint. The accommodation they propose is often more consistent with settler interests, suggesting an approach
which might ultimately lead to a further diminishment of Indigenous identities. In short while much political gamesmanship is being played out as though the outcome is either a choice between ‘equity’ and ‘diversity’, the solution is actually interconnectivity which leads to diversity as equity.

11.9 Summary

This chapter has shown that while newer standards have been elaborated at international levels, the historically embedded ‘us and them’ dichotomy which informs and characterises political perspective hinders government representatives from appreciating the relevance of these standards as the basis of a newer philosophically informed politic; one which equally offers a good ecological order to their own societies and futures. Humanity is dependent on the natural systems of living relationships that is creation. As one Indigenous colleague pointed out, the alternative, the rapacious and polluting, the industrial will only result in more sickness. In his view ‘the technological iron lung will only have room for the few and it will never breathe for all creation’. As such the need of cultural diversity is imperative for the continuance of life. And where governments are responsive to dominant capital as an overriding position, they currently miss the vital necessity for these newer standards.

Further more as has been shown, ILO 169, the Declaration of Indigenous Peoples Rights and the Convention on Biological Diversity are all held consistent with governments undertaking to harmonise national laws with International standards. The disconnect between national and international dialogues was also shown to be the reason for a divergence in political expression and position taken at the time these instruments had been elaborated, and the subsequent processes to which they have been subjected.

While decades of work has produced various International instruments which provide standards, a further difficulty experienced by Indigenous peoples’ has been the requirement of governments that they also provide a technical definition of ‘Indigenous peoples’, in order that they establish how the standards might be applied. The next
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chapter therefore examines the dialogue and discussion which has been concerned with ‘definition’ and its utility in varying contexts and regions of the world.

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1 Department of Public Information, DPI. (1998), Basic Facts about the United Nations, United Nations, New York, p.51
2 The genealogy of this term starts with its use in ordinary language. Kingsbury writes: ‘The choice and evolution of an overarching self-conception to unify the international political movement of Indigenous peoples has necessarily involved abstracting from a highly diverse range of self-understandings and political discourse among different groups. The social and political concept available to the movement are influenced by the concepts carried in its principal working languages. “Indigenous peoples” is now a well-established usage in English and Spanish, but conveys an element of novelty even in French and is difficult to capture nonpejoratively in Chinese, Japanese or Thai except by new usages or translation from other languages. In ordinary language “Indigenous peoples” connotes priority of time, if not immemorial occupancy. It also suggests continuity of group identity over a very long period, even as conditions have been altered by colonialism, influx, migration, or the frequent changes in group structures and ethnic identities. These elements of historical priority and group continuity have acquired significance as ‘Indigenous peoples’ has evolved from ordinary language into a specialized term in transnational mobilization and normative instruments’. See Kingsbury, B. (1998), ‘Indigenous Peoples’ in International Law; A Constructivist Approach to the Asian Controversy, The American Journal of International Law, Vol. 92:414, Issue 3. p.422.
3 ILO 169 has been ratified by the following nation-sates: Argentina, Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay, and Peru. Ratification by Fiji might serve to amplify the context in which to understand the ‘situation’ regarding Fijian dissatisfaction with the Constitution implemented by the Commonwealth.
5 Ibid., p.241.
Noel Pearson, an Aboriginal civil servant, revisits the issue of sovereignty in an article in the Indigenous Law Bulletin, August-September 2001, vol. 15, issue 11, pp. 24-30. Aboriginal sovereignty first posed by Aboriginal activist/leader, Michael Mansell in 1989 is a политик which challenges the legitimacy of Britain’s acquisition of Australia, and argues that given the historic and racist nature of relationship with ‘white’ settlers, the only recourse is a separate Aboriginal nation. Pearson argues that while Mansell’s view might have merit, it is highly questionable that even should the issue be aired in an international court of justice, ‘it is not an ironclad case’. He further points out that International law ‘might confirm the validity of Commonwealth sovereignty in Australia’. Pearson also questions whether the notion of sovereignty, as constituted in international law, actually translates. While Indigenous peoples might use the same term, the international definition fails to address many aspects of Indigenous peoples’ cultural identity, their laws, and institutions and in particular their spiritual connectivity with territory. Pearson writes of the views of Robert Williams whom he describes as a US Indian lawyer, and longtime political and legal activist for self-determination and self-governance. In Williams’ opinion ‘the sovereignty agenda is a futile diversion’. He points out that ‘there is no way that the US, or Australia will abandon its sovereignty in favor of Indigenous claims to absolute sovereignty’. Rather he argues that ‘Indigenous aspirations of self-determination and self-governance’ can be achieved ‘within the nation’, through the ‘control of their own resources, service delivery, local judicial systems, educational, cultural and economic institutions’. ‘Particularly where they could be free from local and provincial [state] legislature and subject only to control at the federal level, and where the rights are entrenched at law and not subject to political whim’ (p.27), Indigenous Law Bulletin, University of New South Wales, August-September 2001, vol. 15, issue 11, pp. 24-30.

CANZ bloc governments continue to maintain that historic treaties with Indigenous peoples are not international instruments and have repeatedly sought to contained all consideration to domestic negotiation. This is more fully explained in the introduction to Volume 3, containing the case studies.

Official Indigenous representation within the CANZ bloc was often of the opinion that their own national negotiations were further advanced, or would be furthered, if they did not subscribe to the convention. Dominant and often officially legitimated First world Indigenous politics may differ in impetus from that of their brothers and sisters in the Third world. Internationally the world’s majority of Indigenous and Tribal peoples are pursuing constructivist negotiations, which require that the globalising system itself, incorporates and legitimates other cultural identities, values, and knowledge - diversity - as a means of addressing the inequity and injustice it promotes.

Rights further elaborated within the Declaration of the Rights of indigenous Peoples and the Convention on Biodiversity.


‘James Anaya convincingly argues that the majority of the norms contained in Convention 169 express customary international law on this point, and thus bind even states that are not parties to the Convention.’ ‘Convention No. 169 also helped with the continuing discussion over the Draft Declaration, if only because it established a generally agreed law or minimum set of rights upon which the Declaration should build.’ Except taken from Magallanes in Havemann, P. Ed. (1999), Indigenous Peoples’ Rights in Australia, Canada and New Zealand, Oxford University Press, Oxford, p.241.

Confusion often exists within First world context simply because institutions created to administer Indigenous peoples affairs, utilize the language of ‘rights’ when in fact what is being countenanced by government simply constitutes an operational sensitivity of varying degree. In effect official language continually changes to accommodate newer political demands, in order that peoples feel they have achieved something, albeit they often have not.

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34 *Ibid.*, p.56

The following text is taken from a comprehensive analysis of the Convention on Biological Diversity (CBD), provided by the CBD Clearing-House Mechanism, dated 11 Nov. 1999. The Convention on Biological Diversity acknowledges the importance of Indigenous and local communities to the conservation and sustainable use of biological diversity. The Convention’s Preamble recognizes the link between conservation of biological diversity and cultural diversity and the dependence of Indigenous and local communities embodying traditional lifestyles on biological resources. Various Articles within the CBD specifically relate to Indigenous peoples, their traditional knowledge, innovations and practices. In particular Article 8j (regarded as the core provision recognizing and protecting Indigenous interests and the role they play in conservation and sustainable use of biodiversity), Article 10 (c) (customary use and practices), Article 17.2 (repatriation and return of information) and Article 18.4 (technical and scientific co-operation). Other important articles of the CBD include Article 12 (research and training), Article 16 (access to and transfer of technology), Article 17 (exchange of information) and Article 19 (handling of biotechnology and distribution benefits). A full analysis of the Convention on Biodiversity (1992) and documents pertaining to ensuing discussion in related international fora can be found at [www.biodiv.org](http://www.biodiv.org)

A site search under ‘Information Services’ ‘Biodiversity’ ‘Indigenous’ will provide up to date material and documentation. The site also provides access to related links and sites. Importantly since the CBD was opened for signature in 1992, governments, international agencies and scientific institutions have ensured that international consideration and mechanisms being elaborated ‘over-ride’ the all important provisions of Indigenous peoples and in particular the articles which link their existence to biodiversity and provide their rights. International Mechanisms are oriented towards providing ‘capital’ with the means to commodify and exploit Indigenous knowledge, and their biodiversities. Indigenous peoples are withstanding the moves by the World Intellectual Property Organization (WIPO) to subsume their traditional knowledge and collective rights, arguing that this mechanism is inconsistent with their rights, cultural perspectives and values and will result in the commodification of ‘livingness’. Comprehensive analysis of the WTO’s agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is published by the Third World Network. For coverage of all major multilateral Conferences centering on cross-cutting agenda see e-journal, the Earth News Bulletin (ENB), published by the International Institute for Sustainable Development at [www.iisd.org](http://www.iisd.org)

See the Cartegna Protocol. Various versions of the ‘precautionary principal’ are being promoted in differing international fora. Capital mechanisms promote a definition and application that will not hinder technological or biotech development. See Transatlantic Business Dialogue, [www.tabd.org](http://www.tabd.org). Within multilateral fora, the ‘precautionary principal’ has been elaborated within the Cartegna Protocol. See [www.biodiv.org](http://www.biodiv.org) Essentially what capital is achieving is the agreement of governments that science would need to prove that GMOs, stem cell lines and cloning were deleterious to humans, rather than the position originally advocated which was that science would have to prove something was not dangerous. Consideration then has been flipped simply by shifting the locus of dialogue and altering the interpretation of the ‘precautionary principle’, and by then getting governments to agree to capitals’ version rather than the international conventions approach. Governments now argue, or present their populations (when and if questioned about the activity of the biotech industries) with a line that science will now determine when and if something should or should not be legislated or approved. With newer institutions and mechanism being created and funded by capital interests to provide the research material and reports to governments, the assurity such argument provides is increasingly being questioned.

43 Asish Nandy, writes that where it was widely believed that in order to attain the prevalent model of a nation state, and the beatitude of development, ‘each society had to restructure its culture, shed those parts that were retrogressive, and cultivate cultural traits more compatible with the needs of a modern nation-
state’, … the failure of Third world societies to benefit from the ‘progress’ path laid before it, has resulted in the state and these societies often look(ing) today like some kind of specialized coercive apparatus or private business venture’. Nandy, Ashis, ‘State’ in Sachs, Wolfgang (1997), *The Development Dictionary. A Guide to Knowledge and Power*, Zed Books, p.265

44 As Herman Schwartz notes in the introduction of his book on the relationship between states and markets: ‘Modern states and modern markets cannot exist without each other: states selectively create and enforce the property rights that maintain markets; property rights sustain the accumulation of capital and growth of incomes that create regular and substantial sources of revenues that sustain states. States encourage and shape the penetration of global market pressures into territory formerly insulated from those pressures, and this has enabled an even faster redistribution of economic activity over global space.’ Schwartz, Herman M. (2000), *States versus Markets, The emergence of a global economy* Macmillan, London, p.1

45 The perspective of the Heads of Government at the 5th *International Conference of New and Restored Democracies*, held in Ulaanbaatar 10-12 September 2003, (attended by 119 States) highlights a growing constituency of governmental leadership which articulate the need to elaborate their own versions of democracy; nation-state systems of governance which more closely reflect their traditions and cultures, and not those which would be an imposed version of English or American approaches and institutions. See: www.icnrd5-mongolia.mn

46 Robert (Bobby) Doonooch Tulabah McLeod, Law Keeper for the Monero peoples of the snow country and south coast of New South Wales, Australia.
Defining ‘Indigenous peoples’ and its ascription to a group of peoples has been the subject of much political and academic rigor, an on-going discussion in which Indigenous and Tribal peoples around the world have been directly engaged. This process is as much about their ‘rights’ to their own politic, cultural identity and worldview as it is about limiting their voice from a First World standpoint.

The following chapter examines the complexities involved in elaborating a ‘definition’, and the differing views and experiences of its utility, depending on whether you are party to the discussion as someone whom it seeks to define, or as a governmental representative. Definition is a historical methodology of containment and as will be shown has been effective in diminishing internal minorities. Examining the newer international processes to which Indigenous peoples have been party, Anthropologists Hanne Veber, from Denmark and Espen Waehle of Norway, provide the theoretical frames within which definition has been approached, as well as additional discourse which might be used to address ‘ethnicity’ as identity.

Where most Indigenous peoples are excluded within national contexts the utility of definition remains embedded in historical relationship and furthers a continuance of the ‘us and them’ dichotomy. Definition also lays the ground work for a newer articulation of self identity, and the on going processes in regional areas, which provide the case studies for this section. These illustrate that in a final analysis, a requirement of cultural diversity will mean flexibility in definition. Benedict Kingsbury’s study provides the argument justifying this approach and the newer criteria which would allow for a broader application of standards. Ultimately definition can again be seen as a process which has consequence.

As Hanne Veber and Espen Waehle clearly suggest:
‘The use of the concept “Indigenous peoples” in categorizing populations is not a simple question of typology. It has political implications and overtones on many levels and therefore its use should be debated in a forum including the peoples who might benefit from it as well as risk being victimized by it’.

11.1 Definition As Containment

Definition is considered by government as the basis on which matters pertaining to marginalised distinct peoples is determined. This approach not only limits the nature of dialogue to a specific population, but its legal quality allows for cultural and social differences to be excluded from the dominant hegemony.

Kingsbury similarly writes that the application of a positivist approach which ‘treats Indigenous peoples as a legal category requiring precise definition’ seeks to provide an ‘operational tool’ which determines ‘who does or does not have particular status, enjoys a particular right, or assumes a particular responsibility’. In short definition allows the dominant to decide which aspects of identity will be denied.

The Australian government’s need of a definition led one ‘high profile’ Aborigine to comment:

‘I suppose that as the Commonwealth does provide specific assistance to Aborigines it needs some working definition of what one is…but it is simply another symptom of ingrained racism and discrimination in a system. You don’t need any legal definition to prove you are white…Vietnamese…or whatever. But you do to be an Aborigine. It is yet another way the white members of this country try to keep us under the thumb’.

Official leaning towards a positivist approach can be seen as a function of power. It again allows the dominant to determine who shall be considered and to what extent and on what terms the dominant retain control of any dialogue or negotiation. This
perspective is also shared by Marilyn Wood whose ‘study of Nineteenth century bureaucratic constructions of Indigenous identities in New South Wales’, noted that ‘the formulation of various definitions of who is Aboriginal had the purpose of being used as “criteria for inclusion or exclusion in the nation state”’.4

In his annual report as Aboriginal and Torres Strait Islanders, Social Justice Commissioner, of the Human Rights and Equal Opportunities Commission, Australia, Dr. William Jonas writes:

‘Research demonstrates that there have been no less than 67 identifiable classifications, descriptions or definitions of “Aborigine” in federal, state and territory legislation in Australia. These definitions were ‘haphazard, inconsistent, unwieldy and (proceeded in a) far-from-uniform fashion. They constituted a form of legal apartheid… (that) preceded South Africa by more than two generations, and continued on a different but parallel course for another three. Indigenous people were subject to judicial or administrative discretion as to whether they would be considered Indigenous or not, with the effect that an artificial legal status could be imposed, withdrawn or re-imposed at the behest of one person in authority’.5

The hypothetical example he provides to illustrate the impact of this administrative control on the lives of Indigenous Australians is so clear, and so consistent with the stories many Indigenous colleagues have shared, that it is worth including in its entirety. Dr. Jonas points out that it is ‘drawn from legislative provisions in force over the past fifty years’.

‘In 1935 a fair-skinned Australian of part-Indigenous descent was ejected from a hotel for being Aboriginal. He returned to his home on a mission station to find himself refused entry because he was not Aboriginal. He tried to remove his children but was told that he could not because they were Aboriginal. He walked to the next town where he was arrested for being an Aboriginal vagrant and
placed on an old reserve. During World War II he tried to enlist but was told he could not because he was Aboriginal. He went interstate and joined up as a non-Aboriginal person. After the war he could not acquire a passport without permission because he was Aboriginal. He received an exemption from the Aborigines Protection Act – and was told that he could no longer visit his relations on the reserve because he was not Aboriginal. He was denied permission to enter the Returned Servicemen’s Club because he was. In 1980 his daughter went to University on an Aboriginal study grant. On the first day a fellow student demanded to know, “What gives you the right to call yourself Aboriginal?”

This hypothetical might appear ludicrous if it didn’t reflect systemic power which deliberately creates ambiguity and uncertainty, providing local authority great flexibility of interpretation, setting the conditions for fear and terror. As a means of control it is a common tool of Empire, and a psychology still prevalent within all levels of Eurocentric relationship framed and understood as a conflict/competition between ‘us and them’. While most colonizing nations employed similar regulatory strategies, at the international level Indigenous peoples have approached the development of definition under other criteria.

Within international fora, definition has been shaped by ‘the level of consideration parties to a dialogue would countenance and then accommodate’. Tapan K. Bose points out that the extent to which Indigenous peoples’ perceptions are integrated into any definition depends on the influence exerted by the dominant power structure mediating the dialogue between activist and theorists. He further explains that the term ‘Indigenous’ ‘within social sciences carries a multiplicity of meanings, from which theorists then selectively choose, creating confusion.’ He also reminds us that ‘a concept or term has no independent existence.’ ‘Meaning is therefore not solely derived from theory, but is also shaped by the contemporary power structure of which it is part.’
The need of a definition first arose when the United Nations’ Special Rapporteur, Mr. Jose Martinez Cobo was appointed by the Working Group on Indigenous Populations of the Subcommission on Prevention of Discrimination and Protection of Minorities. In order to conduct his study on the problems of discrimination against Indigenous populations, a working definition was developed and accepted by the Working Group.  

“Indigenous populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them by conquest, settlement or other means; reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form a part, under a state structure which incorporates mainly national, social and cultural characteristic of other segments of the population which are predominant” (Martinez Cobo 1972).

Bose writes that ‘conceptually this definition remained unchanged throughout the study,’ although an additional consideration was added by Mr. Cobo. The definition of an Indigenous person was extended ‘to include any individual who identified himself or herself as Indigenous and was accepted by the group or the community as one of its members.’ The Working Group would also regard them as an Indigenous person.

This additional consideration, which essentially provides for ‘self identification’ reflects on the political circumstances of Indigenous peoples. Invariably Indigenous peoples are not recognized under nation state law or constitutions and are relegated to the ‘non existent’, a negative status which may be accompanied by official processes of diminishment or genocide. The need to provide for ‘self identification and legitimation by other Indigenous peoples as a means of determining attendance at the Working Group sessions and their inclusion within the study, resulted from these often repressive political processes employed by governments opposed to the study. Some nation states
denied their existence and did not want any examination of the treatment meted out to Indigenous peoples living within their borders. Often these same governments were complicit in reprisals against Indigenous representatives who took part in the Working Group sessions. As mediator, the Working Group sought to address the endemic power imbalance and the Indigenous peoples omission and negative status within national process by providing a forum in which their voices could be heard.

The Chairperson - Rapporteur of the Working Group, Ms. Erica Irene Daes:

“historically, Indigenous peoples have suffered from definitions imposed by others” and as a result in certain countries many Indigenous peoples have been declassified. She maintains that because of this reason the members of the Working Group insisted that no Indigenous community, organization, nation or even Indigenous person from whatever region should be denied the right to express peacefully and without abuse an opinion or a viewpoint in the sessions of the working group.\(^\text{15}\)

Bose writes that this same argument was used by Ms. Daes to justify the lack of a definition in the Working Groups final document.

According to her, through this participatory process the Working Group was able to develop the widely accepted comprehensive draft Declaration of Rights of the Indigenous peoples “without feeling a need to elaborate a definition of Indigenous peoples.”\(^\text{16}\)

This approach, depending on perspective, either contributed to further confusion or gave the document wings providing for a continuation in discussion, while amplifying the number of parties now engaged with the document all seeking to interpret its application to their specific circumstances, region of the world, country, and peoples. In short it provides flux within which theorists and activists can dialogue. The level of politicisation of Indigenous peoples party to discussion is an all important consideration.
The mediator is similarly significant to outcomes, and it is these considerations which have contributed to recent macro-political dynamics. These have seen the US and Australia both exerting pressure on the UN Human Rights Commission. Australia’s Foreign Minister Alexander Downer, whose initial response to the UN Human Rights Committee’s criticism of his government lead him to comment that the HRs committee experts ‘lack professionalism’ and the ‘whole system should be overhauled’, later stated that his government would now seek election to the United Nations Human Rights Commission. The US has also displayed its anger when it did not retain a seat on the HR Commission. This precipitated a decision not to pay its membership dues to the UN, unless it was elected. The US is increasingly viewed by some within the international community as pursuing policies and strategies designed to weaken the United Nations as a whole.

11.2 Approaches To Definition

Hanne Veber and Espen Waehle who have made a study of the processes involving the elaboration of newer Conventions and Indigenous peoples’ own discussions and meetings determining criteria, identified three initial approaches in the definition of Indigenous peoples. As they point out, each has some inherent weakness, but briefly the tendencies they distinguished are:

- **A structuralist approach**, or view, which defines Indigenous peoples according to their position within the overall social and economic structure of the country in which they live. They are often groups who were systematically marginalized during the colonial period and later ignored by the post colonial nation states within whose borders they reside.

- **A substantial definition**, which defines Indigenousness in terms of the content of particular cultures which distinguishes them from other non-Indigenous groups. A major weakness of this approach is a tendency to consider culture in rather
static terms or merely allowing for very slow and gradual change rather than radical and dynamic transformation.

- **An historical approach**, which stresses Indigenous peoples are the descendants of certain peoples who occupied discrete territories at particular points of time in the past. Veber and Waehle point out that this approach is often dependent on ‘historical knowledge [which] may be fragmentary and incomplete, and not well substantiated by written records, oral history, archaeology, highly disputed lexical statistics (glottochronology), or other types of evidence.’ ‘Thus the historical approach is often forced by its own limitation to disqualify certain groups from claiming status as Indigenous even though the same groups would be defined as such by other types of criteria.’

One of the first international instruments to recognize Indigenous peoples and their rights was the United Nations’ International Labour Organization’s (ILO) Convention 169 adopted in 1989. Contained within the document are clauses that set the conditions for a dialogue which reflects all three definitional approaches. It states the Convention applies to:

\[
I(b) \text{‘Peoples in independent countries who are regarded as Indigenous on account of their descent from the population which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions’}.\]

This clause is essentially an historic approach to defining Indigenous peoples. It clearly identifies a time and event, and validates those peoples who are descendants of populations who lived in ‘discrete territories prior to colonization and the establishment of the state.’ Cultural, social, economic and political distinctions are also flagged,
issues which would be fleshed out in later working definitions that applied a more substantive approach.

As Bose points out the predominant reason for this historical approach can be directly attributed to those with power in UN deliberations. He writes:

‘The current concept of theory of “Indigenous” has been shaped by the dialogue between academics and activists of Western Europe and North America, as well as the power structures of Western Europe which lent their support in and outside the UN.’ ‘The concept, therefore, has its origins in a colonial historic perspective.’

In my view, two other factors also served to influence the essentially historical approach at the time of drafting ILO Convention 169. Firstly, the international agenda was at the time of the Conventions elaboration, predominantly being impacted on by the peoples of the Americas. Second, by the late 1980s most governments in the Americas were gearing up for a synchronized celebration of Christopher Columbus’ ‘discovery’ of the Americas some 500 years before. From the Iberian Peninsula to the Americas, officials budgeted or borrowed millions for the event in 1992. Even the Pope was expected to play his part by sanctifying huge monuments to Columbus in the Catholic South.

While negotiation continued within the UN, Indigenous peoples’ began a wider campaign. Their slogan became ‘500 Years of Resistance’. It was a successful strategy. Many countries festivities were set aside or reduced in scale. The media began highlighting the impact of colonization on Indigenous peoples. Hollywood’s multimillion-dollar film, ‘Columbus’, died at the box office.

The Indigenous movement was able to use a real-time event, as the catalyst for a conscientisation process, challenging normative historical perspectives and narratives with subaltern history and voice. Their greatest success was to have the Eurocentric world recognise they still existed as peoples, and that there was a gap between where
they stood and how they viewed the world, and the perspective and assumed universal truth of the dominant’s narrative and worldview.

In a sense the movements process, which employed a number of uniquely Indigenous strategies, centred on one of the twenty five Indigenous projects that Maori researcher Linda Tuhiwai Smith writes of as ‘reading’. This project is a critical deconstruction of the ‘single narrative story of important white imperial figures, adventurers and heroes who fought their way through undiscovered lands to establish imperial rule and bring civilization and salvation to “barbaric savages” who lived in “utter degradation”.’

At a deeper level, the movement’s process began a wider, more public, critical dialogue in which the origins and genealogies of colonial ideas, knowledge and values were and continue to be, open to reconstruction. This Indigenous project is key to creating a newer understanding of inter-relationship and explains why a ‘notionally amplified’ and ‘recontextualised’ historical approach informs so much of their dialogue and politic. Amplification is a cultural project, in that it augments notional thinking. In a sense it provides Europeans with other distinct ways in which to think about themselves and the natural world in which we all live. The result being that often science and other western discourse is seen to lack universal relevance.

Recontextualisation is not simply a process in which subaltern perspective is expressed. The amplification which accompanies it might also be understood as something akin to ‘corporate memory’ within First world institutions and entities. That is to say, Indigenous peoples sharing often serves to explain and throw new light on key events in history or ‘fill in the bits’ that official versions (the dominant’s) neglect. Allowing Indigenous peoples their humanity often leads to a difficult self-analysis. Heroic settler narratives are often shown to be only an aspect, one perspective of history within contemporary understanding. Indigenous peoples’ voices hold the other knowledge, which brings into relief the often amnesic hypocrisy, greed and deliberateness of Imperial strategies and the accompanying values of dominance and control wielded by
European power. Indigenous perspectives bear out the continuance of these same values within many aspects of contemporary dominant society.\textsuperscript{23}

With the moment of colonization being the shared moment or nexus between the two worldviews, a definition predicated on a time and event as in the case of ILO Convention 169 provided a workable definition for groupings in the Americas. It also provided some clarity. The Australian Aboriginal and New Zealand Maori could also identify their moment of inclusion utilizing this definition. Application of this definition however to other regions and continents, Asia, Africa and the Pacific was more problematic as will be shown shortly. Additional clauses contained within the document sought to provide for their inclusion and legitimation within the international dialogue.

ILO 169 also provides for the Conventions application to:

\begin{quote}
I(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations:
\end{quote}

This clause includes Tribal peoples and provides a structuralist approach which allows for the differing socio-economic position many Tribal peoples find themselves in within the nation state, as a consequence of both colonization and de-colonization and ensuing development, and recognizes their status as subject to special laws or regulation. Veber and Waehle write: ‘They are often groups who were systematically marginalised during the colonial period and later ignored by the post-colonial nation states within whose borders they reside’\textsuperscript{24}

The Convention further states that: ‘Self-identification as Indigenous or Tribal shall be regarded as a criterion for defining the groups to which this Convention applies.’
This clause sets the conditions for a substantive dialogue. Self-identification is important to Indigenous groups. Benedict Kingsbury points out that while conventions that provide a definition tend to set out objective criteria for determining to whom the provisions apply, the inclusion of ‘self determination’, allows peoples to shift from being the objective to a subjective and pro-active.\(^{25}\) He provides further analysis.

\[\textit{The commitment to self-identification is part of a move in international instruments away from treating Indigenous peoples simply as victims who ought to be objects of beneficent protection, and towards acceptance of the implication of the ideology of self-determination}.\(^{26}\)

Kingsbury also writes that ‘self identification’ provides Indigenous groups with some determination regarding the inclusion of other groups at both an inter-group and international level. He adds that ‘while states may not fully accept their general determination at the international level’, ‘they are able to influence the practices of the UN and its other bodies.’\(^{27}\) Another aspect of ‘self identification’ Kingsbury raises rests with a group’s ability to ‘include or exclude or preclude particular individuals contrary to their own wishes or self-determination.’\(^{28}\) He points out that state practices and legislative matters vary, but generally they should ‘defer either to the wishes of individuals or to the decisions of the groups concerned.’\(^{29}\) He notes that ‘group membership rules must, it appears, be consistent with internationally recognized human rights.’\(^{30}\)

Since 1989 and the UN’s adoption of ILO169, more ‘self identified’ groups have sought to utilise the convention. This has lead to further analysis and discussion over the criteria for determining a group’s standing as Indigenous or Tribal peoples. As Veber and Waehle point out ‘The application of the term “Indigenous” to a group of peoples is extremely important, as it already has political implication and overtones on many levels.’\(^{31}\) As will be shown in the subsequent chapter, the recognition ILO169 provides for the rights of Indigenous and Tribal peoples in international law, may be the reason why many governments have held off signing the convention. In developing
countries Indigenous peoples may represent a sizable or even majority population. Customary ownership or collective claims to Territory (land) and its ‘livingness’, are seen to run counter to dominant capital interests and globalisation.

Peru’s internationally renowned economist, Hernando de Soto provides front edge analysis which indicates that the reason ‘capitalism’ fails in the developing world is precisely because national laws (required structural adjustment) do not legitimate, but rather disenfranchise local ownership of property, while global capital’s economic principles and regulation de-legitimate their productive activity. Indeed, except for the level of politicisation of South and Central American Indigenous peoples, and a couple of other groupings, there would be no signatories of ILO 169.

The elaboration of the UN’s second document, the Declaration of Indigenous Rights and its adoption in 1994, again brought about discussion regarding the definition of Indigenous peoples. The basis remained Mr. Cobo’s working definition, which describes Indigenous and Tribal peoples as:

“The existing descendants of the people who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement, or other means reduced them to a nondominant or colonial situation; who today live more in conformity with their particular social, economic, and cultural customs and traditions than with the institutions of the country of which they now form a part, under state structure, which incorporates mainly national, social, and cultural characteristics of other segments of the population which is predominant”.

Recognizing that it did not adequately cover the isolated and marginal Tribal populations in Asia, or groups existing in countries who had not suffered conquest or direct colonization but who might also be considered Indigenous, led to an expansion of the working definition in 1983 to include three additional criteria.
a. They are the descendants of groups which were in the territory of the country at the time when other groups of different cultures and ethnic origin arrived there.

b. Precisely because of their isolation from other segments of the country’s population they have almost preserved intact the customs and traditions of their ancestors which are similar to those characterized as Indigenous.

c. They are, even if only formally, placed under state structures which incorporates national, social and cultural characteristics alien to their own (E/CN.4/Sub.2/1983/21 Adds. para.379).  

The later Working Group definition expands the original, essentially historical definition of the ILO to include a fuller substantive approach, one that defines Indigenous peoples in terms of the content of particular cultures, which distinguish them from other, non-Indigenous groups, while also attempting to include groupings whose histories did not reflect a decisive moment of conquest; distinct ‘peoples’ who similarly identify with the Indigenous peoples’ agenda and perspectives and live diminished existences under imposed structures or who retain distinctive identities.

Inherent in this working definition also are issues of discrimination and marginalisation, and a structuralist approach which involves notions of the groups relationship to the ‘other’ non-Indigenous, on economic, social and cultural bases. More simply, the predominately historic approach reflected in the ILO Convention had more to do with the ‘survival’ of peoples, and the creation of modern nation states. The Working Group’s definition is an attempt to introduce additional criteria relating to their cultural, social and economic standing to ‘others’ within the nation state.

While the inclusion of these additional criteria may not have served to provide greater clarity, the introduction of a substantive approach to definition, laid the ground work which allows the peoples’ to further conscientise dialogue within the UN and internationally regarding their identity, values and aspirations. Indigenous peoples are
not seeking the equality westerners understand. Rather, they want to retain their
inheritance and identities, and to this end have spent decades working to elaborate
interconnecting documents within UN law.

Dr. Jonas, in Australia, writes that one Indigenous activist noted:

‘If equality is about making me have the same values and the same priorities
then I do not want it. I want access and equality. If the end result of equality is
being like you white fellas, then I do not want it. I do not believe that is what our
people want. We have a separate identity.’\(^{37}\)

This self articulation increasingly informs international political dialogue. Peoples from
all regions of the world, living contesting realities to those of First world modernity, are
increasingly gaining a voice. As this section shows, the existence of newer standards
which potentially provide internal minorities with an equal application of the Universal
Declaration of Human Rights, has seen governments institute political processes that
seek to define who ‘Indigenous peoples’ are. While the instrumentality of this outcome
may be important, many Indigenous leaders point out that this need of a definition is less
to do with granting rights or about arguing a political concept, because in their
experience, governments have little intention of honouring any outcome. As Indigenous
peoples’ living experiences and circumstance illustrate globally, governments
everywhere may be either directly or indirectly involved in promoting or pursuing
policies of assimilation or ethnocide and in some extreme cases, genocide.

The following case studies further examination of the dialogue and negotiation which
has centred on ‘definition’, while analysing its practical application. The scale and
challenges that differing geographic regions, histories, peoples, and experiences have
presented in the Working Group, requires further detailed examination. Africa presents a
case study in which the instrumental use of ‘definition’ clearly becomes a methodology
of containment. As will be illustrated, its historic legacy still resonates across the
continent today. Asia and it preoccupation with national character presents a case study
on the internalisation and psychological impact of having been categorised as lesser peoples by former colonial rulers.

### 11.3 Definition In The African Context

The existence and relevance of both ILO169, and the Indigenous Peoples Declaration have increasingly informed regional discussions at all levels of engagement. As the Indigenous peoples’ movement has grown to include newer groups from other continents with their own specific conditions, environments, histories and cultures, further analysis of the current definitions and their applicability has been needed. Veber and Waehle’s analysis highlights that the dynamic in discussion is again related to power. They comment that the concept of Indigenous peoples, when applied to Africa, is a complicated one when seen from the perspective of decision-makes, and that, this is less a problem for those who claim to be Indigenous.\(^{38}\)

Many groups whose status as Indigenous peoples have not been questioned in fact claim aboriginal rights to land and territories quite different from those where their ancestor lived at the time of ‘discovery’ or colonization. In Africa, though some groups such as the Pygmies of Central Africa and Bushmen of the Kalahari may perhaps be considered as the true first-comers to the lands where they presently live, other groups who see themselves as Indigenous people cannot claim to be first-comers.\(^{39}\)

Given historical patterns of settlement, in which peoples moved around throughout the continents history either voluntarily, or forcibly, limitations of the ILO’s definition becomes apparent. As Veber and Waehle explain, ‘limiting the right to claim territory to first comers i.e. (descendants of) the peoples who were there before somebody else’, leaves out other ‘ethnic’ inhabitants who are not Indigenous in this sense.\(^{40}\) While there are peoples who do comply with the Conventions definition (e.g. Pygmies of Central Africa, Bushmen of Kalahari), many other groups in Africa who also see themselves as Indigenous people cannot make this claim. Albeit that they similarly claim ‘rights to a particular territory from which they make (or used to make) their living and consider
themselves to belong.’

Their awkward position reflects the real-life situation of the majority of peoples who were pushed around, thrown off their land and marginalised in pre-colonial, colonial and post-colonial Africa.

Seeking to explore the status and meaning in applying the concept of ‘Indigenous peoples’ to Africa, the International Working Group for Indigenous Affairs (IWGIA), and the Centre for Development Research (CDR) in Copenhagen, established a forum in June (1-3) 1993 in Greve, Denmark. As Veber and Waehle report, central to many of the papers presented by the invited representatives from the African Continent were issues of ‘self-identification’ and ‘collective rights’; the precursors for a substantive dialogue, if not a conflicted discussion. The Conventions provision for ‘self identification’ led to debate. Delegates argued that ‘auto-identification rather than ascription by others’ provided for ‘an opportunistic manipulation with unsubstantiated legitimacy’. Additionally Veber and Waehle note that: ‘Certain scholars within ethnicity studies have described ethnic identities in language that suggests that these identities are basically invented for instrumental purposes so as to better compete with others over scarce resources.’

Here we come to the nub of the confusion over identity which represents the ‘flashpoint’ instrumentally and repeatedly used by those with power and wealth in Africa, be these local elites or forces representing external capital interests. This is the divergence between a Eurocentrically devised ethnicity politic and a peoples’ own cultural politic.

Perhaps before continuing to examine the application and relevance of ILO 169, an analysis of the historical processes that have led to ethnic division in Africa needs to be provided.

The argument that ethnic identities are manipulated has its genesis in Africa’s colonial past. Manuel Castells writes that within Africa, much of what the media presents as ‘Tribal conflict’, is actually the legacy of a complex historic relationship between ethnicity, society, the state and the economy. Importantly he points out that ‘ethnic
identities’ are ‘politically constructed’ rather than ‘culturally rooted’ (my emphasis).\textsuperscript{46} This can result in an identity which eco-feminist Vandana Shiva, and Indigenous peoples who retain connectedness with discrete territory and an existence of sui generis culture, equally refer to as a ‘disconnected’ identity. Drawing on the work of several Africanists from contrasting theoretical perspectives, Castells’ analysis shows they converge in a view that colonial rulers constructed and imposed their own version of ethnic identity on local peoples, and that post-independence, these ethnic allegiances have been instrumentally used by elites to create wealth or gain power.

With First world interests currently poised to impose a newer indigeneity discourse on their own internal peoples’ (see next chapter) which advocates the reconstruction of their identity, perhaps the historic lessons of African ‘ethnicity’ are worth illuminating.

Castells cites Jean-Francois Bayart\textsuperscript{47} to commence his analysis:

\begin{quote}
Most situations where the structuring of the political arena seems to be enunciated in terms of ethnicity relate to identities which did not exist a century ago or, at least, were then not as clearly defined… The colonisers conceptualised indistinct human landscapes, which they had occupied as specific identities, constructed in their imagination on the model of a bargain basement nation state. With its Jacobin and prefectural origins, the French Administration had an avowedly territorial concept of the state, British indirect rule, by contrast, being much more culturalist. Aside from such nuances, it was along these lines that the colonial regime was organised and that it aimed to order reality. To achieve this it used coercion, by an authoritarian policy of forced settlement, by controlling migratory movements, by more or less artificially fixing ethnic details through birth certificates and identity cards. But the contemporary force of ethnic consciousness comes much more from its appropriation by local people, circumventing the allocation of the states resources. (Bayart 1989:51, Castells’ emphasis).\textsuperscript{48}
\end{quote}
This point is important because it immediately reflects on a political process in which a ‘disconnected identity’ has become the central agent determining exclusion or inclusion and access to power and wealth. The previous point regarding ‘ethnicity’ as an imposed political identity that historically disconnected peoples from their cultural roots, underpins the dynamic. The insight similarly reflects back on the delegates claims that auto-determination without group acceptance (a conditionality invoked by Indigenous peoples within UN Forums) might lead to opportunism.

Castells’ view, which he substantiates with Davidson’s work, evidences that Eurocentrism provided for the disconnected ‘ethnic identity’. Or as an Indigenous person might argue, the imposed ‘ethnic construction’ sought to replicate a lesser version of the colonialists’ own identity which was classist. Discussion as to why this was done might touch on two countervailing perspectives. The first suggesting that the ‘ethnic identities’ reflect the diminished understanding Europeans had of their peoples and cultures, and that therefore all they were able to do was replicate themselves, overlay it with ethnographic language and terminology which served to make them think it was something ‘different’ and accord the whole project and the people it now defined and structured with a lesser negative status. This point of view goes to the heart of the divergent realms and worldviews within which Europeans ‘construct’ and Indigenous peoples ‘derive’ their own identities. A second grouping might argue that these colonially constructed ‘ethnic identities’ were strategically devised and that this social engineering was part of a compliment of colonial strategies aimed at wresting land and resources from local peoples. Strategies which are still being used today to the same ends.

Additional material within Castells’ analysis of Africa throws more light on these views. Paraphrasing his reference to Davidson he explains how the ‘ethnic classifications of subjugated territories…ideologically prejudiced, was anchored by the political-bureaucratic logic of colonial administrators’: 

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
Europeans had supposed that Africans lived in “tribes” – a word of no certain meaning – and that ‘tribal loyalties were the only, and primitive, stuff of African politics. Colonial rule had worked on the assumption, dividing Africans into tribes even when these ‘tribes” had to be invented. But appearances were misleading. What rapidly developed was not the politics of tribalism, but something different and more divisive. This was the politics of clientelism. What tribalism had supposed was that each tribe recognized a common interest represented by common spokespersons, and there was thus the possibility of a “tribal unity” produced by agreement between “tribal representatives”. But clientelism – the “Tammany Hall” approach – almost at once led to a dogfight for the spoils of political power.’ (Davidson (1992:206-7) in Castells 106)

In other words, what the colonialist did was to create another and lesser version of disconnected representation said to reflect the local inhabitants. This was their own version of what they assumed or claimed was an Indigenous or Tribal structure. It was imposed even though it bore no relationship to the peoples own existing socio-cultural forms of identity and representation. No consideration or countenance was given to any Indigenous input into this process.

Administrators, often guided by anthropological preferencing of visible differences such as height and build (tall slender, short stocky) or other rudimentary criteria of appearance set about creating and legitimating new tribes. ‘Chiefs’ were selected, ignoring local peoples own systems of cultural authority. Administrators used their own criteria for elevating individuals through whom legitimacy of authority was extended by colonial powers. Elevated representatives remained in place as long as the ‘role’ remained consistent with colonial interests. Leadership which became problematic could, was and is easily dislodged or removed through either economic, political or militarist intervention. Leadership can then be replaced with someone who again complies with foreign interests, and believes that his/her society is still ‘emerging’, and that the cost of modernity is the relinquishing of cultural identity and values.
It is little wonders that through the century, political cohesion broke down or that these same ethnic identities remain today. In some cases, today’s government elites might also be a form of disconnected (often imposed) and elevated representation which derives its legitimacy from the same former colonial powers which uses them to protect their interests in a country.\(^{50}\) Albeit that even at governmental levels, African leaders are and do articulate a politic which increasingly seeks internal de-colonisation and the means by which their own societies might develop their own futures.

Castells expresses a similar view. He points out that the repercussions of the ‘redefinition of ethnic identity by colonial powers mirrored the structure of the colonial state, in a way which would reverberate in the long term for independent nation-states’.\(^{51}\) Post-independence, the functioning of the former colonial state remained largely a replication of colonial administration.

Castells explains how the de-colonization process (guided by the Blue Waters, Salt Water interpretation of the UN Covenants of the 60s) resulted in what Mahmood Mamdani\(^ {52}\) refers to as a “bifurcated state.”

‘On the one hand there was the legal state, as a radicalised entity, under the control of the European; on the other hand was the customary power of native power structures, as an ethnic tribal identity. The unity of the former and the fragmentation of the latter were essential mechanisms of control under colonial administration which usually dedicated scarce resources in personnel and equipment to maximise net gains in their ventures.’\(^ {53}\)

Indigenous peoples within the First World will recognise this same methodology applying in their countries. Relationships are often equally racist and what little resources do exist (government funding) are often preferred in favour of the disconnected mechanisms government has created as a representational framework and the programs they devise. These organizations or authorities and departments then become the locus of activity essentially relegating individuals to a ‘complementary role’
in the national venture. The tension between those who work within these entities and the majority of peoples who remain within community or ‘in country’ becomes another source of potential conflict.

For example, the greatest capacity for earning comes from gaining a role within one of the entities negotiating mining or resource extraction from land subject to claim by a peoples. Conversely, any project, forum or activity which Indigenous peoples outside these imposed, regulating and legitimated framework might initiate often is not recognised, supported or funded. Unless it remains under the control of the legitimated representation. Community activity, especially that of a social collective consistent with their own socio-cultural identity is thus de-legitimated, systematically targeted and undermined.

Castells’ analysis of Africa bears out the similarity.

‘…once the structure of tribal chiefs was established, the customary state became a fundamental source of control over land and labour, so that belonging to a certain tribe was the only acknowledged channel to access resources, and the only recognized avenue of intermediation vis a vis the legal, modern state, that was the connection with the vast resources of the outside world, the international system of wealth and power. After independence, Africa’s nationalist elites simply occupied the same structures of the legal/modern state, which, therefore, were de-radicalised. Yet they kept in place the fragmented, ethicised customary state’. 54

Ethnicity became the main avenue to access the state’s control over resources. For Indigenous peoples in the First World, access to the ‘international’ world of ‘wealth and power’ is often as a key negotiator from one or other of the governmentally contrived or sponsored ‘Indigenous organisations / authorities’. The ‘entities’ political legitimacy and dialogue however is framed within and limited to the domestic level. This could be viewed as a governmental ploy to ensure that international events and newer laws
providing them with rights remain separate and do not inform their voice. Accessing the resources of the state (given that their claim to land is either denied or still pending the outcome of dominantly owned legal processes) is determined by an incumbent’s level of politicisation.

Sadly it cannot be claimed that outcomes are determined by Indigenous values, as once again, historic administrative policies have often served to disconnect these individuals’ cultural roots (institutionalisation, children taken away, the banning of language and culture). While this in and of itself does not mean that Indigenous peoples’ representatives are unable to manifest traditional values, or seek a culturally consistent outcome, the power imbalance between dominant interests, and the community voice leaves these individuals in legitimated roles caught between seemingly competing interests. Negotiation often at best, results in a few complementary roles, jobs with perhaps a training component, and occasionally royalties, the distribution of which is often absorbed by a bureaucracy created to administer the same royalty.

As one Maori colleague commented, Indigenous organizations or authorities within the First world are often a misnomer. While their name and staffing look and sound Indigenous, they sit within the shadow of government. An echo of John Adams’ historic statement, ‘government is but the shadow of capital’. Linking the two, it might then be argued that Aboriginal and Indigenous organizations/authorities within the First world are often used by capital interest, which demonstrate little accountability or interest in their wellbeing.

11.3.1 Definition As A Means Of Accessing Resources

Accessing resources, or maintaining ownership of land and its ‘livingness’ as the means of self-sustaining existence is not simply a problem of Indigenous peoples. Globally many more billions of traditional and cultural people in the developing world experience the same de-legitimation in the face of capital’s dominantly owned and skewed system. Again, the only means of ‘wealth creation’ is either to latch into the legitimated system
of power (a complementary role), which simultaneously disconnects them from identity and often self-sustaining existence; or to continue productive activity within locally sanctioned but officially de-legitimated, (extralegal or informal) realms.\textsuperscript{56} The discourse which underpins the continual co-option of people, resources, and knowledge by the dominant’s global system, which promotes and protects European interests, perspective and values centres on ‘development’. A further factor is that ‘poverty eradication’ may also be misused to provide capital with a means by which to re-organise developing countries internal affairs and gain access to their peoples resources and productivity.

In this light dominant perspectives are often seen as remnant colonialism. The justification for the capitalists version of structural adjustment, as concretised by the WTO is the argument that unless nation states modernise (a euphemism for adapt and become like the First World) people will remain ‘poor’. Hernando de Soto’s analysis of the West’s capital system debunks this view, while taking the work of many experts further.\textsuperscript{57} In his study examining the reasons why capitalism fails in the developing world, he illustrates how imposed regulation (structural adjustment) and a denial of local property rights allows western economist to refer to an illegal economy which is often greater in value than the one legitimated by the international monetary system and other dominantly owned institutions.\textsuperscript{58}

\textquote{In every country we have examined, the entrepreneurial ingenuity of the poor has created wealth on a vast scale – wealth that also constitutes by far the largest source of potential capital for development. These assets not only far exceed the holdings of the government, the local stock exchange and foreign direct investment; they are many times greater than all the aid from advanced nations and all the loans extended by the World Bank.}\textsuperscript{59}

Africa illustrates that poverty in the Third World results from systemic processes owned and dominated by capitalised interests. De Soto’s study serves to clearly highlight that national GDP, economic modelling and dominant accounting ignores and omits (tabla rasa) all other activity within a nation state. Essentially then it can be claimed that
current global economics (the formal and dominantly owned world of monetary policy
and theory) includes and factors in the value of land/product and services, only when
and if they are linked to dominantly (externally) owned institutions and funding. The
assumption is that no other activity that already exists is of value because ‘they’ do not
have an interest (ownership) in it and thus have not ascribed a value to it.

With corporate rights continually being given supra status to those of Human Rights and
the Environment, the stock exchange and capital markets then becomes the global
mechanisms through which to increasingly regulate a country’s internal affairs.
Succinctly stated, the dominant’s capital system is equally another Eurocentric
colonisation of peoples and territories, wherein a nation’s foreign policy is reduced to
what Thomas Friedman called ‘capital diplomacy’ and government becomes its client.

This reality which Third World peoples have had to live with since colonialism began in
the 1500s is only now being generally understood by First World people. Thatcherite
economic rationalist ideology has become the driving discourse of a newer neo-capitalist
chapter which has seen the establishment of the WTO and free market regulation that
continue to legitimate and preference the same historic capital interests.

Taking this analysis to its least favourable conclusion; if capital represents the greatest
power on earth, in that it can buy and profit from militarism which contains and silences
all opposition, then all institutions said to be representative of people within the
capitalised system and all other values are at risk of being corrupted simply because
‘wealth creation’ becomes the raison d’etre of life, even if it is at the cost of life. In other
words the challenge to humanity is one of values and behaviour. That is to say, if the
most exploitative behaviours generate the greatest capital and wreak the greatest
destruction through a hierarchical preferred system, equity of the parts (other humans
and livingness) within the system and other values become the urgent need of humanity.

The legacy of the dominant’s globalising capital (whether a colonial venture or that of
newer development, i.e. poverty reduction utilising the WB and IMF) is that anything
not currently owned under their law, has no legitimate basis. Its value is seen only as a potential value should it be incorporated within the system. In Third World countries this has often been on terms that benefit capital and local elites who help administer their interests. With the ever increasing scarcity of land and resources, conflict and violence have tended to elevate the ‘ ethicised’ aspect of political process centralising it in everyday life.

Bayart writes:

‘In Africa, ethnicity is almost never absent from politics, yet at the same time it does not provide its basic fabric...In the context of the contemporary state, ethnicity exists mainly as an agent of accumulation, both of wealth and political power. Tribalism (the Eurocentric version which has been absorbed) is thus perceived as a political force in itself, as a channel through which competition for the acquisition of wealth, power and status is expressed.’ (Bayart, 1989:55).

Extracting the essence of Castells' analysis, several points emerge. These being: that Africa’s crisis is centred on historically and arbitrarily determined ‘ethnicity’ which was colonially defined and politically and structurally legitimised; that the legacy of colonialism has been the elevation of disconnected instrumentally devised ‘ethnic tribes’ not rooted in culture; since independence, elite ‘political entrepreneurs’ have instrumentally used these historic categories for their own interests; the legacy continues as part of the First World’s paradigm of wealth, power and status, and remains in situ. This said it needs also to be pointed out, that other discourses and projects increasingly inform the self-narratives of Africa. ‘Ethnic identity’- linked to access to resources remains an imposed identity that is politically manipulated by capitalist interests. At the same time these identities float above a ‘cultural fabric’ that provides African peoples, particularly rural Africa, with another and deeper level of identity. In effect, capital’s agenda of ‘modernisation’ is akin to urbanisation. The by-product has been the creation of...
of systemically dependent people, which corporate entities will feed, fuel, service and control.\textsuperscript{61}

That Africans have a deeper cultural identity can be argued with reference to previous de-colonisation processes across the continent and the uptake of the Indigenous agenda by some political leaders in more recent decades. Historic ‘ethnic construction’ by colonialists and the idealised assumption that what they were creating and then leaving in situ was consistent with the African identity was what precipitated the writings of Senegal’s former Prime Minister Leopold Sedar Senghor and other black intellectuals such as Amie Cesaire of Martinique and the writer Leon Damas. They claimed that the hierarchical structuring of African identity (the ethnicity legacy) was inconsistent with African cultures and their own inherent social organization.

‘Negritude’, a response to cultural imperialism and a counter narrative, argued that the Eurocentric discourse of ‘classism’ did not fit African cultural contexts. The counter discourse asserted that ‘what is important is Negritude, the common spirit which binds all Afro-Caribbean together.’\textsuperscript{62} Africa’s fabric was family, extended family, and community. ‘As Sekou Toure argued, Africa is “essentially communocratic” and African life is one of organic solidarity.’\textsuperscript{63}

While the West entertained these ideas, the political pragmatism that ‘business continue as usual’, after the withdrawal of European colonial administrators, resulted in a period of great instability within Africa. Various leaders were liquidated in order to achieve external control of a country’s resources. International Aid often provided the continued influence to determine these nations’ futures. While leaders of the 60s may have been somewhat naïve about the nature of departing administrators and the ‘independence’ they could achieve, 40 years later African leaders have a different understanding of how capital operates, and what international mechanisms are available to them.

‘Africa for Africans’, is part of a growing response to historic relations with the First World in which the contested realities between the two, centres on a historically
legitimated fact that the First World remains generally racist and exploitative. There is recognition that dialogue and political interference continues to focus on the control of their resources rather than the wellbeing of their peoples. Unfortunately the ‘exploitative’ nature of First World interests has been one of the reasons for the number of brutal leaders historically supported in Africa. It is a distressing thought that the elevation and legitimisation of unscrupulous individuals fits within a racist discourse of primitivism (easily sold to First World society) and allows for crude control of a country, its resources and its people. The western world accepted that the basis for their control of Africa was the diplomatic legitimisation of genocidal individuals.

Many African Leaders might argue they were carrying out the wishes of their western partners in order to ensure that the resource agreements they signed might be met and their economies conform with IMF and World Bank requirements in order not to slide into greater debt. Within this framework, it might be argued that democratisation, modernisation and poverty eradication have now potentially become the newest discourses by which to remodel Africa. These dialogues again can be used to negate the extant cultural identity and lived relationship of peoples and society, and obfuscate the need to address the historically inherited colonial inequity of land distribution and ownership. The politic remains one couched in ethno political terms ensuring that culture is again negated, despite African peoples’ growing awareness that their languages, knowledge and identities are distinct and of value. Indeed current political strategies continue to invoke the legacy of their devised ethnic identities and pit these against each other. The rhythm and timing of this manipulation similarly leads to conflict and violence.

Dominant politics appears then to remain geared towards the maintenance of entrepreneurial control over internal processes. Media becomes a partner in the project, often presenting conflict as historic Tribal enmity. In fact, it more often than not centres on issues of access to land, and colonially remnant injustices which deny communities of people, their dignity or legitimacy of productive means by which to survive. Complicating matters within the African continent has been the competition between...
western nations for their resources, and the funding of militia, as well as the activity of nation state forces.

In a sense there are two aspects which need to be considered. Firstly where power remains a legacy of colonial structured authority, governments which the west still regard as clients, are increasingly conflicted between a need to recognise and address the aspirations of their citizens, and continue to meet the requirements of dominant interests externally controlling their countries activity.

The second fact which similarly needs to be recognised is that politicisation of the general public has been an accompanying phenomenon of neo-capital’s globalising agenda. This has further implications for political stability. External interests previously only required to deal with the disconnected ethnic elite they created, could gloss over the issue of deeper cultural identity - the social fabric the majority of people still live.

As peoples increasingly understand capital’s newest agenda, more and more Africans have begun to demand that their governments de-colonise historic and often dictatorial institutional mechanisms. To put this another way, is to say that the political utility of constructed and legitimated ethnic identity, no longer addresses or contains a growing cultural voice emanating from Africa.\(^6\)

While cultural politics may remain a dominantly discounted political reality, at the level of constructed ‘ethnicity’ and its legitimating European theory of identity construction, accommodating diversity can be argued. Veber and Waehle sought to address this point. They note that ‘characterizing ethnic process as a competition over resources, neglects many social issues, in particular the requirement of a social system that allows for a systematized communication of cultural differences in order to reproduce itself.’ They underpin this view with reference to Frederick Barth, who argued that ‘the persistence of ethnic groups in contact implies not only criteria and signals for identification, but also a structuring of intention which allows the persistence of cultural difference (Barth 1970 p16)’. From the testimonies presented at the IWGIA-CDR Conference it became clear
that for many of the groups attending, their ‘particular identity was never simply a matter of choice.’ ‘Ethnic labelling was often ascribed to them by others wanting to discriminate against them on the grounds of real or assumed ethnic characteristics.’

Veber and Waehle point out that in most instances denigrating Indigenous peoples by raising questions as to their authenticity was a strategy employed by parties to a conflict, to further undermine Indigenous and Tribal peoples, invariably motivated by the ‘others’ own interests. They remind us that, because Indigenous peoples look different, dress differently or behave differently, they are perceived as different. For many Indigenous peoples, identity is an ‘experienced social reality whether consciously acknowledged and made part of the political discourse or not.’ ‘In sum, Indigenous identity is highly contextual and constitutes a social fact which may or may not become a platform for social and political activity, or from which to make demands for legislative measures from governments or administrative agencies’ (cf Sollors 189).

This said however, I continue to suggest that the requirement of the globalising system is to acknowledge the cultural identity and politic of Third World peoples, and their right to their own resources and to determine their own futures. Ethnic identity is a construction, whether its utility is in Africa or the USA. Ethnic construction is the ‘in systems’ version of cultural ‘difference’, which is subordinate to ones economic identity of a complimentary role. Africans, and in particular Indigenous peoples have no need of continually being subject to our self-interest. Nor should they be expected to become more like us, when our own societies are themselves increasingly struggling to address growing disfunctionalism, and our patterns of existence and consumption are unsustainable. Africa should be allowed its own determination. Perhaps recognition that Indigenous peoples and their rights in international law provide for cultural identity, might support many other Africans’ aspirations for their own institutions consistent with their traditions.

While the relevance of the Indigenous peoples’ agenda might resonate with a vast majority of peoples’ in the African continent, the political realities are such that to date
Indigenous peoples are still required to seek accommodation from the state. Importantly, as in most regions of the world, Indigenous and Tribal peoples within Africa ‘do not aspire to independent statehood, but rather claim rights to territory and self determination in order to secure their own existence.’ Veber and Waehle confirm they are not seeking equal rights but rather special rights and some accommodation by the state which would allow them to retain their identities and means of existence. This position would provide respect and consideration of their desire to remain who they are, by recognizing their difference from the majority population with whom they must co-exist.

Veber and Waehle also suggest that even ‘when granted equal rights or special rights – Indigenous peoples may still be victims of systematised discrimination.’ This is a reality which requires some adaptation to modern state citizenship from Indigenous peoples but equally an accommodation from the state. Importantly, they argue that ‘while a number of states are not willing to accept a role as partners in the dialogue with Indigenous peoples’, an ‘assertion of Indigenous peoples’ rights provides an alternative to ethnic strife and opens up ways of resolving conflict through negotiated agreements between states and peoples’. Perhaps Africa’s growing engagement with an indigenist politic will provide for a newer context and the elaboration of an African model that potentially accommodates diversity.

During the Conference held by IWGIA to specifically look at the relevance and application of international definition and instruments, many of the presentations for Indigenous-Tribal peoples from Africa, again highlighted the systematic methodologies of land dispossession, through negation of customary law and community rights. Land is a central issue of Indigenous identity, one which again raises the distinction between cultural identity, and ownership rights as dictated by the dominant system which hinges on private individual rights and corporate intellectual property rights. As Veber and Waehle point out a ‘drastic reduction in land availability’, coupled with the ‘often brutal genocide of specific groups’ all point to the need for newer approaches. Even ‘the recent
linking of foreign aid to consideration of human rights does not address the central issue of collective identity and rights to territory.’

Veber and Waehle note that it is ‘invariably the African NGOs (Indigenous organizations, human rights, grassroots organizations and others) which have contributed most to furthering sustainable and peaceful development.’ They suggest that ‘self determination’ which provides for the peoples control over their own societies, land, culture and development should be seen as the pre-requisite to regional stability. ‘Looking at current issues in Africa related to the question of collective rights, the prominent role of Indigenous peoples’ rights to territory and land is obvious (cf. IWGIA Yearbook, 1989, 1990, 1991, 1992; or swift 1982). No other question appears more important to Indigenous peoples in Africa than this.’

Indeed Governmental voices within Africa similarly maintain the issue of land is central. Writing in a diplomatic journal, a former High Commissioner for Zimbabwe states that the major issue contributing to their country’s war of liberation, by which 12 million people achieved independence, was the inequitable distribution of land. The article, which is written in the language of their office, can be paraphrased more succinctly. Setting out the historical context and political negotiations undertaken to achieve this re-distribution, they chronicle the steps agreed to but later undermined by European interests. Land re-distribution in Africa is equally seen at official levels as the key to peace. ‘The new land reform and resettlement program is designed to address not only the question of equity, but efficiency, economic growth, peace and stability.’

The consensus developed at the Indigenous peoples Conference at which doubts were raised as to the ‘wisdom’ of identifying specific African populations as ‘Indigenous’ was that the concept of Indigenous peoples:

“implies peoples with strong ties to their lands, who have been in their region since before colonisation, were now dominated by other peoples from whom
their cultures were markedly different and who identify themselves as Indigenous”. (cf Colchester 1993:38).75

In short the working definition of Indigenous peoples within Africa again reflects the three approaches. These being a requirement for contemporary issues to be contextualized within an amplified historical perspective, recognition of the peoples position within national structures and lived realities, and a need to engage with the substantive issues brought to any negotiations by self identifying groups.

Africa illustrates the problem of systemically wielded ‘definition’ which determines ones access to ‘the means of continuance’, of self, of family and of community. The divisiveness engendered where identities instrumentally created were preferred by colonial administrators, has been shown to still inform all levels of relationship often decades after so called ‘independence’. Indeed it has been illustrated that central to ongoing instability is the disconnect between elevated identities and those which remain part of Africa’s cultural fabric, or even elites who also desire the opportunity to elaborated newer institutions and policies reflective of their own cultural traditions.

Africa for Africans is about land, the basis of life, and about the right to envision a future which brings into existence the rhythm and vibrancy that is that continent and its peoples. Africa for Africans is about creating the space within which peoples have the right to Dream a healing and a future they chose, after centuries of often brutal experience, and learning. The space within which to elaborate meaningful existence because ones ‘roots of being’ are again deep within the soil which nurtures the life, the diversity, which is Africa.

11.4 Definition In The Asian Context

Applying the concept of Indigenous peoples to Asia is equally problematic and highlights the tension between governments on the one hand and on the other, the millions of Indigenous - Tribal peoples of South and Southeast Asia who are being excluded from any consideration of the UN’s adopted or working definition. The Asian discussion sees Governments claiming the need for a substantive consideration by the
West, while simultaneously hindering and limiting the degree to which Indigenous and Tribal concerns need be addressed. In other words ‘definition’, has now become a dialogue about identity, a measure, a barrier, which both creates the space of being that is Asia as nation-states rapidly shifting to modernity, but within which the processes of achieving the transformation is often the official wielding of the same methodology of exclusion.

Christian Erni points out the contradiction inherent in the claim by many Asian Governments that they represent ‘Asian values’, ‘appealing to western critics to respect Asian cultural peculiarities, while denying the same principal of respect to the values and traditions of those societies which do not subscribe to the dominant creed’.76

Erni lists these ‘alleged Asian values as – learning, obedience, diligence, thrift, the precedence of the community over individual interests, strong desire for harmony, close family ties and respect of authority, which are conceived of as contrasting with the decadence of modern European values and its consequences, social ills like drug abuse, crime and violence, brought about by decades of prosperity and the largesse of state authority.’ 77

The prevention of such a development, the forgers of the new Asianism argue, is the responsibility of the state. So whereas the core Asian values are seen as the pillars on which prosperity and the new Asian self-esteem rests, the very foundation of this magnificent building, it is believed, are ‘sturdy authoritarian structures’ –the other gem of their cherished cultural heritage.78

The oppositional tension characteristic within much discussion regarding Asian values is also taken up by Greg Sheridan in his overview of Asia. He argues that the economic turmoil in Asia caused by the melt down of 1997, ‘should not lead to a western assumption that the debate regarding Asian values is over and that the West won.’79 While acknowledging that any discussion must accommodate the political dimension, a
perspective ‘which tends to frame the debate as anti-western’, he suggests that other more important aspects of Asian countries own internal discussions, are missed.  

Sheridan sees the impetus of the Asian debate emanating from within Asia itself.

A ‘debate about the nature of the good life, about regional community, about the dynamics of modernisation, about whether modernisation means Westernisation, about the civic dimension of life, about the reconciliation of Indigenous traditions with new cosmopolitan dynamics, about the changes of globalisation.’

He cites, ‘Kishore Mahbubani, a distinguished Singapore diplomat’ who explains that:

‘the key arguments within the Asian values debate are not political,’ but rather ‘an attempt to renew societies, to reconnect them with their past, to overcome the legacy of colonialism and the old assumption of white supremacy and to find a way of life that is both modern and yet true to the traditions of Asian societies,’ which indicates that the central tension within the debate is one of identity.

A debate Mahbubani suggests ‘is about finding a psychological equilibrium, based on neither inferiority nor superiority but a common humanity.’

These insights serve to highlight and again situate the debate regarding Asian values within a wider contexting of the UN’s agenda, which links human rights, development and democratisation. It also points to a discussion regarding the nature of an accommodation between emerging Asian national identities and that of its Indigenous - Tribal peoples. The psychological aspect of identity raised by Mahbubani, also describes a growing shift in perspective from amongst Third World leaders and governments, who now no longer accept an inferior position to colonial and/or post-colonial administration.
As analysis and discussion have grown regarding the historicism and inequity of systemic inter-national mechanisms and dialogue, an accompanying shift in national identity has assisted to engender the UN’s Global Reform agenda. Commitment to its principals within Asia however is uneven. Social and environmental sustainability and consideration of Indigenous and Tribal peoples’ rights are often denied. Asian leaders tend towards a colonialist (neo-capitalist) economic development model while the dialogue seeks to engender an equity position of an emerging national identity within multi-lateral processes.

While this contexting might provide a window for a different voice from within Asia, as Erni points out, the pursuit of economic development, once referred to as the ‘Asian economic miracle’ has been achieved by centralization of state power and military power; ‘sturdy authoritarian structures’ which until more recent events often translated as ‘outright rule (like in Burma (Myanmar)) or indirect control (like in Indonesia) or at least a strong influence of the military on the government (like in Thailand).’

It could be argued that much of the debate regarding Asian values, (whether an imposed western discussion, or an internal dialogue), is disconnected from the lived existences of the great majority of peoples in Asia. Dominant ‘elites’ owe much of their identity construction to either a discourse which legitimates autocratic centralized hierarchical dominance, which Erni points out are drawn from historic political systems which subsumed the ideological traditions of Hinduism, Buddhism or Islam; or to a later colonized identity which has absorbed western philosophical precepts of dominance.

This leaning towards one, while claiming to reject the second, essentially sets the conditions for a conflicted oppositional/resistance identity construction, eclipses a third consideration. By keying any consideration to either their own autocratic historic tradition, while maintaining difference from western colonialism, any resulting identity is in danger of not reflecting the central values of the traditional philosophies with which they maintain they seek to reconnect. Albeit, that this same Asian identity still maintains
a socialized structuring of ‘family - extended family’ consistent with traditionally organized societies and Indigenous-Tribal peoples.

Citing the basis of many Asian nations’ economic success as ‘massive plunder of human and natural resources, child labour, underpayment, excessively long working hours, low health and security standards at the workplace, heavy environmental degradation and pollution, which is often accompanied by brutal suppression of political opposition and blatant human rights violations,’ Erni argues that the outright rejection of international human rights standards by Asian leaders is inconsistent with their own stated core values. Moreover ‘their claim to represent all of Asia is unjustified.’ Quoting Anwar Ibrahim he writes it is ‘“a shame, although clever, to take Asian values as an excuse for authoritarian practices and the denial of basic civil rights.”’ He continues:

“To say that freedom is western or un-Asian is an insult both for our own traditions and our ancestors, who sacrificed their life against tyranny and injustice. […] Honestly we have to admit we are still struggling to eradicate the remains of the so-called ‘oriental despotism’ (Hansen 1996:29 in Vines p17). This refers to pre-colonial political systems, which were often militarily controlled sultanates, kingdoms or principalities, in which ‘the subjugation of peoples often reached despotic dimensions’.

‘The rise and decline of dynasties, constant wars and shifting power centres, the concomitant bloodshed, plunder and enslavement marked these Great Civilisations’ path through the last two millennia of history (in China even longer) as much as all the adorable achievements in engineering, architecture and arts and craft, which are often invoked in testimony of the glorious heritage of modern Asia.’

This heritage has often been negatively valued by Asian leaders. Much of their countries ‘distinctiveness’ levelled or destroyed in the rush to modernity; evidencing both adaptive
strategies in the face of a dominant west, and a further selectivity in the Asian values debate.

Asian governments, from those which manifest dimensions of ‘totalitarianism, like China and (Myanmar) Burma’, to ‘the authoritarian(ism) of … Singapore and Malaysia, even those which are moving towards democracy as in Thailand, Taiwan and South Korea’ all reject criticism of their Human Rights situation. Governments, have in the past, and in some cases still claim ‘international human rights standards are based on western concepts and therefore are not applicable in Asian countries’. Furthermore Asian governments often interpret ‘any foreign criticism pertaining to civil rights… as interference with internal affairs and even as moral imperialism.’

Citing Heinz, Erni points out however that:

‘many Asians do not see the concept of human rights as something particularly western. In fact each of the more than 70 human rights agreements and declarations at the United Nations were voted for by more than 100 states, the majority of them non-western (Heinz 1996:10).’

Setting the context within which the critical issue of Indigenous peoples’ and its ascription to groups is being considered, Erni writes:

*South and Southeast Asia boast one of the highest degrees of cultural diversity in the world. But whereas the majority of the population in South and Southeast Asian countries are comprised of descendents of the few dominating pre-colonial state societies, the bulk of the region’s cultural diversity is vested in the heritage of its Indigenous peoples.*

It is worth noting that of the 300 million Indigenous peoples in the world, some two thirds live in Asia. Erni points out that their adaptation to every type of differing ecosystem; from those living within the Arctic circle, to others on the steppes, through to the Himalayan ranges, monsoonal forests, rain forests and island peoples dependent on
the seas; has resulted in the extraordinary level of cultural and biological diversity evident today.\textsuperscript{92} IWGIA statistics show that while Indigenous peoples may only represent some 4\% of the world’s population they constitute 95\% of the world’s cultural diversity, and by extension biodiversity.\textsuperscript{93}

Erni notes that much of the political activism emanating from Indigenous groups in Asia is the direct result of governments refusal to accept the term ‘Indigenous peoples’; a predicament in which ‘their right to cultural identity and integrity is being denied by the very governments that defy what they call western cultural imperialism.’\textsuperscript{94}

Bose writes that governments within Asia have taken advantage of the confusion in the UN definition and simply overlook the issue of internal colonialism. This sees the non-Tribal dominant operating state structures underpinned by militarism to achieve an economic development that excludes and marginalizes hundreds of millions of peoples. Moreover he clearly argues that any current debate regarding the concept of Indigenous peoples and whether or not groups are included is not a real discussion; rather it is simply the dominant, playing politics.

Indigenous leaders within the region share a similar view. The women’s caucus attending Beijing not only produced a comprehensive document addressing gender issues, but clearly identified the new world order as nothing but the re-colonisation of Indigenous peoples. The beneficiaries and forces behind this re-colonisation were also identified as rich industrialised nation states.

\begin{quote}
We cannot allow these nation-states to continue to dictate their wishes to us. To combat this we need to urge the governments of our countries to vigilantly oppose the efforts of imperialists in order to once again gain control over our sovereignty. Yet as we urge our own governments, we must not lose sight of the reality that it is these same governments that are colonising us. It is indeed a double burden for us Indigenous peoples that we are struggling to free ourselves
\end{quote}
In most Asian countries Indigenous-Tribal peoples are either referred to as ‘scheduled tribes’ as in India, or as ‘tribes’ (Bangladesh, Malaysia, Nepal, Pakistan and Thailand), or even ‘nationalities’ in Myanmar (Burma) and China where they are treated as minorities.\textsuperscript{96} In all these countries the local term carries negative connotations, and the peoples to whom it applies are subjected to assimilationist, integrationist policy or systematic military incursions of liquidation. Dam building, de-forestation and massive infrastructure development further serve to destroy their means of existence. As cities expand traditional peoples again find themselves subject to re-settlement on unwanted ‘waste’ land, which produces nothing. ‘This is nothing short of ethnocide. At stake is their economic and cultural survival. Poverty, malnutrition, mortality, illiteracy and unemployment are markedly higher among tribal peoples than among the rest of the population of these states.’\textsuperscript{97}

The real focus of debate Bose argues, should be based on political reality and

‘focus on the powerlessness of the tribal peoples and their struggle for justice and the removal of the imbalance inherent in the present national and international power structures. It is time to look at the mechanisms perpetuating their subjugation and subordination within the countries in which they live as well as today’s global economic system.’\textsuperscript{98}

These he identifies as ‘the technocratic paradigm of development and modernization sponsored by the IMF and World Bank’. He continues ‘the opening up of tribal areas to multinational corporations is eroding their community oriented values, collective identities, cognitive heritage, distinguishing socio-cultural and linguistic frameworks and consensual decision making processes.’\textsuperscript{99} This reality holds true all over the world, including within First world countries.
Chapter 11: The Story Of Definition

He concludes that while ‘we may state that the confusion over whether the Tribals, scheduled tribes or nationalities of the Asian countries can be termed Indigenous or not has little to do with conceptual clarity. It has to do with politics of the dominant ruling classes.’ And adds:

‘As the struggles of the tribal peoples of Asia and the Indigenous peoples of North and South America, Australia and New Zealand are similar, and as current efforts of the United Nations is to institutionalise better provisions for the Indigenous peoples, the tribal peoples of the Asian region should be regarded as Indigenous in the context of the international instruments. It is true that a declaration is a very weak instrument and is not enforceable, yet it has a moral force and does exert some amount of restraint on states.’

The tragedy for many Third World countries is that capital’s globalising agenda concretised by the WTO, ensures that governments pursue the dominant paradigm and sacrifice their peoples traditional means of existence, their lands, forests, trees, water and even their cultures, simply to ‘compete on the world market’ and be seen to legitimately ‘create wealth’. Traditional knowledge, skills, technologies and existing sustainable economic activity which hold the potential for evolving a newer approach, are discounted and ignored.

Psychologically, the identity of many ‘elites’ (shaped during generations of colonialism) and their desire to ‘to match’ the First World, assists to facilitate the exploitative and disconnecting colonial development model. Extreme classism is often an accompanying hallmark. Concerned to ensure that the sovereignty of their own nation-state is not weakened by western economic interests, Third World governments may forego consideration of their own people. The focus of governmental activity is directed towards an equitable position within dominating macro political and economic realms. Substantive consideration of Indigenous or Tribal peoples’ rights becomes a low priority when elites are engaged in negotiations over new infrastructure or dam building to provide the electricity for modern industrialisation and urbanisation. Indeed it might be
argued that while some Asian governments claim the need for a substantive consideration of their national identity, there is little difference between what they are pursuing and that which western elites promote. Indeed many Asian elites and governments are co-dependant on the disconnected dominant system. The paradigm is not changed despite endless discussion and the newer frameworks of the UN.

The existence of international Conventions and Instruments providing for Indigenous and Tribal peoples’ rights are resisted by governments. Faced with a double level of colonisation in the Third World, Indigenous peoples often find discussion within multilateral forums are sidetracked by officials. Minnie Degawan writes that where a forum’s agenda might seek to move negotiation forward on matters pertaining to the ‘draft’ Declaration of Indigenous peoples, or have been focused on the establishment and operation of the Permanent Forum, governments have held up discussions and sought to nail home the positivist definition.

11.4.1 The Asian Indigenous Voice

Meeting to determine the application of the concept ‘Indigenous peoples’ in Asia, at a Conference convened by IWGIA in 1995, Indigenous delegates from the region unanimously accepted the relevance and importance of the concept. Sharing common problems, the Indigenous movement, which is active throughout the region, considered that a ‘strict definition of Indigenous was unnecessary, because the term constantly has to be adapted to encompass different situations.’ ‘Furthermore the general definitions which exist in the UN and World Bank all provide a general orientation for the meaning of the term which fully embraces the Indigenous peoples of Asia.’

The delegates were of the view that as a general orientation, various elements were useful indications of how the term Indigenous applies in Asia. The Conference conclusion is included in full.
1. *Indigenous peoples have a special attachment to lands and territories.* On the basis of this, Indigenous peoples claim ownership and control of their lands and resources. However throughout Asia Indigenous peoples are threatened with expulsion from their territories, economic interests are plundering their resources and they suffer invasion by outsiders. In the name of development, large scale displacements of the Indigenous peoples have occurred. Invasion constitutes colonization which undermines the prior ownership of Indigenous peoples of their ancestral territories.

2. *Indigenous peoples have a sense of shared ancestry and have the right to self-determination.* The collective identity of Indigenous peoples is found throughout Asia and stretches far into their history. This shared ancestry provides the grounds for self-identification of themselves as Indigenous and of respect for their identity by other Indigenous peoples. Unfortunately throughout the region authorities refuse to recognize Indigenous peoples’ territories and even their right to define themselves as Indigenous peoples.

3. *Indigenous peoples have their own languages, cultures, spirituality and knowledge.* These features make each Indigenous people guardians of their heritage and responsibility for passing the wisdom of their ancestors to their descendants. The constant robbing and commercialisation of Indigenous peoples’ heritage by outsiders is common throughout Asia. The conference expressed particular concern at the collection and patenting of genetic material from Indigenous peoples.

4. *Indigenous peoples have their own politic, social and cultural institutions.* These include customary law, consensual decision-making processes, community life and collective sharing. The Indigenous peoples of Asia strive to control their own lives and make their own decisions. They claim self-government from within, and do not want political systems imposed from outside. This constitutes the exercise of self-determination which was recognized by government and Indigenous representatives at the conference as a fundamental right.
5. *Indigenous peoples’ lands and territories and cultural institutions are violated by states and global forces through acts of domination.* This factor of Indigenous peoples in Asia consists of their being marginalised, dispossessed and colonized peoples, a fate which they share with the other Indigenous peoples throughout the world. The colonization of Indigenous peoples in Asia has not only come about through the process of invasion by western powers but particularly, during the decolonisation process, where different peoples lost out and became prey to the interests of the newly formed states and international interests.

6. *The Indigenous peoples of Asia consider that the UN draft declaration applies to them and constitutes the basic minimum demands for their survival. The concept of Indigenous peoples in Asia should be protected by the Draft Declaration.*

With more than 2/3rds of the world’s Indigenous and Tribal peoples’ living in Asia, representing over 50% of the cultural diversity of Earth, this region of the world has the richness of knowledge and biodiversity that could potentially provide for a trade centred ecological order of governance and exchange. But this would require a shift in psychology, as advocated by Kishore Mahbubani. The pressures of population and of self-narratives which borrow from both historical contextualing of repressive regimes and of their need as evidence of ‘greatness’ and a place in the world; as well as dominant political thinking in which colonialist methodologies of subjugating populations resonate the same characteristics; serve to inform much of the Asian debate about definition.

Since the economic meltdown however, Asia is more cautious of western interests. Within the Asia Pacific region, the re-positioning of Australia as the USA’s Deputy Sheriff by the Howard government has served to diminish her standing and influence in the region. The re-characterisation of relationship from that of ‘friend’ and ‘collaborator in an evolving regional project’, to that in which one party presumes a superior position backed by a big stick, has assisted this process. Capital interests which are a small narrow grouping will no doubt pursue Free Trade Agreements, but this approach is again a diminishment of the rich exchange that could have been Australia’s relationships in the
region. Asia may currently be in the throws of redefining herself, but the collective knowledge of millennia embedded in her peoples and their industriousness, could, if infused with the deeper philosophical precepts of language and culture and of their traditional ways of understanding, bring into existence a vast and rich centre of human endeavour which supports and nurtures her own continuance.

Current dialogue within Asia, in my view centres the three elements of identity, development and democracy and of their inter-relationship within landscape; a framework of thinking which places debate within the wider contexts of United Nations processing and agenda. With multilateral forums legitimating a substantive dialogue, most governments in Asia have remained colonially paradigmatic. The challenge of keying amplified and transformative agenda to national contexts has in most instances met with powerful and repressive response.

Already defined by historic and positivist definition, and with existence being impacted on daily by the attitude of other groupings with whom they share locality, Indigenous and Tribal peoples in Asia see the activity of their elites as both self interest and as a response to outside pressures from Transnational and capital power. Doubly diminished by both their own and those outside who instrumentally utilise the negative and narrow categories that serve to exclude hundreds of millions from a future in which they have the space of meaningful contribution; there is recognition that an implementing of newer agenda will require other strategies.

This impasse has seen flexibility in definitional approaches being promoted. Within the region Indigenous peoples advocate self-understanding and ascription of the United Nations definitions as interpreted and applied by themselves. Benedict Kingsbury’s excellent and compelling analysis in the American Journal of International Law also proposes that ‘because of the breadth of challenges and perspectives emanating from the Indigenous peoples agenda’ any definition of ‘Indigenous peoples needs to be broad and flexible’. He notes that ‘the development of “Indigenous peoples” as a significant concept in international practice has not been accompanied by any general agreement as
to its meaning, nor even by agreement on a process by which its meaning might be established’. 105

As a contribution to the unfolding dialogue, Kingsbury’s analysis is examined next. His newer criteria potentially frees the agenda from the strictures of entrenched structuralism and dated discourse which may either be weighed down by historic attitudes or newer dominant perspective which serve to diminish both the self and national identity. The next section therefore examines a newer approach which addresses these identified limitations advocating newer indicia and criteria.

11.5 The Newer Definitional Approach: Flexibility And Diversity

Benedict Kingsbury’s excellent study of Indigenous peoples in International Law, with particular reference to the complexities of Asia clearly illustrates that when it comes to defining ‘Indigenous peoples’ the experience of key agencies and Indigenous associations illustrate that it is ‘impossible at present to formulate a single globally viable definition that is workable and not grossly under or over inclusive’. 106

Kingsbury examines the two approaches taken when considering the Indigenous agenda: the positivist approach which treats ‘Indigenous peoples’ as a legal category requiring a precise definition107; and a constructivist approach which does not sharply define the term, but sees ‘Indigenous peoples as embodying a continuous process in which claims and practices in numerous specific cases are abstracted in the wider institutions of international society’. 108 While Kingsbury analyses the limitations of both he argues for a constructivist approach and a flexibility of the concept which is potentially global in scope but abstracted to accommodate the enormous variety of local self conceptions and political contexts to which its relevance is asserted’. 109 I would add, a pre-requisite for providing equity of diversity.
After extensive analysis and considered argument which is keyed to specifics and circumstance in various regions and countries of the world, and cognizant of all the international instruments, Kingsbury suggests:

> A flexible approach might provide scope to promote the fundamental values underlying the concept of ‘Indigenous peoples’ while recognizing both its changing nature and the need to work out its application in a vast range of situations.’ Adoption of a flexible approach to this definition is consistent with the functions of the concept in international law and institutions.  

A constructivist approach, he suggests, ‘might involve a compilation of requisites and indicia’; adding that ‘such a list might not see all indicia being met or required, but perhaps be considered as relevant factors to be evaluated and weighed in cases of doubt and agreement’.

**BOX 11: 1 Kingsbury’s List of Definitional Criteria**

<table>
<thead>
<tr>
<th>Essential Requirements</th>
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<tr>
<td>• Self-identification as a distinct ethnic group</td>
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<tr>
<td>• Historical experience of, or contingent vulnerability to, severe disruption, dislocation and exploitation</td>
</tr>
<tr>
<td>• Long connection with the region</td>
</tr>
<tr>
<td>• The wish to retain a distinct identity</td>
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</tbody>
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<table>
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<tr>
<th>Relevant Indicia</th>
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**Strong Indicia**

- Non dominance in the national (or regional) society (ordinarily required)
- Close cultural affinity with a particular area of land or territories (ordinarily required)
- Historical continuity (especially by descent) with prior occupants of land in the region

**Other Relevant Indicia**

- Socioeconomic and sociocultural differences from the ambient population
- Distinctive objective characteristics such as language, race and material or spiritual culture
- Regarded as Indigenous by the ambient population or treated as such in legal and administrative arrangements.
Additionally Kingsbury suggests that a flexible approach to determining international criteria as to the meaning of ‘Indigenous peoples’ would accommodate the innumerable nuances of specific cases. This would combine requirements and indicia, while relying on the dynamic processes of negotiation, politics, legal analysis and institutional decision making and social interaction as a means to working out the application of these criteria. In other words, adoption of a constructivist definition amplifies the contexting for substantive engagement within a multiplicity of local settings.

A constructivist approach also addresses the point made by Veber and Waehle who recognised that ‘Indigenous identity is highly contextual and constitutes a social fact which may or may not become a platform for social and political activity, or from which to make demands for legislative measures from governments or administrative agencies’.

Substantive engagement with peoples’ issues arising from *sui generis* cultures keyed to living territory, in turn creates greater reflexivity within dominant thinking. It becomes a process which of itself highlights the need for systemic reform. In a sense, a constructivist approach shifts dialogue from a rarefied political and legal discussion centred on dated discourse and narrow positivist definition of inclusion or exclusion, to one which engages equitably with the lived realities of peoples, their history, cultures, identities, knowledge, means of existence and their environments.

Taken to its conclusion, the adoption of interconnective constructivist instruments reposition government. Democratic authority no longer simply remains the means by which a disconnected unaccountable system of capital interests is imposed, requiring people and the environment to meet its costs. Rather, the system is reformed to accommodate diversity, of peoples and of ‘livingness’. Government’s role is again amplified, it becoming the democratic mediator ensuring sovereignty by creating harmonising domestic frameworks providing flexibility. Commitment to constructivist instruments sets the potential for allowing peoples, sectors, communities, and regions greater determination or local governance. An accompanying reform agenda of capital
systems would provide the economic re-modelling which ensures capital serves in providing for genuinely sustainable societies, environments and economies. \textsuperscript{115}

This reform requires the re-subordination of capital to Human Rights and Environmental standards, as opposed to capital’s agenda in the WTO which reforms the world to accord greater and superseding rights to non-living entities i.e. transnationals. This dominant project currently aims at establishing a normative standard that essentialises only one version of human existence, urban modernity which is unsustainable.\textsuperscript{116}

In other words, where both projects, the Indigenous peoples and that of the WTO advocate institutional and regulatory reform, the outcome which provides for peace and sustainable continuance, is the agenda which requires that global mechanisms operate to provide for a diversity of life and peoples, their cultural identities and allows them their own resources and means of sustaining their existence. If only so that the diversity on which all life is dependent continues.

Moreover, addressing the global challenge of sustainable co-existence consistent with Indigenous philosophical principals and values commensurate with a living systems approach, provides relevancy for systemic institutions, government and structurally situated mechanisms of multilateralism, which are currently sidelined by the activity of capital elite’s and the WTO which act unilaterally.

\textbf{11.5.1 Flexibility As Practice}

While debate continues, with states and academics alike either seeking to play politics or genuinely find a workable response to Indigenous peoples’ identity and articulation, other bodies, notably the World Bank, have adopted broad and flexible definitions.\textsuperscript{117} Kingsbury notes that within the World Bank, staff, executive directors and sometimes outside consultants have been responsible for devising definition,\textsuperscript{118} and consideration of Indigenous peoples within lending negotiation. As a result, they have often end up mediating between state governments and local peoples.
While Indigenous-Tribal peoples have been able to influence some aspects of bank activity, they still do not have a great enough involvement to fully determine whether an externally devised development project is initiated within their territories or not. This said, the Banks operational directives promote “legal recognition [by the state] of the customary or traditional land tenure systems of Indigenous peoples”, and “participation by Indigenous people in decision making throughout project planning, implementation and evaluation.”

Kingsbury again points out that in addition to the aim of ensuring ‘that Indigenous peoples do not suffer adverse effects during the development process…and that they receive culturally compatible social and economic benefits’, the bank often requires that an ‘Indigenous peoples development plan’ be prepared.

Importantly, in a new climate of increased unilateralism post September 11, the WB directives are again being re-written, in an attempt to eliminate these considerations. This step, which many internationalists, advocates, and Indigenous peoples’ representatives view as regressive, may not only remove directives supportive of Indigenous peoples’ but also relegate Indigenous consideration on any bank project, back to the level of government. Indigenous peoples previously provided consideration as the subjects of international law, as humans entitled to dignity are thus again contained to the domestic arena in which they are legislatively diminished, marginalised, negatively ascribed and often subjected to policies of genocide. Indeed it is argued that this latest step dove tails with other strategies being promoted by dominant interests through the US, and members of the CANZ bloc which potentially provide a newer containment, (see next Chapter looking at the newer political discourse of Indigeneity).

While dominant strategies continue to assail Indigenous gains, other UN agencies have similarly sought to harmonize their operational directives with the body of rights elaborated within ILO 169, and provide consideration of the Declaration of Indigenous Rights. A number have either re-written or are currently redrafting their guidelines. The creation of an Indigenous peoples’ Permanent Mission, along with the accompanying amplification of criteria to include ‘living cultures’ within its Heritage Convention, will
potentially see ECOSOC accommodate and harmonize regional consideration. UNESCO’s Universal Declaration on Cultural Rights also represents a newer step in multilateral commitment to a sustainable and pluricultural future for all humanity.

While operational directives guide the practice of UN agencies, Conventions provide the means by which Indigenous provisions are recognized in international law.

'A number of treaties and other international instruments contain significant provisions concerning Indigenous peoples, but generally offer no definition of the term. Particular provisions concerning Indigenous peoples appear in the UN Convention on the Rights of the Child, the 1992 Biodiversity Convention, and numerous texts adopted by the UN conferences, including Agenda 21 (1992) and the Final Declaration of the 1993 Vienna Conference on Human Rights...'

While international discussion continues with Indigenous-Tribal peoples being increasingly considered, First World nations have and are still framing discussion and consideration within a rubric of historic de-colonization.

Kingsbury again notes that 'Real engagement with the interests and aspirations of social collectives involves a much more complex actualisation of self-determination than the law of decolonisation has established.'

Governments and many academics, disconnected from international processes, are still attempting to elaborate a discussion which will not require any adjustment in the status quo, or genuinely provide for perspectives which they consider prove too challenging for current political orthodoxy and historic national identity.

11.6 Summary

The need of a definition is embedded in systemic thinking and structures which are rooted in colonialism and the expansion of Empire. Utilising definition to exclude and to
hinder the application of Human Rights is now the project of narrow sector interests of the dominant. Africa provided an example of the use of definition to create disconnected and elevated ‘ethnic tribes’. This legacy is one of confused and conflicted dialogue and reality. It was further shown that contrary to the explanation of ‘Tribal conflict’ often provided by dominant media, violence tends to result when these historically constructed ‘ethnic’ categories and identities, are manipulated by external interests for their own purposes. Newer self expression and a growing understanding of the legacy they still live with, sees a growing constituency demanding that there be an adjustment. The case study has illustrated that as with all Indigenous and Tribal peoples, voices in Africa are also demanding that identity again reflect belonging of land. All the studies show that the central issue is land, and a need for its re-distribution along lines which resonate the cultural fabric of Africa.

The Asian study provided another perspective. As a grouping of nation states which have already undergone the ‘wealth creation’ (and subsequent financial meltdown) that parts of Africa may be provided the opportunity to now consider, analysis showed the historic legacy of ‘definition’ not only affects Indigenous peoples and tribes who are excluded from national consideration, but also remains part of the psychological self understanding of some elites. Within Asia, the need of a definition results in activity which displays a borrowing from both their own historical traditions which were often brutal, and western colonial/militarist approaches which can be as equally devastating. Definition it has been argued is not only an instrumental methodology of containment, but because it serves to exclude and this has often been inter-generationally lived, its psychological impact remains.123

Definition is the requirement of a worldview and perspective that generally operates in noun centred language and modalities of thought, resulting is a knowledge system which is hierarchical, of categories with fixed properties, and which continually seeks closure as a means of controlling knowledge.
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What this chapter illustrates is that the dialogue about definition serves to divert attention from what those now needing to be defined, are actually saying. Indigenous peoples are the voices championing not only ‘sustainable development’, but actually a more advance philosophically informed politic. Their voices are articulating the need for the cultural diversity of humans and species and of the need for respect and the equal application of human rights law, which provides dignity and the continuance of life.

The voice of respected Indigenous leader Luingam Luithui 124 sums it up. When asked his views on the need to define Indigenous peoples he commented that where the term was being projected as a political and legal concept which could contribute to the protection and promotion of human beings, state governments were still subjecting them to assimilation and ethnocide, and that therefore the question was not one of definition or even of concepts.

‘I think it is very clear from history that it is, in fact, a question of politics – the politics of domination, the politics of unwillingness to accept equality. At the heart of this issue is another aspect, the human need for a sustainable world and a sustainable democracy, which is a prerequisite to this sustainable world. But here we are facing a situation where the states are preventing the Indigenous peoples from enjoying the rights which these states have accepted as part of the Universal Declaration of Human Rights. Therefore we do not see the need for coming up with a technical definition, although we do not rule out its importance. 125

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Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.


5 Ibid., pp.68-69.
6 Ibid., p.69.
7 As settler nations, First World identity owes its initial national identity to a constructed self-identity, which was dependent on a hostile ‘other’. As award winning West Australian Aboriginal literary writer Kim Scott points out, this project drew together disparate people in a shared narrative providing the means for building cohesion between settlers. ABC Radio National. Deakin Lectures TX. 15/5/01.
9 Ibid., p.46.
10 Ibid., p.46.
11 Ibid., p.46.
15 Ibid., p.44.
16 Ibid., p.44.
18 Ibid., pp.11-12.
19 ILO 169 was elaborated after Indigenous peoples worked to remove the integrationist and protectionist elements within the International Labour Organization’s original convention, known as ILOC 107, which had been adopted in 1957.
23 Recontextualisation is also key to understanding other culturally distinct knowledge, in that it alters ones stance and gaze. It is most effective when notional augmentation is simultaneously being incorporated in thinking. In effect where an individual can simultaneously grasp ‘onetime’, they have begun a new journey of discovery.
26 Ibid., p.63.
27 Ibid., pp.63-64.
28 Ibid., pp.63-64.
29 Ibid. p.64.
30 Ibid. p.64.
31 Veber, H. and Waehle, E. (1993), “...Never Drink from the Same Cup” IWGIA Document 74, p.6
32 Hernando de Soto, a Peruvian, is the founder and President of the Institute of Liberty and Democracy (ILD) in Lima, regarded by the Economist as the second most important think-tank in the world. He was listed by Time magazine as one of the five leading Latin American innovators of the twentieth century. For
more information on both Hernando de Soto and the ILD, go to [www.ild.org.pe](http://www.ild.org.pe). Taken from inside cover of his book.
34 Government representatives of the following nation-states have ratified ILO169 and include: Argentina, Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay, and Peru.
35 This insight has again been borrowed from Tapan Bose and as a paragraph essentially paraphrases his text. See, Bose, T. K. ‘Definition and delimitation of the Indigenous Peoples of Asia’, “…Vines that Won’t Bind…” *Indigenous Peoples in Asia*, IWGIA Document 80, Copenhagen, 1996, p.45.
50 Speaking on Lehrer’s ‘New Hour’, PBS TV Broadcast 10 July 2002, George Ayittey, an economist at American University, a Ghanaian and President of the ‘Free Africa Foundation’, a Washington think tank, pointed out that of the 54 African countries only 15 are democratic. ‘For a long long time, these leaders claimed to be speaking on the behalf of the people when they are not.’ ‘They are not held accountable to their people.’ ‘That’s why we want new, completely new rules for the game, or a new approach to Africa’s problems.’ For transcript go to: [www.pbs.org](http://www.pbs.org).
55 A reference to the Shadow Box Existence see Figure 7:1, p.147.
56 I make a distinction between extralegal and informal economies, albeit that both remain outside the dominant’s capitalized and formalized system and as such are de-legitimated. In effect extralegal economies form part of a nations states ‘informal’ economy.
'Extralegality' is a term used by Hernando de Soto, founder and president of a leading global think tank called the Institute of Liberty and Democracy (ILD), Peru. Generally it relates to all those people who have relinquished traditional patterns of existence, have migrated to cities and townships or their margins, and begun newer productive activity. Extralegal activity is ‘newer activity which has emerged and gradually replaced traditional ones’ (p.86).

In his excellent study ‘The Mystery of Capital’, de Soto argues capitalism fails in Third world countries and those of the former Soviet Union, because legal and political institutions fail to recognize the property rights of local peoples, and newer regulation (structural adjustment) only serves the interests of certain people in an urban setting. In de Soto’s view Third World and ex-communist peoples are left no other option but to ‘step outside the law, because they are not allowed inside’(p.89).

Drawing on French historian Fernand Braudel’s description of capitalism as a ‘bell jar’ in which ‘capitalism (is) a private club, open only to a privileged few, (which) enrages the billion standing outside looking in’, de Soto argues ‘capitalist apartheid will inevitably continue until we come to terms with the critical flaw in many countries legal and political systems that prevent the majority from entering the formal property system’ (p.68). In his analysis, ‘extralegal sectors in the developing world account for 50 to 75 per cent of all working people and are responsible for one-fifth to more than two-thirds of the total economic output of the Third World’ (p.87).

De Soto also points out that: ‘By 2015 over fifty cities in developing countries will have 5 million or more people, with most living and working extralegally’ (p.86) Citing an ILO report, he writes that; ‘since 1990, 85 per cent of all new jobs in Latin America and the Caribbean have been created in the extra-legal sector.’ ‘In Zambia, only 10 per cent of the work force is legally employed’ (pp.69-70).

Extralegal activity is comprised of ‘shops, currency exchanges, transport and other services’ (p.86). Regulation, which increasingly complies with dominantly informed structural adjustments imposed by governments, continually results in local innovation and initiative being de-legitimated and discounted. In light of Hernando de Soto’s study and use of the term ‘extralegal’, the term ‘informal economy’ might now be understood as inclusive of both extralegal activity and other economic and trade activity undertaken within a nation state.

The informal economy also refers to the traditional activity of peoples, sometimes a majority within a country, who are similarly delegitimated. The informal economy comprises the productive output of peoples whose self sustaining existence remains directly linked to traditional patterns and their customary use of land, forests, rivers, and seas.

In effect, these peoples’ property rights, and productive activity are equally denied and discounted. An example cited by de Soto, which has direct relevance for Indigenous peoples, was reported by the Wall street Journal in 1997. It noted that ‘only 10 per cent of land occupied in the Brazilian Amazon jungle was covered by property title’ (p.88). Presumably the rest is Indigenous land, peoples whose relationship has not been formally acknowledged by title.

Extralegal activity as defined by de Soto does not necessarily reflect the entire de-legitimated economy within a country, which also includes the productive activity of traditional self-sustaining societies. An informal economy might include Indigenous peoples, peasant farmers, and fisherfolk who collectively number in the billions globally. These people also trade or sell product in local community and village markets, which may in turn find their way into the extralegal economy in and around cities and towns.

Other forms of de-legitimization also occur within formalized economies in other parts of the world. Local practices and product are again the target. The EU and its newer regulation aimed at systematizing markets sought to standardize product. These directives were seen by farmers as a strategy of transnational interests, directed towards eliminating a diversity of local product: cheese, sausage, wines, olives, fruit and bread... the list is extensive.

Throughout Europe local farmers have over centuries innovated culturally diverse product. The whole project of transnational interests and their WTO might be seen as the demise of diversity.

Perhaps the example which additionally explains de-legitimization and provides a contrast between cultural perspective and that of the globally dominant is provided by ‘coca’. This product is a traditional crop of peoples in South America, who for thousands of years have grown and traded it for its use as a food supplement, as a tea, and as medicine. The arrival of westerners and their chemists were to redefine how the dominant understand the local. When criminal elements altered the traditional product and its use to that of refined cocaine bound for northern markets, local growers, and national landscapes were transformed by corruption, and ultimately US military incursions.
Within the cultural contexts of local peoples however, ‘coca no es una droga’, ‘coca is not a drug’, but rather an historic and important cultural product, a gift of ‘Pachamama’ (Mother Earth), which they are now being forced to forego for cash crops (for which there are no markets), simply because westerners have abused its properties and commodified its use for self interests.

This example again explains why Indigenous peoples resolutely reject the subsumation of their traditional knowledge of ‘livingness’ and its properties by the WIPO. European culture is not one of respect, nor does it require individuals to act in a manner which understands that their action must accord with the values of collective wellbeing. Self interest as ‘freedom and the pursuit of happiness’ which remains the mantra of Man’s law and his exclusive system, has become a globalising mindset of competitive adversarial individualism, which takes little responsibility for action. A project which discounts billions of people, and de-legitimates their property ownership, cultural knowledge and productive activity, thereby reducing existence to a struggle for life.

57 De Soto, H. (2000), The Mystery of Capital, Why Capitalism Triumphs in the West and Fails Everywhere Else, Black Swan Books, Transworld, UK. More information on Hernando de Soto and the Institute of Liberty and Democracy (ILD) Lima of which he is president and co-founder, and which ‘The Economist’ regards as the second most important think-tank in the world, can be found at www.ild.org.pe

58 In a study conducted by the Institute of Liberty and Democracy which sought to ‘gauge the value of possessions of people locked out of the capitalized economy by discriminatory laws’ (p.27), de Soto provides statistical data, which centred on real estate, because this was a tangible and detectable asset, which could be valued.

‘In the Philippines, …57 per cent of city-dwellers and 67 per cent of people in the countryside live in housing that is dead capital. In Peru 53 per cent of city-dwellers and 81 per cent of people in the countryside live in extralegal dwellings. In Haiti, 68 percent of city dwellers and 97 per cent of people in the countryside live in housing to which nobody has clear title. In Egypt dead-capital housing is home to 92 per cent of city dwellers and 83 per cent of people in the countryside.

In Haiti untitled rural and urban real estate holdings are together worth some $5.2 billion….this sum is four times the total of all the assets of all the legally operating companies in Haiti, nine times the value of all assets owned by the government and 158 times the value of all foreign direct investment in Haiti’s recorded history to 1995.

In Peru, the value of extralegally held rural and urban real estate amounts to some $74 billion. This is five times the total value of the Lima Stock Exchange before the slump of 1998, eleven times greater than the value of potentially privatized government enterprises and facilities, and fourteen time the value of foreign direct investment in the country through its documented history.

The value of untitled real estate within the Philippines, is $133 billion, four times the capitalization of the 216 domestic companies listed on the Philippines Stock Exchange, seven time the total deposits in the countries commercial banks, nine times the total capital of state-owned enterprises, and fourteen times the value of all foreign direct investment.

The value of Egypt’s dead capital in real estate is some $240 billion. This is thirty times the value of all the shares on the Cairo stock exchange and fifty-five times the value of all foreign investment in Egypt.

In total the value of real estate held but not legally owned by the poor of the Third world and former communist nations is at least 9.3 trillion. This is about twice as much as the total circulating US money supply. It is very nearly as much as the total value of all the companies listed on the main stock exchanges of the world’s twenty most developed countries: New York, Tokyo, London, Frankfurt, Toronto, Paris, Milan, the NASDAQ and a dozen others. It is more than twenty times the total direct foreign investment into all Third World and former communist countries in the ten years after 1989, forty-six times as much as all the World Bank loans of the past three decades, and ninety-three times as much as all development assistance from all advanced countries to the Third World in the same period. Taken from pp.30-34.

De Soto writes that ‘dead capital lines the streets of every developing and ex-communist country’ (p.30). He points out that while international agency representatives and their consultants might jet into a country to meet with a local ‘privatized sector’, they are only talking to a fraction of the entrepreneurial world. He argues that within Third World and former soviet context the legal or formal economy is the marginal. Extralegal activity is the norm.

In Mexico a survey conducted by the Mexican National Statistical Institute in 1994 measuring the number of informal ‘microbusinesses’ in the country reported a total of 2.65 million. Street Vendors and their
stands in the Federal District alone numbered 150,000 with an additional 293,000 in 43 other Mexican
Centres. Entrepreneurs are to be found in every street, and on corners providing services, establishing
cottage industry, re-building machinery or providing health care.
In short De Soto argues that Third World governments need not look externally for solutions, because the
stuff of development is within their own countries. A perspective that many governments now appreciate.
It might also explain why the US now insists Third World governments create newer institutions which it
is argued become the means by which dominant capital interest will benefit while further de-legitimating

61 This insight might provide a simple explanation as to why Zimbabwe’s President Mugabe reduced the
polling booths within the urban setting (those generally dependant on a complimentary role) and increased
them in rural areas, where ownership of land (self sufficiency) rather then dependency on an externally
driven system is being put through the next level of Europeanization. Or as the Secretary for International
Affairs of the Movement for Democratic Change (MDC) in Zimbabwe explained ‘unless Zimbabwe
implements the normatives of capital we will be left behind.’ Mrs, Sekai Holland, Secretary for
International Affairs, The Movement for Democratic Change (MDC), Zimbabwe, speaking with Late
Line’s, Tony Jones, ABC Television, Interview Broadcast 04-03-2002. Mrs. Holland was in Australia to
attend the Commonwealth Heads of Government Meetings (CHOGM), held on the Sunshine Coast.
See: www.abc.net/lateline
to explain the failure of negritude contains within it the very perspective of Indigenous peoples, and again
illustrates the divergence in understanding. The paragraph clearly contains within it the two contrasting
worldviews. He writes: ‘The positive elements in Negritude was its assertion of African history and
culture and its attack on cultural imperialism; but, unfortunately, by redirecting attention from the Afro-
Caribbean realities of the times to the mythical past, it developed into a profoundly conservative doctrine.
Human beings of whatever culture do not possess an inherent self. Man is the product of society and
specific social circumstances. Moreover, no society produces a common spirit which motivates every
section of society. Society is composed of classes which often have conflicting interests and outlooks. The
discovery of Negritude in the past inevitably becomes a romantic recreation of an ideal which never
existed in the first place.’ p.212.
63 Ibid., pp.211-212
64 Uganda’s Idi Amin is one example.
65 Nigeria and Shell’s complicity in the death of international poet and Indigenous leader Ken Sara Wiwa.
66 A contemporary example, 2002, of conflicted dialogue involves the government of Mali. While the
international community maintains the need of food aid to alleviate starvation in Mali, is because
government Ministers sold the countries entire grain reserve, implying mismanagement; Government
officials maintain they were instructed to do so by the World Bank in order to comply with funding
agreements. The IMF’s site provides detailed documentation of the undertakings Mali has agreed in order
to obtain loans under ‘Poverty Reduction and Growth Facility’ (PRGF) arrangements.
See: www.imf.org/external/country/index or the IMF’s home page, www.imf.org and go to country
information.
67 A similar view was clearly articulated by Bill Fletcher, President of Trans-Africa Forum, an
organization promoting research and commentary on African Issues. Speaking on Lehrer’s News Hour,
PBS, tx. 10 July 2001, about the G8 summit in Canada, and their demand that African leaders undertake
institutional and economic reform in order to receive aid money, he explained: ‘When they say “economic
reform” what do they mean?’ ‘They mean African countries open up their markets to the West, but not
that the west opens up its markets to Africa.’ ‘I mean, we have this rhetoric coming out of the White House
of “Free trade”... free trade, free trade, as long as we can get into your markets, but not in reverse. So
what’s happening in Africa as well as in the Caribbean, is that agriculture is being devastated because of
agricultural subsidies here in the United States. I mean either there’s a level playing field, or we call this
whole game off.’ Transcript available www.pbs.org.
This insight is provided by Rene Lemarchand, whom Castells acknowledges as the ‘leading western expert’ on the violent confrontation between Tutsi and Hutus in Rwanda and Burundi. He writes:

‘As has been repeatedly been emphasised, Hutu and Tutsi speak the same language – Kirundi in Burundi, Kinyarwanda in Rwanda – share the same customs, and lived in relative harmony side by side with each other for centuries before the advent of colonial rule. Contrary to the image projected by the media, the patterns of exclusion brought to light during and after independence cannot be reduced to “deep seated, ancestral enmities”. Although pre-colonial Rwanda was unquestionably more rigidly stratified than Burundi, and hence more vulnerable to a Hutu-led revolutions, the key to an understanding of their contrasting political fortunes lies in the uneven rhythms at which processes of ethnic mobilization were set in motion in the years immediately preceding independence… In both instances it is the interplay between ethnic realities and their subjective reconstruction (or manipulation) by political entrepreneurs that lies at the root of the Hutu-Tutsi conflict (Lemarchand, 1994a:588)’. Lemarchand, Rene (1994) “Managing transition anarchies: Rwanda, Burundi, and South Africa in comparative perspective”, Journal of Modern African Studies, 32 (4): 581-604. In Castells, M. (1998) End of Millennium, Blackwell Publishers Ltd, Oxford, p. 108.

George Ayittey, an economist at American University, a native of Ghana and a president of the Free Africa Foundation, a Washington think tank, was interviewed on the outcome of the G8 summit in Canada by Ray Suarez of PBS’ ‘News Hour’. Pointing out that within their own traditional systems they hold chiefs accountable and as such they want to hold their governments accountable, Ayittey’s voice reflects the newer conscientisation emanating from Africa. “… Africans themselves are saying that we want to hold our leaders accountable and we also want economic reform, but in our own traditional systems. We had free markets there (in Africa).’ ‘We have free enterprise there.’ ‘We had village markets even before the colonialists came to Africa, and we want to return to those kinds of institutions that we have. It’s not the World Bank, which has to dictate to Africa what type of economic reforms that are needed. This is why it is important to listen to the African people. But is seems for a long time… in all of these debates, its always between African leaders and the west. Let’s hear the people.’

As if to underscore his point, it emerged that African leaders have not been engaged in discussions with their own people, nor have they consulted any civil society groups. Echoing de Soto’s view that the Third World has all that it needs to undertake its own development, Ayittey commented that he felt African leaders should not have gone to the G8, because the resources they need to develop the continent is there in Africa itself. News Hour, PBS, tx. 10 July 2002.


Ibid., p.15.

Ibid., p.15.

Ibid., p.16.


Ibid., p.16.

Ibid., p.16.


Ibid., pp.2-3.

Ibid., pp.2-3.

Ibid., pp.4-5.
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84 Ibid., p.16.
85 Ibid., p.17.
86 Ibid., p.17.
87 Ibid., p.17.
88 Ibid., p.18.
89 Ibid., pp.16-17.
90 Ibid., p.19.
91 While 300 million peoples is an official statistic used by the United Nations, NGOs supportive of Indigenous peoples often cite a figure of 500 million.
97 Ibid., p.50.
98 Ibid., p.49.
99 Ibid., p.50.
100 Ibid., p.50.
101 Here I am referring to the ‘informal’ economy, which consists of local product invariably grown and marketed by women. The informal economy usually consists of a diversity of seasonal subsistence product. Impoverishment often occurs when governments insist that local producers introduce cash crops determined by western experts involving a monoculture product listed on the stock exchange. These moneys become part of government revenue from which national debt is to be repaid for national infrastructure development which allows for industrialisation and urbanisation. Countries are easily bankrupted when either the cash product drops in price or the introduced plant fails. Cash crops can fail, particularly when they are of introduced and patented seed developed in laboratories in the west and thus unable to adapt to local climate. Repeated years of crop failure can result in desertification and starvation, which the western media generally suggest is the result of drought. Vandana Shiva similarly sees the shift to monoculture as the genesis of desertification. She points out that the introduction of monoculture agriculture also results in the masculisation of agriculture. A physical shift that accompanies the introduction of pesticides, with men becoming the expert sprayers, fertilizers which again men apply and seed purchasing done by men. Traditional practises in which women, maintain diverse fields, collect dung and save Indigenous seeds are discounted, despite scientific data indicating that traditional methods resulted in higher output. Shiva also points out that monoculture production and its use of pesticides, regards thousands of native species as weeds needing to be eradicated, even though these same plant varieties are vital for sustenance during the monsoon season. While monocultures might produce a higher yield of a single crop, the loss of biodiversity has resulted in millions of additional peoples reduced to poverty and hunger. Shiva again points out that the introduction of industrial forms of wheat and rice, wiped out local legumes and seed oil. These are now imported by India at a cost of billions of dollars annually, highlighting the failure of official planning which neglected to add the cost of lost crops.

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As Shiva rightly points out the traditional practice of women which results in biodiverse agriculture also provides nutrition which consists of more than simply calories from introduced cereals. Additionally, commercially driven agriculture has not only resulted in a one third reduction of production, but also seen the costs of producing crops increase by a factor of four. Shiva maintains that the WB and IMF trade system is criminal because the structural adjustments they impose and the WTO treaties are nothing more than a regulatory system which provides foreign corporations with rights and subsidies, while local farmers and villagers are damned. The result being increased poverty and suicide. She maintains that commerce driven agriculture has resulted in an additional 300 million Indians going hungry, while 50 thousand tons of cereals go rotting on the wharf. With a regulatory system imposed to the detriment of traditional diversity agriculture throughout the Third World, the critical nature of local existence often spirals into conflict over remaining local resources, resulting in a further dislocation of population and refugees. Again western interests will devise a newer development to assist government to ‘get out of debt’ and feed its people.

Increasingly Third World farmers are aware of the systemic injustice being imposed, and recognise that their traditional approaches provide ‘living richness’ by which to sustain existence. While citizens are motivated and understand what’s at stake, governments everywhere are not listening, making a mockery of their so-called democratic authority. Shiva refers to this as ‘dead democracy’ because it is no longer responsive or accountable to its peoples.


102 Vandana Shiva points out that ‘elites’ are uprooted from the source of their own identities, and forget that their status and education were and are provided by the public purse. Third World middle classes and elites dependent on the unaccountable system of wealth have become disconnected from their brother and sisters, and are often callous in their attitude toward them. ABC Radio National, *Late Night Live*, an Interview with Philip Adams, Broadcast, 19/11/01.

103 Conclusions from the Conference, in “…Vines that Won’t Bind…”. IWGIA Document 80, Copenhagen, 1996, p.221.

104 Ibid., pp.221-223.


107 Ibid., p.414.

108 Ibid., p.415.

109 Ibid., p.457.

110 Ibid., p.455.

111 Ibid., p.455.

112 Ibid., p.455.

113 Ibid., p.455.


115 The publication of the United Nations Association of Canada, which questions *Whose world is it anyway?* provides further insight on the dialogue concerning the role of capital and the nature of the critical perspective emanating from these international fora and the reform measures being promoted. ‘Conflict has sharpened between, on the one hand the aspirations for the emancipation of the world’s citizens and their pressure to participate in decision-making about the use, protection and sharing of the world’s resources and the life of the world community, and on the other, the aggressive pressure to ‘free’ markets and ‘liberate’ the movement of capital and investors who control it, reduce government, diminish taxes and lower standards’ (p.464).

The stand alone position assumed by the WTO in relationship to other processes of the UN and capitals pursuit of corporate rights through this forum, such that all other rights, human and environmental need...
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not be considered, has seen many academics call for the reform of Capital systems. Many models are being proposed. Importantly, ‘flexibility’ of design and policy are again being argued for. Danni Roddik and John Gray comment that the ‘tendency to seek universal “one size fits all” answers, (leaves) global institutional designs and policy prescriptions little room for national, cultural and historic differences’. Mr. Sfeir-Younis, the World Banks chief liaison officer, further advises that the focus needs to be on functions rather then argument over institutional boundaries. Kamal Malhortra of Focus on the Global South, suggests that ‘the starting place for effective change is in making what he calls three subordinations:’

*The re-subordination of the financial systems to the real economy,

*the subordination of macro and other economic policy to social policy and human development objectives and strategies, and

*the subordination of the global level of governance to the local, national and regional levels, especially the national’. Importantly, the measure of any reform proposal ‘is the extent to which they amplify accountability and transparency and are open to those most seriously affected by policy’ (p.468).

NGO’s active within multilateral processes similarly call for a re-subordination of capital. ‘…set (ting) the objectives for the World Summit on Social Development, they projected a multilateral system in which the global financial and trade bodies would be brought within, or subordinated to, the human rights, sustainability and social standards developed through the UN.

Without defining the structures, the NGO “benchmark” statement outlined processes which would bring the IMF, World Bank and World Trade Organization (WTO) policies under human rights treaties, ILO conventions and regular social and environmental audits. Only thus could the world community begin to get at the structural causes of poverty, unemployment and social disintegration’ (p.468).


116 When India gained independence Gandhi was asked how long it would take for India to catch up with the west. He answered that given it took an entire world just to provide the first world with its standard of living, how many worlds did they think India would need?


118 Ibid., p.442.

119 Ibid., p.443.

120 Ibid., p.443.


123 This colonial legacy is also prevalent amongst many Indigenous peoples living in First World contexts. The psychological impact continued relationship has had, particularly on men, is profound, when role as head of family is reduced to nothing, and all contributory activity is systematically eliminated. Richard Trudgen who lives and works in the Northern Territory provides a powerful and insightful expression of the lived realities which create the conditions of despair and anomie. His work explains ‘Why Warriors lie down and die’. Colonialism which provides for a continual negation of self, coupled with the negativity of re-narrating ones worth, which experience then validates, is a potent mixture which inter-generationally has legacy. Trudgen, R. (2000), *Why Warriors Lie Down and Die*, Aboriginal Resource and Development Services Inc., Darwin, pp.170-171.

124 Luingam Luithui a Naga from Manipur, India, is the Secretary General of the Asia Indigenous Peoples Pact (AIPP). He is a veteran of the democratic rights movement and a founding member of the Naga Peoples Movement for Human Rights.

Chapter 12: A New Political Discourse Of De-Colonization

Indigeneity is a new political discourse within academia. It responds to the challenges posed by Indigenous-Tribal peoples within international and national dialogues.

Debate over how to include Indigenous peoples in the nation-state sits within a wider contexting of international processes associated with de-colonization. Expanding the de-colonization process to now also include ‘internal minorities’ often Indigenous-Tribal peoples, has been the next level of challenge.

Indigeneity within western academia purports to embody the Indigenous voice and vision and provide a political solution for their aspirations. This section therefore takes a critical look at Indigeneity, its history, utility and practice, and the level of hope it affords Indigenous peoples of Earth.

The global project of conscientising the world to Indigenous perspectives can be seen as having two aspects. The first involves non-indigenous activists and intellectuals and according to Linda Tuhiwai Smith:

‘is similar to that which has occurred in Literature with a centering of the landscape, images, languages, themes, metaphors and stories in the Indigenous world and the disconnecting of many of the cultural ties between the settler society and its metropolitan homeland. This project involves non-Indigenous activists and intellectuals.’¹

The second aspect is an Indigenous project which focuses on cultural action and political self expression which emanates from cultural identity and which does not subscribed to dominantly promoted discourses of inferiority.

With both aspects being contained within the one indigenizing project, there is a potential for confusion. Particularly when it is that knowledge emanating from the first
aspect and associated with literature and the arts which becomes the dominant perspective or voice informing official processes and dialogues addressing Indigenous aspiration.

This section on indigeneity might be understood as a need to reframe the entire debate and infuse it with the perspective and voice of those who live in nation-states which have already undergone processes of emancipation, and found them wanting. Cultural voices which articulate self-understanding and a newer politic which informs the international level with an awareness that it is both the architecture and its intent, or the purposes for which it is constructed, which need reform.

12.1 What Is Indigeneity?

According to Havemann: In both domestic and international political arenas, Indigenous peoples themselves have become increasingly clear, vocal, and adept at elevating ‘indigeneity’ as a principal and a political process for extricating themselves from disempowering colonial contexts. The essence of the transformational ethno-politics of ‘indigeneity’ lies in Indigenous peoples’ moral, political, and legal assertion of their rights to land, identity and a political voice.

Rewriting this in point form, Indigeneity:

- Is a principal and a process of internal de-colonization;
- Emanates from Indigenous peoples; as a political expression of their voice;
- Is a discourse said to legitimate this voice as an ‘ethno-politic’ of moral, political and legal assertion; and
- Is a consistent discourse emanating from both domestic and international political arenas.
The utility of ‘indigeneity’ as discourse requires close examination. Is there a universal Indigenous voice? Does this discourse really provide justice and equity? And will it render fair process and just solutions? As a final perspective on indigeneity, the accommodation which this newer framework potentially provides as self-governance, bi-cultural governance and self sufficiency, is questioned. This raises the issue of representation, and within the final part of this section the divergence between cultural framing and the need of institutional frameworks. Levels of accommodation as models of self governance are also provided, albeit that a wider framing and other voices shared, illustrate that any processes involving the shift of authority may fail.

As a starting point, it is important to appreciate that the notion and term ‘indigeneity’ itself has again been borrowed from Spanish speaking Indigenous peoples, and as such it must not be confused with the ‘indigenist’ or ‘indigenizing’ project consistent with much Third World peoples’ articulation, particularly as the politic, impetus and process of these projects may diverge. The advent of an indigeneity discourse may create further confusion within dialogue because much that is associated with Indigenous peoples as identity and self-expression is common globally. However, what indigeneity achieves and will be shown is a systemization, which defines and legitimates a version of self-expression consistent with the political principals and processes of Eurocentric interests.

Academics suggest that indigeneity is an Indigenous peoples self expression. Recontextualising Indigeneity, I argue that as discourse it emanates from a recognition that modern political theory has to date not been able to accommodate Indigenous peoples’ cultural philosophies, identity, values and worldview.

Engagement with the Indigenous voices raising legitimate challenges has necessitated a newer discourse. One which it might be claimed addresses their substantive concerns, but which again legitimates State processes of homogenization, hence ‘a principal’, allowing implementation of a normative response to Indigenous aspirations. As such indigeneity can also be seen as a Eurocentric and embedded political discourse of de-colonization that systematizes Indigenous self-expression.
In contrast the Third World’s ‘indigenist’ discourse, or an ‘indigenizing’ project emanates from Indigenous peoples’ as peoples recognized by international law and denotes an amplification of notional construction and a dialogue which accommodates the integrity of Indigenous - Tribal peoples’ of ‘connected’ identity, within a holism of culturally distinct worldview, language, and sui generis knowledge. Indigenizing discourse often leads to new terms being coined in international language in response to a need to express and address Indigenous concepts and notions, not previously contained within dominant language or thinking (biodiversity, traditional knowledge rights, Cosmovision).

Linda Tuhiwai Smith³ attributes the origin of the ‘indigenist’ project to Central and South America, where Indigenous peoples pursue a ‘transformative’ politic. Here, ‘indigenist’ agenda and discourse is a political expression of self-articulation emanating from a distinctive cultural epistomy and self-determining, autonomous identity (albeit that the State may not recognize them as such). Linda Smith cites Ward Churchill.

‘The concept of indigenist...means, “that I am one who not only takes the rights of Indigenous peoples as the highest priority of my political life, but who draws upon the traditions – the bodies of knowledge and corresponding codes of values – evolved over many thousands of years by native peoples the world over’. Smith continues, ‘The term centres a politics of Indigenous identity and Indigenous cultural action.’

While this definition similarly includes many Indigenous peoples within the First World (often those not included in rarefied discussion, or voices governments seek to contain), a further distinction arises as to the means of existence. First World peoples are generally systemically ‘dependent peoples’, where the Third World’s Indigenous and Tribal peoples are to a large extent self sustaining living systems of knowledge and existence.
It can be argued that the uptake and elaboration of an ‘indigeneity’ discourse by which this term is legitimated in Eurocentric political theory and discourse serves to illustrate the effectiveness of the peoples’ own indigenist project. The term is now being used to address ‘a voice’ previously de-legitimated within Eurocentric discourse. Whose voice again raises the issue of identity (see later section).

The politicization of ‘indigeneity’ further serves to illustrate the distinction between perspective and understanding of the two projects. Dr. Augie Fleras’ excellent study and analysis of ‘indigeneity’ as a First World political discourse provides the material against which to further contrast divergence.

Where the Third World’s indigenist project emanates from ‘distinct cultural identity’ and ‘language’, it’s integrity often being of peoples’ essentially living sui generis systems, the First World’s version ‘indigeneity’ is defined by an ‘identity politics’ keyed to Eurocentric discourses of ‘difference’, while drawing on ‘ethno-politics’ as an expression of Indigenous peoples challenging State legitimacy. In other words, definition and understanding of the dominant’s term ‘indigeneity’ is already diminished or contained by other pre-existing Eurocentric discourse and domestic legislation which define terminology. As such it can be said that indigeneity is articulation of a structurally situated voice. This contrasts with those who are not systemically dependent and who provide a critical analysis of structured and systemic inequity and injustice and offer other solutions.

This is an important distinction because it again reflects on identity, and values. And yet many of the aspirations are consistent. Indigenous peoples do not want to be more like us, nor be forced to join the system on terms which benefit us invariably to the detriment of themselves. Nor do they want to administer policies designed for them, by us. What many are seeking is a dialogue which amplifies and vests the man made system with new thinking, values and meaning. Within the First World however, indigeneity as discourse now legitimates a Eurocentrically defined dialogue which draws together indigenous self expression but which simultaneously retains power imbalance.
The challenge of ‘indigeneity’ theoretically legitimates a discourse ‘concerned ultimately with restructuring the contractual basis of Indigenous-State relations’. As process however, indigeneity will be shown in the Case studies to results in re-definition of ‘Indigenous terminology’ as a means of again retaining authority (see New Zealand case study Volume 3 Chapter 18, p.541). A process one might argue, the very discourse of ‘indigeneity’ itself, serves to illustrate. The case studies will also show how indigeneity as process might similarly ensure continued cultural diminishment.

While some First World theorists understand ‘indigeneity’ as a politic providing ‘a legitimate authority over collective and inherent rights to land, identity and political voice’, and Indigenous ‘ethno-politics’ as a framework for ‘renewal and reform’, it still does not equate with the ‘indigenist’ project of some Third World peoples who although marginalized and often subject to genocidal policy are not, on the whole, ‘domestically dependent societies’. Rather, many Third World peoples are self-sustaining and autonomous peoples who are de-legitimated (homo nullius) and repressed. Doubly diminished the peoples’ agenda is predicated on cultural distinctiveness and traditional knowledge which still provides for existence (continuance) when not subjected to militarist/economic colonial (neo-capitalist) imperatives which ‘disconnect’ them from self/territory.

Hence while the First World version is one of ‘restoration and reform of domestic frameworks’ to accommodate a version of some First World Indigenous identity, the Third World project transcends frameworks and seeks to invest globalizing systems and institutions with newer thinking, values and meaning.

While this point highlights the distinction in political approach between many Third World peoples and a dominant politic emanating from within the CANZ bloc, it has also to be acknowledged that within First World contexts indigenist voices equally exist. Many Indigenous peoples express a similar identity to that of Third world indigenists, albeit that they are also contained within the States’ systematized politic of ‘restoration and renewal’. Divergence of voice within the First World, addressed by indigeneity,
hinges on the means of achieving recognition of their rights and an understanding of what these rights are. Broadly speaking those who are often structurally located often promote State owned political and juridical processes as the means by which to define and achieve Indigenous rights. Voices more consistent with the Third World’s indigenist voice, maintain their rights are inherent and inalienable. They argue the State cannot ‘give them’ rights because they have always retained sovereignty. The solution in their view lies in the State recognizing their inherent rights.\textsuperscript{10}

In other words, within the First World’s systematized approach of ‘restoration and reform’ there are two broadly distinct voices. Those consistent with ‘indigeneity’ and often the dominant voice in dialogue, argue substantive issues and rights are best addressed through re-structuring and perhaps constitutional reform. The second group consists of peoples who steadfastly refuse to engage in juridical and legal processes that lead to partnership and roles as policy formulators. If they are going to be subjected to a dialogue, which is said to provide de-colonization, then these outcomes, which simply result in more of the same, are unacceptable. Divergence in First World voice will be further examined later within this chapter. For the moment however I will return to the original focus, which is to highlight the divergence between a dominant indigeneity discourse and the voice of Third World indigenists.

Indeed this ‘indigenist project’, emanates from peoples who have already undergone de-colonization and found it wanting. That they are utilizing the international level to engage their states in reforming dialogue, which legitimates and alters their relationship within domestic contexts, does not negate a divergence of politic. Other de-legitimated peoples (hundreds of millions) who were often ignored and overlooked during previous de-colonization processes retaining/creating nation-states are also pursuing accommodation. As a separate and distinct movement from the Indigenous agenda, these unrepresented nations and people seeking ‘self-determination’ similarly demand a voice in multilateral forums, and often the recognition and legitimation of a homeland state. A few examples include the Kurdish people, Chechnyan, Palestinian, and Kashmiri. Large groupings of humanity as millions of people who are invariably cast within dominant
narratives as ‘separatist’, and since September 11th now run the risk of being re-cast as ‘terrorists’.

Indeed achieving self determination at multilateral levels is dependent on one’s capacity to make a case, provide historical-current perspective of deliberate injustice and inequity (legal moral argument) and articulate and manifest a level of politicisation which the world community cannot ignore or with which capital decides it is in their favor to provide an accommodation.

At this level of inter-national engagement, ‘self determination’ may results in two differing considerations: Self-determination as ‘independence’, or as ‘autonomy’. The First refers to the self determination accorded a nation-state (e.g. Timor), the second ‘autonomy’ refers to a model for ‘self rule’ by a people/region within a nation state.¹¹

With Indigenous peoples a comparative minority within First World nations, the existence of international law providing consideration of internal minorities within states, has resulted in the newer indigeneity discourse.

Indigeneity now adds a third interpretation to ‘self-determination’, a domestically contained and newly defined ‘self governance’ as an internal accommodation. Importantly, Indigenous peoples in both First World and Third World contexts are not seeking to deconstruct the nation state and its processes of popular governance. However, they do demand legitimation and recognition on their terms.

12.2 The Need For A New Discourse

Havemann points out that whereas once it was held that only states were a sovereign subject of international law, advances in international human rights law has extended jurisprudence to include Indigenous peoples.¹² Indeed Human Rights law at international levels also potentially legitimates other unrepresented nations and people’s right to ‘self determination’.¹³
With macro-political processes being increasingly called on to provide ‘self determination’, I argue that the extension of international jurisprudence to include Indigenous peoples has resulted in a newer discourse of ‘indigeneity’. The danger is that this may become a useful tool similar to that of Senghors’ ‘negritude’ which provided Empire with the means of retaining power over the de-colonization of African peoples and the retention/creation of nation states (See Vol I:12.3 Definition In the African Context).14

‘Negritude’ which similarly began as an African self-expression of cultural politics was subsumed by Eurocentrically defined and imposed ‘ethno’ political processes. Articulation of cultural ‘difference’ was sidelined under Literature and the Arts, eliminating the need for genuine political engagement. This methodology protected Empire’s external interests, essentially replicating pre-existing colonial borders held legitimate under international Law, while domestic or internal State creating politics were again defined and confused by political discourse held to centre on a self expressed politic.

As a political process the outcome was held to have established the independence of African nations, as systems of governance that accorded with European values, while simultaneously ensuring their means of self determination were denied and remained under the control of Empire. In other words, Africans were still to be subjected to a negative, classist, and racist discourse and macro-political processes which ensured the First World’s political/capital interests retained control.

12.3 Reframing With International Sensibility

Much of the literature contributed by various academics and professors evidences the tension between speaking/writing the language of Indigenous peoples sovereignty, self-determination and co-existence and continuing to retain colonial domination over ‘the progressive emancipation of Indigenous peoples in settler “dominions” of the contemporary Anglo–Commonwealth’.15
This statement again serves to place officials and theorists associated with the newer discourse of indigeneity within the CANZ bloc. In this group of settler nations decolonization is still generally thought of in terms of the civil rights movements of the 1960s. This framing results in a renewed negotiation by which to internally accommodate Indigenous ‘citizens’ not ‘peoples’. The distinction being that citizens are an individuated identity while peoples is a collective identity. By this means, the amplified and transformative aspects of the international Indigenous agenda, in particular its ecological dimension and sui generis integrity are denied. So too is the collective identity of peoples albeit that the solution being proposed is said to accommodate this consideration.

As Indigenous peoples’ trapped within the borders of First World nation states, Maori, Aboriginal and Native peoples histories all exhibit a continual process of frustrating ‘their calls for new, empowering, normative frameworks and processes’ and acknowledgment of their rights as peoples.¹⁶

The implication of this statement is its assumption that an ongoing process of historically confused and frustrated engagement, in colonially defined and embedded language and a Eurocentric understanding of concepts, can expect to precipitate newer ‘normative legislation’ which genuinely accommodates ‘Indigenous’ notions simply by continuing negotiation within the same national framework. I argue the history and values of colonization in which man’s system is still rooted, limits any ensuing accommodation.

Normative frameworks which do not specify internationally consistent flexibility in approach and policy will only serve to provide, at best an accommodation which ensures integration or worse, self administration of ones own misery under arrangements characterized as ‘nominal power-sharing’. Systemically contained and defined self-governance is not self-determination. Many Third World Indigenous peoples in contrast have employed a politic of working outside the box utilizing the international level to
elaborate an ‘interconnective constructivist framework’, which governmental ratification of ILO 169 then allows them to draw down into national law.(See Chapter 10 and 11)

In 1999, 2000 seminal and edited texts were published. *Political Theory and the Rights of Indigenous peoples* and *Indigenous peoples Rights in Australia, Canada and New Zealand*. Both engage with substantive challenges posed by Indigenous peoples from within the CANZ bloc. Both contain the front edge of dialogue and discussion. Some voices express understanding from the space of lived marginalization and of a history which has served to perpetuate exclusion. Other voices are of theorists and still others emanate from advocacy and agency for and on behalf of either their own peoples, or because the personal commitment is to a just and shared future. All contributions are substantial and provide for a richness which holds the hope by which to re-orient our collective journey into the future.

### 12.4 Into Indigeneity As A Contrasting Of Consciousness

Within First World contexts Augie Fleras confirms that Indigenous people seek a collaborative relationship with the state. He maintains that ‘indigeneity’ seeks ‘shared and interlocking sovereignty’, through ‘self-governance’. I am arguing that the means of achieving this perspective further evidences a divergence in politic between the dominants version of ‘indigeneity’ and that of *indigenist* discourse.

Fleras writes: ‘*Ethno-politics are not concerned with cultural expression or survival per se: nor are they about multicultural adjustments or institutional accommodation. Concern is focused instead on the radical restructuring that bolsters Indigenous control over land, identity and political voice.*’ He continues: ‘*Emphasis in some cases rests on demands for cultural autonomy and territorial groundedness through creation of social space for expressive and instrumental purposes.*’

In other words the politic is for a structural adjustment which provides some level of authority over themselves and which is said to accommodate their ‘peoplehood and
collective identity’. Identity and levels of politicisation again result in divergence. The impetus is one of ‘power’ sharing; the reclamation of land, culture and resources; a redress of grievances, and a restructuring of identity.

This again contrasts with Third World indigenist perspectives, in which the focus is on ‘surviving’ and of retaining identity/land, knowledge and culture against a growing tide of structural adjustments favoring capitals ‘globalisation’, or a newer colonization which seeks to impose the same ‘disconnection’ and ‘systemic dependence’ most First World peoples already live with.

The two approaches combined might be seen as a pincer movement, with hegemonic state authority and dominantly owned international mechanisms as the object between. The First World’s Indigenous peoples are working to transform the dominant from within, as a means of re-instating and re-claiming some authority over themselves (having had negotiation contained to the domestic by national frameworks); the Third World are ‘peoples’ whose articulation serves to highlight the imposed and continuing colonization occurring externally through international mechanisms by the same dominant interests. So while the language and articulation might serve to confuse understanding of the divergence of Indigenous articulation, resulting voices reflect on the differing impetus, identity and domains of activity.

Where First World Indigenous people, it is suggested by Fleras and others, are seeking ‘settlement’ which provides varying levels of self governance through structural accommodation (partnership within dominance), Third World Indigenous peoples are seeking global reform which provides for instrumental consideration that addresses the injustice and inequity of the dominantly owned system of multilateral and bilateral mechanism and institutions which deny them their inherent rights. Thus an Indigenist politic is cognizant of the need to reform inherent excesses and imbalance as a means of ensuring the ‘continuance’ of ‘livingness’.
The Third World project or an *indigenist* project is inextricably linked with marco-political reforms aimed at de-colonizing and democratizing international mechanisms, institutions and agencies. Where the International Human Rights agenda provides the door to ‘equity’ rights and ‘distinct’ rights, the Biodiversity agenda as an ‘*indigenist*’ project is concerned with the recognition of their collective rights of traditional knowledge and control and protection of these same cultural means (knowledge and livingness) integral to continuance and survival.

Here again it is necessary to point out that many First peoples pursue a politic which seeks to restore their rights to ‘resources’. As their negotiation is generally contained at domestic levels however, processes tend to lead to juridical consideration which not only determine but also define a level of rights, e.g. hunting and fishing rights. The outcome, while leading to some gain is simultaneously a diminishment in rights. A class of rights that nominates and defines a ‘societies’ activity and simultaneously casts living systems simply as resources consistent with Eurocentric values is not consistent with Third world *indigenist* politics. A further problem arises with this approach. Hunting and fishing rights are now cast as ‘special’ rights which sectors of the wider community, particularly those who belong to gun associations and enjoy hunting as a sport, and recreational fishermen perceive as a diminishing of their own rights and historically validated priority relationship with the state. This outcome often leads to hostility between wider society and those Indigenous people granted this category of rights. Emotion is easily unleashed and manipulated for other political gains.

Within First World contexts, Fleras writes: that ‘indigeneity’:

> ‘moves away from the colonization of the past towards the recognition of First peoples as distinct societies whose collective and inherent rights to jurisdictional self-determination over land, identity, and political voice have never been extinguished but serve as grounds for entitlement and engagement with the State. The politicisation of this indigeneity is inextricably linked with its manifestation in Indigenous ethno-politics’. 20
Important he sees ‘ethno-politics as a collective action or social movement’, ‘the transformational dynamics’ of which:

‘involve(s) the articulation and redress of grievances against the State. The mobilisation of this collectivity is anchored by the self-conscious stance of related people who define themselves as rightful occupants of a historical homeland. This imagined sense of ‘peoplehood’ reflects a division of the world into moral communities of like-minded individuals with a distinctive identity and culture, emotionally charged membership, and a passionate attachment to a homeland as the site of pre-existing entitlements’. 21

This is an important perspective because it again contains language and concepts which can create further confusion simply by attempting to write an understanding of ‘indigeneity’ which might be interpreted as having universal relevance for all Indigenous peoples. It also reflects on some First World Indigenous identity and levels of politicisation. Third World peoples and indigenists derive their legitimacy from the constructivist definitions and standards of interconnective instruments in international law, or international treaty law. 22 They make claim to their ‘identity’ and ‘rights’ on a ‘distinctive’ basis as ‘peoples’, and not that of an ‘imagined peoplehood’, or a ‘moral community of like minded individuals’ consisting of ‘emotionally charged membership’.

While these descriptions may explain some Indigenous identity, allowing for an internal accommodation of ‘distinct cultural societies’; Third World Indigenous-Tribal identity, on the whole, retains the integrity of distinct peoples’ grounded in territory, culture, language and sui generis knowledge as a self sustaining autonomous living system. In other words where First World peoples have been contained and forced to exist and pursue their aspirations in terms which remain consistent with the dominant’s man made system; Third World Indigenous and indigenist seek to remain living systems within the one living system: Earth.
Consequently, while some First World groups, it is said, are focused on re-vitalizing culture and the pursuit of a politic which is understood as a ‘competition for power’ – or more accurately the retransfer of power from those who have it to those who want it as a basis for sovereign self-determination’, \(^2\) \(\text{Indigenists (north and south), seek a self determination which allows them to priorities their peoples considerations and define their own Indigenous-state relations. Not competitively seeking power, this project rather expresses a politic consistent with conscientising perspectives relevant for all humanity and which have the potential to enjoin government (similarly colonized by external interests) in a collaborative politic which address multilateral processes of reform and their re-orientation to newer values and priorities, shifting the focus of activity to addressing the critical ecological challenges we face in common.}

Indeed this politic is the reason for the growing alliances Indigenous peoples have been able to develop with environmentalists and green groups, Labor movements, women’s groups, farmers, fisherfolk, peasants, and youth within the Third World. It has informed much of the activity of a growing Civil Society movement at international levels: in particular the work being elaborated through the UN’s World Summits.\(^2\)

Within South America, the emergence of Indigenous political parties, have served to change national landscapes, drawing multiple marginalized groups towards them. Indeed where Mexico’s masked and articulate Marcos heads a flourishing peoples’ movement, Peruvians have elevated their leader to the Presidency. Bolivia has recently followed suit electing an Indigenous Leader. Within First World contexts, the continual casting of Indigenous peoples aspirations as a ‘competitive’ politic, often serves to engender hostility and racism from wider society. Limiting their politic and characterizing it as a ‘power’ discourse may only further resentment, hindering government from recognizing Indigenous peoples’ rights. The delay, ultimately serves dominant interests.

This view leads to a further distinction between projects. The First World’s ‘indigeneity’ discourse is concerned with a structural accommodation within a disconnected system based on Man’s Law and its power, and is of an identity limited to human inter-relation.
It is said to include territorial belonging and ‘difference’, which distinguishes Indigenous from others (the re-visiting of the us-and-them dichotomy, which casts Indigenous aspirations as competitive). The Third World as an ‘indigenist’ project seeks an inclusive conscientising inter-dialogue providing an equitable legitimation of autonomous cultural peoples as a continuance of a diversity of ‘livingness’ in which values and knowledge are of Mothers Law (Mothers Law does not negate exchange for those who may interpret this understanding as romantic or unrealistic).

This distinction between consciousness and projects is vital given the entire global system is dominantly owned. The language, methodology and terms by which First World Indigenous people attain their accommodation may well be promoted by CANZ bloc governments as ‘the solution’ for all Indigenous - Tribal peoples and possibly other de-legitimated groups, at marco-political levels. Such a newer systematizing will only serve to allow globalising mechanisms consistent with capital’s values, to continue to ‘disconnect’ still ‘connected peoples’, subjecting them and the livingness which they sustain, to further diminishment and genocide.

While the perception may be that the ‘principal’ of ‘indigeneity’ as discourse is consistent with Indigenous peoples’ own ‘indigenist’ or ‘indigenizing’ project at international levels, the practical application of the Eurocentrically embedded ‘indigeneity’ politic as currently defined and pursued, may result in a further diminishment of Indigenous peoples’ rights contained within the interconnecting instruments and international law.

While the challenges emanating from First World Indigenous peoples are similarly described as ‘transformative’ and ‘confounding to state authorities’ (which they no doubt are), the keying of ‘indigeneity’ to domestic contexts, political theory and legal mechanisms hinging on pre-existing and dominantly owned discourses of ‘difference’, and ‘ethno-politics’ and devoid of the nature-body dimension of sui generis knowledge and philosophy results in a divergent Indigenous politic. Both however are legitimate and require accommodation. The aim of this analysis is simply to point out this
divergence, in order that any assumed sameness and thus potential confusion is further clarified.

12.5 Back To Normativism: Confusing Voice As Containment

It can be argued that a dominantly owned ‘indigeneity’ discourse emanates from a recognition that positivist approaches no longer address substantive and legitimate issues or Indigenous voices. Given that western theory is generally a knowledge applied as ‘tool’, the terms uptake might be seen as the means of politically determining dialogue (as process) aimed at reaching a newer normative solution. In other words ‘indigeneity’ becomes the word or descriptor applied to the process of dialogue between Indigenous people and the state. That the term has already been defined within theory allows the State to neutralize any indigenist articulation, whether this voice emanates from First World contexts or the Third World.

The keying of definition to pre-existing theory further ensures that the State retains its authority and more importantly the power of their disconnecting system, by relegating internal minorities to a category of ‘distinct societies’. Such a domestic accommodation negates their status as peoples under international law. Recognition which potentially allows for the continued existence of sui generis peoples and biodiversity. The methodology of structural containment varies within First World countries, and is examined later but each seeks re-definition of Indigenous peoples while questioning the basis of their claims.

‘Indigeneity’ as a theoretical politic seeks to address internal Indigenous-State relationships. As a tool, it shifts discussion away from substantive engagement with the amplified reality or specifics of diversity of Indigenous - Tribal peoples, their cultural identity, inheritance, values and worldview. Furthermore, appreciation of ‘indigeneity’ becomes a function of an essentially Eurocentric process of understanding and its ascription to Indigenous peoples. As a device it again allows the dominant to determine the degree and terms of Indigenous - Tribal peoples accommodation within dominant
hegemonic thinking and systems. In other words indigeneity seeks to diminish any substantive dialogue, by subsuming the content of discussion, while claiming that it is contained and has been canvassed within the concept. The term ‘indigeneity’ is simply overlaid on discourse in order that an in-systemic or paradigmatic accommodation might be achieved.

Substantive engagement shifts from an engagement with indigenist notions and concepts emanating from internal minorities which retain ‘connectivity’, to a Eurocentric discourse centering on ‘difference’ and the ‘authenticity’ of Indigenous identity. In other words the theoretical focuses on the internalized negativity of that First World Indigenous identity who bore great discrimination and were forced to adapt in the face of historic/contemporary policy. This grouping, often found marginalized within urban settings or inhabiting official organizations often understand their identity and politic as being oppositional to that of the dominant.

Much of this identity has historically pivoted on ones ‘difference’ from dominant identity. In other words, just as settler identity emanated from a drawing together of people where in the ‘other – pre-existing peoples and land were all understood as hostile’, some Indigenous identity has resulted from a drawing together around shared narratives within a racist context and framework which continually diminishes and imposes the injustice which they have to live. Indeed Fleras’ definition might be seen as seeking to address this situation, by referring to groups as moral communities of emotionally charged, like minded, or related people; distinct societies who hold to a historical notion of belonging to a particular homeland.26 The problem however is that while this definition may address those who have undertaken the greatest degree of adaptation, and reflect ‘a’ political articulation,27 it does not include the other Indigenous-Tribal peoples, an overwhelming global majority, who retain ‘connectivity’.28

These peoples are not only those of Third World countries but are equally to be found within the First World. Additionally within First World contexts many of these peoples
equally claim legitimacy as peoples through international Treaty law and have been active within this arena. These are peoples whose identity still emanates from a contexting of cultural integrity (language, knowledge, inheritance) even though marginalisation and often isolation on reserves and mission ‘enclaves’ has often served to diminish their voice and ensure their material and spiritual ‘impoverishment’.

Physical containment often leads to an assumption that adaptation to this diminished imposed in-situ existence (sometimes self destructive), has resulted in the loss of traditional/inherited identity and knowledge. However as any one who has lived in these settled enclaves can attest and newer anthropological and ethno-archeological literature confirms, the opportunity to visit and traverse ‘country’ quickly establishes that traditional relationship, skills, knowledge and identity are extant and inextricably linked to historic territory/identity.

Stephen Loring and Daniel Ahini express the same view and provide just one example from Canada.

‘The vitality of Innu culture is not always evident from the visible elements of modern community life. Many of the core values of Innu culture are not apparent in the villages, divorced as these are from the land and relationships between individuals, groups and the land that are experienced as country. In the country, placenames and stories evoke narratives and mythology to create a richly textured landscape overlaid with meaning and history. In the country the Innu are competent, self-reliant and independent; they walk in the footsteps of their ancestors.’

Others who work within these enclaves will confirm that often the imbibing of alcohol which is excessive and appears consistent with severe alcoholism, will simply stop with apparently no side effects or longing when visiting country. This repeated experience has led a number of colleagues working within community to comment that Aboriginal
peoples’ relationship to alcohol is not that of the Europeans. Aboriginal peoples also become self-reliant and independent when in country.

Throughout Canada, New Zealand and Australia many peoples continue to exist in similar diminished circumstances. These peoples are invariably left out of rarified discussion and political process. Problems may arise when a few elevated representatives who are officially legitimated, or in some instances politically appointed, become embroiled in government processes while simultaneously seeking to define an identity which accords with their self understanding and provide a normative political solution which accommodates themselves.

Indeed in this framework, ‘indigeneity’ can serve dominant interests, the politically legitimated discourse being of those Indigenous voices which have already had to relinquish ‘connectivity’ (re-settlement, institutionalization) and are engaged in a re-vitalization of self understanding. This may again assist orientation towards the values of the dominant’s newer narratives which ‘selectively’ include aspects of cultural tradition (the re-structuring of identity mentioned previously by Fleras). Importantly many Indigenous nations, Iwi and peoples retain cultural identity and as such pursue an indigenist politic. Language also provides no clear means for determining who reflects an indigenist politic. Even those using a form of English often remain ‘connected’ to inheritance of identity and knowledge.

Perhaps the insights provided by Linda Tuhiwai Smith might best explain the divergence between indigenist articulation and those pursuing indigeneity from within First world contexts. Writing from within an integrity of Maori culture, her perspective sheds further light on much of the confusion within the CANZ bloc.

Tuhiwai Smith makes a distinction between the project of ‘community’ and that of others active as either ‘separate organisations or as a small group of individuals’ whom she writes ‘became much more intent on engaging in reorganizing political relations with the state.’ In her view the strength of the...
(Indigenous) movement is found in community, and emanates from its local mobilization and grass root development. The community is the locus of cultural identity and strength. It is from within community that cultural revitalization as an Indigenous project emanates. Linda writes: ‘The cultural and linguistic revitalization movements have tapped into a set of cultural resources that have recentered the role of Indigenous women, of elders and of groups who have been marginalized through various colonial practices. These groups in the community were often the groups who had retained ‘traditional’ practices, had been taught by elders, were fluent in the language and had specialized knowledge pertaining to the land, the spiritual belief systems and the customary lore of the community’.

While ‘separate organizations’, and those operating as a ‘small group of individuals’ may be seeking to re-connect with the cultural resources available within ‘community’, their locus of existence often dominates. As a group who have more often then not defined themselves in opposition to policy and in response to State power, all the while absorbing systematized knowledge and thinking, they represent a grouping who often reflect ‘unspecified identity’.

Colonization and roles within the national project, often perceived as validation of success, hinders the ‘decolonization of mind’ that gives rise to indigenist politics. Both Linda Tuhiwai Smith and James Sa’ke’j Youngblood Henderson identify this moment of self awareness as contributing to the movement and its strong and articulate voice informing international dialogue. The politic of ‘disconnectedness’ however gives rise to a grouping of people who are most vulnerable to a re-structuring of identity consistent with dominant precepts.

Having now created a political discourse which accords with First World identity construction, but is held to be Indigenous by virtue of those Indigenous who have subsumed the discourse as a means by which to understand and re-construct their
identity (selective re-vitalization and re-structuring of culture), ‘indigeneity’ now becomes another confusion. The relevance of this insight has importance at the level of methodological application.

‘Indigeneity’ can now invoke the limitation of the substantive definition. Juridical and political processes which legitimate ‘a rather static view of culture or an expectation that only allows for slow and gradual change rather than radical and dynamic transformation’\(^{34}\) are given ascendance. ‘Difference’ from Eurocentrically devised and often historically inaccurate ‘stereotypes’ are held to be in-authentic. By these processes peoples unable to establish their ‘connectivity’ (on dominant terms) are forced into the only other category legitimated by political theory, that of indigeneity, which already defines them as ‘distinct societies’. Hence it can be argued that an ‘indigeneity’ agenda opens the door for processes leading to an in-systemic accommodation furthering integration and diminishment keyed at a domestic level thereby negating international standards which address global inequity and injustice.

12.6 Indigeneity As Newer Dialogue For Community

As a political tool, ‘indigeneity’ has a strategic use in that it can again confuse dialogue. Indeed ‘indigeneity’ might be seen as providing the means by which non-Indigenous peoples have been able to more deeply penetrate Indigenous cultures, re-defining and re-contextualising understanding. Marginalized by political process and distanced from rarified discussion, much Indigenous leadership retaining connectivity of language and cultural identity within the First World, are mollified when officials now appear more sensitive to their indigenist voice.

While dialogue may canvas substantive issues and leadership believe they are engaged in a ‘genuine’ negotiation, the outcome and solution has already been framed and is contained within the theoretical that now informs the dominants position. ‘Negotiated agreement’ (as a domestic processes) is often contingent on a relinquishing of ‘inheritance’, especially territory and collective identity, and the implementation of newer economic imperatives and governance structures which are again consistent with
dominant values and interests. A perspective which simply serves to highlight how ‘consultative’ processes invariably never result in an outcome that Indigenous peoples feel is consistent with their aspirations, or values. Often the outcome, now said to have been achieved with their ‘consent’, does not even relate to the nature of discussion Indigenous peoples felt they where undertaking as negotiation. In short, all ‘agreements’ or ‘settlements’ ensure that the adaptation is always theirs, while the dominants ‘progress’ driven by capital/military interests continues unabated.

Indeed it might be argued that where Senghor’s ‘negritude’ provided the discourse and ‘tool’ for Imperial containment of African de-colonization and nation-state retention/creation, confusing dialogue at both domestic and international levels, ‘indigeneity’ may similarly become the newest tool by which to de-colonize internal minorities, particularly within the First World. The imbalance of power legitimated by structurally situating dialogue ensures that any indigenist (culturally consistent) articulation is marginalised and silenced. A promotion of ‘indigeneity’ (politically devised ethno-identity) at international levels may further confuse and serve to negate the decades of work and struggle Indigenous Tribal peoples have undertaken to establish their rights in international law. In other words, the ‘challenge’ from Third World peoples and indigenists which can potentially lead to a reform of dominant mechanisms and institutions within man’s system, may be contained, while other strategies shoring up the status quo or a unilateralist position, are enforced.

In this light indigeneity, a dominantly owned discourse of internal de-colonization, becomes the latest normativism and hegemonic response to the requirement for the reform of globalizing systems and institutions and their practices which result in inequity and injustice. Moreover, indigeneity becomes the tool by which a First World solution, said to be consistent with Indigenous peoples aspirations might be used to confuse international discussion. The dominance of First World interests, of English language and discourse, and the marginalization and political strategies which deny much of the Third World’s peoples access to international fora (see First chapter ‘Within the International’) will perhaps see ‘indigeneity’ elevated as ‘principal’, subsuming the
voice and political strategies of Third World peoples; Indigenous and Tribal peoples who argue that de-colonization does not provide ‘equity’ and whose lives are a living testament to this reality. It is the continuance of often externally devised genocide which led to their internationalization within the movement which addresses a wider and growing collective voice to that level from which global diminishment is legitimated and increasingly imposed on all peoples.

Indigeneity as a dominant strategy negates international standards, simply by providing governments with a newer approach that contains discussion at domestic levels. What this achieves is the requirement that Indigenous peoples subject themselves to national, regional, provincial processes to establish ‘rights’. So where international standards provide them with self determination as peoples, indigeneity and its processes will see them having to start from a level of homo nullius potentially legitimated as ‘distinct societies’ and subject themselves again to further political and juridical processes in order to claw back what they have already achieved in international fora. While indigeneity and accompanying ‘agreements’ may be the only way some First World peoples feel they can hope to achieve recognition or that it provides what the State is prepared to discuss and perhaps begin processes towards granting, it is important that political articulation is not confused with or used to deny indigenist and Third world voices.

The advent of indigeneity which legitimates a political process that concentrates First World peoples attention on a nationally devised agenda centering on often dated State notions of ‘equity’ parallels other activity at international levels. Global conscientisation and multilateral processing is now challenged by dominant First World countries asserting historic unilateralism as a means of retaining Empire. Co-existence of diversity still eludes dominant perspective simply because a paradigmatic shift in perspective clearly results in a view that it is the First World which is dependant on the Third World and not the other way around. The dominants perspective is only sustained if dialogue remains a structurally situated Eurocentric and imposed discourse of elites (those that
benefit from disconnectedness) in which the global family continues to believe, or is forced to accept.

### 12.7 Indigeneity As A Discourse Of Diminishment.
A contrast between Indigenous peoples self-articulation or an ‘indigenist’ politic and an ‘indigeneity’ politic emanating from First World theoretical discourse.

<table>
<thead>
<tr>
<th>INDIGENIST Self Expression</th>
<th>Dominant INDIGENEITY discourse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term</td>
<td></td>
</tr>
<tr>
<td>Pre-existing indigenist or an indigenizing project of cultural self expression</td>
<td>A dominantly owned and defined 'indigeneity', ethno-identity discourse.</td>
</tr>
<tr>
<td>Legitimacy</td>
<td></td>
</tr>
<tr>
<td>International law (on basis of inter-connecting constructivist instruments or a historic Treaty)</td>
<td>None, other than that provided in domestic law and acceded by the State (moral assertion/level of politicization).</td>
</tr>
<tr>
<td>Identity</td>
<td></td>
</tr>
<tr>
<td>Distinct peoples</td>
<td>Different societies of selectively reconstructed identity.</td>
</tr>
<tr>
<td>Integrity</td>
<td></td>
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<tr>
<td>Autonomous sui generis peoples and systems (connectedness)</td>
<td>Societies of cultural revitalization (disconnectedness and diminishment)</td>
</tr>
<tr>
<td>Order</td>
<td></td>
</tr>
<tr>
<td>Mothers Law, cultures of autonomous living systems consciousness.</td>
<td>Man’s Law, centralized power and control of structured authority by structured authority imposing its law and self interest on all of life.</td>
</tr>
<tr>
<td>Politic</td>
<td></td>
</tr>
<tr>
<td>Identity, Relationship, Authority</td>
<td>Wealth, Power, Status</td>
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<tr>
<td>Process</td>
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<tr>
<td>Reform of dominantly owed and informed international system, mechanism and institutions.</td>
<td>Domestically contained structural accommodation within dominant mechanisms.</td>
</tr>
<tr>
<td>Aim</td>
<td></td>
</tr>
<tr>
<td>Survival and legitimization of cultural diversity of inter-connective and inter-dependant 'livingness' which provides for continuance of life.</td>
<td>Power sharing and some self authority within man made system which currently priorities unsustainable existence.</td>
</tr>
<tr>
<td>Accommodation</td>
<td></td>
</tr>
<tr>
<td>Self-determination. Retention of autonomy, land, culture, knowledge, resources and a 'collaborative' relationship with State.</td>
<td>Self-governance. Reclamation of some self authority. The State grants a level of local Governance (dominantly defined) in exchange for a relinquishment of inheritance-</td>
</tr>
</tbody>
</table>
### Table: New Political Discourse of De-Colonization

<table>
<thead>
<tr>
<th>Authority</th>
<th>Cultural integrity (socially contextualized voice of conferred authority) and Alliances (domestic and international)</th>
<th>Dominant forms of governance and social structuring (disconnected voice) and creation of newer ‘pan-national’ selectively restructured identity expanded across CANZ Bloc and potentially the globe.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Means</td>
<td>Sui generis system and knowledge (self generating and sustaining autonomy)</td>
<td>Dominantly determined and defined economic development (dependence, complimentary roles)</td>
</tr>
<tr>
<td>Basis</td>
<td>ILO169, Declaration of Indigenous Rights, Biodiversity Conventions and Traditional Knowledge rights, providing collective ownership and control over territorial livingness and use consistent with their values</td>
<td>WTO’s Intellectual property, corporate patent law (TRIP’s) and some domestic system providing a level of protection / authentification of Indigenous art, artifacts, ritual and/or symbols as an individual right of author.</td>
</tr>
<tr>
<td>Impact</td>
<td>Continuance of ‘livingness’ and diversity.</td>
<td>Greater inequity and injustice, commodification of ‘livingness’, homogenization and potentially destruction of humanity and earth.</td>
</tr>
</tbody>
</table>

Re-framing the whole of the Indigenous peoples agenda to conform with western consideration is consistent with strategies being run within the Working Group on the Draft Declaration (Chapter 9.5, p.206.), which aim at limiting discussion on previous UN Covenants which framed decolonization processes of the 1960s. Activity centers on processes which seek to diminish the notion of self-determination. Such an approach allows First World interests to ignore the ‘transformative’ aspects of the international movement and the amplified rights contained within newer inter-connective instruments. Instruments that potentially provide Indigenous peoples with recognition of their self-determination, cultural distinctiveness, inheritance, collective identities, traditional knowledge, territories and ‘livingness’ as peoples in international law.

The challenge this poses to First World and Commonwealth interests, and more particularly a capital system which seeks to own and exploit for and on behalf of dominant elites and societies, might be seen as the context within which the newer discourse of ‘indigeneity’ has been elaborated. Global events also appear aimed at...
Chapter 12: A New Political Discourse Of De-Colonization

sustaining the dominants capital system without having to acknowledge that the means of ‘expanding and growing their economy’ remains the exploitation of ‘other’ people and their basis of existence and identity. Sadly the project as it is currently being elaborated neglects to reflect on the values of dominant culture and the identity which gives rise to a system that denies the majority of humanity their dignity and the means by which to sustain their existence.

Instead the political challenge for the dominant has been to elaborate a newer discourse which appears to be conscientised but which ensures that the means by which any group attaining a level of control over their own affairs potentially remain subservient to and thus consistent with dominant cultures values and interests.

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3 Linda Tuhuiwai Smith (Ngati Awa and Ngati Porou) is an Associate Professor in Education and Director of the International Research Institute for Maori and Indigenous Education at the University of Auckland. Taken from ‘About the Author’ on inside cover of book.
5 Dr. Augie Fleras currently teaches sociology at the University of Canterbury, New Zealand. He was formerly Associate Professor in the Department of Sociology at the University of Waterloo, Canada. Excerpt taken from ‘Contributors’, in Havemann, P. Ed. (1999), *Indigenous peoples Rights in Australia, Canada and New Zealand*, Oxford University Press. (viii)
7 Ibid., p.192.
8 Ibid., p.189.
9 Ibid., p.189.
10 These voices are consistent with growing global conscientisation, which holds that the solutions for all humanity require political solutions consistent with multilateral processes of the UN, not unilateral militarism which imposes continued inequity and injustice.
11 Aceh within Indonesia provides a current example. Where a ‘free Ache’ movement seeks some degree of self determination, the Government in Jakarta suggests autonomy, while militarily clamping down. The tsunami has now altered the context in which dominant and diminished relationships are being played out. It remains to be seen what the effect of foreign led re-construction will achieve for the local Acehnese people other than their incorporation as a newer grouping of the systemically dependant and impoverished. This despite the billions of dollars ‘freely’ given in donations by the citizens of dominant
countries, but which NGOs will turn into micro-debts, while officials at the macro level of international development and trade (either local or foreign) relieve them further of their resources.

13 The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, guarantee that all peoples have the right to self determination.
14 The methodology, which provided for confusion stems from a Eurocentric splitting of discourses. Where ‘negritude’ was an expression of cultural identity politics, its proponents were intellectuals whose writings allowed for its relegation to Literary studies and the Arts. Linda Tuhiiwai Smith, points out that an indigenizing project also has two dimensions. ‘The First one is similar to that which has occurred in Literature with a centering of the landscape, images, languages, themes, metaphors and stories in the Indigenous world and the disconnecting of many of the cultural ties between the settler society and its metropolitan homeland. This project involves non-Indigenous activists and intellectuals.’ The second aspect is an Indigenous project: one which centers an Indigenous politic of cultural action. In other words the second project is political self-expression, which emanates form cultural identity, and does not subscribe to dominantly promoted discourses of ‘inferiority’. See Smith, Linda T. (1999), *Decolonizing Methodologies*, Zed Books, p.146.


22 This is the same level which legitimates the Civil and Political rights, Economic, Social and Cultural rights afforded the citizens of all or any state, particularly those who have no Bill of Rights or constitutional protection of these considerations. ICCPR, and ICESCR both underpin the equity of peoples across all levels of man’s systemic architecture. Diminishing these for one set of peoples’ or a targeted part of humanity in turn diminishes them for all peoples, potentially denying all citizens these rights.

24 The UN has held three World Summits to address the critical issues humanity faces in common. The First was held in Stockholm in 1972 and is known as the World Summit on Human Development. This was followed in 1992, by the Rio Earth Summit. 2002 will see the Third World Summit for Sustainable Development (WSSD) held in Johannesburg.
25 Kavaljit Singh points out that 8 OECD countries own 98% of the formal economy; the rest of the world’s peoples share the remaining 2%. Presentation at Regional Conference ‘Corporate power or People’s power? TNCs & Globalisation’, convened by Asia Pacific Research Network (APRN) and AID/WATCH, University of Technology, Sydney September 2001.
27 Linda Tuhiiwai Smith makes a distinction between communities who are primarily focused on cultural revitalisation, and ‘separate organizations or a small groups of individuals’, (who) ‘became much more intent on engaging in reorganising political relations with the state.’ Smith, L.T. (1999), *Decolonizing Methodologies*, Zed Books, p.111.
Chapter 12: A New Political Discourse Of De-Colonization

31 Ibid., p.110
32 Ibid., p.110
33 Ibid., p.111.
35 The following section dealing with case studies will illustrate this point further. Examination of the outcome of the UN’s treaty study conducted by Miguel Alfonso Martinez, the Special Rapporteur confirms that the intent of dialogue is often not that stated up front. In his final report he refers to the Lubicon case in which negotiation resulted in newer bands being created through ‘questionable’ means in order that an agreement could be achieved which sidelined all those communities which refused to relinquish ‘inheritance’ of identity and belonging. See United Nations document: E/CN.4/Sub.2/1999/20.
36 In 2003, Canada held a Senate inquiry into a dialogue between Indigenous peoples’ and officials of the (former) Government. The inquiry was into the outcomes of the National Roundtable consultation on Indigenous peoples political accommodation, and the ensuing policy and legislation created by government. Senators were left questioning department and governmental officials about legislation which did not reflect the agreement reached with Chiefs and their peoples’ representatives.
37 This difference in impetus explains the divergence of Indigenous voice at the international level often occurring between official Indigenous representation from the First World or CANZ bloc, and those of their brothers and sisters from Third World Countries.
38 IPS Geneva 22, An article reporting on the outcome of negotiations on the Declaration of Indigenous Peoples at the Working Group December 5-16, 2005 clearly indicates this point. Australia, New Zealand the USA and Britain (‘Washington Consensus’) were identified by Indigenous representatives as nation-states seeking to limit the notion of ‘self-determination’ provided to all peoples under ICCPR and ICESCR. Article:

**RIGHTS:**

**No Declaration for Indigenous Peoples This Year - Maybe Next**

Gustavo Capdevila

The long-awaited international declaration on the rights of indigenous peoples may see the light of day in 2006, after more than 10 years of complex efforts by a United Nations working group, experts announced.

*GENEVA, Dec 22 (IPS)* - The negotiations that took place this year gave rise to a glimmer of hope that the next session of the U.N. Commission on Human Rights, to be held in March and April, might approve the Declaration of the Rights of Indigenous Peoples.

The U.N. estimates that there are about 300 million people belonging to indigenous communities in more than 70 countries around the world. It points out that they are among the most marginalised people in the world in economic, social and cultural terms.

Over the space of a decade, the working group on the draft declaration on the rights of indigenous people, made up of representatives of governments and indigenous communities, had barely managed to reach agreement on two articles, and these in fact dealt with collateral issues.

But in the Dec. 5-16 session in Geneva, the working group finished drafting 10 paragraphs of the preamble to the declaration, as well as 14 articles, which can be considered as already approved, representing very concrete results, said Luis Enrique Chávez, from Peru, who chairs the group.

Victoria Tauli Corpuz, representing the Tebtebba Foundation, an indigenous association in the Philippines, said the adopted articles were very important because many of them are related to the key
issues that indigenous people would like to see in the declaration.

But Tauli Corpuz acknowledged to IPS that the working group has not yet begun the process of provisionally adopting articles related to self determination, lands, territories, and resources, because "these are the most difficult articles to negotiate." "Anyhow, I think that it's a very good indication of progress," said Tauli Corpuz, one of the eight indigenous representatives on the Permanent Forum on Indigenous Issues that functions at the U.N. headquarters in New York, and includes another eight state delegates.

However, Saúl Vicente Vázquez, from Mexico, representing the International Indian Treaty Council (IITC), said indigenous people are disheartened by the ten-year dialogue with the governments.

The representatives of indigenous people analysed the possibility of accepting the draft text of some articles proposed by the governments, in order to finally obtain a declaration.

The draft declaration apparently bothers some member states, which have thrown up hurdles and attempted to limit the rights outlined in the text, said Vázquez.

Most governments have taken a positive attitude, although unfortunately there are some powerful states that are clearly opposed to the establishment of indigenous peoples' rights, he maintained.

He specifically mentioned Australia, the United States, Britain and New Zealand as the countries that are opposed to recognising indigenous peoples' rights to self determination, and to their own land, territories, and natural resources.

Chávez, however, said he had found goodwill on both sides during the debates, particularly in the negotiations over the more sensitive issues. "We have managed to close much of the gap between the texts, and although there are still differences, these are about ideas, not words," said the Peruvian diplomat.

The issue of self determination is limited to a debate between the indigenous peoples, who present their legitimate aspirations, and the states that describe what they think is reasonable and possible to respect and fulfil in given circumstances, Chávez said.

The two supreme treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, guarantee that "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," the covenants add.

A similar text was proposed by the U.N. Sub-Commission on Human Rights to solve the problem of self-determination in the draft Declaration on the Rights of Indigenous Peoples.

But Australia, the United States and New Zealand told the working group that Article 3 on self-determination in the draft declaration "cannot be a rote repetition" of Article 1 of the two international conventions.

The three countries said the working group "must explain in this declaration exactly what is meant by the term self-determination as relates to indigenous peoples."

In the working group debates, "We have also heard the assertion that the right in Article 3 may include secession or independence, or self-government, or free association, for example," the three countries said in a joint statement.
The text that they proposed states that self-determination "shall not be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States."

Tauli Corpuz said the statement reflected the three countries' fears and concerns, and showed that they want to ensure that the right of self-determination does not lead to secession.

Indigenous peoples maintain that if it is agreed that they have the right to self-determination, limiting that right would be discriminatory. "Why is (self-determination according to the two international treaties) allowed for other people but not for indigenous peoples?" Tauli Corpuz protested.

In any case, those indigenous communities that have "an agenda for secession" will go ahead with or without any U.N. declaration, she insisted.

Tauli Corpuz gave short shrift to the idea that after a declaration which recognises their right to self-determination is adopted, indigenous people "will suddenly go out of their way and secede. That's not the reality in our world today."

In spite of these difficulties, Chávez believes it will be possible to present a text for adoption by consensus at the last session of the working group, to be held in Geneva Jan.30-Feb.3.

As a last resort, Chávez could turn to the Commission on Human Rights itself, with a draft declaration that could be adopted by the Commission as the highest U.N. body on the issue. Another option is for the Commission to authorise a new period of working group sessions to finalise the text of the declaration over the next year. (FIN/2005)
Chapter 13: Indigeneity: Whose Voice?

Politics As An Expression Of Culture And Identity

This section sets out to present the inherent difficulties encountered in dialogue. Where the dominant continually casts Indigenous peoples’ aspirations as competitive, because the legal and political focus tends to be concerned with land, I am arguing that the impasse emanates from a lack of self-reflexivity and genuine desire to understand the ‘other’. With dialogue embedded in historic relationship and dominant parties often unaware of the power their internalised narratives represent as a barrier in their own processing, they may be hindered from hearing the ‘meaning’ emanating from Indigenous articulation.

Indeed the paradigmatic contrast of understanding land illustrates this point effectively. Where one party sees it as ‘inanimate material’ for exploiting, the other sees it as a living manifestation of themselves, of their identity and being. Indigenous peoples’ may fall sick when their country is destroyed. Some individuals, who carry responsibility for ‘country’, can also die when this occurs.\(^1\) Politics is an expression of identity and culture, and it can be argued that it is a lack of evolution in European thinking, as the dominant with veto power over all dialogues, which hinders forward movement of the conscientised politic of collaborative co-existence. This next section will contrast the divergence in expression and provide a self-reflexive Korero; a speaking of ones understanding of the genealogy of ideas and knowledge and their relationship.

Perhaps a re-stating of the paradigmatic contexts from within which one understands politics and its purpose provides a starting point for another level of analysis.

‘Politics are generally about power, wealth, and status; the ethno-politics of indigeneity translates power into self-determination, wealth into land, and status into recognition of a distinct, rights bearing collective identity - a form of differentiated citizenship.’\(^2\)

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
While this is a worthwhile perspective, the objective of this paradigm in which the accommodation is expressed remains wealth creation and the continued legitimation of a dominantly owned and devised capital/monetary system where in accounted value (mostly speculative zeros\(^3\), and fictitious amounts ‘internal transfer pricing’\(^4\), accredited and debited) are held to be ‘real’.

Re-writing this from a Third World perspective or an indigenist voice it might read:

Politics is about identity, relationship, and authority (conferred to wisdom from within, not exerted power); culturally grounded articulation or self-expression is autonomous and of belonging to territory; land is life, and of respectful relationship within ‘livingness’ as a peoples. The objective of this paradigm is ‘continuance of livingness of diversity as well-being’ and a system of trade, which is based on real value.

It is not surprising that ‘negotiated settlements’ forged within Canada, New Zealand and even Australia consistent with a political discourse of ‘indigeneity’ and its priorities have often been accompanied by local action, blockades and increasingly e-media campaigns aimed at ensuring a wider constituency understands that outcomes remain inconsistent with Indigenous aspirations and values.

Borrowing from Fleras, the crux of paradigmatic contrast is addressed by Daniel Salee:

‘The points of contention between First Nations and non-Aboriginals do not simply consist of irritants that might be overcome by mere good will, or of territorial claims that might be satisfied if one or the other party showed flexibility or compromise. As the conceptual differences over land partly revealed, the two parties operate within institutional parameters and sociocultural systems which have nothing in common … The conflict between Aboriginals and non-Aboriginals rests in fact on a paradigmatic contradiction of which the poles are, a priori, logically irreconcilable.’\(^5\)
I would argue that the obstacle to reconciling what is currently lived and experienced as ‘contradicting paradigms’ is dominant identity itself and its values. Indeed I argue that where the system created by man rewards and holds aggressive self interest as successful behaviour, it is not hard to appreciate that dominance currently lacks values, which provide for continuance of wellbeing.

Add to this historic disconnection (nation building/industrialization/colonization/progress) and accompanying discourses and self narratives of ‘supremacy’, of ‘the hostile other’ and the narcissism which often accompanies ‘winning’ dominant behaviour, and it is not surprising that we end up with two seemingly paradigmatically distinct world views.

The basis of this divergence however provides further clues. European history, which continually prioritises conflict and heroises the victor (themselves), has travelled a linear journey through the centuries. Since the Cartesian split and the ascendance of the state, this narrative was amplified with theory which sought to explain and provide internal order in a chaotic world presented by science and decades of war and conflict. In modern times (20th century), the need for order spurned conflicting ideologies on how to centrally control a State’s societies. The world was subjected to conflicted political ‘isms’ competing to control more and more humanity and countries. The historically informed methodology of dominance, i.e. militarism being used to ensure either side’s win or loss with other peoples’ territories often being the landscape within which to play out the destructive power conflict.

What is being argued is that all this European activity remains caught in a paradigm which has disembodied knowledge, has specialised to the extent that it is disconnected, and produced societies of virtual identity. Aboriginal peoples often see the European’s journey through history as a path that took them away from their own humanity and separated them from the living world.
‘Muta’ a traditional Elder of the ‘Murin Bara’ peoples, offered the following perspective on the world and the values of the European:

‘White man got no dreaming. White man him go ’nother way. White man him go different. Him got road belong himself.’ As Anna Voigt and Nevill Drury explain, ‘by this is meant that white peoples have no sustaining and binding spiritual vision either between each other or between themselves and the land. Aboriginal peoples know that such a vision and way of living is essential for individual, social and ecological health. Non-aboriginal people cannot and need not adopt Aboriginal spirituality as their own, but as all human beings are bound by one Earth, there is much accumulated wisdom of the Dreaming legacy – what we are calling wisdom of the Earth that can teach us all.’

The legitimation of European dominance is the ascendance of Man’s Law. A study by Hernando De-Soto points out that dominant theory, like nation states’ laws have all been elaborated after the fact. That is to say, in response to European settler endeavour. ‘Order’ as either understanding or an imposed system of existence has followed the unregulated activity of people. With religion diminished, there was no greater context of ‘order’ within which these humans needed to operate. De-Soto’s analysis clearly shows that in the creation of the USA there was a need to legitimate the activity of its settlers within its body of law, so as to legitimate its own existence. Order as law was simply created after the fact. This perspective also explains why ‘ethicists’ have had no significant response to, or impact on bio-technology. As a separated discourse within modern thinking, it too follows in the wake of unregulated activity.

One example that stands out in contrast is the newer methodology of ‘pre-emptive’ order being legislated by governments in compliance with the creation and activity of the WTO. Capitalism since the demise of its balancing counterpart, ‘communism’, has moved to globalise its mechanisms and values as the global ‘ism’ by which all life on Earth will be valued, discounted, controlled and commodified. The tragedy of this ‘ism’ is that it too is historically limited and does not address the real global challenge that
faces us: how to live as humans within a diversity of life in which the values that imbue relationship allow for the continuance of livingness as wellbeing.

Settler authority as a system of governance is again based on a borrowing. Democracy has become a discourse of principle and practice by which to legitimate the unconstrained behaviour of elites who often ruthlessly imposed their dominance. Democratisation as the creation of a State can again be seen as another process which through lineal time (history) shifts authority away from people to a disconnected imposed structure. I argue that this outcome is a direct consequence of Empire and colonization. Settler societies are disconnected people removed from the amplified living inter-relationship generally extant in traditional cultures.

Modern urbanity produces a landscape of disconnected, mobile anonymity dissolving of relationships. Conversely, traditional and Tribal peoples rely on a consensual voice embedded in community and on social structures which provide a living context within which formalized processes of decision making are checked and balanced by others and by multiple inter-relationship. In settler society, the formalized process was extracted and re-applied as structure. By this means ‘conferred authority’ became ‘power’ responsive only to those who inhabit the structure (legitimated role) and wield its might, which is imposed often by force. In other words modern society only has its structure (judiciary, executive, government) and its institutional processes.\textsuperscript{11}

The advent of the WTO and its newer activity now seeks to re-orient even these structures and institutions to accord priority consideration to corporate rights. Where countries lack these institutions, capital is using its military to accelerate ‘disconnection’ and ‘create’ governance structures and institutions that replicate the dominant’s and accord with its interests.\textsuperscript{12}

Empire, with its historic values of militarist dominance (annihilation/ subjugation) for capital wealth creation, imbued the structure with what could justly be called sociopathic values. Man’s Law is one of competitive adversarialism, continually open to re-writing,
in order to retain the legitimacy of those entities and individuals whose values and activity most accord with and assist in retaining dominance.

First World politics has been one of fearful defensive aggression. Hence a ‘governance’, which is not only disconnected, but often, one which does not accord with the values or aspiration of the people being governed.\textsuperscript{13} Within the First World, and increasingly other parts of the globe, societies are totally dependent on man’s system for their existence and primary identity (role). Much education as it is currently constituted is aimed at creating additional roles within man’s structured existence oriented towards the values of arrogant individualism, wealth creation and unconstrained consumption within a comprehension of time as lineal time and increasingly, of now, the present as instant self gratification.

Political dynamics (elections) within First World countries, hinge on the failure of social engineering by which elites (those with power who inhabit the structure) seek to garner support, while continuing to ‘superficially’ re-interpret for the society, who they are, what is happening to them, how they should feel, what to think, how to behave and what to expect or want.\textsuperscript{14} Indeed modern identity is so disconnected from itself that it is a virtual identity. Discourse and media/communication play key roles in maintaining social disconnection. Neither version of dominantly promoted narratives (political/capital or communication/capital) inform as a contribution to transparency, and are often so disconnected from lived reality, that alternate narratives find fertile ground; a perspective validated by the existence of a growing civil society movement at both national and international levels.

The centre of power for the system (capital as disconnected wealth creation) is currently devoid of values consistent with a continuance of ‘livingness’. Hence the need for newer international standards which accommodate cultural diversity; recognize humans and livingness are the priority; and which seeks to re-subordinate capital to both human rights law and newer ecologically-oriented development law. Such a global project is well advanced through a number of differing International Conferences, and seeks
sustainability: socially, environmentally and economically for all humans. In effect, the project facing the First world is a de-colonization of themselves and an amplification of the values and meaning of their systems and institutions.

Capital’s counter reform elaborated and concretised through the WTO sees transnationals (non living entities) and the elites who inhabit these entities, given superseding power as corporate rights. Governments become the head of client states and thus remain dependent and responsive to capital. Values which imbue inter-relationship and the global system, by which ‘winning’ elites also attain power, sees government assist in overriding the rights of humans and livingness in favour of profit.

Capital’s agenda seeks to commodify ‘livingness’ and systematize (stock exchange, capital markets,) all existence. Rationalization as structural adjustment and regulation aims at producing a global elite (capital/military) who control a privatised system which allows them to determine and shape the world’s future in their interest, while the debt burden for this activity, including their failures, are carried by humanity and the Earth’s living systems.

Corporate rights aim at ensuring that this system is unaccountable and self regulatory. Given the values by which elites succeed within this model, the virtual and disconnected nature of modern identity and the lack of knowledge or respect they have for ‘other’ humans and living systems, a belief that they will either know or want to re-orient their activity is questionable. At best they will produce homogeneity, while life requires diversity. Thus the very ideological basis on which the model is premised is counter to ‘livingness’ and continuity. Indigenist voices point out that their lives are the mirror in which to see ourselves in the future being elaborated by capital/military.

None of this is written to deny the contribution capital has made to advancing aspects of human life; nor is it suggested that reform can take place without them, rather this Korero, is simply to point out that as a disconnected system unto itself (lack of accountability and transparency - the self regulation argument, and closed institutional
processes), its values and activity have become counter ‘living continuance’. Such a perspective again amplifies the nature of inter-dialogue experienced as ‘irreconcilable’.

The powerful of the First World have so much personal investment and belief in their system that their ability to experience the moral dimension of Indigenous peoples’ articulation is questionable. I would argue that the real motive for seeking a solution is not predicated on morals but emanates instead from the existence of international law, which underscores the legitimacy of Indigenous claims and which is experienced by dominance as a challenge to the exclusivity of settler authority within landscape. While national frameworks may currently provide argument for the continued sovereignty of the State, the irrefutable fact is that ‘land was stolen’, and peoples’ remain marginalised, impoverished and devoid of rights.

Why has the Indigenous agenda only now taken centre stage within First World contexts, when the peoples have been making the same claims through-out the history of contact? The pressure, in my view emanates from an appreciation that Third World voices increasingly inform a growing conscientised agenda of global reform, which in response and in contrast to the dominant’s vision of ‘globalisation’ (capitals agenda), demands the reassertion of ‘cultural locality’. With the issue of an accommodation of their Indigenous peoples still unresolved, or more accurately, contained by on-going legal and political State processes, the need to find a solution becomes more urgent. If only to avoid and ensure that their own peoples don’t join the global reform project.

Suddenly the Indigenous voice and their rights are perceived and understood as potentially jeopardizing the legitimacy and basis of the dominants own status, power, wealth and system. Where power is seen to reside in dominance it is not surprising that First world elites experience and therefore characterize Indigenous peoples aspirations as competitive to their own interests.

The relevance of indigenist politics as an expression of a worldview and values that have the potential to assist address global challenges seems not to be recognised. Indeed a US
government report looking forward to 2020, clearly states that as globalisation (capitals version) continues, the only solution to the growing divide between the haves and have nots that their orientation of the global system will produce, is increased militarism.\textsuperscript{18}

While those with power within the First World may maintain that Indigenous expression is a moral politic leading to a structural accommodation, \textit{indigenist} expression and the Third World’s agenda is in effect concerned with the survival of the living systems within the living system as the vital diversity on which all life is dependent. Political discourses of power do not respect the relevance this has for their own survival. All human beings are born of Mothers Law to Earth. This fundamental truth escapes the powerful living the virtual disconnected identity of man’s law and his science.

As an imaginative exercise, and one I’m sure has not been missed by dominant capital, if all G77 countries were to sign the UN’s interconnected conventions en mass, providing for a legitimated basis by which to recognise cultural peoples and their means of continuance and seek solutions that advocate flexibility as opposed to transnationally informed normativism; the First World might conceivably have to re-orient their economic activity to internal consideration and real values and open their markets to Third World product, or declare war upon all the peoples of the world. A potentiality that may yet seem to capital powers as a necessary option being prepared for.

Hope for this ‘irreconcilability’ of paradigms therefore hinges on the \textit{conscientisation} of dominant societies such that those with power begin to understand that their theories and worldview need to be subjected to greater intercultural dialogue. Simply put, the language of dominants, which seeks to explain their activity, only holds for a minority of people who benefit from their system. The majority of humanity who have been discounted by this same system live a contested reality to dominantly promoted narratives. In other words, while dominants may invoke their power and insist that their worldview and theories are ‘the truth’, the majority of Earth’s humanity live by other knowledge and an experience of their imposed system which throws into relief not only the failure of man’s system but the inadequacy of dominant discourse. Succinctly, the
self-talk and knowledge of dominants is thinking projected as truth which they believe is universally relevant, but which cultural peoples everywhere know is not.

As has been illustrated above it is the lack of self-reflexivity and critical engagement with voices that point out the failure of the dominant’s architecture and the processes their mechanism create, that hinders forward movement towards a paradigmatic shift which provides for continuance of wellbeing.  

As the aim of this section is to address the discourse and voices that may be used to re-assert an inequity and injustice of dominance and contain global reform, I will again return to consider indigeneity and the theoretically legitimated solution or accommodations being proposed.

As a First world discourse, indigeneity does resonate with some leadership, albeit that this ‘fit’ again often reflects on a history of dispossession and often genocidal policy. ‘Indigeneity’ has greatest currency with those, who for a matter of survival undertook the most arduous journey of adaptation. Indigeneity as a political expression of this identity is also informed and understood as a domestic dialogue.

13.1 Indigeneity As Accommodation

So where is the dialogue within the First World pertaining to Indigenous peoples? Augie Fleras provides insight. Again ‘indigeneity’ as Eurocentric discourse is a discourse of ‘ethno-politics’. As such the excellent analysis he provides is a useful and considered understanding of the officially legitimated, dominantly defined dialogue emanating from the First world.

In his analysis of the CANZ bloc, Fleras provides the three legitimated dialogues to emerge from indigeneity.
• Within Canada the proposed model is of internal ‘self governance’.
• In New Zealand, a ‘bi-cultural model’ is said to be being pursued.
• In Australia, partnership in economic development (dominantly owned and determined) or ‘self-sufficiency’ defines self-determination.

Shaping these dialogues again are those voices, which tend to be structurally situated and have thus been legitimated within political process.

This next part will examine the differing contexts within which indigeneity as a newer political discourse is said to have relevance. Indeed the three nation-states all exemplify the differing stages to which relationship has evolved through linear colonial history and self-understanding. Grounding theory in contexts which are peopled provides another level of critical analysis. The impact as national process has been instrumentally the result of one groupings dominance within dialogue across the entire CANZ Bloc. In order to understand the confusion which their articulation can engender, we will examine their role before embarking on more detailed analysis of the accommodation indigeneity is said to provide within the three countries. The voices of Indigenous Academics further critical perspective in response.

13.2 The Métis As ‘Go-Between’ In The CANZ Bloc

Within the CANZ bloc, one grouping of people has tended to dominate official discussion. Métis activity within Canadian contexts has not only shaped that nations dialogue, but because approaches are borrowed in the Pacific, have similarly impacted on the other two. Additionally, Métis people often act as consultants to Australian and New Zealand government, as well as official Indigenous representation and bodies within these countries.

In Canada, the preponderance of Métis people within officially legitimated institutions and organizations and thus across national agenda has often served to marginalise Indigenous peoples who have no formal agreement with government (other than Native
Title consideration), or are Treaty peoples who, have tended to be active within the international arena. Various political strategies were unleashed to ensure the containment of these voices behind the door of officially devised domestic negotiation.

As identity is again central to understanding, perhaps a brief history of Métis politics will provide further insight. The Métis are a peculiarly Canadian phenomenon of history, and a legacy of settler intermarriage with Indigenous peoples. Historically and today they dominate Canada’s internal political discussion. The role and position they occupy is often that of ‘go-between’. Paul Chartrand writes:

*There’s perhaps notably a unique nation in Canada: the Métis people. The Métis nation evolved as a result of circumstances unique to the North American northwest, in the sense that Europeans settled North America from the east First, in a general way, and it was centuries before the west was settled. During that time, however, there was leakage from the eastern settlements. European individuals travelled to the west, and as a result of the economic enterprises that they were involved in, grew communities of people of mixed parentage, Indigenous folk and non-Indigenous people; for all sorts of historical and geographical and economic reasons, a new nation evolved. It was recognized by everybody as a distinct society. That political recognition is a basic historical fact.*

The Métis were to undergo economic and political diminishment by British interests in the 1860-70’s. This chapter of Canadian history in which the Métis, were led by Louis Riel, a founder of the province of Manitoba (1870) and an elected representative to parliament, provides another study in the rule of Empire and political/militarist strategies for establishing British settler self interest. The lawlessness which accompanied this chapter and the Battle of Red River saw many Métis move to what was later to become Saskatchewan. Within the Manitoba Act of 1870, Métis people received 1.4 million acres of land to be distributed by script. Every Métis born before this date was entitled to script, which either conferred land or money to the person named on the certificate. ‘Land speculators, lawyers, bankers and syndicates moved in and proceeded to obtain
script from the Métis.’ ‘They purchased it outright, used forgery or fraud, delayed settlement and even hired people to impersonate Métis applicants.’

As matters heightened, resistance again broke out. After losing three battles: Duck Lake, Fish Creek and Batoch, and surrendering, Riel was sentenced with high treason by British authority, and hung on 16th November 1885.

‘The majority of Métis who received script were, in one way or another, convinced to part with their land holdings.’ ‘Very few descendants of the original script holders still own and operate the holding.’ ‘The position taken by the Métis of Saskatchewan is that the issuance of script did not extinguish Métis aboriginal rights and was unfair because very few Métis actually benefited.’

Many Métis have continually struggled to have their identity and rights recognized. It is important to understand that even within Métis people, there is political divergence. Albeit that the Métis, as a constitutionally recognized ‘distinct society’, which differentiates them from ‘First Nations’ (Indian Nations), pursue their rights through State owned political and juridical processes.

The historical injustice which denied the Métis a political voice and the accompanying loss of economic independence may still be said to inform Métis politics. Having lost the battle, the Métis made do, invariably becoming part of the national venture. Many successful and well-educated Métis emerged, albeit that as a ‘distinct society’ the terms of this success may not have been those they had historically aspired to.

With all other political avenues closed to the Métis, the emerging Indigenous agenda of the 1970s, spearheaded by First Nations, and the State responses of the 80s and 90s was to provide the window within which to consolidate. The result being that as the educated, the Métis tended to populate all governmental departments, organizations and/or institutions dealing with and administering ‘native’ peoples. The difficulty of the Métis agenda however lies with their historic positioning ‘between’ European and
Native interests. As buffalo hunters, guides, linguists, traders and the employees of official and commercial initiatives in native lands throughout the history of contact, the Métis, often unwittingly, facilitated settler expansion, at the cost of both Native peoples and themselves, simply because their dual identity was and is oriented to western thinking and values.

Brazil provides a current example. The ‘Caboclo’ are also an historical anomaly resulting from the intermarriage of Indigenous peoples and Portuguese settlers. They currently live along the Amazon River, much as other Indigenous peoples do. However, their identity is one in which the native/Indio is diminished and understood internally as inferior, albeit that patterns of existence and the life skills they employ are Indigenous. The Brazilian government is currently engaged in stimulating their communities with capital, shifting sustainable traditional practices towards intensive commercial fishing. Loss of social cohesion and natural resource diminishment has been the result, leading to growing conflict with neighbouring Indigenous peoples.26

The ready acceptance of Métis in the role of ‘go-between’ has an historical basis. Unlike the British, Indian nations recognized that the French did not seek to disposes them of their lands, but rather married into the peoples and became part of the community. It might be argued that consolidation under the newer Indigenous rubric emergent in the 1980s was simply an extension of this pre-existing historic relationship. Métis domination of the state’s processes and their ‘unique’ historical identity creates confusion for Indigenous peoples, particularly within the other CANZ bloc countries. Chartrand himself acknowledges the difficulty which arises.

We were a buffalo hunting culture. The point here is there is every difference between recognising a people that is an historical community with origins in the early mixing of Indigenous people and new settlers, on the one hand, and proposing, on the other hand, as is done in some quarter, that any individual in Canada who happens to have a dual ancestry ought to be recognised as Métis.
Here in lies the central problem. Métis, who have a separate identity, their own language and culture, do not recognise dual ancestry as the determinant of their ‘distinctive’ identity, and yet it is exactly this aspect of Métis people which often sees them accepted by Indigenous peoples of mixed ancestry elsewhere within the First World. To explain it is necessary to context this statement and then provide additional perspectives.

Throughout the First World, Indigenous peoples were the subject of anthropological discourses of ‘race’ and ‘eugenics’, which influenced policy resulting in the categorizing of individuals on the basis of blood. The percentage of ‘pure Indigenous blood’ one had flowing through ones veins determined the level of ‘savagery’. Indigenous peoples were categorized as half-breeds, quarter-breeds, and even octoroons. Within Australia, policy went a step further. Many Indigenous peoples were forced into marriages by missionaries and other authorities/station managers in an attempt to ‘breed out’ Aboriginality. Additionally, it is also important to recognize and remember with some sensitivity, that the mixing of bloods within children may not and often was not with the consent of the mother, or her choice; a legacy which often determined a child’s fate under policies of removal.

Historic discourse which sought to separate out and exclude individuals on the basis of blood, was later overlaid with an additional discourse, one centring on ‘authenticity’; a view and thinking which still permeates and imbues current attitudes. And here we encounter another divergence in cultural perspective. Europeans will argue that Indigenous peoples’ identity lacks ‘authenticity’ should they not be living a pristine, pre-contact existence, or should they have chose to join the modern world. ‘Behaviour’, euphemistically referred to as ‘the customs and traditions’ of a peoples, becomes the determinant. The legacy and power of this perspective is such that Indigenous peoples who as a consequence of history lost language, rituals and ceremonies and most importantly, family, through genocide and policies of forced removal and institutionalisation, have sometimes internalised this diminishment. This may leave them unsure how to stand strong within their own being. Hence the attraction of the Métis,
whom they may presume and often perceive as a strong and proud voice representing mixed blood peoples like themselves.

They may not be aware that the Métis seek to distance their ‘separate’ identity from others who have mixed ancestry. The descriptor ‘Native people’ often used in conjunction with the Métis, also serves to confuse peoples within Australia and New Zealand and even Canada. In these countries, Indigenous peoples are generally not aware of the socio-historic or political differentiation and status of Métis.

While some Métis peoples may equally reflect indigenist values, it is argued that generally, Métis politics is a function of First World power discourses and a peculiar history; a politic which seeks to acquire a greater stake within the hegemony. Their desire to historically establish the province of Manitoba and create their own government evidences this perspective. Indeed this legacy might again be said to inform current political objectives. While dominant Métis voices are also calling for self-governance, what is meant and how it is achieved may diverge from First Nations.

Some Métis politics is not necessarily about the ‘transformative values’ contained within the international Indigenous agenda; nor is it necessarily consistent in impetus. It could be claimed that some Métis politics, which similarly uses Indigenous terms, confuses the international dialogue particularly that conducted in English. As the educated and politically adept, their activity tends to drown out other voices, skewing European appreciation to a political and legal accommodation of their ‘anomalous’ identity, essentially masking any possibility of a dialogue couched in amplified cultural terms.

Métis people do have a legitimate claim to accommodation, however the problem arises when their politic and articulation is said to be consistent with and reflective of all other Indigenous peoples’ aspirations. In other words, dominant Métis are often involved in nation state processes (political/juridical) that result in a normative politic that the dominant then simply replicates and impose on all others. ‘Normativism’ has already been shown not to result in genuine equality and is the reason why internationally,
Indigenous peoples’, academics and lawyers promote the constructivist approach in definition and politic elaborated in interconnective UN conventions (see previous Chapter 12)

The divergent voice of Métis adds another twist to dialogue. While voices at one end of the spectrum have been pursing ‘hunting and fishing’ rights within territory, other groups have pursued activity that has led to Métis ownership of oil and mining. All Métis gains are achieved through state owned juridical processes and capital negotiation. Given the role of Métis, it is not hard to appreciate that within Canada ‘indigeneity’ is being promoted as a ‘power sharing’ arrangement within dominantly owned structures, and that other voices which might advocate a collaborative politic are marginalised, particularly those of First Nations who make claim as Treaty peoples under international law. Again a legal basis frames the legitimacy of a politic said to be ‘the preferred course’.

Augie Fleras points out that ‘the intersection of competing paradigms’ – (which he defines as) ‘indigeneity versus sovereignty, nationhood versus statehood – unleashes a key dynamic in post-colonial encounters. The outcomes of this interplay will continue to reverberate throughout the corridors of power as long as formal initiatives for restructuring Indigenous-State relations tinker with symbols rather than substance. Perceptions that central authorities possess neither the vision nor the political will to “live together with (radical) differences” bode poorly for the post colonizing of White settler dominions’.27

When asked to comment on the likelihood of political strategies aimed at engendering global justice either succeeding or failing, a senior internationalist attending a Commonwealth Heads of Government Meeting (CHOGM) in Brisbane, September 2001 commented ‘the only way they (those with global power) will change, is money or the gun’. Fleras also confirms this view. He points out that the Canadian government’s apology for past policies and the recognition that ‘the inherent right to self-government has never been extinguished but persists into the present’ was acceded ‘when the “costs”
of excluding First Nations from the national agenda proved unacceptably high in social, political and economic terms’.28

Indeed in these terms the First World could be seen to be bankrupt, morally and monetarily,29 its formal economy being of virtual disconnected value (speculative capital) legitimated only by dominantly owned structures. Newer structural adjustments and creative accounting allow for the siphoning out of moneys through corporate entities which then declare bankruptcy, leaving the general public to pick up the tab. The vertical and horizontal integration of corporations within Transnational bodies and their accounting mechanism of ‘internal transfer pricing’ which assigns ‘fictitious’ value, serves to ensure that pricing eliminates all local economic activity.30 Simply put, vertical integration eliminates internal competition, while horizontal integration through WTO regulation, allow for nations to be further indebted while the Transnational, is credited. 31

In effect, the paradigmatic shift required is one of perspective. Jerry Mander paraphrasing Martin Khor of the Third World Network writes similarly. Khor was asked in 1992 how he could argue against the large structural adjustments being promoted by the WTO. ‘Wasn’t he worried that without an expanded production and consumption base Third world peoples would be deprived of Western standards of living?’32 In answering, Khor reflects a consistent and growing Third World voice:

‘I think you have it backwards. Those who most depend on an expanding economy are not Malaysians or other Third Worlders, but you in the First World. In your world, you no longer have contact with the land, and you don’t know how to get along without luxuries. For us, if the whole global trade system collapsed, we might be better off. We have never lost touch with the land; we know how to grow food for our communities, how to make our own clothes, how to develop the fairly simple technologies we need. This is how most of us lived until recently. We wouldn’t mind having some of the new technologies you offer, and some kinds of trade are very useful, but if the Western colonial powers and
transnational corporations would simply leave us alone, stop exploiting our resources and land so we could again retain their use, we could probably survive quite well. But what would you do?  

In essence it is these people (Indigenous, Tribal, semi Tribal, agrarian people) who live within the so-called ‘informal’ economy (billions of people around the globe), who have ‘real’ wealth as the means of autonomous sustainable existence (as a living system and trade), knowledge, belonging, identity, culture, philosophy, ceremony/ritual, music, and self-expression which are still ‘of meaning’. Peoples, Arturo Escobar writes once lived sustainable wellbeing but who are now either dying of poverty, exploitation and neglect, on the one hand, or dying of neo-liberal excess on the other. What is left to them he says is laughter, which at the same time is the laughter of resistance and pain, and of hope and despair. We may call this laughter the laughter of culture. 

Europeans who historically underwent this same journey of diminishment, and who as settler nations have come to epitomize the ‘advanced way of being’ that ‘progress’ or capital’s experiment in social engineering results in, where every material luxury is provided, increasingly display the suicide, the self destructiveness that meaningless, depressive and commodified existence creates. In this world, culture has been subsumed by capital and is prioritised by and promoted for profit (film, television, sport and music). Indeed First world culture as a product is divided into popular culture and high art, the later of which remains an essential borrowing from European inheritance and like its people has been settled and imposed on landscape. Within a ‘progress’ narrative, many experience culture as Art, Advertising, Forest Gump, Sex and the City, Sport and music videos, or televised live events. In effect culture is simply another commodity.

Indeed I argue that the dominant’s media and satellite communication, beamed into every corner of existence has contributed to a perception that ‘lack of meaning’ in exchange for ‘materialism and dis-respectful/decadent behaviour’ is all the West offers. People of grounded culture, (and all youth everywhere) only understand us from our
images; communication and films which too frequently elevate sociopathic behaviour, crime, death, destruction and violence as ‘ordinary everyday existence’. Communications newest values are debased programming euphemistically referred to as ‘tittytainment’ which is of downward spiralling values. This newer category of programming has been specifically designed to capture and engineer a youth identity. Primary identity is ‘image’, is aggressively and overtly sexual, and of behaviour which prioritises modelled dis-respectful hedonism (of self and with others). Devised by marketing conglomerates in response to the think tank strategy of world leaders who prescribed ‘tittytainment’ as the solution to the inevitable unemployment which will accompany capital’s rationalization,\(^{38}\) the stereotypes promoted across all 5 multimedia empires are ‘the moop’ initially exemplified by Eminem, and ‘the midriff’ embodied by Brittany Spears. Albeit that other artist and programming continue to supersede this duo, presenting increasingly extreme versions of imaged identity and values. Given the ubiquitous nature of commercial media and communication it is remarkable and also a measure of its power that self-regulation is regarded as adequate means by which to ensure the integrity and values of message and content.

With the Third World demanding greater consideration in all multilateral forums and control and benefit of the resources within their own territory, it is interesting to contemplate how the dominant will resolve matters. With goods and service industries already rationalized in their own countries, or in the process of being rationalised in other First World economies (Australia), the strategy to ensure a ‘growing economy’, without needing to re-consider values, or address sustainability, and co-existence of diversity, can only lead to the further absorption of communal resources by the private sector (agribusiness, water, energy, education, health), the plundering of new frontiers (bio-scientism, resource management), and militarism (technological development, behavioural modification technology – videogames, tittytainment, weaponry - , and war as an activity which provides a role for un-employed youth.

Historically, the ‘new world’ provided the means by which Empire could revitalize its failing economy, while ridding themselves of the dislocated, impoverished and
marginalised. At this time a reverse movement is in process. Those being most greatly
impacted upon by the systems injustice now seek to re-locate to the First World which
has perpetuated and benefited from the devastation their lifestyle and system tends to
cause. The curtailing of citizens rights, the re-vitalization of security, increased
legislative powers for police forces and newer repressive weapons, an acceleration in the
building of jails and containment centres owned by private (often former military)
interests, the imposing of draconian sentencing, mandatory sentencing, and the death
penalty, all show parallels with the methodologies which led to thousands being sent to
penal servitude or to join successive waves encouraged to leave for the ‘new world’.

This time, however there are no ‘new worlds’ (albeit that Australia seeks to transmigrate
refugees to flooding Pacific Islands and the Mars project is not due till 2012.)
Additionally, on this occasion, the ‘living systems’ on which all life is dependent are
collapsing. Current projections point out that within a couple of decades 25% of Earth’s
mammals will be extinct. So while the First World continues to exert historic
unilateralism (a power/dominance politic), those who point out that man’s system is
unsustainable and needs reform are often being silenced. The tragedy is that it is these
voices, which often have the most to offer the dominant. Indeed within Third World
politics, and that of a growing Civil Society movement, the aim is not to dismantle
global systems but rather to invest them with other values and meaning. This process, I
maintain, Empire seeks to neuter by confusing the focus of discourse while
universalising and imposing a superseding system of corporate rights which again allows
the dominant to ‘expand its economies’ at the cost of human and living diversity.

One might simply say global dynamics emanates from processes which see a new entity
seek to consume the UN. Or to state this another way, the game is now will the WTO
return to the fold and harmonise its directives and activities with those signed by the
world community, or will capital continue to push to define and control every aspect of
international activity such that governments and peoples’ everywhere are ruled by $Law,
corporate mechanisms and entities?
Empire has exerted so much force throughout history, disconnecting social identity and creating dependence that it is not surprising that the implementation of indigeneity as currently defined may serve to achieve the same thing. The English-speaking world has simply continued to seek to replicate itself and its values globally. The advent of ‘new world’ societies contributed to a belief in social engineering. A need to create cohesion of disparate people elevated a pioneer and colonialist narrative (‘us’ superior and ‘them’ primitive hostile) around which to draw a new nation together or administer a colonial country. In effect this process of social engineering (construction) has so imbued dominant self-identity, and by extension become such a normal functioning of power and politics, that it is often not appreciated that it does not have universal relevance. This is particularly so for people, who live within self-sustaining cultures keyed to landscape and are of other historic self-narratives and identity, similarly keyed to landscape.

In these societies externally devised ‘engineering’, socially, economically, and politically by the First World are seen and experienced as evidence of the West’s arrogance; a belief that they are better than the rest of humanity. Indeed I argue that the problématique facing humanity today is the schism of First World identity in which the self narrative that accompanies their dominance is said to be of ‘freedom’, ‘liberty’ and ‘justice’ while their system, it’s structures and processes generally engender exactly the opposite for the majority of Earth’s peoples and livingness.

The challenge for the new millennia is not, what to do with the Third World, or how to systemically subsume their local economies for our benefit, (poverty eradication) but rather, who are the First World? And how can they live respectfully and sustainably within the means of their own territorial integrity? Capital’s belief that they have the knowledge to centrally control all living systems, (militarist states / resource management), and that their system will feed the world (monoculture, GMO, paddock to plate, fast food/supermarkets) and fuel it (ground to bowsers), in order to urbanize (civilize) entire humanity is simply a non-sense. As one Indigenous colleague commented, ‘the technological iron lung will only have room for the few, and it will never breathe for all creation’.

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
With Indigenous peoples seeking self-determination in international law, and their rights elaborated, Empire has moved to provide a structural accommodation of ‘self governance’ at domestic level. By virtue of its characterization as a ‘power sharing’ discourse this is a political step, which simultaneously places ex-situ any consideration of the inheritance and ‘sui generis/knowledge’ of Indigenous Tribal identity. Again the very knowledge which is needed to amplify global thinking and bring other values and meaning to the dialogue is lost to the globalising system. ‘Political discounting’ of their knowledge and philosophy, which serves to culturally disconnect it from its collective authors also opens the way for a redefinition of their ‘knowledge/resources’ as ‘potential goods’ for patenting and commodification.

This politic, works hand in hand with a First World system which serves to increasingly disconnect peoples from their self-sustaining existence. Once dislocated, they not only become dependent, but as marginalised voices they are unable to respond to powerful corporations which have frequently pirated the knowledge/resources which sustain them. Indeed while a few leading academics, individuals and organizations have been able to successfully mount legal challenges, much of the knowledge/resources/produce of Third World peoples continues to be patented by corporate interests.40

In short co-existence as it is currently being elaborated by capitalised interests means the incorporation of all humanity and livingness still outside the dominant’s formal economy, on terms which allow the dominant to remain dominant; while the diminished, those previously discounted under de-colonisation (1960s) are forced to undertake further radical change. This shift requires not only hundreds of millions of Indigenous and Tribal peoples, but potentially billions of peoples to have to forgo their self sustaining autonomous existence as knowledgeable cultural peoples of territory and livingness, in exchange for an existence as diminished ‘ethnic societies’ within ‘modernity’ who are ‘impoverished’ and by default ‘devoid of skills and knowledge’ within an unsustainable system predicated on wealth, power and status.
Chapter 13: Indigeneity: Whose Voice?

Presumably the newer politic of ‘indigeneity’ is not only about legitimating the voice of Indigenous peoples within Eurocentric discourse, but also stems from an awareness of the ongoing diminishment inter-relationship between Indigenous and non-Indigenous still results in. In the next chapter we will examine the accommodation indigeneity is said to provide. Within Canada and New Zealand self governance is being discussed. In contrast Australia remains committed to self sufficiency and under the Howard government a policy referred to as ‘practical reconciliation’ which it might be said is simply program delivery and capital stimulation of corporate led projects within Indigenous communities.

1 I briefly share the story of a man who stood up at the Kari-Oca in Rio de Janeiro in 1992. An elderly man in his late 60s, tall and dignified with the eyes of someone who has had to hold great wisdom derived from grief. He shared how he was the last living individual of his peoples’. There was no one with whom to speak his language anymore. There was no one left to share the stories and the reality which was his life. All his forest had been destroyed and his peoples had gone with it, most killed by those arriving to claim land, or pan for gold or through military incursions ensuring the timber could be taken out. I remember trying to imagine if I was the last person on Earth to speak English, and everyone else was dead. A whole world would cease to exist. The sadness was painful for all of us present.


3 Richard Barnet and John Cavanagh, in a condensed history of the de-regulation of banking and financial markets entitled ‘Electronic Money and the Casino Economy’, show how money became its’ own product, buying and selling money, essentially disconnecting it from is former sources of value: commodities and services (p.361). Electronic transfer has allowed money to be traded in an instant. Barnet and Cavanagh write: ‘well over $2 trillion a day travels across the street or across the world at unimaginable speed as bits of electronic information’. ‘… it only exists as an entry on a computer tape’. (p.362). In Mander, J. and Goldsmith, E. (1996), The Case Against the Global Economy: And For a Turn Towards the Local, Sierra Club Books, pp. 360-373.

4 Taken from my notes of Kavaljit Singh’s presentation at a Regional Conference, ‘Corporate Power or Peoples Power? Transnational Corporation & Globalization, convened by Asia-Pacific Research Network (APRN) and AID/WATCH at the University of Technology, Sydney, September 2001. See also www.aprnet.org for further material.
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6 Where modern man’s culture wraps ‘war and conflict’ in ‘glory’, within some traditional cultures conflict may not be spoken of in these terms. More often then not, when referred to, it is spoken of as a time when man lost his way, and his humanity. This is not to claim that men in other cultures are not prepared to, or have not resorted to battle, or even honour warriors. Rather, it is to explain that in other cultures, man’s ‘warrior self’ is understood, but does not become socialised as primary identity (upbringing within a conflict zone however does provide mothers – the bearers of culture, with difficulty). Indeed most traditional cultures require men to undergo some form of initiation, a sacred passage (theologies usually require time in a monastery or similar institution) specifically so that he learns to master these deep instincts. This contrasts with the military training of the West, which until recent times was mandatory. A simple way to explain and reflect the deeper resonance of culture and their divergence can still be seen in the way men greet each other. European’s extend the hand, to show they are unarmed. In other cultures, men hug, reflecting a culture which is still predicated on inter-relationships of sameness and of family. Those that bow are respectful of the individual’s autonomy (the top of the head being the god font). It’s a rough thumb rule, but it remains part of historic inheritance and thus reflects the divergence within human cultures. The advent of suicide bombers as martyrs reflects on another level of self-understanding. Where the west continues to provide any number of explanations, perhaps my previous comment re growing up in a conflict zone extends an understanding of Gandhi’s words, and might provide another resonance to centre insight. In his view ‘civil disobedience with injustice is a sacred duty.’ Where a dominant group unjustly subjugates people to prolonged unaccountable militarist methodologies of repression while politically denying ‘hope’, it is not difficult to appreciate that men’s ‘warrior self-for ones family’ emerges, and that they act.


8 Ibid., pp.18-19.

9 In a chapter on ‘Biocolonization’ in which Andrew Kimbrell explains how corporations and governments are becoming the brokers of the blueprint of life, he poses a number of ethical questions. ‘Do scientists and corporations have the right to alter the genetic code of life forms at will? Should we alter the genetic structure of the entire living kingdom in the name of utility and profit? Is there a limit to the number or types of human genes that should be allowed to be engineered into other animals? Should the genetic integrity of the biotic community be preserved? Is there something sacred about life, or should life forms, including the human body and its parts, be viewed simply as commodities in the new bio-tech marketplace? Is genetic makeup of all living things the common heritage of all, or can it be appropriated by corporations and governments?’ (p.133) Kimbrell sees a failure by ethicists to address these questions. He writes: ‘…the so-called “bioethicists” employed by various governments and educational institutions appear incapable of saying no to any advances in the manipulation and sale of life. They seem intent on seeing the unthinkable become the debatable, the debatable become the justifiable, and the justifiable become the routine. While virtually all polls show that the international public is opposed to much biotechnology and Biocolonization, this has not yet led to a major biodemocracy movement that demands public participation and decision making in these issues (p.133). See, Kimbrell, A. ‘Biocolonization, The Patenting of Life and the Global Market in Body Parts’, in, Mander, J. and Goldsmith, E. (1996), *The Case Against the Global Economy, And For a Turn Towards the Local*, Sierra Club Books, pp.131-145.

10 Tony Clarke writes: ‘The new World Trade Organization established by the Uruguay round of GATT is designed, in effect, to serve as a global governing body of Transnational corporate interests. The WTO will have both legislative and judicial powers and a mandate to eliminate all barriers to international investment and competition’ (p.301). This mechanism centralises corporate control over free trade deals. Importantly, Clarke also states that: ‘The fundamental purpose of the new Free Trade Deals (such as GATT and NAFTA) are to enable TNC’s and banks to act unhindered by national law and constitutions. (pp.299-300). ‘Though this new kind of constitutional protection, the rights of the TNC’s take precedence over the rights of citizens in their respective nations-states’ (p.300). See, Clarke, T. ‘Mechanisms of Corporate Rule’, in Mander, J. and Goldsmith, E. (1996), *The Case Against the Global Economy, And for a Turn Towards the Local*, Sierra Club Books, pp. 297-308.
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11 This perspective may serve to explain the source of ‘abuse’ by some the structure elevates. As their role is both ‘of power’ and experienced ‘as power’ they may confuse it for leadership and authority. Power is not authority nor is it leadership. In effect then, where there is no higher authority than oneself and power becomes your central self understanding within an increasingly disconnected culture of self interest and gratification the requirement for ‘empathy within innocence’ is discounted. See final chapter ‘Concluding Reflections’ in which the meta-rules of Aboriginal relationship are provided.

12 In his chapter ‘Theory and Practice of Neo-Liberalism for Eastern Europe’, Peter Gowan critically examines Prof. Jeffrey Sachs’s Economic Theory of Transition often referred to as ‘Shock Therapy’ (ST). Gowan confirms that one of the key outcomes of Shock Therapy is the state-institutional form. He writes: If ST’s projected outcome in each state is democratically-based increased living standards and freedom, the output of Sachs’s policy is institutional. Sachs has often named it as a ‘market economy’ or ‘capitalism’. Yet closer examination reveals that specific state-institutional forms are the central output goals of ST at the level of a single country, not capitalism as such. (p.196). … Even on the occasions when Sachs says his goal is simply ‘capitalism’, we discover that he means the very particular institutional matrix which excludes most capitalism throughout history from qualifying as capitalist at all (p.196). In Gowan P. (1999), The Global Gamble. Washington’s Faustian Bid for World Dominance, Verso, London, New York, pp. 187 - 247.

13 Vandana Shiva refers to disconnected government unresponsive to its people as ‘dead government’. ABC Radio National, Late Night Live, Interview with Philip Adams, broadcast 19/ 11/01. Interestingly this notion reflects a similar one to Indigenous peoples’ own perspective of modern culture which they maintain is ‘walking dead language’.

14 Mander, Jerry, and Goldsmith, Edward (1996), The Case against the Global Economy and for a turn toward the local, Sierra Club Books.

15 Maude Barlow was responsible for conscientising the world to this corporate aim. She initiated a global response within Civil Society which resulted in a handful of governments assisting to holt Multilateral Agreements on Investment (MAI) which legitimated Transnational Corporation (TNC) rights over those of governments and a countries future governments when the MAI was signed. Altering the Agreement would require governments to pay for any drop in the TNC income, for example, should the population want stronger environmental laws and compliance mean additional cost. Capital interests have continued applying pressure and are currently working to ensure that ‘structural adjustment’ and compliance with WTO regulation achieves the same end. Free Trade Agreements and compliance with WTO often results in ‘confidential’ contracts between Government/or their authorities and private capital interests groups which contain similar compensatory clauses. Sydney’s new Cross-City tunnel provides one such example. Maude Barlow is the National Chairperson of The Council of Canada, a cofounder of the Blue Planet Project and a Director of the International Forum on Globalization, the San Francisco based research and education Institute opposed to economic globalization. She is an activist and author, including: The Blue Planet (2003), written with Tony Clarke and published by New Press and Alternatives to Economic Globalization (2002), published by International Forum on Globalization.

16 In other words, capital and its corporate rights is equally an ‘us and them’ dichotomy. That is to say, the elite who inhabit transnationals see themselves as a separate category of humanity. Hence the belief that their activity does not have to accord with the values or aspirations of the rest of humanity as ‘our’ common interest.

17 Arturo Escobar writes that many groups around the world are directly engaged in re-conceiving and reconstructing the world from the perspective of local culture, local ecological, economic, and social practises; a paradigmatic shift in which local culture is the source of development; a project which knows that culture has everything to do with knowledge, power and politics. Escobar, A., Abstract from Thematic Sessions entitled ‘The Laughter of Culture’, in, Globalization: Responses from Santiago Covering the SID 22nd World Conference, Development Journal, Vol. 40, No. 4, December 1997, Sage Publication, pp. 20-24.

18 John Pilger cites this report in ‘The New Rulers of the World’ a documentary on capital’s globalisation for television broadcast. SBS TV, transmission (TX), 21 August 2001.

19 Canadian Author John Ralston Saul regarded as one of the worlds leading ‘thinkers’, shares the view that the capitalist project of the past 50 years is reaching its end and that the challenge we face is to elaborate a newer paradigm. In an interview with Brian Kerry of the ‘7.30 Report’ on ABC Television broadcast 30 May 2002, John Ralston Saul commented: ‘Globalization, the sort of rational theory of
globalization is dead, it’s gone now, we’re just trying to figure out how to come around the corner and do something else. When it was suggested by the interviewer that such a view might be news to George W. Bush, Tony Blair and John Howard, Saul’s reply expressed a growing view by many groups within the maro-political fora: ‘What’s globalization? Globalization is a particular narrow theory of a particular form of internationalism. There are dozens of ways of being international. This just happens to be a rather silly, naïve, late 19th century economic theory, that we were a bunch of dogs who were going to be led around by an invisible hand. Of course it couldn’t last that long. Inevitably it was going to make a fool of itself.’ Saul also clarified that he was not anti capitalist but rather critical of the assumptions which underpin the capitalist paradigm that every problem can be rationally solved. ‘I’m critical of assumptions about what those corporations can do beyond what they’re supposed to be doing.’ Saul has published a number of books including ‘On Equilibrium’, the fourth in a series challenging the conventional thinking and policy of governments and economists. A consistent critic of right and left ideologies and of economic rationalism, he suggests that the future challenge lies in a choice between false capitalism and real capitalism. Interview with John Ralston Saul, ’7.30 Report’, ABC TV, Broadcast 30 May 2002

It might be argued that where the Crown is said to be the source from which legitimacy is derived, by both peoples (international Treaty law) and government (a sovereignty within Commonwealth sovereignty), discussion is contained at the domestic level by government and subject to national law.

Metis, from the French meaning ‘half’. .

Havemann, P. ed. (1999), Indigenous peoples Rights in Australia, Canada and New Zealand, Oxford University, p. 91.

23 See Canadian Government website. Copy of the Manitoba Act 1870, 33 Victoria, c 3 (Canada) (An Act to amend and continue the Act 32 and 33 Victoria chapter 3; and to establish and provide for the Government of the Province of Manitoba) [Assented to 12th May, 1870]

MANITOBA ACT 1870

30. All ungranted or waste lands in the Province shall be, from and after the date of the said transfer, vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion, subject to, and except and so far as the same may be affected by, the conditions and stipulations contained in the agreement for the surrender of Rupert’s Land by the Hudson’s Bay Company to Her Majesty.

31. And whereas, it is expedient, towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise, as the Governor General in Council may from time to time determine.

32. For the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them, it is enacted as follows:--

(1) All grants of land in freehold made by the Hudson’s Bay Company up to the eighth day of March, in the year 1869, shall, if required by the owner, be confirmed by grant from the Crown.

(2) All grants of estates less than freehold in land made by the Hudson’s Bay Company up to the eighth day of March aforesaid, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

(3) All titles by occupancy with the sanction and under the license and authority of the Hudson’s Bay Company up to the eighth day of March aforesaid, of land in that part of the Province in which the Indian Title has been extinguished, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

(4) All persons in peaceable possession of tracts of land at the time of the transfer to Canada, in those parts of the Province in which the Indian Title has not been extinguished, shall have the right of pre-emption of the same, on such terms and conditions as may be determined by the Governor in Council.

(5) The Lieutenant-Governor is hereby authorized, under regulations to be made from time to time by the Governor General in Council, to make all such provisions for ascertaining and adjusting, on fair and equitable terms, the rights of Common, and rights of cutting Hay held and enjoyed by the settlers in the Province, and for the commutation of the same by grants of land from the Crown.
33. The Governor General in Council shall from time to time settle and appoint the mode and form of Grants of Land from the Crown, and any Order in Council for that purpose when published in the Canada Gazette, shall have the same force and effect as if it were a portion of this Act.

34. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson’s Bay Company, as contained in the conditions under which that Company surrendered Rupert’s Land to Her Majesty.

35. And with respect to such portion of Rupert’s Land and the North-Western Territory, as is not included in the Province of Manitoba, it is hereby enacted, that the Lieutenant-Governor of the said Province shall be appointed, by Commission under the Great Seal of Canada, to be the Lieutenant-Governor of the same, under the name of the North-West Territories, and subject to the provisions of the Act in the next section mentioned.

36. Except as hereinafore is enacted and provided, the Act of the Parliament of Canada, passed in the now last Session thereof, and entitled, “An Act for the Temporary Government of Rupert’s Land, and the North-Western Territory when united with Canada,” is hereby re-enacted, extended and continued in force until the First day of January, 1871, and until the end of the Session of Parliament then next succeeding.


25 Ibid.

26 Pedro Martinelli interviewing an academic, in a made for television documentary on the Caboclos Indians in Brazil’s Amazon basin. Entitled ‘Sons of the Rain’. The program formed part of the ‘Tribute to Life’ series. This episode was screened by SBS TV, 20 February 2002.


28 Ibid., p.206.

29 Phillip Adams, a leading Australian political and social commentator, writing in ‘The Weekend Australian’s Review section’, in an article entitled ‘Our Crumbling Pillars’, lists, some 24 professions, institutions and industries which are in crisis. His analysis, which commences with Doctors and GP’s, psychiatrists and politicians, also examines, accountancy, banks, the law, judges, police, the priesthood, the ABC (national broadcaster), Aboriginal leadership, the Armed Services, librarians, academics, nurses, public school teachers and principals, and farmers, all of whom ‘see their cause as hopeless or their profession as doomed.’ ‘It is hard to find a profession, an industry or institution that doesn’t see itself in crisis’. ‘Everywhere Australians live in a maelstrom of self doubt, insecurity, and guilt.’ ‘Everywhere trust and hope are being eroded, corroded, destroyed’. The Weekend Australian, 20-21 July, ‘Our Crumbling Pillars’, in ‘Review’ p.32.

30 Kai Mander and Alex Boston, provide a clear study of this methodology in which a global company discounts and runs at a loss to eliminate competitors. The champions of this approach, who have also given their name to the methodology in current usage, is the giant US retailer ‘Wal-Mart’. Setting up on the outskirts of a town or a community’s commercial centre, it systematically begins discounting, offering 2 for 1 deals, and category killers to attract customers. ‘From automotive supplies to clothing and pharmaceutical to kitchenware, Wal-Mart moves sector by sector to undercut its competitors’ (p.337). The jobs Wal-Mart provides are at the bottom end of the economic scale. Their study reveals that a full time worker’s average annual income, including the companies profit share plan, hovers at $12,000. – well below the poverty line (p.339). Making no commitment to the community Wal-Mart seeks to take over from local businesses and thus community capital is lost. ‘Each Wal-Mart store sends its profits back to the community to undercut its competitors’ (p.337). The jobs Wal-Mart provides are at the bottom end of the economic scale. Their study reveals that a full time worker’s average annual income, including the companies profit share plan, hovers at $12,000. – well below the poverty line (p.339). Making no commitment to the community Wal-Mart seeks to take over from local businesses and thus community capital is lost. ‘Each Wal-Mart store sends its profits back to the head offices in Bentonville, Arkansas, removing the community money that was formerly deposited in local banks or invested in local projects’. ‘Under NAFTA and GATT, Wal-Mart and other corporations can “repatriate” money around the world’ (p.341). Mander and Boston also write that across America, thousands of people are taking steps to let the giant know they are not welcome in their community (p.342). Additionally, unions, manufacturers, small businesses, and municipal governments have filed law suits (p.342). Importantly they write: ‘Once we realize that Wal-Mart’s bigness makes it our enemy instead of our ally, perhaps all transnational corporations will be thought of differently, and citizens and communities will begin reining in the elite powers that have overstepped our boundaries’ (p.343). They conclude their analysis with the immortal words of Sam Walton: “There is only one boss. The customer. And he can fire everybody in the company, from the chairman on down, simply by spending his money somewhere else.” (p.343). Mander and Boston, Kai and Alex, ‘Wal-Mart, Global Retailer, Ch. 29 in

31 Kavaljit Singh’s study illustrates how fictitious amounts accounted for as ‘internal transfer pricing’ between corporate entities within a transnational parent company, not only provides the mechanism by which to discount and eliminate local economic activity, but similarly avoid taxes and siphon moneys overseas to holding companies, trusts etc. In effect ‘transfer pricing’ allows a company to convert its tax liability into profits. See: www.apnet.org


33 Ibid., p.18.

34 Arturo Escobar identifies culture as the crux of globalization. He points out that in the beginning there was culture, not markets, nor economic growth nor profits; experts, civil societies or global environmental problems; not development nor globalization. The reference to cultures of laughter emanated from an Address to the Societies 40th Anniversary World Conference by Haiti’s President Jean Bertrand Aristide. ‘He talked about laughter, the laughter left to the poor people of Haiti caught between the choice of dying of poverty, exploitation and neglect, on the one hand, or dying of neo-liberal excess, on the other – a laughter of resistance and pain, of hope and despair at the same time. We may call this laughter the laughter of culture’ (p.21). Where the First world still holds that development is about achieving a profound cultural transformation of Africa, Asia and Latin America, so they might reflect modern European values; a process in which lay the power of development and the development of power, Escobar argues that a genuine dialogue flips consideration. He cites Lourdes Arizpe’s presentation in which she pointed out that ‘culture is not a dimension of development, rather that development is embedded in culture and has everything to do with knowledge, power and politics’ (p.21). Escobar, A. ‘The Laughter of Culture’, Abstract from Thematic Sessions, Globalization: Responses from Santiago Covering the SID 22nd World Conference, *Development Journal*, Vol. 40, No. 4, December 1997, Sage Publication, pp.20-24.

35 Advertising during the ‘Super Bowl’, has become such a central part of the cultural experience that news and media coverage, including NBC’s ‘Today’ program, dedicate news time to their discussion. Similarly many Commercial networks around the world, fill prime time with programming which consists of nothing more than ‘advertising’ linked by a host or presenter.

36 Forest Gump, a Hollywood movie has provided Americans with a newer bit of philosophy speak, ‘life is like a box of chocolates’. It’s uptake and usage across media and even by political commentators reflects a similar ‘folksiness’ to that provided by ‘Huck Finn’.

37 A commercial network program which centres on modern urban New York women’s need to continually ‘be laid’ and find sexual partners.

38 Martin, H.P and Schumann, H. (1997), *The Global Trap, Globalization and the Assault on Democracy & Prosperity*, Translated from the original in German by Patrick Camiller. Zed Books. Martin and Schumann provide a first hand description of the dialogue, thinking, attitude and demeanour of the world’s leading 500 politicians, businessmen and scientists, who met in San Francisco in 1995 at a three day Conference convened by the Former Soviet Leader, Mikhail Gorbachev to ‘point the way to a “new civilization” of the 21 century. Attendees included George Bush (Snr.), George Schultz, Margaret Thatcher, CNN’s Ted Turner, Washington SyCip the South-East Asian magnate , the high priests of theoretical economics from Stanford, Harvard and Oxford’, and John Gage of Sun Microsystems. Martin and Schumann recount the story of David Packard’s sharing within this august group. Hewlett Packard employs some 16,000 people globally. When asked how many employees he really needed David stated ‘Six maybe eight’ ‘We’d be really stuck without them.’ Referring to the 16,000 current employees he explained that ‘All but a minority are rationalization reserves’ (p.3). Martin and Schumann comment that ‘not a murmur passes through the room’. ‘The prospect of previously undreamt-of armies of the unemployed seemed to go without saying for those present.’ ‘None of the highly paid career managers from the company division believes there will be enough new, regularly paid jobs in any sector of the economy in the technologically demanding growth-markets of hitherto affluent countries.’ The Fairmont pragmatists sum up the future in a pair of numbers and a concept: “20:80 and “tittytainment”’ (p.3). Only 20% of humanity, (located in which ever countries) will suffice to keep the world economy going. This 20% will ‘actively participate in life, earnings and consumption – to which may be added another 1 per cent or so of people who, for example, have inherited a lot of money.’ The rest who want have a job it was
suggested ‘will have an almighty problem’. ‘The question in future will be to have lunch or be lunch’ (p.4). Consumed by the ‘geostrategic’ question this new social order proposed as ‘one of rich countries with no middle class’, Zbigniew Brzezinski comes up with ‘tittytainment’. ‘He thinks of tittytainment (“tits” plus “entertainment”) in terms not so much of sex as of the milk flowing from a nursing mother’s breast.’ ‘Perhaps a mixture of deadening entertainment and adequate nourishment will keep the world’s frustrated population in relatively good spirits’ (p.4). I would suggest that nearly a decade later, a nights viewing of commercial television will reveal that ‘tittytainment’ as ‘sexual content’, has become the ‘deadening nourishment’ being provided.

Robert Doonooch Tulabah McLeod, Monero peoples of the Snow country and South Coast, NSW, Australia.

Two recent cases of biopirating illustrate this point. These involve Basmati rice and India’s Neem tree, which is used as an organic pesticide in agriculture. Vandana Shiva who has been directly involved in international court cases against the theft of traditional plant diversity by giant US corporations writes extensively on this subject and the impact of multinational agribusiness on farmers. See Shiva, V. (2000), Biopiracy, The plunder of Nature and Knowledge, Green Books, UK. And Shiva, V. (1990), Staying Alive: Women, Ecology and Development, Zed Books, London. Also, Shiva, V. (1996) Monocultures of the Mind, Biodiversity, Biotechnology and the 3rd World, Third World Network. Where Shiva is active within continental India, ethnobotanist Darrell Posey has been working within the Amazon. Years of exposure to Indigenous peoples’ and their knowledge coupled with the unfettered activity of multinationals has seen him become a strong proponent of Indigenous peoples’ traditional knowledge rights (TRR). He has also championed an international code of conduct for researchers working with, or, in and around Indigenous and Tribal peoples. See Posey, Darrell A. and Dutfield, Graham (1996), Beyond Intellectual Property, Toward Traditional Resource Rights for Indigenous Peoples and Local Communities, International Development Research Centre (IDRC), Canada.
Chapter 14: Proposed Models Of Accommodation

Where previous chapters have engaged in a critical examination of the context from which the newer discourse of indigeneity has emerged and then looked at its practical utility, this chapter examines the likelihood of achieving the models of accommodation being proposed. Again critical perspective is being applied. Not as a comment on the models themselves but because the process of achieving them is still dependent on the dominant’s demeanour, thinking, language, legitimation, process and control. Power still resides outside these models and they will ultimately only work if those who have power are prepared to share it. History however indicates that those societies with a Greco/Roman imprint generally do not share power, unless it is in their own self interest; a point which serves to underline the need of the conscientisation inherent to Indigenous peoples’ political philosophy.

This is why so much of this thesis weaves back and forward between the parties within dialogue, reframing and re-contextualising. The project is not only to preference Indigenous perspective, or to highlight the points at which perspective diverges (a consequence of distinct worldview and knowledge), but also to examine through reflexivity, realities on the ground. Such an approach illustrates the ‘disconnect’ between what is being theorised and fixed as discourse, and what is lived. This processing illustrates the pattern of relationship between Indigenous peoples and non-Indigenous societies; a relationship which has its own genealogy revealing of the repetition in approaches utilised by dominant interests. This perspective reframes the material being engaged with, further illustrating that even newer processes have an inbuilt potential for failure. Indigeneity is no different in this respect, and as the previous two chapters have shown, the potentiality for repetition exists. This next chapter will illustrate this point while providing additional perspective and contexting of the representational processes which may result in some version of self-determination. What indigeneity suggests is that space can be created within existing governance structures which might accommodate Indigenous peoples’ aspirations.
Self governance as a model of authority, as a framed and legitimated space of Indigenous authority of themselves remains open to interpretation and the levels of politicisation that are Indigenous self expression. Indigeneity then might be seen as a two way sword, sharpened on both sides and able to cut both ways. This blade can be used to chop away dead wood so that new green shoots may grow from the tree, or it might also prune to that extent that the reshaping (topiary) does not allow the tree its autonomy, (its branches free to stretch and grow within the creators heavens in accordance with its own knowledge of cultural locality).

Fleras sees ‘self determination’ as the touchstone of dynamic processes within Canada, New Zealand and Australia. He confirms the move towards ‘self-governance’ within Canada and writes:

"The concept of self determination through self governance eventually evolved as the preferred discourse. Self-determination as an inherent principal and collective practice not only erodes the legitimacy of Canada’s absolute authority, but it also rejects the credibility of existing political relations and mainstream institutions as a framework for popular governance. Proposed instead is the restoration of an Indigenous–driven sovereignty through the revitalization of select Indigenous custom and institutions." ²

(A perspective which confirms my point regarding the existence of international law legitimating Indigenous peoples rights, and the fear it causes dominant ‘elites’, hence a discourse which centres on self-governance).

The ‘selectivity’ of Indigenous custom and institution around which governance is devised again reflects on the priorities of dominant interest and the divergence in identity and politicisation of many First World Indigenous peoples. Fleras also points out that those who are more affluent, better organized, or politically stronger will fair better; the marginalised being given little choice and a determination being made for them.³
Fleras outlines in great detail the argument and levels of self-governance being proposed while also acknowledging that the dialogue has not been totally embraced. Many Indigenous voices reflect ‘a belief that arrangements created to colonize First Nations are unacceptable and that new structures are required – structures that sharply curtail State jurisdiction while endorsing Aboriginal–defined models of self-governance’. Fleras also comments that other voices are not prepared to explain or define what is meant by self-governance, because it is felt that this again provides a means of ‘social control’.

So how does the State propose to structurally accommodate Indigenous peoples, recognized as having ‘self-determination’ under international law?

Proposed instead is the restoration of an Indigenous-driven sovereignty through the revitalization of select Indigenous customs and institutions. The key elements of this renewal and reform are varied, but encompass the following: control over the process and power of self-governance as a third tier of government; the procurement of cultural sovereignty and territorial groundedness as a basis for the healing process; and realignment of the political agenda to accommodate Indigenous authority alongside federal and provincial jurisdictions. Sovereignty and control over jurisdictions are the key.

In other words, the proposed model potentially remains and retains dis-equalness simply because it is hierarchical in tenure (granted of state sovereignty) and of exerted power (top down jurisdiction). This again contrasts with cultures of livingness. Within identity of ‘connectedness’, authority is conferred up, is consensually (transparently) derived and collectively determined. This is because they and the livingness with which they have relationship and with which continuance is inter-dependant, all live with the consequences of decision and action.

In contrast, within capital’s structure of hegemonic power, authority is vested in individuals within non living entities which are often unaccountable by virtue of
inhabiting the structures which regulate man made self-serving globalising systems; a perspective which leads to the argument in favour of an International Court of Justice, and the subordination of capital mechanism to human rights and environmental conventions. The previous perspective emanating from this understanding is that of ‘good governance’ which advocates the drawing down of power to the level where people live within landscape.

The models proposed by Fleras however, may carry the capacity to engender a shift in relationship and a transferring of authority, but it remains contingent on the dominant party’s genuineness. Their commitment to a world which provides ‘an equality in human dignity’ and structural reform which allows for the democratization of relationship between nations and peoples. Such a world would require deep levels of reflexivity to achieve, given settler societies inherent identities, and the fact that the systems (institutions) they operate are a continuum of the Imperialist project.

14.1 Aspiration A Function Of Representation

Within Indigenous contexts, divergence in identity, politicisation and therefore voice express differing aspirations. Moreover the disconnect of often officially created institutions and organizations leave many within community and ‘country’ with a diversity of opinion over who and how to represent themselves and their interests. A study by John Bern and Susan Dodds into the ‘Debate about Indigenous Self-government, Self-determination and Land Rights’, supports this view and led them to categorize the main perspectives found in community. They write:

‘Within a single Aboriginal community there may be those:

- who have special spiritual responsibility with regard to the land and/or sites on the land
- who wish to see the community gain greater control over their own use and control of the land to achieve greater economic independence;
who wish to have their historic claim to the land and their subsequent unjust dispossession formally recognised; and

who use the land to hunt and to gather food in a traditional manner, and wish to have continued access to the land for those purposes.

This diversity which might seem to present competing views over representation, when reframed from within Indigenous cultural perspectives results in another level of understanding. The ecological priority framing identity and role within these cultures allows all these requirements. Land, or ‘territory’, or ‘country’, as it is variously called by Indigenous peoples’ operating in the English language, is again central to continuance of identity and heritage.

Issues identified and associated with the project of determining representation in order that it meets Eurocentric requirements melt away when you stand within a consciousness of Mothers Law. For example, where Iris Young correctly argues that ‘the pluralism required should take the form of recognising group-based differences within the state, and the need for special representation of oppressed groups’, Indigenous perspectives which understand that life is relationships in shared space (diversity of living systems within living systems), leave one questioning why the separation exists in the first place, and why a system that continually seeks to create this, given that all humans are human. This shifts the focus of concern.

Where Eurocentric framing results in endless discussion and often conflict over how to decide who represents what and whom, where and how, consideration flips to questioning why the system works to create artificial and conflicted categories between parts of the one living system, namely the family of humans and a peoples. In Indigenous perspectives identity and belonging are not of ‘difference’ but rather of variation (diversity) within sameness. In other words, the focus shifts back to those who currently wield power that results in imbalance as sickness.
In Indigenous philosophical frameworks knowledge, thinking and identity have cultural locality and each person’s relationship with Mother legitimates their participation and value within family, community, nation. Each person has and retains their own autonomy, as a part within the whole which is their belonging of shared space, because self, language and belonging all have locality. Hence each person brings to the shared and collective project, and as they age, increased authority.

The ecological framing of self and identity addresses not only the arguments and conflict which emanate from a worldview predicated on difference, but similarly those which result from a human to human contexting. That is to say, where the European requirement is institutional forms of representation which fit their structure, Indigenous peoples in some Third World countries have replicated cultural structures as representative entities, reflecting processes which remains consistent with inter-relationship of territory as belonging. This approach allows for the relationship of other living systems which are already factored in as part of cultural identity and contained as consciousness within language and knowledge. These are human systems which are sui generis as a living system with specific locality. In these Third World contexts, the inter-relationship of peoples which now have a virtual reflection in institutional form may become confederacies.

Here again it is important to appreciate that the activity of the institution, or to restate this, the person in one of its roles, which the European perceives has institutional authority, genuinely derive their authority from within the peoples of which they are belonging. Moreover the cultural context reframes and directs activity, a contrast to the problematic which indigeneity potentially creates. In European contexts, and most particularly the CANZ bloc and the USA, where institutional activity alters ones role and relationship spatially, representation remains subject to the pressures of dominant interests and identities. That is to say language, concepts, methodologies, knowledge, processing, worldview and agenda continually imposed by the dominant all serve to re-define the identity and priorities of the representation legitimated.
Bern and Dodds write similarly on this point suggesting that because ‘representative bodies of Indigenous people are geared toward some aspect of self-determination or negotiation with the wider state. To a certain extent... the agenda is set from the outside and that agenda will often set criteria for identifying which kinds of interests are given priority and which members of the group are representatives of the group’s interests.’

Representation however is ultimately necessary and Young’s point on the need to provide space, for the oppressed to have their voice heard, is important, given the nature of the modern world and its architecture. Operating to exclude and marginalise through political (and increasingly military) methodologies which deliberately target a fault-line of ‘difference’, necessitates that space be created within its institutions and system.

Hearing the voice of the diminished provides clues as to systemic failure, so that those that have authority may be better informed and assist in correcting imbalance. Those with authority currently believe the systems operation provides its stated goals, these being freedom and justice for all. Indigenous peoples might argue that the project is ‘wellbeing’ and ‘continuance’ and that this is the crisis of modernity; the failure of their systems to achieve these. Further more, the very ‘ideals’ which are said to inspire institutional inter-relationship no longer serve to orient activity.

Governance as a template of institutional structures no longer reflects or takes its orientation from its humanity but from external or outside influence (the very point made a moment ago about some Indigenous representation within the same framework). In this case the outside influence is the world of unfettered and unregulated capital/corporations and military power. A grouping of humanity who have spent the past decades creating newer regulatory institutions (WTO), financial institutions (merchant banks – Foreign Direct Investment) and supportive entities (transnational corporations and private militaries/security firms) in order to takeover, alter and determine the priorities of existing institutions, and where necessary, compete with and eliminate any they perceive as a threat to their vision of a new world order. This is the current activity and consciousness of Slaw. Those that operate this law may however
soon also realize that the direction and trajectory they are pursuing is ultimately a dead end.

Young argues that within representative bodies, oppressed groups ought to have special rights, at least in those areas that specifically affect those oppressed groups. ‘This special representation is aimed at ensuring a democratic voice for oppressed groups so that they can shape the institutions that affect their lives.’ This in effect became the justification for the UN’s Working Group on Indigenous Populations. As the source of the institutional framework promoting ‘integration’ which shaped member government policies such that Indigenous-Tribal peoples’ cultures and identities were negatively legitimated (ILO107) resulting in oppressive relationship, awareness resulted in the UN creating the space within which their voices could be heard (see previous Chapter 9.3 p.173).

Indeed the conscientisation begun by Indigenous peoples within the early days of the UN’s Working Group which has similarly grown within civil society networks goes beyond the democratization mentioned by Young. It is about justice and the equality of human dignity. Having a voice and a stake in the future being elaborated is the project of these social movements. Humans who know ‘another world is possible’, and who bring the hope and innovation, the ideas and the knowledge to the shared challenges facing humanity, and remain focused on creating the mechanisms and frameworks that will allow the space for cultural diversity and its continuance as this in turn will engender wellbeing for all.

In summary, all humanity ultimately lives by some order, but the distinction between those who live Man’s Law from that of a consciousness which is Mothers Law is that the first construct that order, and then because it is exclusively benefiting (not shared space), spend huge energy and resources (which is both wasteful and destructive) retaining it and expanding it while maintaining it is the legitimate order. Indigenous peoples accept that as we are of Mother her nature provides the order comprised of an interconnecting web of relationships. Indigenous peoples know that ones heritage does...
not preclude other life within shared space. Rather the requirement is good relationships which engender wellbeing for the whole.

This is why Indigenous peoples do not seek to forcefully impose themselves on nature. One can only work collaboratively with all other life, respecting its autonomy and allowing for its continuance as part of the vital and mutually benefiting diversity within shared space.

Europeans however who operate in Man’s Law believe even nature must be brought in under their order. This is the deluded and dangerous ‘non’-‘sense’ of bio-genetics and intellectual property rights. Forced criteria and priorities imposed on nature\textsuperscript{10} and a newer institutional construct which it is thought provides order and control.\textsuperscript{11}

The divergence in understanding ‘inheritance’ provides another level of explanation of the shift in consciousness that Indigenous philosophy provides. Within the dominant world of noun based lingualism and thinking one experiences spatial contexting differently to Indigenous peoples. The definition provided by the Macquarie Concise Dictionary for ‘inherit’ is 1. to take or receive (property, a rights, a title, etc. as the heir of the former owner. 2. to receive (anything) as by succession from predecessors. 3. to possess as a hereditary characteristic.\textsuperscript{12} This understanding leads to a ‘way of being’ in the world where ones ‘heritage’ as an inter-generational passing on becomes the ‘something’(noun) which provides ones place within a framing of wealth, power and status. Hence a belief that one can simply extend this legitimacy to again own or take the ‘property’ of other life which are considered inanimate and/or inferior, and at the bottom of a world hierarchy inherent to the same worldview.

By way of contrast within Indigenous context ‘heritage’ and one ‘inheritance’ is concerned with relationship. Battiste and Youngblood Henderson provide the understanding of peoples who operate in a verb based lingualism reflecting the implicature order of the enfolding continuum.
Among Indigenous peoples, possessing a song, story or medicinal knowledge carries with it certain responsibilities to show respect for, and to maintain a reciprocal relationship with, the human beings, animals, plants, and places with which the song, story, or medicine is connected. Cajete (1986) and Maruyama (1978) have discussed this as mutualistic logic and reciprocal causality. For Indigenous peoples, heritage is a bundle of relationships, rather than a bundle of economic rights or policy considerations. The ‘object’ has no meaning outside relationship, whether it is a physical object such as a sacred site or a ceremonial tool, or an intangible such as a song or a story. To sell it is necessarily to bring the relationship to an end.13

Here again is the divergence between Europeans who believe in the superiority of their worldview, authority and institutionalisation, and Indigenous peoples who know that ‘real’ power is disperse throughout living systems. Ones relationships then need to be respectful and collaborative, otherwise living systems and or their parts, against which one relentlessly perpetuates hostility, may combine and gather their energies and act to re-establish balanced order. Or they may internalise the diminishment and begin to display the self destructiveness which in extreme cases becomes at a cellular level, Alzheimer’s and Parkinson’s, at the human level, suicide, and at the universal level, systems meltdown and extinction.

Struggling however to survive and to conscientise, Indigenous peoples’ have remained focused on the need to gain a legitimate space within man’s architecture. A space of both voice (participation) and physical existence (country) which will provide for continuance as wellbeing.14 While divergence in identity, politicisation and therefore voice may appear to express differing aspirations, as has been shown, all are accommodated by such a reframing of political purpose. Dialogue however at this current stage which remains focused on the need to engender political models that structured power will accede to, and which are all described in dominant terms, remains the doorway to a potentially divergent future. The challenge has been to elaborate the models which will provide for a mutuality of accommodation.
14.2 Four Levels Of Internal Accommodation

After extensive study and analysis and an examination of the diversity of circumstances which are the realities of Indigenous peoples across Canada, Fleras proposes four levels of internal accommodation; statehood; nationhood; municipal authority; and institutional representation. Each present with differing features which in turn result in differing implications. Fleras’ categories of self governance are:

1. **statehood**: ‘absolute’ sovereignty with complete independent authority over internal and external jurisdictions
2. **nationhood**: ‘shared’ sovereignty, with jurisdictional authority over internal matters of direct relevance but not over external affairs
3. **municipal**: ‘functional’ sovereignty, with control over community based, culturally sensitive development in conjunction with control over the legitimate concerns of comparable units.
4. **institutional**: ‘nominal’ sovereignty with meaningful decision-making powers through improved representation and institutional accommodation.  

Within his study, Fleras provides a thoughtful and thorough explanation of these categories and approaches and grounds their relevance in a diversity of locality. As previously stated this section is not concerned with the models proposed, but rather oriented towards a critical examination of the contexting and processes in and around these dialogues. As such their inclusion here is to confirm that dialogue has moved forward to that extent that clear categories which meet Eurocentric criteria and priorities already exist and have been elaborated. What is being presented as argument stems from an awareness that little or no reflexivity by dominant interests has been undertaken, nor in general by wider societies with whom Indigenous peoples live. And this failure has consequences for Indigenous peoples at every stage of dialogue and negotiation. Having to continually operate solely within a European consciousness and worldview allows for differences which provide fault-lines of conflict, with internal categories equally being created.
This next part will examine the differing contexts within which indigeneity as a newer political discourse is said to have relevance. Indeed the three nation-states all exemplify the differing stages to which relationship has evolved through linear colonial history and self-understanding. Grounding theory in contexts which are peopled provides another level of critical analysis. The impact as national process has been instrumentally the result of one groupings dominance within dialogue across the CANZ Bloc. In order to understand the confusion which their articulation can engender, we will examine their role before embarking on more detailed analysis of the accommodation indigeneity is said to provide within the three countries. The voices of Indigenous Academics further critical perspective in response.

### 14.3 Canadian Indigeneity: Self Determination As Self Governance

A divergence in voice, identity and status within Canada’s Indigenous peoples leads to a complexity of negotiation. While some Indian nations have treaties, others have no agreements. Adding to some confusion at all levels of discussion are also the Métis, who are a historic anomaly. While voices at one end of the spectrum have been pursing ‘hunting and fishing’ rights within territory, other groups have pursued activity centred on oil and mining. At the centre of many discussions are the Métis who achieve their gains through state owned juridical processes and capital negotiation. In other words as a ‘distinct society’ recognised under constitution they may be precluded from other political and legal strategies being pursued by Indigenous peoples which hinge on international law. This later dialogue is often a separate indigenist dialogue which contains the philosophical perspective and values vital to global conscientisation of the need for diversity as continuance.

Given the existence of the Métis as a separate people, it is not hard to appreciate that within Canada ‘indigeneity’ is being promoted as a ‘power sharing’ arrangement within dominantly owned structures, and that other voices which might advocate a collaborative politic are marginalised, particularly those of First Nations who make
claim as ‘treaty peoples’ under international law. Again a legal basis frames the legitimacy of a politic said to be ‘the preferred course’.

The unequalness of bi-lateral negotiation (dialogue), of power (legitimated law and force) and authority (European knowledge base and language) and the structured nature of dialogue (disembodied institutionalised hierarchical), has seen the divergence in voice sometimes used to further confuse. Processes requiring juridical procedure are generally preferred. So too are those voices who promote this process.

Political dynamics within Canada have achieved a few policy outcomes within national contexts. However within the Indigenous voice, expression remains divergent; a polarity of identity and articulation between those who argue that Indigenous rights will best be achieved through political and legal procedure and constitutional amendment, and indigenist voices who maintain that their rights are inherent and inalienable. They argue the solution lies in the restoration of appropriate structures.\(^{16}\)

Fleras also points out that an acknowledgement of ‘inherent rights’, does away with processes which may or may not legitimate Indigenous rights. In other words, identity is indigenist, rather then of a re-structured narrative and processes that either ‘delegate’ rights or holds them ‘contingent’ on a group complying with dominant models of governance or development.\(^{17}\) He writes:

‘...the politics of re-structuring often conceal hidden agendas and contested realities. The fundamental objective of various Indian Affairs departments – to eliminate the ‘Indian problem’ through local self-sufficiency – has not wavered with the passage of time. Only the means have changed, with crude assimilationist strategies being replaced by unobstructive channels that co-opt aspects of Aboriginal discourse on the grounds of ‘national interests’.'
This reality does not bode well for Australian Aboriginal peoples who are currently being corralled into the same policy of ‘self sufficiency’, which the Canadian experience clearly shows, fails.

_The establishment of a ‘community negotiation process’, together with modified block –funding arrangements, may bolster governments commitment to reduce band dependency, broaden reserve decision-making powers, improve effectiveness of band management, and enhance mutual accountability. It may also have the effect – however inadvertent and unintended – of advancing corporatist agenda._

While Fleras writes diplomatically, I would suggest that the potentially confused discourse of indigeneity coupled with the dis-equal nature of bi-lateral relations, levels of politicisation, material and spiritual impoverishment and the elevation of voices that remain consistent with this discourse are part of a strategic plan to deny ‘inherent’ rights. Euphemistic referencing to ‘partnership’, and ‘the inherent right of self government’, are all part of political and juridical processes, which seek to deflect a need to justly recognize and restore indigenist autonomy. Dominant politics is always one to claim its processes are the only processes. The un-stated and un-addressed within this view however, is that what is claimed as authority is simply an extension of historically imposed power, which still informs relationship.

Also at stake are the multiple departments, policies, management strategies, funding and roles by which Indigenous peoples are contained. As a Eurocentric discourse indigeneity might be seen to buy into power politics. Dominant perspectives, which continually see the Indigenous agenda as competitive, are ‘reluctant to relinquish jurisdiction unless concessions are consistent with vested interests’.  

*Indigenist* voices within Canada however maintain their right to self-determination as an inherent right.
'...First Nations prefer to maximize jurisdiction and powers as a means of restoring what they have always possessed: sovereignty. More of the same is unacceptable, a point defiantly conveyed by Peguis Chief Louis Stevenson: We don’t want to administer our own misery'.20

In other words, Indigenous peoples are not going to be satisfied with propositions or models which simply provide them with a level of policy implementation. The state is being required to acknowledge their inherent rights, and as in the case of some Third World peoples who pursued ILO169, seek a collaborative relationship with their distinct peoples. Partnerships providing ‘self sufficiency’ and policy administration defined and determined by dominant interests are not consistent with indigenist identity and values, nor their rights in international law.

‘Despite using the rhetoric of post-colonial renewal and reform, White settler dominions remain resolutely opposed to any fundamental re-structuring, preferring instead to depoliticise indigeneity, either intentionally or inadvertently through the commodification of popular culture or through capitalist imperatives. The tenacity of the assimilationist commitment suggests the nearly obvious; the dismantling of European tutelage and replacement by “new frontiers” will falter without a corresponding dissolution of internal colonialist structures. The emergence of Indigenous ethno-politics is predicated on this counter-hegemonic framework of dual decolonisation.’ 21

Whether Canada has the courage to address this challenge remains to be seen. Many of the lauded handbacks, including Nunuvut have to date been consistent with a dominantly determined indigeneity discourse. Given the prevailing values of power, and of those who wield it, I suggest that the continued conscientisation of dominants will remain a primary requirement of indigenist politics. Fleras again:
‘Time will tell whether Canada possesses sufficient resilience and savvy to accommodate the competing sovereignties of a three-nation state without succumbing to the paroxysms of ethnic cleansing or cultural apartheid.’

### 14.4 Bi-Culturalism In New Zealand

With the indigeneity discourse said to be a dialogue that provides bi-cultural governance for Maori, a New Zealand case study provided by Ranginui J. Walker provides timely insight on the failure of the discourse. Walker’s text evidences the containment national negotiation limited to internal de-colonization within a normative context results in. It also highlights the impasse continually experienced even when seeking to engage and comply with the dominants ‘indigeneity’ politic. One which it is said provides self-determination through the guise of self-governance. Walker’s contribution, which provides an excellent analysis of Maori history and contexting of the political options being currently considered within Aotearoa, (New Zealand), catalogues the continual intervention and confusion western interests create by defining and legislating newer representational frameworks and institutions into existence for Maori.

Normative processes ‘leading to emancipation’ now sees Tangata Whenua or first peoples of the land/earth having to choose between ‘an elected national Maori assembly which does away with social structuring culturally consistent with Maori political units of whanau, hapu and iwi, and omits recognition of marae committees’; or ‘a parallel self government model which has been tried before and failed’. ‘On the first occasion it was over thrown by military force in the 19th century, and later when employed by the Maori Parliament it was simply ignored by the Pakeha Parliament’. Walker points out that faced with these options all that is left is ‘insurrection or negotiation’. He further comments that with ‘the first ruled out due to lack of fire power’, ‘numbers’ and ‘the ameliorating effect of intermarriage’, ‘negotiation remains their only avenue.’

The pursuance of a third model, tikanga rua, or bi-cultural governance, which ‘proposes a Maori assembly to produce legislation based on Maori tikanga (custom) and a Pakeha
assembly to make law based on Pakeha tikanga’, has however been further frustrated by remnant colonial thinking and authority. Successive governments have remained opposed. Walker quotes the argument of former Prime Minister Jim Bolger ‘there is no political will to alter the fundamental constitutional arrangements of the nation involving the sovereignty of an elected Parliament... the sovereignty of Parliament is indivisible’.

This same impasse was encountered and envisaged by Indigenous peoples from within a number of Third world countries. Recognizing that nation state discussions had simply generated a mountain of laws, broken treaties, frameworks, discourse, language and representation all aimed at perpetually diminishing their rights and confusing discussion, led to the strategy of international politicization and the elaboration of newer Conventions opening up the possibility of their constructivist application. Where the right to self determination is guaranteed by the ICCPR and ICESCR, self-governance within nation states was central to elaboration of ILO 169. While the ILO document is not perfect from the perspective of some Indigenous peoples, those pursuing other political strategies involving historic Treaties for example, ratification of the Convention by a number of South American governments has assisted some Indigenous peoples to retain a level of control and authority over their lands and resources and increasingly for newer more ‘collaborative’ relationships to emerge.

In Argentina where Indigenous peoples are roughly 2% of the total population, their lobby to have ILO 169 ratified resulted in a re-writing of the nations Constitution such that it acknowledges Indigenous peoples, providing the flux within which the peoples could pursue newer national and provincial frameworks and regulation that give meaning to ILO 169. The new Constitution also recognized a number of Indigenous peoples requirements, including the prohibition of any dumping and storage of nuclear and radioactive waste within the country. Interestingly, while initial advocacy to ratify ILO169 was deflected to processes of Constitutional amendment, continued Indigenous activity and governmental conscientisation has seen Argentina subsequently ratify the Convention.
International interconnective standards or ‘global standards’, potentially allow for the
diversity of Indigenous peoples within a nation state, providing the necessary flexibility
required for the differing circumstances of peoples while allowing them to elaborate
their futures. Rather than seeking to create one national regulative standard based on
dated discourse, definition, historic legislation, and limited dialogue, some Third World
Indigenous peoples have preferred to pursue a politic which enjoins government to
international standards and then to pursue internal accommodation that allows them to
retain cultural structures which spreads authority across the diversity of peoples.
Cultures, knowledge, language and identities are inextricably linked to specific
territories and livingness. These same cultural structures provide for negotiation and
discussion between peoples should consensual positions be needed and have lead in
some instances to alliances and newer confederations which may also include civil
society, reflecting indigenist forms of self-government.\(^{26}\)

This approach is consistent with the political principals of ‘global governance’, which
advocates the drawing down of power to the local; a level where those impacted upon by
a decision regarding any development are the ones who make the decision. There is also
another argument. That is, any use of resources should benefit local people dependant on
them for survival and wellbeing. It is an argument which grounds and provides a real
basis to newer eco-systems planning, which seeks economic and social sustainability,
not simply sustainable resource use for disconnected capital/corporate interests (Sachs).

This approach also recognises that the project of ‘development’, as the transformation of
peoples with longstanding cultural traditions and knowledge, no longer remains the
global project. It may suit the dominant to continue to believe in their current form of
development, but as Arturo Escobar points out, for cultural peoples globally, this
‘conventional development has lost its hold on the collective imagination.’\(^{27}\) Where
dated development and now globalisation serve to render ‘the other’, i.e. ‘the local’
(inclusive of local knowledge and culture), ‘subordinant, and impotent’, requiring they
adapt or perish, many cultural peoples from Africa to Asia with Latin America between,
are working to reassert the locality of culture.\(^{28}\) This politics is predicted on the
realization that ‘cultural difference continues to be socially significant; that it is the source of life practises, nature, economy, knowledge and politics; and that local communities should have the right to decide on the direction they want to give to change under more equal conditions within dominant cultures’.

Where normative state processes deny Indigenous peoples basic justice and equity, I would argue that a study of international interconnecting instruments, including the Convention on Biodiversity, and the vision already elaborated internationally, would accord with Maori cognizant of ‘Io take take’ as praxis and world view. I would also suggest that the inter-connective framework elaborated at the international level would have particular relevance for ‘Iwi’ especially those who were and are not party to the Treaty of Waitangi and retain cultural ‘connectivity’.

The case study presented later serves to highlight why, despite claiming that indigeneity serves to provide for bi-cultural governance, political processes have been held up. Simply put, ‘indigeneity’ as a judicial process has sought to re-define Maori. Where to date, national consideration has been that of ‘Iwi’, newer outcomes now recast Maori as ‘distinct societies’ (see chapter on NZ).

14.5 Australian Indigeneity As Self-Sufficiency

The continuing strategy of CANZ bloc countries to refuse ratification or engagement with newer international conventions and standards or to adopt a constructivist approach, has relevance when contexting the contribution of Aboriginal academic, Professor Marcia Langton. Her studious examination of events in Australia since the High Court’s Mabo decision is a sad study in dis-equal relationship and continuing diminishment. Within Australian contexts, self-determination addressed as indigeneity is said to provide economic ‘self sufficiency’. And yet as will be shown, processes serve to deny materially impoverished peoples’ their ‘knowledge resources’. Indigeneity as a politic negates the need to engage with the integrity of Indigenous identity as a *sui generis* system. As a dominantly embedded process of accommodation the natural world
is split off from Indigenous peoples, replicating the split underpinning the dominant’s settler identity, knowledge, language, institutions and system.  

Langton’s study highlights the processes by which the normative approach allows for an in-systemic accommodation, which simultaneously places ex-situ fundamental aspects of Indigenous identity and knowledge. A process that again ensures Chomsky’s rule of Empire is legitimately established, by which ‘natives are only provided complementary roles’.

A plethora of western institutions, management groups, governmental and academic bodies and departments established in the name of regional planning, sustainability, conservation and/or educational opportunities for Aboriginal peoples speak of a strategy which essentially sees the dominant again promoting newer economic and conservation developments through ‘co-management’ of ‘terrestrial protected areas’ with officially legitimated Indigenous organizations and bodies.

Focusing on research while simultaneously repressing traditional knowledge under the rubrics of ‘insufficiently trained Indigenous peoples’ again allows for a perpetuation of diminishment. Activity then centers upon accredited training programs and courses in ‘natural resource management’. The ‘sui generis knowledge’ of Aboriginal cultures is discounted, only to the extent that Aboriginal peoples wanting to work for the now dominating organizations believe it to be so, while some academics, continue to research and write this knowledge up and fight to then have it validated within curricula.

Having created the institutions which contain and control Indigenous knowledge, and lacking any national or international framework that provides recognition or protection of Indigenous peoples ‘sui generis systems or the cultural knowledge contained within’, the mechanisms which further facilitate a western expropriation lie in the confusing and complex range of titles to land. ‘While terrestrial and marine areas within Aboriginal domain lie both within and outside of Aboriginal jurisdictions’, western interests are free
to research and learn from Indigenous peoples ‘living on land within their jurisdiction’, while utilizing other areas ‘outside’ for any development or commercialization.

I would argue that some elements within government; scientific and capital interests which had been following the elaboration of the Convention on Biological Diversity, have deliberately frustrated and confused discussion and dialogue by focusing Aboriginal leadership’s attention on National and Territorial initiatives to establish organizations, institutions, authorities and conservation areas. The timing of initial scientific studies and the ‘urgent management challenge to the nation’ that ‘land mass, coastal, sea and marine areas within the Aboriginal domain in northern Australia and the resource wealth within these areas constitute’ is indication of a move from hegemonic interest in the 1990s to again dominate and control any potential Aboriginal development based on their own territory, using traditional knowledge, cultures or resources.

While I do not argue with Aboriginal peoples’ right to ‘choose’ to enjoin themselves with official nation-state initiatives and frameworks, I have difficulty with the unequal nature and hegemonic processes of diminishment which result in a continual frustration of Aboriginal aspiration. Instead of assisting and supporting their endeavors, or recognizing their right to their knowledge and cultures, official processes still exploit community leadership which may lack cognizance of international agendas. Levels of politicization determine the requirement of government to comply with newer standards consistent with international conventions and the conscientisation occurring at the macro political level. Indeed the sustainability of wider society and newer development models are contingent on government recognizing that their global system needs new thinking and reform.

The international Indigenous agenda has been the inceptive spearhead of this paradigmatic shift. This agenda promotes the reassertion of cultural locality as self determining peoples, which by extension allows other sectors and communities local governance and activity keyed to ‘living systems conscientisation’ (currently understood
by scientists as environmental renewability defined as a sustainable eco-systems approach), within a sovereign nation that values diversity and constructively (flexibly) provides genuine equity and justice for all, whether a collective Indigenous identity or that of any other.

14.6 An Understood Diminishment

That traditional peoples may not understand the systemic specifics of how they are being diminished does not obfuscate their appreciation of what is happening to them. The following case highlights the limitation of current national approaches in which the normative framework fails to address Indigenous peoples concerns and values. In a separate publication in which Langton argues the merit of the programs and projects being implemented on Aboriginal land, she recounts the story involving the spread of ‘Mimosa Pigra’ an invasive weed which arrived and began dominating waterways within the Arafura wetlands.

The traditional owners and clan members who are dependent on the local ecology for their existence sought assistance with its eradication from the many organizations, institutions, and scientific research groups all working within the region. After ‘meeting with the staff of the Federal Minister for the Environment and obtaining no satisfaction’ and concerned at the increasing detrimental impact of the plant, they were finally ‘forced to seek external substantiation of the need for protection of the wetlands natural and cultural values’.

‘Assisted by Dr. Neville White, geneticist and anthropologist, they applied for listing under the Ramsar Convention on Wetlands of International Importance’. It should be noted that this was one of the first projects traditional peoples had nominated themselves. All other projects, which are well funded, are generally initiated by Europeans who then seek to accommodate Indigenous sensitivity. Traditional owners are well aware that their perspectives are often not fully appreciated or considered. At a workshop held in 1997, ‘to address the design and conduct of research’, ‘landowners
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echoed a continuing theme: We want help but on our terms, to enable us to determine and manage our own futures on our own lands.’ 34 Which serves to highlight the claim that ‘indigenist’ voices do exist within the continent, and that isolation and diminished political status again allows for them to be discounted within national dialogue and negotiation defined by an indigeneity politic.

14.7 Summary

As we have seen through examination of the various contexts within which dialogue is framed by the newer indigeneity politic, initial analysis would suggest the hope that any processes might result in fair and just relationships with which to co-exist peacefully looks bleak. Insight was also provided on the confused role that Métis may play in dialogues. As a separate and distinct grouping from First Nations (Indian nation) within the Canadian political landscape, their politic can diverge simply to ensure they achieve a range of rights as a constitutionally recognized society. The requirement that they pursue separate resolution is often not understood within Indigenous communities across the rest of the CANZ bloc. It might also be said that Government officials have similarly confused representation and voice.

While Indigeneity does in all probability hold some promise for on-going dialogue, I would suggest that conscientisation of dominant thinking will need to remain part of process. Where we are already at a critical stage in which the world’s living system have started to display the Alzheimer’s of internal collapse as one living system after another begins to melt-down, we can only hope that the rate at which those with power uptake newer thinking, is faster then that at which this man made and induced sickness spreads within our Mother. All of which again underscores the urgent need for humanity to create the space for plurality within the architecture of man’s agreed order.

Internationally, some conservationists, environmentalists and scientists have grasped and understood that the knowledge systems and languages vital to understanding biodiversity within a specific ecology or locality is the knowledge of its Indigenous
peoples. Within Central America, and other regions, whole systems approaches guided by Indigenous peoples in collaborative relationship with scientists are working on environmental renewal and continuance. Similar projects are now to be found in Asia and Africa. Such projects represent a major shift in thinking and attitude reflecting the conscientisation inherent to any genuine engagement with Indigenous perspectives and knowledge systems. The awareness being that much dominant knowledge and processing is disconnected from any ecology and as a noun based lingualism misses the consciousness of being that is the enfolding continuum integral to a living, breathing, communicating reality of meaning birthed of Mother.

Where newer collaborative conservation/environment models give expression to Indigenous led projects, development models that equally provide for human centered approaches in other regions of the world also illustrate a growing trend towards understanding that locality is a key to engendering continuance as wellbeing. Cultural locality however requires that national and global architecture accommodate this logic. Indigeneity as a newer political discourse sits squarely within this space providing both the opportunity, and perhaps the demise of newer conscientised approaches; being the sword which can cut both ways.

Central to outcomes in my view will be the nature of thinking and understanding of the dominant party within any negotiation and their desire to either address or ignore continuing injustice. Casting Indigenous aspirations as competitive misses the renewal or renaissance available to all humanity through an engagement with Indigenous perspective and knowledge. Simply seeing indigeneity as a political resolution which potentially results in ‘us’ having to give ‘them’ part of that which we historically took and have subsequently often destroyed, is a limited perspective. Understanding that noun centered thinking emanates from the fear of loss, and historic disorientation and trauma, is central to appreciating that there is ‘another world’ and it ‘is possible’. The very mantra of the growing international body of civil society networks which represent the voice of peoples aware that processes of continual centralization of power and the
diminishment of the intelligence by which it operates, runs counter to the continued wellbeing of all life.

The re-orienting required is the exposure to other knowledge systems, and newer macro-political architecture which legitimates these within pluricultural templates of governance. Frameworks which recognize that it is relationships between humanity and living systems that primarily ensures wellbeing, and that the best manner of safeguarding continuance as wellbeing is to underwrite the authority of locality.

Having canvassed the range of issues that are the dialogue concerning accommodation, the challenges are deeper then simply considering that environment need be part of the uptake. Perhaps an analogy provides another perspective and understanding.

Modernity as a way of life might be said to be sliced white bread. Environmentalism is represented by a newer awareness that highly processes white bread does not provide nutrition. Conscientisation resulting from voices who knew that nutrition was vital to wellbeing are analogous to Indigenous peoples and a growing civil society. Examination of the structures that frame this industry illustrates that the Food Manufacturers, acting in their self interest and through relationships of power, ensured that government regulation did not mention nutrition. Rather national standards simply measured calories and kilojoules (a measurement of potential energy). Here then is the diminishment, the systematization of limited criteria which presumes that food is simply fuel. Still further conscientisation about the need for nutrition and its role in providing health, has again seen food manufacturers seek to control. The negative impact of their product is now masked by a newer approach, one in which the boundaries between food and pharmaceuticals/medicine are being blurred. Now the product becomes ‘functional food’.

White bread with added Omega 3 is marketed by the same manufacturers with the claim that it assists children to develop better brains. In effect Omega 3 becomes the environment in modern man’s system. The medicine added while humanity continues to
lurch forward still measuring calories and kilojoules and still lacking understanding of the diminishment inherent in their thinking and activity. In this analogy, nutrition and fresh organic food (of mother) represents the vision that provides ‘well-being’. White bread and omega 3 represents the vision of corporations and transnational.

To extend the analogy with perhaps an Indigenous perspective is to legitimate the diversity of the traditional forms, the chapatti, the naan, the rye bread and sour dough and the hundreds of other varieties emanating from distinct cultural knowledge and localities. Pluralism would also underwrite a view that where peoples and cultures have no variation, they need not relinquish their own food security and substitute ‘bread’ because this suits some globalizing project.  

As has been shown in this section examining ‘indigeneity’, the potentiality exists for newer relationships between Indigenous peoples and Europeans within nation states, but this requires that the pattern of thinking and practise be conscientised. Otherwise the practical will simply be repetition. The outcome of any process informed by indigeneity may be perceived as improvement, but in terms of the degree of shift required to put the trajectory of humanity onto a course which will allow for continuance as wellbeing, it may not be sufficient. This again is the challenge of existing relationships of diminishment and their resolution. The choice to raise the song to a major key which resonates joy and heartbeat, or to remain stuck in a pattern which has at its core the historic requirement that the ‘other’ be dispossessed and denied, a further diminishment of song which drops to the minor key of sadness and loss, or a space of being which is of continual suffering.

As will be shown within the next section which provides case studies, negotiation and dialogue currently appears to remain consistent with patterns of diminishment. Moreover the legal framing of negotiations and the ‘disconnect’ that exists between international and national contexting again ensures that the pattern remains diminishment despite Indigenous peoples best efforts to resonate tracks of human equality and dignity across political landscapes.
Central to any consideration of Indigenous aspirations is the context within which the dialogue takes place. Limiting negotiation to a domestic context sets up conditions in which government, supposedly the peoples’ representative authority, is simultaneously the shadow of capital. In such scenarios government is not only a ‘conflicted party’ in dialogue, but also ‘mediator’ and ‘umpire’. Historic inequity and a diminished consideration of citizens’ interests in preference to corporate rights, (essentially ensuring the dependence of everyone on a disconnected and unaccountable capital system), results in government seeking to contain the criteria and terms of any discussion. A legacy of confusing, inept and historically constructed frameworks which also sought containment, still further limits any real appreciation of Indigenous peoples’ aspirations.

While much academic and political effort is being invested towards ‘the emancipation of Indigenous peoples’, the context remains at issue. Having limited discussion solely to political and economic consideration in which Indigenous peoples’ aspirations are cast as ‘competitive interests’, the main challenges to an accommodation within First World countries emanates from international constructivist standards that recognize Indigenous Tribal peoples’ rights, and a consideration of those, a minority in global terms, who for survival, have follow an adaptive politic. This awareness has seen dominant governments pursue obstructionist activity in the UN’s Working Group redrafting the Indigenous Peoples Declaration of Rights. The accompanying strategy seeks to limit the notion of ‘self determination’ as it applies to Indigenous Peoples. While examination and analysis may serve to provide greater clarity, it might also be argued that the centrality of ‘rights’ as the goal being pursued, coupled with the fact that negotiation and its processes are dominantly controlled, might again serve to deny justice.
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It is important to explain that in the context of this discussion ‘power’ is being used in terms consistent with western understanding. That is to say, ‘power’ is that which is imposed and obtained and maintained by force. That today Indigenous peoples may be thought not to be subjected to this form of imposed domination is to miss the point. Where in many Third World contexts militaristic force and terror are still being unleashed against Indigenous peoples, in First World contexts dominance is now generally more subtle, it having been replaced by systemic means of control and subjugation. The inherent nature of relationship however has altered little. Today Aboriginal people in Australia who constitute less than 2% of the population represent 20% of the prison population nationally. A study completed by the Committee to Defend Black Rights in the late 1990s found that 90+% of Aboriginal men and 80+% of Aboriginal women would spend some time in their life within jail. Indigenous peoples’ minds, spirits and bodies have all been colonized, as have their lands and cultures. Indigenous peoples’ lived and psychologically maintained ‘diminishment’ of identity, accompanied by dispossession from the means of their own continuance are symptomatic of peoples the world over who require that the dominant recognize the pervasive nature of their own thinking, structures, identities, activity, and purpose. In other words the offer of the political models being proposed is to allow a space within the dominant system for people ‘other’ than that identity which today seek to determine all activity, whose knowledge is the only legitimate knowledge, and whose worldview and way of life is the normative which defines modernity. Consequently, the power being talked of here is the one which established settler nations. Perhaps this explains why the challenge of indigeneity for much dominant identity is understood as a relinquishing of power. Indigenous peoples would suggest that they are not gaining power, rather a ‘space’ within which to be themselves and elaborate ‘ways of being’ reflective of their own sociocultural perspectives and worldview through agreement. Such agreement would mean that they may pursue wellbeing and continuance without settler groupings continuing to presume they need to impose, deny, control and demand that Indigenous peoples become who they want them to be. Sadly dominant interests have not fully grasped yet that force eliminates choice and options, not simply for those they diminish, but for the whole of humanity, because with these cultures goes knowledge of other ways of being which have sustained life as wellbeing for millennia. Existence which did not result in cancers and leukemia, did not result in infertility or radical genetic mutation (chemical exposure and ingestion/depleted uranium), nor in societies necessitating of jails or mental institutions.


Ibid., p.199.

Ibid., p.198.

Ibid., p.199.

Ibid., p.198.

Ibid., p.199.

Ibid., p.165

Ibid., p.168.

Ibid., p.169.

Ibid., p.168.

Ibid., p.168.

It is a great concern that the very groups/interests who gave the world the damaging chemicals and pesticides that destroy and cause genetic mutation within life forms (including humans) are now the proponents of genetic engineering and the principal corporate entities which hold patents to life forms. It does not bode well that these identities which exhibit Slaw values, were prepared to create dead end species which would not germinate unless they had been sprayed with their toxic pollutants. Furthermore having contaminated their own continent, (such was their arrogance and belief that they could and would impose a future which benefited them) they now have to ensure that all other continents are also contaminated with GMO, other wise they stand to lose their global markets. In short Transnational interests would lose a war they created against all life forms, and other humanity who do not want to be part of this project.

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
11 While some geneticists argue that all they are doing is what nature has done, and that it is really no different from selective breeding, is to miss the point. Within selective breeding the human may limit the choices available, but ultimately the rainbow serpent/DNA decides according to its criteria, knowledge, culture and language, which it will recombine and for what reasons. That is to say, scientists have not stopped to think about how and why nature makes particular choices. Neither will they be able to glean this level of understanding through their current methodologies and approaches. Moreover they do not know the inter-relationships in which the particular rainbow serpent/DNA is operating. So imposing our criteria and priorities on the rainbow is to presume we understand, when in fact we do not, and neither will we. Shifting from a hostile dictatorial and savage intervention to a collaborative approach with nature is to return to the approaches we previously used when we still had agriculture, (now agribusiness). Selective breeding and innovation over generations allows the ultimate choice to nature herself, which at the level of the activity taking place is the only authority represented. That humans can have an impact in these spaces is not being questioned. That they seek to determine and impose an outcome on these processes when they do not live in this context is being challenged. From an Indigenous perspective this is to transgress the good order that is life on earth and as such it will result in sickness.


14 This search for space is essentialised in the conflict between Israel and Palestine, the resolution of which billions of peoples of every other cultural identity watches, waiting to see to what extent dominance will engage in self-reflexivity such that ‘another world is possible’.


18 Ibid., p.203.

19 Ibid., p.203.

20 Ibid., p.203.

21 Ibid., p.226.

22 Ibid., p.203.

23 Ibid., p.119.

24 Ibid., p.119.

25 It is interesting to contemplate the re-building and up-grading of the Lukas Heights nuclear facility, located in suburban Sydney by an Argentinean firm, which is linked to US and Canadian interests. Perhaps it portends a desired utilisation of Australia’s ‘outback’ as the dumping ground for transnational energy and military interests.

26 Within English discourse Iris Marion Young writes of the Iroquois Confederacy and its historical influence on the founding institution of the US Congress, which borrowed from their traditional systems of governance. See Chapter 13, ‘Hybrid Democracy: Iroquois Federalism and the Postcolonial Project’. In Ivison, D., Patton, P. and Sanders, W., Eds. (2000), Political Theory and the Rights of Indigenous Peoples, Cambridge University Press, pp.237-258. Within other Indigenous contexts confederacies, which may be termed differently, bring together peoples’ who share a region or ecology. For example within South America there is a confederacy of peoples of the Amazon, and at international levels an Alliance which represents the peoples of the tropical forests in some 31 countries. These examples are essentially confederacies of peoples from within an understanding of Indigenous governance systems and models.


28 Ibid., p22.

29 Ibid., p21.
30 'Io take take’, in Maori often refers to the ‘old knowledge’; the oral and sacred knowledge which still informs culture and language.
31 ‘Iwi’, a peoples. Often used to mean ‘tribe’ in English, ‘iwi’ has other meanings in Maori. Iwi have a collective genealogy which informs identity as oral tradition, which is culturally lived.
32 While consideration of the body and soul dates from Plato and has challenged philosophers throughout history, it is Francis Bacon’s treaties which argued that nature was there for man’s use, and that he must ‘bind her into servitude’. Bacon’s work set the conditions for the mechanistic philosophers, Newton and Descartes. On the 10 Nov. 1619, Descartes declared that ‘the natural world was a soulless machine ordered by mathematical law.’ By the 17th Century the soul had been reduced to one gland (the pineal), within the human brain, which it was argued gave rise to man’s ability for rational thought. ‘This desacralised, deanimated, soulless vision of nature became the foundation for modern science, and was established as its reigning paradigm in the scientific revolution of the 17th Century.’ In Sheldrake, Rupert, and Fox, Matthew (1996), Natural Grace. Dialogues on Science and Spirituality, Bloomsbury, pp.14-15.
36 While this ‘disconnect’ between international and national contexting often exists, dominant interests are equally active within the International arena. At this level, activity centers on limiting the right of ‘self-determination’ (provided by ICCPR and ICESCR to all peoples and parts of humanity) so that Indigenous peoples receive a lesser quality of rights. Such an approach essentially reduces them to a secondary consideration in State process while opening up the potentiality for a next round of discussions framed by the newer political discourse of Indigeneity.
Indigenous Peoples: Towards an Interconnective and
Conscientising Dialogue

VOLUME III

THREE CASE STUDIES: ‘...THE ONE SOLUTION...’

Z. Kutena
PhD. Thesis in Social Ecology
University of Western Sydney, 2004.
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Chapter 15: Introduction To Case Studies

This final volume seeks to address the ‘solution’ or ‘accommodation’ of Indigenous peoples being proposed by First world Countries. Canada, Australia and New Zealand, all share similar policy and their influence at international levels is keenly felt. The CANZ bloc often sets the tone of dialogue within multilateral discussion, providing leadership and advice to Third World governments.

CANZ bloc countries co-operate on the Indigenous agenda at international levels. Involvement within International processes leads to a view that each country might be seen to provide an aspect of overall position. In general it appears that leadership and the diplomatic facilitation of a political position is usually conducted by Canada. Australia tends to provide the reservoir of racist perspective, historic attitude and diminished legal consideration of the Commonwealth. New Zealand appears to supply the accompanying theoretical discourse underpinning the shared approach. Britain bestows the ‘imprimatur’.

The need to re-consider the aspirations of Indigenous peoples in light of the UN’s global reform agenda has resulted in the promotion of a newer accommodation. Where domestic negotiation still tends to be couched in terms of ‘a shift from welfare dependency to a rights based approach’, compliance with ICCPR\(^1\) and ICESCR\(^2\) as a process of internal de-colonization has necessitated a newer strategy. The ICERD\(^3\), and processes elaborating newer instruments addressing Racism, Racial Discrimination, Xenophobia and Related Intolerance\(^4\) call for restorative justice and further require governments to examine the values informing negotiation and relationship with racial minorities. The accompanying conscientisation of subaltern history and analysis of previously unjust policy and legislation similarly results in the need for a newer solution. The existence of Treaties, agreements, and international interconnective constructivist conventions which establish the ‘distinct rights’ of Indigenous peoples, have also
required new approaches by governments. In response to all these international developments, the CANZ bloc has worked to contain all negotiation to the domestic arena. Furthermore in Canada and New Zealand the existence of treaties has served to define and shape national politics by ‘Assert(ing) that treaties involving Indigenous peoples are basically a domestic issue, to be construed, eventually implemented, and adjudicated via existing internal mechanisms, such as the courts and federal/local authorities’.  

The following section seeks to explore the newer accommodation being officially promoted for Indigenous peoples and examine the efficacy of current treaty negotiations, legal mechanism, and processes characterised by asymmetric bi-lateral relations. There are three case studies examining each of the CANZ Bloc countries. Each illustrates the ongoing nature of historic inter-relationship pointing to a concern that any newer political discourse offering accommodation may not provide a just solution. The publication of two seminal texts provides the voices with which to engage in two of them. These are a Canadian and a New Zealand voice. Both of which carry great weight and are heeded by government. Articulation serves to underpin other academic work and provide a consistency in argument and view.

The Australian Case study emanates from an engagement with the report of a Parliamentary Joint Committee into Australia’s international obligations. Analysis points to deliberate and racially motivated policies, which not only fail to meet basic standards, but also fall short of the current accommodation being proposed. A second analysis of an additional national process highlights the on-going and cynical manoeuvrings of officials. Both serve to prove that within the Australian context, recent negotiation and ensuing official process have resulted in a newer discriminatory framework, which hinders Indigenous peoples from gaining their rights.

It is argued that the advent and promulgation of an ‘indigeneity’ discourse within modern political theory seeks to override all previous internal consideration and the need
for substantive engagement. ‘Indigeneity’ overlaid as discourse potentially provides an accommodation of a Eurocentrically devised and ascribed Indigenous identity. As a strategy it may allow the dominant to subsume and negate other voices.

The concern being addressed is that accommodation consistent with this discourse will be claimed to have relevance for all other Indigenous peoples. It could become a strategy aimed at neutralising a multilateral constructivist approach at international levels, while sidelining articulation that is not expressed in English or dominant terms. The offer of roles to First World Indigenous representation consistently pursuing an ‘indigeneity’ politic could further serve to ensure that other voices are lost within international fora.

Simply put, the case studies will show how the Eurocentric discourse allows for the re-definition and re-narration of Indigenous peoples own indigenist project. Indigeneity as a dominant approach potentially allows the state to obfuscate the need to address historic inequity and inheritance in preference of a solution that requires peoples adapt to a ‘contemporary’ identity, selectively restructured and imposed through discourse and process.

The Canadian case study examines the historical contexting and journey of unresolved relationship between themselves and the Crown and later the state. Canada illustrates the diversity in project that is of Indigenous articulation and that of Indian affairs. Where Canada sets the political direction the impact of events and policy in that landscape on geopolitical consideration cannot be underestimated.

The Australian case study examines the methodology by which juridical frameworks and argument invoke the limitation of a substantive approach. This methodology relegates Indigenous peoples of cultural identity to illegitimacy through discriminatory process. A process which then clears the way for the implementation of dominant policy and approaches which accord with ‘indigeneity’. Cited for breaching its international human rights undertakings by the CERD Committee, Australia’s newer legislation and policy denies rights and holds them in abeyance potentially in perpetuity.
The New Zealand case study will show how differing contexts, histories and dialogue result in a divergence of perspective and understanding of the indigeneity discourse. What will be illustrated is the confusion this creates resulting in activity that potentially neutralises cultural identity through the very processes that are being pursued to achieve legitimation of identity.

The three case studies become journeys within political landscape. Within each the tracks are those set out in my methodology; the boundaries which bring together being identity, relationship and authority. Each landscape provides part of the same one journey which has a historical basis and a legal and political dimension which impact directly on identity and self understanding. Grounding theory in the specificities of locality provides another level of analysis.

The choice of case study has been motivated by a need to address the politic being promoted at international levels. A politic emanating from countries in which officially legitimated leadership either opted not to pursue ratification of ILO 169, or found this avenue closed to them through processes which limited negotiation to existing domestic frameworks and/or a politic defined by a need to address historic treaties. This divergence as the basis or premise of political articulation is an important one, and the interplay that this creates needs to be examined more fully. Having a Treaty, or not having a Treaty, being constitutionally recognised or not, being the subject of institutional policy while devoid of legal mechanism and recognition of identity as rights, all contribute to differing political articulation which can result in a lack of clarity. Similarly the level of political dialogue articulated, be it international in character or of national and domestic contexts, again potentially results in more confusion.

Importantly, CANZ bloc negotiations in which Indigenous populations are a minority, are First World countries which dominate and benefit from capital’s ‘globalisation’ and the regulatory frameworks they impose on macro political mechanism, processes and
other governments. Where Indigenous-state relations within the CANZ bloc are by virtue of historic treaties with the British Crown, an in-systems or Commonwealth contained dialogue, the ramifications of any accommodation has wider implications across the other 50+ nation-states of the Commonwealth.

Third World countries, in which the applicability of international interconnective Indigenous Tribal conventions may have relevance for a majority population, might be forced to follow the CANZ lead.\(^7\) Hence the importance and relevance of addressing political processes, which while specific in nature, may not address the situation or needs of *sui generis* Third World Indigenous or Tribal peoples struggling to survive ‘development’ and the imposition of capital’s agenda, nor characterise the articulation emanating from these doubly diminished peoples.

### 15.1 Treaties And Their Impact On Dialogue.

The UN’s Special Rapporteur on Treaties, Mr. Miguel Alfonso Martinez, provides a sharpening in perspective. In his view one of the overall aspects of negotiation and processes needing greater assessment is ‘the connection between the treaty *problématique* and the general question of “the human rights of Indigenous individuals”’ and “the rights of Indigenous peoples”, which he points out ‘is a very different notion, broader in scope and inclusive of those individual rights’.\(^8\) This has particular relevance in contexting perspective and attitude informing official processes at all levels of engagement with the international Indigenous agenda.

The existence of historic treaties within Canada and New Zealand has served to define official approaches towards all internal Indigenous peoples whether party to a treaty or not. Australia which has no such agreement(s), sets up differing considerations (albeit that they import the same methodology of containment). Examination of governmental strategies within Canada and New Zealand, show that negotiations have centred on national processes which hinder the recognition of treaties as ‘international agreements’,\(^9\) contain their interpretation, and/or re-define the meaning and content of
the treaty and often re-adjudicate its application. Indeed, the UN’s Special Rapporteur on Treaties felt it necessary to point out that in accordance with his terms of reference and mandate the content of his final report needed to address “the process of domestication” of all issues related to Indigenous peoples and that this was of “singular importance”.10

The contextualing of Indigenous peoples is also informed by interpretations of definitional consideration. Martinez explains that while much debate continues within international fora over establishing a generally accepted interpretation of the term ‘minority’ (often qualified by ‘ethnic’ or ‘national’), the work of the Special Rapporteur on Indigenous Minorities Mr. Jose Martinez Cobo, who elaborated a ‘working definition’ of ‘Indigenous peoples’ has provided an acceptable basis recognised by the Commission of Human Rights and its subsidiary bodies.11 This point is important.

For the purposes of his treaty studies however, Martinez found that Cobo’s constructivist approach or a working definition which provided for the ‘inclusivity of the diversity of Indigenous and Tribal peoples’, presented him with a few problems. In particular, the work of a number of international organizations - he lists the ILO and the Organization of American States – which he regards as ‘having contributed to a confusion of the clear cut minorities/Indigenous dichotomy’. In Martinez’s view; and ‘in the context of today’s United Nations practises and according to existing international legal instruments and standards, the securing of effective international protection of minority rights remains very much confined to the realm of their individual rights,’ negating their claim to collective rights. (A perspective which again highlights that processes are a function of internal de-colonisation which seek to replicate dominant identity and retain the status quo).

Additionally, he continues ‘this overall issue is mainly dealt with as a matter privy to the internal jurisdiction of states, thus precluding any other alternative approach’12 (such as the international constructivist approach). Consequently he argues, in the context of Treaty considerations, Indigenous peoples should not be viewed as ‘minorities’, albeit
that they may be such a population within a nation state, nor should ‘ethnic’ or ‘national’ minorities be considered Indigenous.\textsuperscript{13}

In this light it again becomes clear that Indigenous peoples are a ‘distinct category of peoples’, and that international conventions which provide ‘distinct rights’ and their ‘collective nature’ become crucial to national debate. The Rapporteur’s Treaty study was limited by his terms of reference to that category ‘of Indigenous peoples established beyond a doubt’\textsuperscript{14} and did not engage with the application of constructivist definition emanating from the Human Rights Subcommission.

Martinez also felt it necessary to distinguish between Indigenous nations which expanded into adjacent territory (as occurred in Africa and Asia) and those which have been inhabiting their lands since time immemorial and were subject to the phenomena of organised colonisation by European powers.\textsuperscript{15}

While lack of legal definitional clarity may have necessitated Martinez’s concentration on Treaty studies of ‘Indigenous nations’ whose ‘standing was beyond doubt’, the first section of this thesis has sought to explain the relevancy of constructivist and inter-connective standards (ILO169, Declaration of Indigenous Rights, Biodiversity Convention) for Indigenous and Tribal groupings subjected to internal frameworks of diminishment.

As a journey, it might be argued that while Indigenous peoples with treaties can make claim on a ‘differentiated’ basis in international law\textsuperscript{16} from those without agreements but also living within a nation state, a ‘minority’ status consistent with international conventions providing ‘distinct rights’ may open the door to other negotiation. This politic can also legitimate an \textit{indigenist} voice which might further challenge embedded normativism. State normativism leads to accommodation characterised by a domestic consideration of ‘historic treaties’ which subjects all other groupings of peoples to settlement through ‘modern treaties’ as a processes of de-colonisation framed to address the human rights of Indigenous individuals. It is argued that such a process simply
results in an in-systemic accommodation that denies the amplified and ‘transformative’ values of interconnecting agenda.

Importantly, while governmental officials promote a positive view of newer domestic negotiation and settlement to an international community, many Indigenous nations argue they are still being subjected to policy which does not accommodate or address their aspirations. Within Canada, resulting claim settlements (which tend to preclude through national frameworks a genuine consideration of Indigenous peoples ‘right to territory’), often require a peoples to forego and accept the extinguishment of their ‘native title’, in order to gain a form and level of self-governance.\(^\text{17}\)

At a community level, in which self-understanding and internal histories result in an identity that often differs from representation located in disconnected governmental organizations and departments, appreciation of the existing interconnective instruments available to Indigenous peoples at the international level is hindered. In many reservations and scattered enclaves, local leadership is dependant on advisors and consultants who tend to steer negotiation towards the existing and governmentally defined national dialogue, which in turn legitimates their role. Official Indigenous identity may also be conflicted particularly when loss of ‘connectivity’ with traditional territory and language have been accompanied by a subsumption of western values as a strategy of adaptation.

### 15.2 Processes Of Denial Revisited

It is also the case that Indigenous peoples may be left out of political process, while state authorities and courts seek to establish ‘precedents’ forming the basis for normative approaches. In still other situations national judicial frameworks which already deny a genuine consideration of internationally recognised rights, see government and state institutions subjecting Indigenous peoples to modern treaty discussions as a means of claim settlements. These settlements invariably require relinquishment of identity rights as inheritance, in exchange for a selectively/legitimated re-structured cultural identity.
The terms frequently include dominant systems of local governance, the establishment of management boards and/or institutions to monitor, conserve and research biodiversity, while ensuring the continuance of ‘national interest’ economic resource development. Complimentary roles and some say over education, training and health are often the ‘benefits/gain’ offered to ‘natives’ party to negotiation. Indigenous peoples often maintain that these ‘modern settlement agreements’ run contrary to their identity and aspirations.

Others, expressing an indigenist voice, claim that as a peoples who should have been party to negotiations, they were not included in discussion or agreement processes. Still in other settings, Indigenous peoples are not only left out of discussions, but are simply made to understand that new laws and regulatory frameworks now govern daily activity, requiring them to again alter their ways of being and often the means of existence. Conservation laws and national protection of species legislation provide significant examples. Both serve often to deny access to ‘environment’ (land, forests, sea, water, air) and impose penalties on the gathering of traditional food or materials. Permits may also be imposed, which further impact on a peoples devoid of cash, or employment.¹⁸

The following case studies and engagement with specific voices emanate from this contexting and represent a newer position being proposed for Indigenous peoples. As previously stated, CANZ bloc countries and the influence they exert on international processes cannot be understated. Consequently the critical lens being applied is the re-contexting of articulation from that of domestic frameworks to one of interconnective international standards. It is also the case that the accommodation being proposed may be at odds with the values and aspirations of other Indigenous peoples living within the same national context of the study.

Given that the normative approach proposed is responsive to the existence of historic treaties, the Canadian case study will highlight the differing understandings and voices of peoples who have such a treaty. The New Zealand case study will show how the Treaty of Waitangi, and newer discourse centring on identity and definition of
Indigenous concepts has resulted in a politic that de-legitimates ‘Iwi’, replacing it with a ‘contemporary identity’ that accords with the theoretically devised indigeneity discourse.

The Australia case study will highlight how juridical frameworks are created and imposed in order that a genuine consideration of Indigenous rights can be denied. Indeed this case study will show that despite a decade of conscientised legal and political process, Australian Aboriginal people have again been relegated to \textit{homo nullius}.

Analysis of these case studies will seek to engage with the substantive issues contained within an asymmetric dialogue and amplify the historical contexting of voices, a methodology consistent with the definitional approaches highlighted in the third chapter. This approach coupled with the articulation of voices often denied in official structures and rarefied discussion will again serve to illustrate the relevance and importance of international interconnective standards; and of a politic which seeks Federal government compliance as a means of ensuring an internationally consistent dialogue of co-existence. All three case studies serve as one narrative, evidencing a continuity of colonial containment which the application of a dominantly owned ‘indigeneity’ discourse as political and judicial consideration may again serve to achieve. Particularly when accompanying strategies at international levels seek to redefine and limit the application of ‘self determination’ as it applies to Indigenous peoples, albeit that ICCPR and ICESCR provides this right to all parts of humanity.

What becomes clear from the Rapporteurs study and a cursory examination of the themes within the political landscape to be examined is that where the aspirations of Indigenous and Tribal peoples are often shared globally, the resolving of ‘unfinished business’ is having to be achieved by divergent journeys. These become the tracks across political and legal landscape; journeys of shared resonance along which there is a bringing together of sameness which may diverge, but which at various points also meet up with those singing another track within the same landscape. So given the aspiration, what is the practical and lived reality within structured discourse, and what of the
understanding of those who create and operate the institutions of authority and power within these landscapes? What too of the political contexts which owe their origin to a human project which sought to deny others, and which remains embedded in the same thinking? Where is the pattern?

As was shown in the previous section examining ‘indigeneity’, the potentiality exists for newer relationships between Indigenous peoples and Europeans within nation states, but this requires that thinking and practise be conscientised.

In the following case studies however, negotiation and dialogue currently appears to have remained consistent with a pattern of diminishment. Moreover the legal framing of these negotiations and the ‘disconnect’ that exists between international and national contexting again ensures that the pattern remains diminishment despite Indigenous peoples best efforts to resonate tracks of human equality and dignity across political landscapes.


UN Conference on Racisms, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban in 2001. Final report and communiqué can be found: http://www.un.org/WCRA/coverage.htm or through the UN’s home page www.un.org and go to Conference and Events and then choose Past Conferences and Special Events.


Martinez points out that the general trend within rarefied circles is to contest that treaties with Indigenous peoples have a standing in international law. He gives three reasons why this view is held within legal and academic circles. The underlying assumptions are 1. Indigenous peoples are not peoples according to the meaning of the term in international law, 2. Treaties with Indigenous peoples are not treaties in the present conventional sense of the term, meaning they are not instruments between sovereign states, and 3. Historic treaties are legal instruments which have simply been superseded by the realities of life as reflected in the domestic legislation of a state. Martinez, M.A. (1998), ‘Study on treaties, agreements and other constructive arrangements between States and Indigenous populations’, Final Report of the Special Rapporteur, Unedited Version, Final Report doCip document (para. 69), p.16 The UN’s reference for the Edited Version is now E/CN.4/Sub.2/1999/20.

Martinez felt it necessary to point out that within contemporary contexts regarding treaties/agreements and other constructivist agreements between Indigenous peoples and States—including their role in view of future agreements between Indigenous and non-Indigenous parties—particularly in light of the terms of reference of his mandate as Special Rapporteur under the Commission on Human Rights resolution 1988/56, other activities and consideration being given to Indigenous peoples under UN Frameworks dealing with the prevention of discrimination and the protection of minorities is tangential… (para. 89) p.20

Martinez defines his usage of the term ‘constructivist agreements’ as “any legal text or other document that are evidence of consensual participation by all parties to a legal or quasi-legal relationship.” (Authors emphasis) (para. 126), pp. 28 in E/CN.4/Sub.2/1991/33, para.96. The context in which he examines these ‘other’ agreements relate to process said to engender ‘autonomous regimes’, as in the case of Greenland,
Martinez writes of the Lubicon case in which negotiations were fragmented. When unable to achieve settlement with the Cree peoples as a whole, ‘questionable’ strategies resulted in the ‘creation of a new band’ to facilitate a partial land claim, the remaining Lubicon Cree refusing to accept extinguishment of their ‘native title’. Final Report of the Special Rapporteur, Unedited Version, doCip document. (para.142) p.32.

The Australian Federal governments introduction of a sports ‘fishing license’ is a classic example of a law introduced to protect and conserve fish stocks, but which simultaneously impacts on the rights of Indigenous families who traditionally live on fish and other resources in the sea, rivers and bodies of water using hand lines or home made traps. Devoid of jobs, families often rely on this protein rich source to supplement cheap ‘fast food’ bought over the counter.
Chapter 16: Canada: Articulation Of The Political Solution

A voice I would like to address is that belonging to international consultant Professor Paul Chartrand. Professor Chartrand is a Métis lawyer and former Commissioner with Canada’s Royal Commission on Aboriginal Peoples (RCAP) from 1991 to 1995. The publication of an interview he gave to former CBC producer and academic Murray Dobbins, on the ‘Aspirations for Distributive Justice as Distinct Peoples’ provides the material for the following dialogue.¹ I thank him for his sharing and for allowing me the critical space which does not seek to deny his voice but rather to again re-contextualise it with other cultural perspective and experience of international dialogue and that of community.

The aim of this exercise is to again contrast the dominantly proposed accommodation of ‘indigeneity’, with that sought by Indigenous peoples pursuing an indigenist project. Importantly, I respectfully suggest that my colleagues views may build on ‘indigeneity’, as a Eurocentric project, providing a model for a limited systemic accommodation. The solution Chartrand argues lies in Constitutional change by which the State creates a third tier of governance. While this may be the direction being travelled and proposed by others (see chapter on indigeneity), the strategies and values involved in achieving its implementation, and the identity it seeks to legitimate may be at odds with Indian nations ² living within Canada. Indeed the risk is that this approach may not only re-structure Indigenous peoples identity, but may also negate other approaches in international law. This is an explanation of my reason for engaging in the following dialogue. It is in the spirit of dialogue that I enter this space.

Chartrand similarly picks up on the theme of values and argues the ‘equal right’ of people to determine their own existence. On this we wholeheartedly agree. As an official and consultant of the Canadian government and a Métis, a people who are already Constitutionally included as a ‘distinct society’ and are recognised as having a separate identity to First Nation peoples (see Chapters 12, 13 & 14 examining Indigeneity), I contend that some of Chartrand’s other views may allow for a re-orienting of notional

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² Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
consideration away from cultural and international consistency. While the accommodation promoted is being systematized by First World governments, it can be argued that it is a potentially limited solution, a containment, when viewed from the perspective of the International Indigenous movement, and its worldview which resonates with hundreds of millions of Indigenous and Tribal peoples around the world, including ‘native’ peoples’ in the First World.

The following case study will begin with a précis of Chartrand’s position and his initial suggestions on achieving accommodation. This chapter will present the divergence in perspective through history regarding boundaries, alliances and pan-Canadian identity. The story will take us on a journey which explains how Indian nations lost their autonomy and the understanding in which they hold their Treaties. Constitutional change in Canada has presented another challenge as do perspectives which prescribe political solutions consistent with the newer indigeneity politic. Analysis will show how self-determination is being redirected to mean the inclusion of socio-political communities, negating extant identity of socio-cultural peoples. Where the proposition is that effective participation in the national project is an acceptable outcome negating the desire for legitimated existence as self-identifying peoples, policies of assimilation are again thought to be acceptable. The traditional voice being given prominence in this case study serves to dispel this suggestion and to question whose authority should determine how Indian nations will live. Having struggled to retain identity some 500 years, First Nations within Canada clearly seek to determine their own futures and the nature of their relationship with the State.

Chartrand maintains that ‘a right of self-determination has to be exercised in a way which respects the equal rights of others.’ He suggests that what is behind the move towards political autonomy, self-determination, and self-government is the desire to develop policy. Pointing out that Aboriginal peoples are marginalised and excluded, such that they comment ‘Public institutions’, ‘Your institutions– we haven’t been part of it!’ leads to a claim that because they lack representation ‘in the Parliament and legislature as elected officials’ and as ‘participants in large administrative structures,
Chapter 16: Canada

which includes deputy ministers and the important people who develop policy’, Aboriginal people want to develop their own policy. Chartrand provides two examples to illustrate the point.

‘... people say, “We are in the best position to decide what is good for us and what is in the public interest”. If we look at the Ojibway as a nation, we say the Ojibway are in the best position to decide what’s the public interest from the perspective of the Ojibway, and we want to distinguish that from what you have developed with your bureaucrats and so on – the Canadian public interest. All Anishinabeg interests always have to be filtered through the public interests of everybody else, and they’re saying “We can look at accommodation in some way to promote social harmony, but we want to formulate our own concept of what is in the public interest based on our values”. That’s the basic norm behind the move towards self-determination, self-government: what public values ought to inform the development of public policy”.

While this may essentially seem an innocuous perspective, what I understand is being implied is that political autonomy, self-determination, and self governance might be addressed by allowing Indigenous peoples a limited domestic accommodation in which they have more say in their own policy development. This approach it might be argued could also serve to legitimate a leadership within the officially created and governmentally responsive Aboriginal organizations, and a newer negotiation by which this same representation be given additional power.

Chartrand then maintains that while there are many distinct Aboriginal peoples: ‘I think eleven distinct linguistic groups spread out across Canada … there’s no history of cooperation between these groups except to a limited extent between near neighbours’. He further states that ‘there is necessarily no history of national, in the sense of pan-Canadian, cooperation; that is a very recent phenomena, and it’s a very important fact.’
This assertion, which some may find contentious, provides the basis for the accommodation he then proposes. An accommodation based on ‘contemporary identification’ or a belonging to ‘a social, historic, political community’, rather than one which recognizes Indigenous people own identity of ‘cultural inheritance’ (an inherent right afforded every dominant). Chartrand further proposes a ‘multinational’ approach in which ‘justice requires the recognition of Aboriginal peoples, not as disadvantaged racial minorities entitled to corrective policies (an international consideration), but as distinct, historical, socio-political communities within Canada with collective rights, including the right to define, protect and promote their own ‘public interests’; a federated approach in which ‘people ought to be able to opt in and out of … nationalities in the same way that today people can opt in and out of citizenship’.

Chartrand’s assertions and proposals are not only contentious in some quarters, they may negate other political processes being elaborated by Chiefs and Elders party to Treaties. His prescription might also be at odds with a desire of Indigenous peoples to remain who they are and be themselves, a right of identity for which they have struggled more than 500 years. Indigenous peoples do not want to change ‘nationalities’ as proposed. This reflects an imposed western notion, and is a disconnected individuated identity. Rather, as ‘connected’ peoples, they are seeking recognition of their ‘distinct peoplehood’, a right to their humanity, and in the case of Canada, for many, the recognition of their Treaty rights. ‘We (do) not desire to be disconnected from our ecological homeland or to create a better sociological “identity” in modern diasporic thought.’ Indeed the argument for a ‘pan-Canadian’ identity is consistent with a restructuring of extant Indigenous identity that retains historic alliances beyond Canadian contexts.

The recasting of Indigenous peoples from an international context of minorities and the Rapporteurs’ constructivist definition, to that of ‘distinct, historical, socio-political communities’, needs also to be addressed. The international agenda, Conventions elaborating Indigenous peoples ‘distinctive’ rights, rests on a recognition of peoples as racial minorities as was shown in the chapter dealing with international standards. I argue that Chartrand’s pronouncements might be seen as a skewing of the Indigenous
agenda to again accommodate the ‘particular’ identity of Métis peoples who have a totally different history, and whom Chartrand himself acknowledges ‘Canadians would find easier to accommodate’ within his proposed model because ‘Métis nationalism was part of that European economic thrust.’

A third point needing to be addressed is the argument for ‘contemporary identities’ denying cultural identity and inheritance. While Eurocentric discourse has difficulty accommodating recognition of historical treaties, cultural philosophy requires that the intent and meaning of the agreement be honoured. The UN’s Special Rapporteur on Treaties also points out that while state administrators and ‘specialized literature’ may underpin a dominant view ‘… that Treaties are not international agreements, and therefore need only be dealt with by existing internal mechanisms’, Indigenous peoples have a differing position. (114) Martinez writes:

> It is worth underlining, that this position [the dominants] is not shared by Indigenous parties to treaties, whose own traditions on treaty provisions and treaty-making (or negotiating other kinds of compacts) continue to uphold the international standing of such agreements. Indeed for many Indigenous peoples, treaties concluded by European powers and their territorial successors overseas are, above all, treaties of peace and friendship, destined to organize coexistence in – not their exclusion from – the same territory and not to restrictively regulate their lives (within or without this same territory), under the overall jurisdiction of non-Indigenous authorities. In their view, this would be a trampling on their rights to self-determination and/or their other unrelinquished rights as peoples.’

A perspective and insight consistent with an indigenist voice.

### 16.1 Divergence of Perspective Through History

Chartrand’s assertion regarding ‘a lack of any historical evidence of cooperation between Native peoples, or of a ‘pan-Canadian’ focus similarly sets the conditions for misleading articulation. Indigenous peoples own history precedes British arrival and
colonial map drawing. Indigenous peoples everywhere have seen colonial maps superimposed over their own living territorial relationships with the effect that arbitrary borders and colonial boundaries often hinder their maintenance of historic, cultural, and trade relationships which are part of subaltern Alliances.

Native peoples in Canada and North America, as with all Indigenous and Tribal peoples around the world, have historic relationships which often intersect the landmass, or oceans they live within. These relationships between peoples and nations, which originally existed for both exchange and ‘wellbeing’, have often been misrepresented in anthropological material. Most often it was omitted, because it was not readily observable or understood, given the attitudes and thinking of early settlers. A historic mistrust of Europeans does not see Indigenous peoples explaining, but rather protecting their cultural knowledge and existing Alliances. Europeans who still tend to view Indigenous peoples as remnant peoples are further mislead by relying on historically produced material. Within Canada, the bulk of ethnographic studies tends to concentrate on presenting native peoples as they were in the 19th century, resulting in ‘stereotypes’.17

The Crown’s move to elaborate Treaties further skewed European understanding of Indigenous peoples' inter-tribal relationships. Consideration became a matter of geographic territory, and a negotiation aimed at ‘open(ing) up vast tracts of land for settlers and railroads in the fertile plains north of the US border between Lake Superior and the Rocky Mountains’.18 Official negotiators were not interested in any ‘sacred’ or ‘culturally’ relevant factors, although these aspects were and still are fundamental considerations for Indigenous peoples. Agreements were achieved through a systematized process of successive negotiation, which they simply numbered.19 In all, ‘eleven numbered agreements took place between 1870 and 1921 between the British Crown, through its Canadian officials, and the Indigenous peoples of the northwest.’20

This perspective is substantiated in a separate document generated when the UN’s Special Rapporteur Miguel Alfonso Martinez attended a unique meeting involving over 100 Elders from the Treaty Six Cree and Dene (Chippewa) nations of Alberta,
Saskatchewan and Manitoba who came to discuss the international validity of Treaties with Indigenous peoples at Onion Lake. Engaging with the specifics will allow for further analysis and address the matter of Indigenous peoples co-operative relationships. The voices are consistent with an *indigenist* project.

Sharon Venne, who was in attendance and assisted in co-ordinating the event and the documentation, much of which required translation from Cree writes:

*When the British Crown was negotiating Treaties across the western part of Canada, the Crown started to number the Treaties. By the time, the Crown reached the central part of present-day Canada, they had reached number Six. For example, the Treaty signed the following year in 1877 with the Blackfoot Confederacy and their allies was called number Seven.*

When Treaty Six was entered into in 1876, the present boundaries of Canada’s ‘prairie provinces’ did not exist, albeit that the Manitoba Act of 1870 established the terms by which this province was formed and Métis peoples be provided with land. Venne writes: ‘The Treaty Six territory now extends across the provinces of Alberta, and Saskatchewan and into the Provinces of Manitoba. The size of territory in question is 260,000 square miles. At present there are 52 communities remaining spread out across the Treaty area like pepper corns in a sea of salt.’

Venne explains that at the time of signing the Treaty, the Chief agreed to share their lands with the non-Indigenous peoples. ‘There are many examples of pre-contact Treaties with other tribes where land was shared. Treaties and Treaty making were not a new concept to the Indigenous peoples and neither was sharing the land a new prescription. Sharing land is not selling land.’ The notion of co-existence is thus a fundamental value of Indigenous cultures and epistomy pre-dating the current European political engagement.
Andrew Gray also writing within the same IWGIA document cites Milloy, to establish the cooperative nature of inter-tribal relations.

‘“Far from being the romantic and wild raiders of the plains, the Cree and other natives of the plains were engaged in a series of well-structured, inter-tribal relationships which were designed to ensure their security, to assist them in meeting the challenge of plains existence and to facilitate the acquisition of the good things of the world”. (Milloy: 1988:xiv).’

In his overview of Cree history, Gray cites, amongst others, Mandelbaum, Wolf and Wilson all of whom support the argument that Indigenous peoples did have cooperative alliances and extensive trade networks. Taken together, these provided for a cooperative network across the continent. Indeed, the growth of the Indigenous movement at international levels has seen historic relationships extended through networks and Alliances to include relationships which span the globe.

From the time of first contact, in 1640, which saw the Cree become hunters and trappers, through to a period in which they traded arms and horses and then buffalo meat, alliances were expanded and altered to accommodate changes in life sustaining activity, a consequence of contact with settlers. Inter-relationships predicated on cultural social ordering also provided for a continuance of their identity as a peoples. ‘The Cree were all linked by a relationship terminology of asymmetric exchange, thereby reinforcing the identity of the nation as a whole while enabling flexibility of movement from one band to another.’ These inter-relationships are still lived today by Cree peoples.

Gray writes: ‘While the buffalo lasted the Cree were to a large extent independent from European influence, but ‘as the herds diminished, life became hard and the traditional way that the Plains Cree had enjoyed for so many generations became less tenable (Milloy, op.cit.:104). The disappearance of the buffalo took place in the later half of the 19th century when American traders raised the price of buffalo robes and hunters moved up from the United States.'
To this day Cree blame the loss of buffalo on American hunters: “This utter disregard for natural law, coupled with the white man’s diseases and his plain cruel selfishness created for the proud, easy-going Plains Cree, a period of untold misery and brought about their ultimate degradation (Dion, 1979:65)”.

16.2 Loss Of Autonomy

While the language of Gray’s text is consistent with an international document used as political referencing, others more clearly state the intention of British settler interests. On a naturalist program made for television, aimed at introducing youth to the living world of biology, ecology, and conservation, a recent segment dealt with the history of the Bison. The interview was conducted with Ian Smith from Victoria’s Open Range Zoo, who was paraphrasing a study by R. Silverberg on the vanishing of The Dodo, the Auk and the Oryk.

‘The American Bison is without doubt the largest of all animals to ever have been found in America yet despite their magnificence they were nearly wiped off the face of the plant. In the 1800’s, when Europeans first saw them, it was noted that over two whole days a constant stream... past a camp. The prairies were literally black with millions of bison but then in 1871 professional hunters were sent in to shoot them because they were a main source of food and hide for the Native Americans. To wipe out the Native Americans, the aim was to wipe out the bison. Basically in less then a decade their numbers went from 60 million to almost zero. But luckily some were collected and bred in captivity. A hundred years ago there was only about 1500, now the numbers have risen to around 500 000.’

This forthright analysis points out the obvious and deliberate strategy of officials to destroy Indigenous peoples independent livelihoods and thus autonomy. A man made devastation forced the conditions for the negotiation of treaties.
Loss of resources created stress within inter-tribal relations. Where once the ‘Cree had lived in the woods and on the plains in alliance with the Blackfoot and Assiniboine peoples’, ‘trading extensively with both non-Indigenous’, and ‘the Mandan-Hadatsa through previously existing trade networks’; by the early 19th century relationships had begun to deteriorate. The Hudson Bay Company and its rival the Northwest Company made more of an effort to trade directly with as many groups as possible.’ The Métis who had intermarried with Native peoples, and who had bi-cultural skills and languages were employed by both companies to facilitate this policy. ‘This had the effect of breaking up the mutually exclusive trade monopolies between the plains peoples and rivalries increased. An inflationary spiralling in horse prices lead to an increase in raiding.’ As the buffalo dwindled, tensions rose, and the Cree began to suffer a period of increased hardship, which reached its peak in 1869-70. ‘A small pox epidemic in 1870, a vicious battle with the Blackfoot (a former ally), and massive prairie fires ravaged the Cree.’ Starvation and freezing winters in which children died also took their toll. ‘As a result of all these problems the Cree and other plains peoples signed the treaties and became settled on reserves.’

Anthropological and ethnographic material of this later period served to further distort European appreciation of Indigenous peoples cultures and identities. Gray provides important perspective on these early descriptions of religious and cultural practises. He writes:

‘…descriptions produced in the first half of the 20th century (which) refer to information from pre-treaty periods were used for creating ethnographic typological cultural areas.’ ‘Patterns were developed on the basis of “traits”. Wissler linked plains peoples together by the use of the horse, Spier by the Sun Dance while Murdock makes a “shopping list” of 90 traits (Fisher, 1985:362). The result is a timeless, changeless vision of a way of life based on buffalo herding which rose to a peak in the mid 19th century and rapidly declined with devastating effect on the Indigenous peoples of the plains.’
While Mandelbaum maintains a view of a ‘devastated peoples’, other ethnographers like Milloy, show that far from being a defeated peoples, ‘the Cree were able to absorb the shocks of epidemics and defeat’ by drawing on their cultural strength. Aware that the critical reality of their peoples required some negotiation with the Crowns representative, the Cree had sought the Treaty. 38 Gray writes that ‘five years before the Treaty was signed…the Cree wanted government support to ensure the transformation of the model of production from buffalo herding to settled agriculture. In order to do this they had to come to some agreement with the government.’ 39

Contrary to current assertions which feed a generally perpetuated view that Indigenous peoples have ‘lost their culture’, the Cree have maintained their language, identity, knowledge and ceremonies and have detailed knowledge of the treaty discussions, which was taught and passed down to the current generation. Gray’s description of the events, which took place during the Onion Lake discussions with the Special Rapporteur, clearly evidences this claim. Central to the difference in perspective are the cultural contextualing of time and space.

16.3 Understandings Of Time And Space

Addressing the cultural understanding the Cree have for their treaty, Gray points out that as a spiritual ceremony of the timeless invisible world, the meaning of the Treaty went beyond the realm of daily existence or the visible world of time. 40 Where Europeans argue that one set of historical conditions do not legitimate the treaty in a second ‘modern’ context, Indigenous peoples see the changing of interpretation through time as a diminishment of ‘meaning’. Similarly the notion of space differs. Europeans understand space as contingent on time. This leads to a belief that linear time alters interpretation, allowing for native lands to be bought and sold, and laws changed. Treaty peoples however ‘see their reserves as an “island” – spatial frames which should be unchanging, but within which people change’. 41 Gray writes:
'The Cree and Dene see the Treaty and the traditions which flow from it as a framework or set of principles for the continuity of their social and cultural life over generations. Change thus takes place within a set of parameters where the meaning of life and self-identity are not threatened. These parameters are timeless and consequently are changeless. Time and space operate within them.'

In other words, instead of a consciousness geared to change as a function of linear time (the underpinning of the ‘progress/development’ discourse), peoples see time and space in terms of ‘duration’ and ‘extension’ which they collapse into an invisible world.

The effect of this is to alter radically the hermeneutic and post-modern preoccupation with interpretation of ‘difference’. Rather than being a text which changes over time, the Treaty becomes a prayer in the hands of the spirits beyond time and space. Instead of being based on difference, the spirit world of the Treaty is based on sameness.

This insight supports my argument that the cultural context of time and space which imbues Indigenous peoples notion of ‘Cosmovision’ amplifies the realm within which identity is derived. Identity is of relationship, which similarly seeks to resonate sameness. It is of meaning which imbues the timeless continuum of cosmos. An understanding, which may clarify why Indigenous peoples cultural identity results in a consistency of political articulation across time, despite policies designed to impose a ‘contemporary’ identity.

The perspective substantiated in the UN Treaty Study was that the Cree and other plains people ‘do not constitute survivors of a socio-cultural life which has long disappeared. On the contrary…most of it, if not all features… are alive and well, although appearing in a completely different historical context.'
16.4 Consistency Of Containment

Venne also explains that ‘at the time of signing the Treaty, the Chiefs and Headman agreed to share their lands with the non-Indigenous peoples’ but ‘never surrendered, sold or otherwise alienated the land, water, trees, mountains, resources above or below ground, animals, birds, fish and all other living things.’ Moreover the Chiefs could not have agreed to this because they were only ‘caretakers of the land and resources and all the living things for the future generations.’ ‘Creator never gave any authority or privilege for anyone to sell, cede or surrender the lands which are for future generations.’

The ensuing hundred years has seen Canada continually devise means through which to break the treaty, and erode Indigenous peoples control of their territory and resources. The Indian Act, created in 1876, the same year as Treaty Six was signed has been the centrepiece of official methodology.

‘The Indian Acts over the years have tried to establish the form of government on the reserves, the schooling, the possibility of ceding reserve lands and facilitating the Government to take large proportion of payments due under treaty obligations from the Government into the budget of the department of Indian Affairs. For this reason the Indian Acts were seen as threats to the rights flowing from the Treaties.’

Later strategies included an ‘official proposal to terminate all special status, reserves and treaties’ (federal White Paper 1969), ‘which was later withdrawn when massive protests broke out’ and ‘Indian Chiefs from Alberta produced a document detailing the effects on the Treaties.’ “The Indian people see the Treaties as the basis of all their rights and status...” they said, “the Canadian government disclosed its true agenda concerning Indigenous peoples” (Venne, op.cit.:104).
‘During the 1970’s the Canadian government decided to proceed with constitutional partition from Britain.’ This produced further concern. While the Treaties had been signed with the Commissioners and the administration of the Treaty had been undertaken by Canada, the obligation was in the name of the Crown of Britain. This makes the Treaties internationally binding Agreements, the conditions of which both Canada and Britain have failed to fulfil. Furthermore, the Treaties are seen ‘as a concrete manifestation of Indigenous sovereignty whereby the Cree nation and the British Empire met together as equal parties in 1876.’

‘In 1981 the Chiefs of the treaty nations in western Canada took their case to the British courts. According to Royal proclamation of 1763 Indigenous rights had to be dealt with prior to settler state independence (Indian News Media, nd: 14). The appeal court under Lord Denning in its summing up (Regina v Secretary of State for Foreign and Commonwealth Affairs –ex parte Indian Association of Alberta and Others 1982:909) affirmed that the Treaties had indeed been signed with the British Crown but “that the Crown’s obligation under its Indian treaties must have passed to Canada, though it could not determine the method or date of the alleged transfer” (Venne, op.cit: 105).’

The Canada Act of 1982 saw responsibility for including the rights of Indigenous peoples into the constitution pass to Canada. Excluded from the Constitutional talks, ‘“the elders and chiefs of the Treaty Six nations in western Canada…in their wisdom, declined to join the state of Canada” (Venne, op.cit.107).’ The ‘horse trading which ensued’ at a series of constitutional conferences lead to a breakdown in talks in 1987 with the question of treaty rights unresolved.

Canadian strategies aimed at breaking the stalemate ensued. The first was to ‘buy reserves out of the treaty by offering them bi-lateral agreements in return for lump sum “support grants”. This money is designed to “pay off” the financial obligations inherent in the Treaty. The other has been to establish a “Commissioner of Treaties” who will look into the way in which these agreements can be adapted to suit the political interest of the Canadian government.’
These strategies again evidence Eurocentric perspectives and systemic approaches being employed to contain Indigenous peoples distinctive identity and rights. Again the methodology becomes one in which the ‘only space of dialogue’ is a Commission embedded within the dominants power structure, which facilitates a process defined by and conducted in dated historic thinking and language. The government’s move was to ‘set up the Commissioner of Treaties, a government appointee who would re-adjudicate the Treaties’. The Elders raised the question of Indigenous sovereignty on which the Treaty of 1876 was based. The discontent was summed up by an Elder from Big River reserve who said: ‘The non-Indian has no right to interfere on what we want for our future.’

Official processes in which academics continually make assertions or propose models of a lesser accommodation has, to date, served to confuse much of the discourse pertaining to Indigenous peoples rights within the English speaking world. Purportedly representational articulation emanating from officially legitimated individuals further muffles ‘connected’ Indigenous peoples voices.

16.5 A Diminished Accommodation

Chartrand’s perspectives may point the way to an accommodation of people who followed adaptive strategies and who lack the connectivity with specific territory through cultural relationship. These ‘communities’ of indigeneity are dominantly reflected within the national dialogue within Canada and their representatives often provide consultative advice to government. It must be remembered however that they are an infinitesimal grouping, often not acknowledged by Indigenous peoples as having a group belonging within their international agenda. As such, their accommodation, while a major issue for Canada, should not be allowed to confuse international processes and systemic reforms being negotiated within the UN and other forums.

Chartrand’s argument that there is ‘no theory of justice that explains why today there ought to be one law for all’ is valid, and suggests the flexibility promoted internationally by Indigenous peoples. His proposition for Constitutional change however needs closer scrutiny. While his views may initially appear consistent with
some First World Indigenous aspirations they should not be seen as the way to understand the considerations needing to be accommodated or acknowledged within any Constitutional re-drafting. In fact it is argued that an accommodation limited to this criteria not only remains culturally inconsistent, but both inequitious and unjust for a majority of Native peoples in Canada.

‘The Royal Commission identified three basic elements of good and effective government agreed by democratic theorists. One is **power**, the legal and recognised capacity to act. So here, we would recognise in the Constitution of Canada a right of Indigenous peoples to exercise self-government with the power to make decisions, laws- that’s what is important, to have your decisions respected. The second element is **legitimacy**, which means there is general support for, and confidence in, the government by the people for whom this government purports to act. The third element is **resources**, the physical means of acting: you act legitimately, according to recognised power, and so you have resources, the physical capacity to act, which means not only money and that kind of thing but also a population base.’

62

In light of this passage, perhaps a reminder of Tully’s argument is timely, particularly as Chartrand’s proposition is couched within a domestic framework of thinking characteristic of internal de-colonisation and an indigeneity discourse. In Tully’s view ‘the exercise of self-determination consists of decolonisation and the recognition of Indigenous peoples as free, equal and self governing peoples under international law, with **shared** jurisdiction over lands and resources on the basis of mutual consent’. It was further argued in the chapter on international standards that where Indigenous peoples are the subject of legislative frameworks which relegate them to internal colonization, domestic negotiation where in government legislation (or in this case a Constitution) again frames Indigenous rights, imposing its law and values, retains State dominance and does not provide Indigenous peoples with self determination.

Tully also argued for ‘the right of a people to govern themselves by their own laws (not simply the States ‘public interest’ laws) and exercise jurisdiction over their territories
either exclusively or shared.\textsuperscript{64} Tully’s final argument goes to the heart of Chartrand’s proposal.

\begin{quote}
Indigenous peoples will be free and self determining only when they govern themselves by their own constitutions and these are equal in international status to western constitutions. Internal self-determination therefore is not a form of self-determination or freedom. It is a form of indirect colonial rule, not unlike earlier forms of British indirect colonial rule, which Canadians, Americans, Australians and New Zealanders found to be an intolerable form of unfreedom and the justification of their own successful and purportedly universal struggles for freedom. Yet for reasons that do not withstand public scrutiny, they do not hesitate to impose such a yoke on weak and captive peoples within their own borders.\textsuperscript{65}
\end{quote}

Chartrand’s proposition contains the seeds of the newest accommodation being proposed for Indigenous peoples. No doubt some Indigenous peoples might accept his proposal as being in their interest, believing it is consistent with their cultural aspirations. Theorists and many Third World peoples however will see that the constitutional proposition again potentially ignores international interconnective standards and denies Indigenous peoples their cultural identity and inheritance. In effect it is again a dominantly devised, defined, owned and imposed solution.

The consequence of this newest indigeneity politic will be the containment of potential outcomes such that they result in systemic accommodation, and a further ‘integration’ of Indigenous peoples. Simply put, I argue that while political articulation retains a view of Indigenous peoples as ‘socio-political communities’ as suggested by Chartrand, rather then as ‘socio-cultural peoples’ requiring equity and an internationally consistent political accommodation, any discussions or consideration will remain assimilationist and colonial.

Importantly the use of the term ‘power’ in Chartrand’s proposal is also culturally at odds with Indigenous peoples perspectives. The term power as used by dominants does not correlate in these contexts. Within the Indigenous world the concept of power invoked
by humans is more akin to a western understanding of Authority. Power has many forms. Again, perspective has to be considered, because governance within the Indigenous world is based on consensually conferred authority.

Perhaps the English definition which most closely articulates this understanding is provided by the Oxford dictionary as: ‘Authority 3a. an influence exerted on opinion because of recognized knowledge or expertise.’ Re-structuring this concept to accord with Indigenous concepts it might read ‘a valued and respected perspective, consensually conferred authority because of recognized knowledge and experience which wisely contexts understanding and therefore choice/solution’. Herein lies the continual difficulty of western political theorists to comprehend Indigenous perspectives. Accustomed to dealing with political expediency, such that power is ‘imposed or exerted’ they miss the amplified requirement of authority, which by virtue of attained wisdom, is given power. The ‘moral and ethical’ (western appreciation) is distilled within leadership – Elders. Rather than being held to be separate requirements or considerations manifested for and on behalf of society by other institutions. This contrast highlights the splitting and separation which characterizes Eurocentric identity, thinking and knowledge. Reflection on this point, should again lead to an appreciation of the ‘transformative potential’ contained within the International Indigenous agenda. It again illustrates the central issue of values.

Chartrand’s views which promote a ‘socio-political’ consideration rather then one by which the perspective is of ‘socio-cultural peoples’ may distort the international Indigenous peoples agenda. All CANZ bloc countries and the US have sought to distance any cultural consideration within their discourse and negotiation. This essentially limits engagement with Indigenous peoples identities, and allows for a political accommodation which replicates disconnected individuated European identity. It creates a framework of thinking in which humans are separate from the natural world, the sacred and their own biology. Growing awareness (since 1980s) within scientific and academic disciplines of the ‘wealth’ of as yet ‘un-exploited biological/knowledge resources’ which Indigenous peoples’ sui generis cultures contain, is now leading to a systematizing of this ‘disconnecting’ approach by European interests. Capital, and the
centres of activity which have provided its global control through oil and nuclear economy, is now engaged in shifting this control to ‘food’. Being created are newer mechanisms (the WTO, and FTAs), which they will claim legitimates their ownership of any and all ‘livingness’ that their science deems either vital to ongoing life (environmental managerialism), or worthy of commodification and exploitation within their capitalised system (Bio-piracy and GMO). To achieve this however, the international rights provided within interconnective frameworks, particularly the Convention on Biological Diversity may be diminished. The next section examines how indigeneity as a newer discourse may potentially serve this end.

16.6 Socio-Political Communities Or Socio-Cultural Peoples?

A ‘socio-political’ consideration rather then a ‘socio-cultural’ discourse is the newest dominant process of containment. Consistency as a dominantly defined ‘indigeneity’ discourse, which essentialises a restructured ‘ethno political identity’ as the approach, overrides the need to consider inter-generational inheritance of identity, territory and knowledge. It also allows for European ownership of any resources and knowledge still outside western scientific understanding and control. The result of this accommodation is an artificially created ‘new and disconnected frontier’, ready for European colonization by geneticist, biologists, scientists, academics, conservationists and ecologists. By adopting this politic, obstructionist governments seek to sidestep the specific articles contained within the internationally elaborated Convention on Biological Diversity (CBD). This convention links Indigenous peoples cultural diversity with the existence of Biodiversity, provides for traditional knowledge rights, and collective rights of identity and relationship. Indigenous peoples party to the elaboration of the CBD, and the articles specifically related to their identity rights, sought international standards which would: protect genetic material (the sacred); potentially protect all humanity from bio-scientism by providing an option for a genuine application of the ‘precautionary principal’; provide Indigenous peoples a collective right to utilize and retain relationship with their territorial livingness, on terms consistent with their own cultural perspectives and values.
While theorists and capital interests might want to find a culturally disconnected legal and political accommodation of Indigenous peoples which limits their ‘self determination’ and ‘livingness’ to Eurocentric models of ‘governance’ and ‘resource development’; Indigenous peoples the world over are working to achieve another vision. They offer differing models, consistent with and knowledgeable of natural systems which allow for a continuance of wellbeing of themselves and, by sustaining Biodiversity, (the living systems on which all life is dependent), everyone else. Hence the interconnective frameworks at the international level. This understanding is often overlooked by Green groups and conservationists who to date, with the exception of a few notable organizations and institutions, have done little to advocate compliance with the specific articles pertaining to Indigenous peoples’ rights within the Convention on Biological Diversity.

Instead the bulk have chosen to populate this new frontier, often excluding Indigenous peoples from discussions and negotiations regarding their traditional lands. The creation of new parks and conservation areas often result in the expulsion of local Indigenous peoples or is accompanied by legislative frameworks that curtail or prohibit *sui generis* activity. The systematisation is also accompanied by the advent of newer research institutes and foundations linked with either academic or corporate interests. These bodies now become the centres for newer exploration into Indigenous cultural knowledge, with the aim of co-opting and ultimately furthering western scientific and corporate interests. Knowledge gained is re-structured and re-contextualised to accord with Eurocentrism and its values. In effect, the strategy promoted by dominant capital interests is one that inculcates disconnected Third World ‘elites’ into a newer system of biodiversity management, wherein Indigenous peoples’ ‘knowledge/resources’ are only provided consideration as a corporate patent within their licensing organization, the World Intellectual Property Organization, (WIPO). Researchers and state institutions become party to the commodification of traditional knowledge and revenues return to State structures. The fear is, and its well founded, that the incorporation of this knowledge by pharmaceutical industries in turn will lead to synthetic versions being created, (cheaper/profit), which will then free the state to pursue other dated development (mono-culture of GMO) within Indigenous territory. ‘The livingness’ value
is thus again ignored by those who totally subscribe to western discourses of power and science.\textsuperscript{70}

16.7 Assimilation And Absorption

Chartrand’s views also provide other insights, which point towards the ‘integration’ of Indigenous peoples within the dominant system, while overlooking the need to accommodate differing cultural perspectives and values. His comments also indicate that his views do not have universal support from within the Indigenous world.

‘The principal of \textit{participation}, I think, is the appropriate remedy for the illegitimacy of the unilateral exercise of State power, historically and continuing. Some people say we ought not to elect people to Parliament and so on because we’ve been excluded in the past. But we’re starting this very important historical era where we have a few Indigenous judges and MLA’s through Canadian institutions, as opposed to distinct Indigenous institutions, and these people (the few that now have a role) are looking for \textit{effective} participation, as opposed to \textit{legitimate} participation. It seems to me that, in time, participation is legitimised by being effective. That can only come through time, with a lot of effort and a lot of grief’ (authors emphasis).\textsuperscript{71}

In essence he is highlighting and suggesting a continuing processes of absorption which requires a relinquishing of identity (collective and cultural) as a strategy of adaptation. A continuance of the same, a domestic negotiation that seeks to retain the English speaking world’s unilateralist position of dominance, rather then one which accords with internationally elaborated Conventions and Covenants, or indeed growing multilateral conscientisation. He does acknowledge that a lack of ‘legitimation’ will result in ‘a lot of grief’. Chartrand again provides the reasoning for any voices opposed to his prescription.

Where he suggests it is ‘because we’ve been excluded in the past’, I would argue that Indigenous peoples see there are far more important issues at stake then simply seeking to retain a perceived ‘separateness’ because of historical injustice; a continuation of an
‘us and them’ dichotomy which characterizes the dominant. At issue is an accommodation which recognizes the equity of diversity, and a differing worldview and values.\(^\text{72}\)

Using his own criteria this calls for a right of Indigenous peoples’ to \textit{legitimately} be themselves (cultural peoples), to retain \textit{power} (authority) of themselves, and to own their \textit{resources} (knowledge/livingness/inheritance and continuance) and seek to utilize them in terms which are consistent with their cultural identities, and philosophies of existence, without their knowledge being expropriated, colonized, exploited and diminished by non-Indigenous peoples. A ‘legitimate’ accommodation as peoples consistent with international standards, not simply an ‘effective’ domestic accommodation of ‘communities’.

Perhaps it is important at this stage to point out that the objective of both Chartrand and myself are in some ways consistent in that the project is one of human dignity. What diverges is the argument proffered to forward agenda, and the track by which to achieve it. Accommodation needs to provide for diversity of voice and for inheritance in order to make implicate cultural diversity of living systems.

\textbf{16.8 The Traditional Voice}

Importantly, when given the opportunity of speaking with the Special Rapporteur for the United Nations, Elders and Chiefs were clear that they wanted their treaty honoured. Chief Wallace Fox also sought to address the confusion being engendered internationally. \textit{‘For too long, the Canadian Government have been making representation outside this country about the plight of the Indigenous Treaty Peoples. Canada continually tells the world community that the Canadian system is acceptable to the Indigenous peoples. This is untrue.’} \(^\text{73}\)

It is argued that contrary to Chartrand's view regarding the impetus for political autonomy, self-determination, and self governance, Indigenous peoples do not want to join the national venture simply as ‘disconnected’ policy formulators, or token voices inhabiting the dominant’s bureaucratic system. Some Métis and other leaders may have
chosen to enjoin themselves historically and currently people the officially legitimated Indigenous departments and organizations, but Indigenous peoples have consistently sought to retain their own integrity as distinct ‘socio-cultural peoples’, in the face of a centuries old systemic which deliberately employs de-humanizing strategies which have served to marginalise and impoverish them materially and spiritually.

Determining policy from within a dominating system which still does not accord them equity of identity as humans, or the dignity of their ‘peoplehood’, is not a future to which they aspire. The continual frustration of their aspirations and their poverty will result in additional grief, sickness, and suicide. The only option still being assimilation with a system that literally kills-off your peoples, and employs delaying tactics designed to outlast attrition.

The question then becomes, when does colonization end? Or, when do those with power within systemic domination acknowledge that they are still perpetuating the same unjust system? Being pushed into policy or ‘imitative’ roles within national institutions because that is the only way you can seek to keep your peoples from invasive, destructive Eurocentric imposed programs and strategies is very different from proposing it as an accommodation, or suggesting it is the impetus for self-determination, self-governance or political autonomy. Recognition of treaty rights or a genuine domestic consideration of governments’ international obligations which legitimate ‘distinctive rights’ would provide an internationally consistent solution.

While some Indigenous peoples do work within governmental departments and organizations, by virtue of a lack of genuine recognition of Indigenous peoples rights contained within interconnective instruments these roles and institutions tend to be integrationist. Perhaps the real question is again a reflexive one. When are dominants going to be able to de-colonize themselves, such that they understand their own identity, thinking, and values that imbue their institutions and policy? When are they going to be free to envisage a newer more equitable and respectful relationship with Indigenous peoples, or indeed other nations and peoples and the Earth ‘livingness’?
16.9 Authority

From the perspective of Indigenous peoples, at issue is the basis of ‘authority’ on which officials presume to decide for them and to propose other notions and concepts without consultation. Policies imposed lack any understanding or consistency with Indigenous peoples' own cultural identities and values. They smack of a politic which seeks to retain power and control over internal minorities and to determine their futures. It is an asymmetric dialogue limited to internal domestic containment rather than the required consistency of international Laws.

’People sitting in Ottawa do not know us. The people in Ottawa sit behind desks to dictate and to develop policies for us without consulting us. We do not like the policies of the Departments, but still officials come and try to implement the policies in our communities. The Government try to implement notions and concepts outside the Treaty framework.’

Indigenous and Tribal peoples the world over, simply want their rights recognized; to live in their territories in accordance with their own cultural and political systems, without interference. They seek the right to determine the shape of their own futures. Equity rights, it is argued, are recognized within the internationally elaborated Conventions and Covenants. Indigenous peoples are prepared to share, even their knowledge, but the terms must be such that they’re traditional knowledge rights be given the consideration they demand as protection under international law. Importantly their knowledge and cultural perspectives must not become another ‘frontier’, which Europeans simply colonize through co-option and disrespect, as has occurred subsequent to the elaboration of the Convention on Biodiversity.

From an Indigenous perspective it could be said that Europeans only know how to co-opt and colonize. First it was God and women, then other land and other peoples. This was followed by colonization of the body and its natural systems (invasive activity i.e. synthetic medicine, fertilizers, chemicals, oil and its by products, mining, and dams) and now, the diversity of creation (invitro) and through genetic engineering, the sacred. For them this is activity which stems from ‘disconnected’ identity; from consuming the
discourses of Empire, of the hostile ‘other’ (land, and people), technology and science
and dated western development frameworks. The added twist and ascendance of
‘speculative capitalistic systems’, and ‘advances in biotechnology’, all promoted under
the WTO, have refuelled the dominants belief that they are the natural leaders forging
ahead on behalf of all humanity. The question is, to where? Indigenous peoples point out
that one will still be living on Earth and still be subject to Earth’s natural systems and
the immutable laws of biology and life, whether one believes them to be sacred or not.

Tampering with the sacred, from the perspective of Indigenous cultures, is seen as
another level of ill considered, ignorant and irresponsible colonization. It may generate
enormous profits for some people and non-living entities (transnationals), satisfy some
scientists and create a few new jobs, but at what cost. Un-natural and ‘sick’
human/species mutation, extinction and ecosystem collapse already exist, confirming
their view that dominant science does not understand or respect the immutable laws of
creation. Furthermore they argue that any advance in scientific insight are so embedded
within the values of European culture that the only course followed by the dominant is
that of commodifying ‘livingness’. A Cree saying aptly sums it up. ‘Only when the last
tree has died and the last river has been poisoned and the last fish been caught will you
realise that you cannot eat money’.

Summary

Canada, which provides the political point on English speaking articulation over
accommodation of Indigenous and Tribal peoples for the Commonwealth, has the
capacity to create the pluri-cultural institutions necessary for a future of shared
wellbeing and for the continuance of multiple and diverse identity. Some of which have
knowledge of cultural locality, and others of which have systemic knowledge but which
might, if government can create the space, engender newer respectful and mutually
benefiting relationship. This being between parts within the livingness which share a
shape, and with the rest of creation which is also birthed spirit. The challenge is to
Government and those who people these institutions. Either they remain the client of
capital (who have one vision which on current trends it has been argued will not
guarantee future existence of wellbeing/the priority being profit), or you re-subordinate $’s to human and environmental consideration ensuring that Man’s Law be infused with the values which are relationship of livingness. Such a project in my mind unleashes the imagination, creativity and energy of humanity.

However, having historically sought to deny the Indigenous voice, the state of dialogue remains stuck in its context of deliberative and deadening exchange. Canada’s reliance on domestic juridical mechanisms again evidences a consistency of Empire. As this case study shows the discourse portrayed by Chartrand tends to serve Canadian interests which utilise government and policy as a means of containing and determining how Indian nations will live. It may not provide a solution to the long overdue acknowledgement of Treaty obligations. The establishment of a ‘Commissioner of Treaties’ to oversee and again re-adjudicate, essentially creates another ‘artificial space of dialogue’, a methodology equally in play within Australia. One such context is the Native Title processes legislated into existence, first in Canada and later in Australia.

The elaboration of the Native Title Act (1993 and Amendment 1998) allowed the Australian government to set the conditions by which the court/government decided the criteria permissible to establish a concept of ‘Native Title’, without having to engage in a substantive recognition of Indigenous peoples ‘right to territory’. Once again this process not only legitimates a diminishment of cultural rights and identity but also becomes a framework and processes which denies justice. As will be shown, Australia provides an examination of legal frameworks which have been devised to provide land rights, but which simultaneously deny rights.
Chapter 16: Canada

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.

2 I use Indian Nations because while the more recognizable term is ‘First Nations’, my use of ‘First World’, ‘Second World’ and ‘Third World’ explained within the endnotes to the Introductory chapter, may cause some confusion. So while within Canada official terminologies include, Native peoples, First Nations, Indigenous peoples, Aboriginal peoples, and Indian Nations, I have chosen the later simply to make distinction clearer. I will use the other terms when the context of dialogue has been firmly established and there is no possibility that misunderstanding might occur.
4 *Ibid.* p. 93
6 *Ibid.* p. 93
7 *Ibid.* p. 91
8 *Ibid.* p. 92
9 *Ibid.* p. 100
10 *Ibid.* p. 88
13 It might also be argued that the recasting of Indigenous peoples as social collectives may also result in and serve to further argument that frames negotiation as that of competitive interests. You will recollect within the chapter looking at international standards as an interconnective framework, argument was proffered negating this dominant perspective. While the material used to refute this divisive political emanated from Australian contexts, the analysis holds across the CANZ bloc where all governments are similarly party to the same international conventions. ‘A Parliamentary Joint Committee into Australia’ international obligations found that under ICERD, the government was not being asked to mediate between competing interest groups, but rather to guarantee equality in the enjoyment of fundamental rights. ‘A submission from the Human Rights and Equal Opportunities Commission further clarified this view. It points out that under the Convention, State parties are “required to balance the rights of differing groups identifiable by race.” In other words, State parties are not being asked to find a balance between ‘mining, pastoralists, and fishing interests’, but rather between, ‘the civil, political, economic, cultural and social rights of Indigenous and non-Indigenous peoples’.
15 see ‘Understandings of Time and Space’ later in this chapter.
19 Martinez points out that treaty making was one of a number of methodologies used by Empire to legitimate colonial expansion and domination. Other forms of bi-lateral agreements to emerge included agreements with Settler migrants to the colony excluding local peoples from the agreement process. Such agreements essentially overthrew any pre-existing and local forms of governance. Hawaii is a case in point which Martinez argues the unequal nature (validated by Apology Bill of US 1993) of the treaty annexation in 1898 could be the grounds for it to be ‘declared invalid…according to the international law of the times’ (para.163), ( pp. 35-36). The establishment of perpetual leases by Royal Trade Companies as in the case of the East Indies represents another juridical innovation of Empire. Martinez points out that all innovations in legal modalities coexisted with military might, which defined the basis of relations between the coloniser and the Indigenous peoples. ‘… options were employed according to the real needs and
possibilities of the alien powers in each specific case. This is so, whether it was done to formalize, *ex post facto*, the acquisition already made or to smooth the path for future military action that might be required*. Martinez, Miguel Alfonso, (1998), ‘Study on treaties, agreements and other constructive arrangements between States and Indigenous populations’, Final Report of the Special Rapporteur, Unedited Version, Final Report, *docCip document*, (para.185), p.40.


23 The population of the Cree is given as 60,000 later within the document. It was sourced from a study by the Department of Indian Affairs and Northern Development, Ottawa, entitled ‘Linguistic and Cultural Affiliations of Canadian Indian Bands’, published in 1967.

24 A perspective we have already established is substantiated by the Report of the Special Rapporteur on Treaties, Mr. Miguel Alfonso Martinez.


30 Silverberg, R. (undated), *The Dodo, the Auk and the Oryk, Vanished and Vanishing Creature*, Puffin Book, UK., pp. 57-60. This text, further evidences that of Americas best known historical heroes, ‘Buffalo Bill’, William Cody and Billy Comstock, owe their infamy to the number of buffalo they could kill in one day. In one famous incident the two had a wager of $500 each between them and their sport was watched by ‘a hundred gentlemen and women’ who came up from St. Louis by train, for the day. p59.

31 *Totally Wild*, Project Sheet transcript of interview with Ian Smith, Victoria’s Open Range Zoo, story on American Bison, Channel 10, Broadcast, 14 May 2001


38 Gray cites the work of Morris from 1880:171, which confirms that Four Chiefs, lead by Sweet Grass had written to the Governor in 1871, stating they had heard their lands had been sold, ‘and they did not like it; we don’t want to sell our lands; it is our property, and no one has a right to sell them.’ The letter also states that given the ruin of their country, ‘they want(ed) cattle, tools and agricultural implements to assist in everything when we come to settle – our country is no longer able to support us’. ‘It was apparent by the late 19th century that this shift in production would be the most likely to protect them from starvation.’ 39IWGIA, *Honour Bound: Onion Lake and the Spirit of Treaty Six*, IWGIA Document No. 84, Copenhagen, p.24.


45 Malidoma Patrice Some, who is both an Academic (PhD’s from the Sorbonne and Brandeis University) and a Shaman (Leader, Healer, Diviner, Teacher, Medicine Man, Spiritual Elder) of the Dagara peoples from Burkina Faso. He explains that the whole universe is meaning, but man cannot become it, because to

46 This idea of the ‘timeless continuum of cosmos’ is a reference both to Aboriginal notions of time, often referred to as ‘onetime’, and the notion of an enfolded order borrowed from physicist David Bohm. Dealing first with the concept of ‘onetime’, theoretical physicist David F. Peat, author of Blackfoot Physics, A Journey into the Native American Universe, writes that for the peoples of Turtle Island (America), ‘time is animate, it is the activity of spirit. Time is alive, it is not independent of us nor of the rest of nature. Time is addressed in ceremonies and a peoples’ relationship with its movement must be renewed. And in this way all of time can be accessed from within the present moment; or perhaps it is better to say that within the sacred space of the ceremony one can enter the flux of time and move within its vastness.’ p.199 The continuum which is an elaboration on the ‘implicate’ or ‘enfolded order’ of physics, is described again by Peat as ‘an order in which the whole is enfolded within each part’. p.6. See Peat, F. David (1995), Blackfoot Physics, A Journey into the Native American Universe, Fourth Estate, London. See also Bohm, David, (1995), Wholeness and the Implicate Order, Routledge.


48 Ibid., p.6.
49 Ibid., p.31.
50 Ibid., p.31.
51 Ibid., p.31.
52 Ibid., p.31.
53 Ibid., p.31.
54 Ibid., p.38.
55 Ibid., p.45.

56 Commenting on the juridical instruments to emerge between colonial power and Indigenous peoples, Martinez notes that ‘Their intrinsic forms and contents make it clear that the Indigenous and non-Indigenous parties mutually bestowed on each other (in either an explicit or implicit manner) the condition of sovereign entities in accordance with the non-Indigenous International Law of the times, (para. 186), p.40 Importantly, Martinez also points out that there were powerful reasons for Treaty making. In essence, juridical instruments with Indigenous peoples which provided the coloniser with rights (real or imagined), could be used ‘to counter opposing claims advanced by other colonial powers vying for control of the [same] lands.’ Martinez, Miguel Alfonso, (1998), ‘Study on treaties, agreements and other constructive arrangements between States and Indigenous populations’, Final Report of the Special Rapporteur, Unedited Version, Final Report doCip document, (para.187) pp.40. See also UN Edited Version: E/CN/Sub.2/1999/20.

57 IWGIA, Honour Bound: Onion Lake and the Spirit of Treaty Six, IWGIA Document No. 84, Copenhagen p.31-32.

58 Ibid., p.32.
59 Ibid., p.32.
60 Ibid., p.41.

62 Ibid., p.95.
63 Ibid., p.56.
64 Ibid., p.57.
65 Ibid., pp.57-58.
67 Authoritative leadership is that which provides options and solutions which engender the wellbeing of all parts within a living system. Wellbeing being derived from the implementing and respecting of the meta-rules of relationship within all level of exchange, both internally and with those of other living systems. (See final chapter).
68 See Wolfgang Sachs, Global Ecology, in which he explains how the call for sustainable development by those addressing the finite nature of ‘livingness’ has not resulted in the commonsense outcome one might expect. He writes that ‘instead of sustainability being about the continued health of nature, it has become
the continued health of development’ (p.9). Sachs goes on to explain how this shift in perspective has been practically achieved resulting in the managerialism we now see in environmental approaches (pp.9-10). Within a living systems understanding, humans do not have the knowledge to determine relationship for other living systems. No country or human is boss of the other. All humans have is control over and responsibility for their own activity and this should, as a matter of self interest, be such that it does not impact negatively on other living systems. In other words, humans will never be able to understand the infinite complexities of inter-relationship of every living system and its part. Presuming that by controlling what they do know is all there is, is again detrimental to continuance. All that will be created is imbalance elsewhere which in turn can lead to sickness. This is why traditional knowledge which has been built up over millennia of cultural locality becomes vital to continuance for all humanity. Science nor capital can commodify this as a normative which will have relevance everywhere, because to do so again creates imbalance and sickness. You do not live ‘out there’ somewhere. You live where your feet are standing and ones reality is informed by the living systems with which you are relationship. That is, what else is present as birthed spirit within the same moment and space of your being. This illustrates the potency of commercial mythmaking (communications media) which promotes understanding that one lives in a shared virtualness of globalizing self interest which denies nature and spirit. Sachs, W. (1993), Global Ecology, Zed Books, London.

69 Wapner’s study of conservation measures in Africa, has served to illustrate the direct link between park creation which simultaneously expelled local peoples and the increasing in poaching. This occurs when cultural authority, which used to keep neighboring groups out of the territory, is replaced by newer conservation law with which peoples have no relationship. All they see is the loss of authority of the now removed peoples and the opportunity this may provide. See Wapner, Paul (1996) Environmental Activism and World Civil Politics, State University of New York Press, New York.

70 In support of this point, I briefly share the story of an Indigenous colleague from South America. It took place in the northern, cross-border regions of Paraguay, Argentina and Brazil. Botanists had heard that Indigenous peoples had knowledge of a plant whose properties would help cure AIDS. His peoples noticed a steady, but small number of scientist had begun turning up in their communities, asking about plants. Always polite, when specifically asked about one flowering vine, and whether it was the plant, the answer given was simply ‘perhaps’. It was a culturally consistent and respectfully evasive answer, the only other options being ‘yes’ or ‘no’. My colleague then proceeded to tell me, how their entire territory was inundated by researchers and students who they later linked to a pharmaceutical company in Europe, who ripped out every plant they could find, loaded it into trucks and helicopters and disappeared. Presumably, if it was the plant they sought, they were not going to leave any behind for someone else to use.


72 Attempting to succinctly express this vision one might say: Indigenous politics is a cultural politic which offers a differing vision for the future of humanity, of development emanating from autonomous cultural locality respectfully ordered by pluricultural mechanisms which regulate balanced and real exchange between diverse parts, to the benefit of all who share the one shape, as a living system, in relationship with Mother Earth and Father sky our parents, and all our other brothers and sisters with whom we share the space of birthed spirit.


74 Ibid., p.57.

75 Vandana Shiva’s work highlights the increased bio-piracy taking place around the world. In a recent radio interview she recounted how a multinational sought to patent ‘basmati’ rice, claiming they had invented it, when basmati rice is a staple Indigenous food source within a region of India. Indigenous peoples the world over have been inundated this last decade since the elaboration of the CBD 1992, and subjected to the theft of both their biodiversity and their traditional knowledge of its’ properties and uses. See Shiva, V. (2000), Biopiracy, The plunder of Nature and Knowledge, Green Books, UK. And Shiva,V. (1990), Staying Alive: Women, Ecology and Development, Zed Books, London. Also, Shiva, V. (1996) Monocultures of the Mind, Biodiversity, Biotechnology and the 3rd World, Third World Network.

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
Chapter 17: Australia:
Legal Frameworks Of Diminishment And Containment

The existence of ILO 169, and other international conventions providing Indigenous rights, coupled with the High Courts finding that *terra nullius* (empty land) was legal fiction, have all precipitated the need for a newer accommodation within Australia. Indeed while the real challenge is ‘recognising Indigenous cultures and giving them the same value and respect as that which is given to non-Indigenous culture’, much of domestic negotiation remains inherently paternalistic resulting in the containment of Indigenous peoples’ rights through legal and political means. Domestic consideration has been played out through the courts and legislature. The methodology of containment might again be defined by indigeneity and definition which centres process on proving ones authenticity. As will be revealed the outcome of official process has been to again relegate Aboriginal peoples to a newer status of *homo nullius*. Resulting policies, which contravenes government’s international undertakings to provide its citizens with their basic rights and amendments to the Native Title Act have seen the Australian government cited for discrimination by the CERD.

An indigeneity discourse within Australian contexts not only systemically relegates Indigenous peoples to a potentially individuated identity, but simultaneously holds in abeyance (for an unspecified period) any consideration of their rights. In preference, government policy is oriented to ‘economic development’ as a means of self-sufficiency. The terms by which this might be achieved, capital loans, corporate structures and government subsidies to existing mining consortiums, other transnational corporation and research institutes for training and employment (complementary role) have all been previously tried and for the most part failed. Aboriginal peoples will all tell you that employment and training cease to exist once the funding runs out. Faced with the need to create a newer solution, government is currently implementing newer strategies centring on ‘self sufficiency’ as processes of integration.
The history and context of Australia’s Native Title Act are worth examination because they illustrate the processes by which Indigenous peoples’ rights are diminished and contained. Throughout the history of modern Australia, Aboriginal peoples, who were included for the first time in the national census after a referendum and constitutional amendment in 1967, have endured harsh treatment and policies of cultural genocide. The prospect of recognising Indigenous cultures and according them the same respect as other cultures has proved a challenge to some officials and sectors of society. Policy and law makers are all engaged in determining the meaning and value which will be ascribed to Indigenous cultures. The attitude and stance of the current government and political events played out in the last decade have been accompanied by a growing level of conscientisation within wider society of the Indigenous agenda. Newer subaltern history, and international condemnation of Australia’s ‘Aboriginal’ policies have served to highlight a continuance in the dated nature of co-existence.

A United Nations CERD Committee finding that Australia’s amendments to its Native Title Act were in breach of its international obligation to protect Indigenous rights precipitated a Parliamentary Joint Committee and a final report, June 2000. This section engages with the material as a means of highlighting the inconsistencies and failure of Australian government compliance at all levels. It also provides insight regarding the nexus of diminishment both within political process and legal argument. The lived specifics of Indigenous peoples additionally contrast the disconnectedness of systemic consideration. Australia still pursues containment through domestic legislative means, negating other international standards.

This chapter begins with an explanation of the legal circumstances which resulted in the Australian government implementing Native Title, contextualising it with the political climate in which events were being played out. As the story unfolds we examine the original Act and the processes it was then subjected to, which both undermined and set the conditions for a change of government and a newer legislative solution which further diminished Indigenous peoples. The Act and its alterations are then analysed, revealing the historic nature of dialogue, and the assumptions inherent to Anglocentric thinking. These are illuminated through a reframing of the project with both intercultural
perspective and international standards. Culture again becomes central as this frames identity and relationship and provides the knowledge that is authority for Indigenous peoples. This study reveals that it is culture which is specifically being targeted and denied. A Case study of the Yorta Yorta peoples illustrates the limitations of the Native Title process which fails to deliver. The examination of Native Title concludes with a challenge in which consideration is flipped. This is done to illustrate the rigidity and diminished nature of Anglocentric thinking which still tends to expresses exclusivity and a negativity of relationship to Indigenous peoples. A stance which often presumes they are who we say they are and who we decide they can be.

17.1 Legal Fiction And The Need For A Response.

The trigger for the Native Title Act was the High Court’s decision in Mabo (No.2). This historic event which took place in 1992 recognized that Australia’s claim to have settled empty land, *terra nullius*, was legal fiction and that Indigenous peoples had a previous claim to land.

It could be argued that the High Court’s decision in *Mabo* No. 2 raised the spectre that the continent belonged to Aboriginal peoples, and that it was the legitimacy of Australia’s claims to sovereignty which was in question. Richard Bartlett explains that while the court rejected the notion of Australia as *terra nullius*, in order not to leave the issue of legitimacy open, the judges concluded that ‘irrespective of the original presence of the Aboriginal people, … territory was acquired by settlement’.4,5

The High Court held that ‘sovereignty over Australia had been acquired by Britain through settlement so that: the law of England was not merely the personal law of the English colonists; it became the law of the land’.6,7

Importantly *Mabo* No. 2 found that ‘the antecedent right and interests in land, possessed by the Indigenous inhabitants, remained as a burden on the Crown’s title until they were extinguished. The Crown would take an absolute beneficial title, or an allodial title, to land in a settled territory only when there were in fact no inhabitants in the territory at the time sovereignty was acquired.’8
This decision is held to ‘establish the doctrine of native title through which the common law of Australia was (is) capable of recognizing the existence of traditional title.’\textsuperscript{9} Albeit that as Bartlett points out the argument that sovereignty was acquired through ‘settlement’, allowed the courts to sidestep the whole issue of dispossession. With the notion of \textit{terra nullius} rejected, had it been suggested that territory had been acquired by ‘conquest’, compensation would have been payable from 1788.\textsuperscript{10}

Bartlett also points out that while the judges’ ‘rhetoric’ as he terms it, was to declare that Indigenous inhabitants be accorded ‘full respect’ with regards to the ‘equality’ of their rights and interests in land, native title was not accorded this status.\textsuperscript{11}

\begin{quote}
Native title was considered subject to extinguishment at common law by inconsistent grant without either consent or the payment of compensation. This limitation upon native title was a fundamental aspect of the compromise of the Aboriginal interest in order to give paramountcy and validity to the interests of the settler society.\textsuperscript{12}
\end{quote}

‘When confronted with the choice between pragmatism, on the one hand, and principle, ‘fully respecting’ the rights of the Indigenous inhabitants and thereby giving effect to equality before the law, on the other, the majority of the High Court in Mabo No.2 chose pragmatism and denied any right to compensation at common law.’\textsuperscript{13}

The lesser status accorded native title also had relevancy when considering whether or not the issuing of a ‘pastoral lease’ extinguished native title. With ‘more than half of Australia’s mainland having a history of tenure that includes the granting of pastoral leases’\textsuperscript{14}, the uncertainty in which these grants were held set the conditions for a fearful and racist political chapter. This uncertainty would be addressed later by the High Court in \textit{Wik Peoples v. State of Queensland}. However, at the time of the Act’s elaboration, the then Prime Minister Keating argued that pastoral leases would not be affected and that settler interests would dominate.
It might be argued that the elaboration of a Native Title Act provided the legal means through which Australia again sought to retain legitimacy of its sovereignty while achieving agreement with some Aboriginal leaders that the continent did not belong to them, but perhaps under some circumstances parts of it might. Aboriginal peoples however, would now have to prove this by meeting dominant criteria, which established a legal concept of native title.

In essence the Court and the ensuing Act split Indigenous peoples’ ‘right to territory’, recognized in international law, into two legally created and qualified categories within domestic law. Native title\textsuperscript{15} which was to be recognized in common law, and traditional title sourced in the customs and laws of the peoples. Native title was said to reflect and emanate from traditional title. The Act and its processes were the means by which traditional title could be accommodated within common law as native title. In other words, Indigenous peoples would now have to prove they held traditional title (connectivity on dominant terms) not recognised in common law, in order to gain a native title, again determined and defined by the courts. The Human Rights and Equal Opportunities Commission’s report into Native Title 1999, identified the problem that emerges from this approach.

'So long as the common law continues to recognize the traditions and customs of Indigenous people(s), and give them a meaningful place within Australian society today, native title exists as a declaration of Justice. Where, however, the common law applies tests and rules which reduces native title to an historic right that cannot be exercised or enforced within contemporary Australia then native title exists as a declaration of injustice.'\textsuperscript{16}

This thesis argues that within a contexting of extant international law and conventions providing Indigenous peoples’ with identity rights (ILO169, Declaration on Indigenous peoples’ Rights, Biodiversity Convention) and UNESCO’s Universal Declaration on Cultural Diversity,\textsuperscript{17} native title can be seen as a national process of containment and diminishment.
Native title and its processes ensure that Indigenous peoples remain the objective of process, rather than the subjective and proactive, which international approaches accord peoples. The Act shifts the burden of proof to Aboriginal peoples; claimants unfamiliar with legal processes, language and concepts, who lack access to documentation (Eurocentrically preferred evidentiary material), and who are thus dependant on ‘others’ to mount, interpret and present their case.

As a process the Native Title Act is consistent with the Eurocentric discourse of ‘indigeneity’. By invoking the limitation of a substantive approach, (a rather static view of culture which only allows for slow change), and subjecting ‘identity’ to a Eurocentric discourse of ‘difference’, Indigenous peoples whose behaviour or knowledge of antecedent life is said to no longer accord with a Eurocentrically defined and ascribed notion of ‘traditional’ are held to be ‘in-authentic’. By this process ‘customary law’ the basis for making a claim is called into question. With the Act further demanding proof of ‘unbroken connectivity’ to country, native title can then be denied.

Here again we have the spectre of Indigenous peoples being subjected to a judicial process that capacitates and enshrines the utility of narrow, historic and often inaccurate positivist definition. The criteria which function as part of legal process are dominantly determined. Definition is dependent on the interpretation determined by the judiciary in every tribunal hearing. Reflecting a dominant mindset, to date, traditional identity is held to accord with dated and often inaccurate stereotypes and literature with extant Indigenous identity and oral knowledge both discounted and targeted. In effect the process and its outcomes run contrary to the promise native title was said to provide Indigenous peoples.

‘The promise of native title was that the basis of the legal right was to be found within Indigenous culture itself rather than imposed externally.’ ‘The content of native title was only limited by the traditions and customs which continue to be observed by Indigenous people today. In this way native title promised to provide the basis for the protection of not only Indigenous property rights, but also Indigenous culture and society.’ ‘Through native title, the recognition and protection of Indigenous heritage, Indigenous use of resources, Indigenous art
and intellectual production could all be formulated around rights rather than a policy which depended on the benevolence of consecutive governments.  

While this project indicates that the hope was an outcome that granted Indigenous peoples various parcels of rights, the challenge of defining these rights remain subject to a domestic process and on-going juridical determination. Or as previously stated, aspects of Indigenous cultural identity are reduced to a right which the dominant have defined and are prepared to grant. As has already been argued in previous chapters, this approach is inconsistent with International law concerning Indigenous peoples.

A key problem is the assumption that Indigenous/Aboriginal law is somehow commensurate with that of Man’s Law. That is to say that while Indigenous peoples are understood to be ‘different’ the assumption is that their philosophy and worldview result in the same thinking, self-understanding, identities, priorities and values. Dominant perspectives are yet to understand that Indigenous peoples’ cultures emanate from and resonate Mothers Law, the living law governing all of earthborn life. Consequently, you cannot simply redefine and diminish aspects of their culture and identity to accord with dominant thinking, its priorities and its values. Modern humanity and their culture are disconnected from nature and spirit. Hence dominant activity and a way of life which are unsustainable. Globally, dominant First World people are increasingly described as ‘He who consumes more than the earth can give’. The real project in my view is one in which the laws and institutions which legitimate settler culture and ensure their homogenised activity is essentialised as the only means of existence, be re-oriented towards Indigenous conscientisation.

‘Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways on an unprecedented scale. Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.’ … ‘Our very development
model is questioned daily by the earth’s ecosystems on which all life and all economic activity is dependent. Our patterns of consumption and production cannot be left unchecked. ... ‘Nobody can truthfully argue that there is a larger human imperative or decisive constraint that makes it obligatory that we must destroy the environment. ‘Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature’.21

As a member of the Washington Consensus ideologically wedded to the WTO’s preferencing of corporate rights, it is not surprising that Australia’s native title process fails to deliver. With foreign and national policy oriented towards an agenda which furthers the formalised economic interests of unfettered and unaccountable capital power,22 it is not difficult to see how native title became a domestic process of containment and diminishment. Elaborating a new national process inculcates and deflects Aboriginal peoples’ activity from the interconnective standards already available at international levels. As a national process it also hinders sectors of wider society from engaging with the collective thinking and knowledge available at macro-political levels. Domestic negotiation denies the link between Indigenous peoples’ cultural diversity and biodiversity recognised within international fora. The existence of a Biodiversity Convention has been mirrored by UNESCO’s Universal Declaration on Cultural Diversity.

‘As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In a sense, it is the common heritage of humanity and should be recognised and affirmed for the benefit of present and future generations.’23 ‘Cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence.’24

Domestic dialogue and negotiation continues to cast Indigenous aspirations and right to cultural identity as a competition over land and resources consistent with European thinking and values. The resentment sectors of wider society feel towards Indigenous
peoples being granted rights emanates from the preferencing of relationship and interests they as settler society have enjoyed from successive governments. In other words, sectors of society still expect government to remain wedded to an ‘us and them’ dichotomy in which their interests are preferred. Resentment is further exacerbated when sectors of wider society perceive the rights granted to Indigenous peoples are not shared by non-Indigenous people. As a Human Rights and Equal Opportunities Commission report points out, ‘this is because they fail to understand the meaning of equality within a human rights framework:’

‘We are not white people in the making, nor are we simply another ethnic minority group. We are, at a fundamental level part of the modern Australian nation. But, within this nation, we have a particular position. We are Australia’s Indigenous people, the first people of this land, and we continue to have – as we have always had – our own system of law, culture, land tenure, authority and leadership. It follows then, that treating us the same as everybody else will not deliver equality, but is in fact discriminatory.’

Dominant interests and its processes appear aimed at ensuring they remain dominant. Co-existence and a need to re-orient activity and thinking to the ‘equality of diversity’, has not been absorbed by those who hold power within man’s system. Furthermore, as the proponents and beneficiaries of a monocentric worldview of self-interest, which still demands and requires that all ‘other’ humanity relinquish their cultural identity, means of existence and traditional knowledge in order to replicate modern settler existence, blinds them to their systems failure. It remains easier to disparage and subjugate the ‘other’, than have to deal with the global challenges the failure of their unsustainable man made system poses.

Having currently joined the unilateralist venture of a militarist’s solution instead of engaging in visionary thinking, Australia is continually being diminished in multilateral arenas. Europe, Asia, South America and Africa are all engaged in multilateral processes that seek to elaborate newer international law and mechanisms which priorities, human rights and environmental consideration to which capital interests will ultimately be re-subordinated. Not achieving this outcome will in the view
of many internationalists result in increased global conflict and death. The challenge to dominant humanity is to alter their existence and learn to co-exist sustainably, within the limits of their own territorial integrity. The system of unaccountable corporate power currently being pursued denies 80% of humanity their dignity, the means of their own self sustaining continuance, their cultural knowledge and their right to a healthy and productive life in harmony with nature’. 29

Within this section native title will be shown not only to be consistent with indigeneity, but simultaneously to further deny Aboriginal peoples’ the ‘revitalisation of culture’ acceded to within this political discourse. 30 Indigeneity, it was argued in a previous section, provides the State with a newer domestic methodology by which to negate Indigenous peoples’ cultural identity rights recognised in international law, while maintaining that the judiciary provides justice.

Leaving process, criteria and argument aside, structurally situating authority also accord with indigeneity simply because it is again imbedded and of Eurocentric power; an exerted and imposed system of disconnected man made existence. While the courts maintain the appearance of providing ‘equity’ for Indigenous rights, the redefining of these rights and the processes they are subjected to again reflect negatively on the dominant. If the courts were genuinely to provide ‘equity’, they would amplify multiculturalism (equity of race) and legitimate indigenist 31 identity, notions and concepts, alongside those of European’s and advocate co-existence. Mediation would shift from requiring Indigenous peoples prove the maintenance of ‘an ascribed’ identity, to one in which, as Bartlett suggests, the Crown has to prove it’s abandonment of native title. 32 Instead, the Act and its Tribunal processes have led to the negation of Indigenous peoples ‘right to land’ and even its requalified and limited consideration of native title.

17.2 Reverberating Racism

While initial reaction to Mabo (2) was subdued, within six months a co-ordinated backlash had begun. ‘Leading the attack were conservative politicians (including state premiers and National and Liberal members of parliament), leaders from the mining industry, financiers, media columnists and radio talk-back hosts.’ 33 Andrew Markus
Identified four elements within the ‘vehement outcry’ that followed. The first was to claim that any recognition or granting of land to Aboriginal peoples’ was ‘racially discriminatory’ because, ‘you have to be Aboriginal or a Torres Strait Islander person to be qualified to get native title.’ In other words it created a separate law for one group of Australians completely missing the point regarding the equity of diversity.

The second approach was to attack the High Court Judges and their findings, with claims they ‘had betrayed the demands of their high office.’ A former Liberal Front bencher and now a member of Cabinet argued: ‘Once upon a time, Parliament made the law and the courts interpreted it. But all that has changed… You’ve got unelected, and maybe unrepresentative people making the rules that we all have to live under. And if you don’t like what they are doing, you can’t vote them out.’ Judges were vilified and pilloried, held to be ‘misguided’ and ‘noteworthy in their ignorance’. There were even calls for the Chief Justice to stand aside.

The third strategy was to attack Aboriginal peoples. Australians were treated to a barrage of racist views on Aboriginal culture while simultaneously it was held that any reference to subaltern history was a ‘guilt industry’. Markus writes: ‘…the (former) National Party leader, assumed the mantle of archaeologist to reveal that “at no stage did Aboriginal civilization develop substantial buildings, roadways or even the wheeled cart as part of their different priorities and approach…Rightly or wrongly dispossession of Aboriginal civilization was always going to happen. White settlement of the Australian land mass was inevitable”’. A leading right wing propagandist, invoked Thomas Hobbes a seventeenth century British political philosopher who ‘described the life of primitive and uncivilized European man as “solitary, poore, nasty, brutish and short”’, suggesting this was an apt description of eighteenth and nineteenth century Aboriginal life. He also pointed out that ‘….Aboriginal people had no written language, had not invented the wheel, and had no political institutions, Such a culture could have no future.’

Not satisfied with the historical, contemporary Aboriginal peoples were also targeted. The Chief Minister for the Northern Territory observed that ‘part of the problem is they are centuries behind us in their cultural attitudes and their aspirations in many
respects’. To counter historical perspectives which highlighted the genocidal treatment meted out to Aboriginal peoples, others argued ‘that as stone age and backward people they should not look to live in the past.’ Some went further suggesting ‘they should congratulate themselves that it was the British who got here first; they had been treated no differently to other Indigenous populations, indeed much better than most’. The Fourth level of attack was to claim that any consideration of Aboriginals gaining title to land would threaten the nation’s economic stability. Aboriginal land rights would split the nation and weaken Australian Sovereignty. Perspectives that simply reflect an un-evolved paradigmatic thinking and a dated fearful understanding of the global challenge.

17.3 The Government’s Reply

Within this climate of extreme xenophobia and racism, the Keating government set about elaborating the Native Title Act. Most political analysts believe that the intention of his government was to provide for legislation which allowed for a balanced consideration of both European interest and Aboriginal aspirations, while retaining governmental control of the process and outcomes. Indeed Keating’s Redfern Address, to mark the launch of the International Year of the World’s Indigenous peoples’, 1993, acknowledged and recognized who had been responsible for contributing to the problems of Indigenous Australians. Noting that the country had reached out to ‘dispossessed Irish and the poor of Britain’, ‘refugees from war and famine and the persecuted of Europe and Asia’, Keating sought to context a newer relationship with Aboriginal Australia.

Isn’t it reasonable to say that if we can build a prosperous and remarkably harmonious multicultural society in Australia, surely we can find just solutions to the problems which beset the first Australians – the people to whom the most injustice has been done.

And I say, the starting point might be to recognize that the problem starts with us non-Aboriginal Australians.

We took the traditional lands and smashed the traditional way of life.

We brought the diseases. The alcohol.
We committed the murders.
We took the children from their mothers.
We practiced discrimination and exclusion.
It was our ignorance and our prejudice.
And our failure to imagine these things being done to us.
With most notable exception, we failed to make the most basic human response and enter into their hearts and minds.
We failed to ask – how would I feel if this were done to me?
As a consequence, we failed to see that what we were doing degraded all of us.\textsuperscript{44}

Public reaction to his statement of historic truth polarized the community. While Aboriginal peoples felt hope other interests began to align themselves with a growing right wing backlash.

In hindsight it might be argued that by limiting the context in which the Act was elaborated to that of domestic law and circumstances without recourse to international standards,\textsuperscript{45} the outcome of the native title legislation could only result in processes of diminishment. The framing of legislation which also provided for Governmental mechanisms to extinguish native title and claim extinguishment of traditional title, set in play a sequence of events by which State and Territory governments aligned themselves with other interests deliberately working against any legitimation of Aboriginal peoples’ rights.

To explain it is necessary to have a general understanding of the mechanism and processes elaborated under the Act and then analyse the impact of the later Howard Government Amendments.

17.4 The Original Act

Native title as both ‘a framework for the recognition and protection of native title’ and ‘a regime… governing the circumstances under which native title could be extinguished’\textsuperscript{46} is the only nationally legitimated process through which the vast majority of Aboriginal peoples in Australia can currently claim land or territories.\textsuperscript{47} The Act established a
Native Title Tribunal to hear applications and implement processes by which Aboriginal peoples claims were categorized after meeting criteria and tests.

Once an application was accepted, Aboriginal peoples were said to be either

- Registered native title claimants\(^{48}\)
- Registered native title holders\(^{49}\)

Elaboration of the Act was achieved a year and a half after the High Court Decision, and had involved negotiation between the Commonwealth Government, Indigenous representatives and the representatives of non-Indigenous interests groups.\(^{50}\) While the parliamentary report maintains that discussions with Aboriginal peoples were both ‘extensive’, and took place with ‘community representatives’, the reality was that the legitimated leadership party to discussions were members of governmental authorities, and/or organisations, or politically appointed to the process.

While efforts were made to explain and involve community many remained unclear as to what was being discussed. Explanation was invariably not understood. Within community, ‘country’ is identity and the processes and discussion (often translated from English) by which they were being asked to re-think, re-interpret or re-structure this relationship had nothing to do with self-understanding. Indeed many viewed the project with healthy suspicion. Discussion was seen as yet another process in which they had to grapple to comprehend how the dominant think even though they already knew it would be devoid of ‘meaning’. This said however, given the potential for further media frenzy it is remarkable that the Keating Government ever achieved the Act albeit that they were to subsequently lose office and some might argue the Act has only served to further hinder Indigenous peoples from gaining the rights available in international law. Tribunal activity can be seen as another domestic mechanism that locks Indigenous peoples’ into an inequitous and unjust process.

In 1993 the then Prime Minister, Mr. Paul Keating, described four key aspects of the Bill:
• ungrudging and unambiguous recognition and protection of native title;

• provision for clear and certain validation of past acts – including grants and laws – if they have been invalidated because of the existence of native title;

• a just and practical regime governing future grants and acts affecting native title; and

• a rigorous, specialized and accessible tribunal and court processes for determining claims to native title and for negotiation and decisions on proposed grants over native title.\(^{51}\)

Provisions set out in s.3, within the Commonwealth’s Native Title Act 1993 (passed 2 December) were said to reflect these key points.

(a) to provide for the recognition and protection of native title; and

(b) to establish ways in which future dealings affecting native title may proceed and to set standards for those dealings; and

(c) to establish a mechanism or determining claims to native title; and

(d) to provide for, or permit, the validation of past acts, invalidated because of the existence of native title.\(^{52}\)

With capital interests seeking certainty, the Act provided the National Native Title Tribunal with the power to mediate and facilitate agreed determinations hoping that this provided an alternative to lengthy litigation.

‘In carrying out its functions the Tribunal was to act in a fair, just, economical, informal and prompt way, it could take into account the customary concerns of Aboriginal and Torres Strait Islanders, and was not to be bound by technicalities, legal forms and rules of evidence.’

‘Litigation was to be a last resort where mediation and negotiation failed to produce an agreed result between the parties concerned.’\(^{53}\)
Within the preamble to the Act was the ‘right to negotiate’ albeit that this was extended only as a ‘special measure’ to registered claimants or titleholders, providing them ‘with a right to negotiate the form of compensation’ that might result from government’s future acts. This mechanism essentially set the stage for claim and sometimes an instrumentally devised counter-claim, with the Tribunal deciding which application would be legitimated as the claimant and finally perhaps title holder. The UN’s Special Rapporteur Martinez found a similar process occurred within Canada.

While the government of Canada has moved to accord Native Title ‘special protection’ under Federal jurisdiction ‘requiring the settlement of native title “by consent”, in the form of a regional treaty or agreement’, representational confusion has also been exacerbated. With indigeneity defining political process the additional step in Canada towards ‘self governance’ may now see a ‘band’ of questionable identity become party to processes, while other ‘bands’ within a peoples remain resolutely opposed to relinquishing native title in exchange for self governance. (Lubicon Cree case)

Under Australia’s Native Title Act, the ‘right to negotiate’ was limited to a class of future acts which

Conferred a right to mine; or

Involved the compulsory acquisition of native title rights and interests for the purpose of conferring an interest on third parties.

Two exceptions to the right to negotiate were provided. The right to negotiate would not apply if:

The Government declared that the act was subject to the expedited procedures because it considered that the act would not directly interfere with the community life and sites of significance to the native title holders or would not cause major disturbance to the relevant land or waters; or

If the act was the subject of ministerial determination under s.26 (3)(b) and (4), excluding it from the right to negotiate process.
The Act also required ‘governments to negotiate in good faith with native title holders over the terms of the impairment or extinguishment of their title’.\(^59\) The provisions were also broad in scope.

‘Without limiting the scope of any negotiations, they may, where relevant, include the possibility of including a condition that has the effect that native title parties are to be entitled to payments worked out by reference to:

\[(a)\] the amounts of profit made; or

\[(b)\] any income derived; or

\[(c)\] any things produced;

by any grantee party as a result of doing anything in relation to the land or waters concerned after the act is done.’\(^60\)

The right to negotiate however did not constitute a veto right. The Native Title Tribunal, or indeed any State or Territory Tribunal acting in lieu of the Native Title Tribunal were empowered to make arbitral determinations within short time frames and were expected to act expeditiously with the relevant minister being given the power to over-rule decisions.\(^61\)

This structuring of authority by which ministers were given a final right of say could be seen as the weakness in the Act because contrary to the requirement that governments meet their obligation in ‘good faith’, most worked to undermine the Act rendering it ‘unworkable’. The Parliamentary joint committee set up to investigate Australia’s International obligations clearly found that the lack of ‘workability’ of the Act, arose ‘because of the lack of commitment by State and Territory Governments in particular, to implement the Native Title Act.’ The committee also pointed out that ‘No legislation is workable or effective in achieving its aims where there is a lack of commitment by governments to its implementation.’\(^62\)

In order to accommodate the variances in circumstances of the differing Indigenous peoples across Australia, the Act was necessarily flexible. This allowed judges
appointed to Native Title Tribunal’s to make the necessary determination regarding criteria and evidence of Indigenous peoples continued connection with land. Where it was understood that the Native Title Tribunal would carry out its work with ‘good intent’ this flexibility in fact became an additional locus through which ‘other interests’ sought to sabotage the native title process. Efforts were aimed at overloading the Native Title Tribunal with claims and counter claims, even bogus claims, with evidentiary material of a questionable nature introduced, in order to ‘vexate’ consideration of applicants.63

17.5 Undermining The Process

With the court establishing Indigenous peoples ‘surviving traditional relationship to land’ be recognised and given effect in common law, governments around Australia began working to shore up settler interests. (416-417)

In Western Australia (WA), the State government took the Federal Government to the High Court challenging the constitutional validity of the Commonwealth Native Title Act.

Simultaneously they passed their own act which ‘purported to extinguish native title in the State and replace it with statutory ‘rights of traditional usage’ (s.7) which were subordinate to all other titles (s20), and to the application of general laws relating to land use and management (s.17). The WA Act known as the Land (Titles and Traditional Usage) Act 1993 (WA) (the LTTAU), also sought to establish that the ‘rights of traditional usage could be subject to extinguishment or suspension by ministerial notice (s.26), and would be overridden by other grants of title or acquisitions by the State Government, subject to consultation with the relevant Indigenous groups.’

Even this last right of consultation could be ‘dis-applied’ by the Minster under the WA Act.64

Central to this strategy was the uncertainty in which the Courts held pastoral leases. Additionally with Indigenous peoples now potentially able to lodge claims to Crown
land, particularly the vast regions in which no development or commercial title had been extended, the Western Australian government began issuing hundreds of new titles to private interests. When Western Australia later lost the case, these titles were held to be invalid.

By now events had become so hysterical that genuine information was drowned out by dis-information, and impassioned racism within National News headlines. Within official circles opposition party strategies working against recognition of native title were also fuelling local constituent fears. Adding to the confusion and the need for amendment to the original Act was another High Court decision known as the Brandy Decision. This finding held that ‘the process for the making and registration of a decision by the Human Rights and Equal Opportunities Commission with the Federal Court was an invalid exercise of judicial power and therefore unconstitutional.’ This decision directly impacted on the processes employed by the Native Title Tribunal set up under the Act because it contained a similar scheme for determining registered native title claimants or titleholders. With the Native Title Tribunals clogged with applications, mining and pastoral interests began pressuring for ‘expeditious’ determinations. The perception was the Act, as originally written, was ‘unworkable’.

The Keating Government introduced a Native Title Amendment Bill in 1995 to deal with the effects of the Brandy decision, but it lapsed when Federal elections were called and Parliament was dissolved on 29 January 1996. The Howard Liberal Party campaigned for the Federal election on the Act’s lack of ‘workability’. The furore and panic that accompanied these campaigns were extreme with politically motivated groups and media invoking racist rhetoric. Posters were distributed showing a black hand superimposed over the continent of Australia. A television campaign was launched in which two children, one white and one Aboriginal played a game of ‘twister’ with the child’s black hand shown covering white circles. Howard appeared on TV holding a map with almost the entire continent coloured, which he claimed showed the area Aboriginal peoples would own.
17.6 A New Government And 10 Points

The run up to the 1996 Federal elections also saw the rise of newer political groups, invariably championed by former members of Howard’s own party. The most infamous being the One Nation party which formed around Ms. Pauline Hanson who won a Senate seat. The Federal election was won by the Coalition party (Liberal/National Party) under the Prime Ministership of John Howard. Coalition constituents include pastoralists and farmers, the mining sector, other primary industry interests, and the financial sector.

By June of the same year, the new government introduced the Amendment Bill to the House of Representatives and in October released further amendments. In December 1996 a further High Court Decision was handed down in *Wik peoples v Queensland* (Wik). In response the Howard government decided not to proceed with the 1996 Bill but rather to reformulate a response so that the Amendment Bill might also reflect the Wik decision. 67

The Wik finding essentially held that pastoral leases did not automatically extinguish native title, as these leases were a creation of Australian statute and not common law. Where native title was not extinguished by the grant of a pastoral lease, native title would coexist with the rights of the lessee under the lease. But where the rights between the lessee and the native titleholders were inconsistent, the rights of the lessee would prevail. 68

In Bartlett’s estimation the Wik decision was one in which the judges chose the principal of ‘equality’ over pragmatism. 69 He writes: ‘… the significance of the decision goes well beyond the question of the relationship of pastoral leases to native title.’ ‘The majority decision in *Wik* and the rationale of native title expressly declared by the High Count in *Mabo No. 2* dictated that native title should be accorded equal status at common law to that of other rights and interests.’ 70

This finding angered many pastoralists who could not countenance the idea that Aboriginal peoples might have coexisting rights to ‘their’ historically ‘acquired’ properties. In May of 1997, the Attorney General’s Department published an assessment
concluding that there was ‘considerable uncertainty as to the practical operation of coexistence.’ The view of the Prime Minister was that ‘the Wik decision pushed the pendulum too far in the Aboriginal direction.’ ‘Indigenous leaders have repeatedly been told by me that pastoralists and farmers must be guaranteed the right to carry on their normal day to day activities without fear of interference or hindrance.’ The problem for pastoralists was that historically held assumptions that ‘Indigenous peoples would die out’, coupled with dated views and attitudes had lead to the situation in which the rights of a pastoral lease had not been set out in any real detail under statute.

To address this historical reality Howard released a ‘Ten Point Plan’ in May 1997. In a highly politicized climate the government’s amendments were re-introduced to the house in September 1997. Argument and media hysterics continued with the Senate unprepared to pass the legislation. As the dead lock continued Australia began to drift towards a double dissolution, and as media blazoned, faced the potential of a ‘race based election’. Finally, on the government’s third attempt an independent member, Senator Brian Harradine who held the balance of power in the Senate at the time, was convinced to capitulate and the amended legislation passed into law on 8 July 1998.

While the judiciary may as a result of its decision in Wik been able to provide Aboriginal peoples’ justice in common law, as Bartlett points out, ‘the equality status of native title remains of course subject to the supremacy of Parliament, in particular that of the Commonwealth.’ The government’s 10 Point Plan might then be seen as a move to diminish the ‘equity of native title’. Bartlett explains that: ‘dominant forces in Australian society never contemplated giving “full respect” to native title’. ‘The government of most of the states and the Northern Territory sought Commonwealth legislation that would extinguish native title albeit providing for payment of compensation.’ ‘Native title was to be subordinate to all other interests – past, present and future’.

Re-drafting the Amendments to the Native Title Act, Howard’s government might also have been said to take international standards (ILO169) into consideration. The Amendments, while specifically a response to Wik, are also framed to pre-emptively extinguish the potential rights which Indigenous peoples’ may claim by invoking international law.
Unconstrained by any domestic law which fully harmonizes with international obligations given when signing ICCPR, or ICESCR, the only two domestic pieces of legislation hindering implementation of the amendments came from domestic Racial Discrimination Laws held to harmonise with CERD, and one clause within the Constitution. This later article which gives the Federal government authority to ‘make laws on behalf of Aboriginal peoples’, was invoked to legitimate Howard’s right to push through the amendments. Argument was made at the time that the intent of the Constitution was that government would use this power for the ‘benefit of Aboriginal peoples’, rather then against them as evidenced by the Amendments.

The Racial Discrimination provisions, which were originally enacted in 1975, and said to comply with Australia’s obligation under CERD became the mechanism for international scrutiny. The Racial Discrimination Act includes in s.10 the guarantee of equality before the law of all races.\(^76\) This Act had been previously invoked in *Mabo No.1.* A case involving the Meriam peoples of Murray Island and their right to traditional lands in the Torres Strait.\(^77\) The outcome of this case was to establish that the peoples did have a ‘traditional interest’, however, whether they ‘owned the land’ was never decided. This was an earlier example of the court side-stepping the equity of Indigenous peoples rights, albeit that the judgement did establish that the Merian peoples’ interests ‘could not be asserted by others’.\(^78\) It could be said however that this judgement essentially recognised a specific form of interest.

As political events became more extreme, and with claimants increasingly finding that their cases were lost or even overturned in favour of others, when further discriminatory amendments were introduced, Aboriginal peoples sought the assistance of the United Nations Committee on the Convention for the Elimination of Racial Discrimination.
17.7 The Act, Amendments And International Criticism

It is worth examining the specifics and the legal and political arguments made through the course of the history of native title. The following section will also draw on the findings of the Parliamentary Joint Committee. However, it need also be remembered that while this inquiry and report examines Australia’s obligation in light of CERD, the Native Title Act was originally keyed to specific national and judicial contexting. Thus determinations in Mabo No.2 which initially defined native title and subsequent High Court decisions (Wik) plus the filters of domestic law, capital interests and constitutional consideration, all shaped the Act and its Amendments. The report however neglects to examine the Native Title Act through applying the provision of the ICCPR or more specifically ICESC rights. This omission, I maintain, might again result in another wave of legislative and procedural diminishment of Indigenous rights. When the additional lens of ILO 169 is added, Australia’s Native Title Act can be seen as a process which hinders the recognition of Indigenous peoples’ rights.

To date the native title process has resulted in claimant’s applications being subjected to confusing and inconsistent criteria. Required to prove their Aboriginality and their continued connection to land, (when any existing records were kept by State and Territory Government), and with testimony often refuted by dated and inaccurate anthropological material or ‘expert’ perspectives, Indigenous peoples’ have found the process unjust, and outcomes inconsistent. In a number of situations, additional strategies were employed by dominant interests to further confuse legal proceedings. Anthropologists have been paid to support counter claims with the objective of clogging the courts and calling into question the validity of claimant groups. Governments have also acted to diminish Indigenous peoples’ rights, often ignoring their obligations under the Act issuing land titles to third parties without abiding with the peoples’ right to negotiation or the other provisions within the Act.

Deliberate and official processes of diminishment within the amended native title process became so intolerable that Aboriginal peoples sought the assistance of the United Nations CERD Committee. In August 1999 under its early warning and urgent action procedure the Committee considered the amendments and determined that they...
‘discriminated against Indigenous native title holders, by extinguishing their title and by reducing their capacity to protect their title from extinguishment in the future.’

In response, the Howard Government rejected the findings of the CERD Committee, describing them as ‘unbalanced’. The Minister for Foreign Affairs went further, describing the UN’s experts as ‘unprofessional’. The anger which accompanied the international finding saw the Australian government involved in a most regrettable episode of public venting, including a threat to withdraw from all UN Treaties. Official energy was also expended in an attempt to diminish the Committee’s standing internationally, with the objective that it be ‘reformed’. Justice Evatt, who had been the Australian representative to the UN Committee was replaced by a Howard appointment. Official behaviour resulted in diplomatic fallout and a loss of international standing in some sectors.

17.8 A Parliamentary Review

A Non-governmental Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund was established to look into Australia’s International Obligations to Protect Indigenous Rights in June the following year. Their findings were consistent with that of the CERD Committee.

‘The original Native Title Act 1993, as amended by the Native Title Amendment Act 1998 is racially discriminatory’. Further more they recognized that the lack of ‘workability’ used by the Howard government as an excuse to legislate its amendments to the Act was in large part due to ‘a lack of good faith on the part of the Commonwealth and most State and Territory Governments.’ ‘These governments approached their obligations under the original Act with a view to deliberately creating a situation where the legislation was unworkable.’ While the joint standing committee acknowledged the original Act had also contained some discriminatory provisions, the Howard Amendments breached both domestic compliance and international Law.

In defence of their amendments the Federal Government argued that they had to balance competing interests. This claim gives a clear example of government’s conflicted role,
and a view that they are mediator and umpire. The parliamentary committees’ finding however was that ‘Australia’s obligation under CERD is not to mediate between competing interests but to guarantee equality in the enjoyment of fundamental rights.’

In a submission to the Parliamentary Committee, the Aboriginal and Torres Strait Islander Social Justice Commissioner advised:

‘The Convention requires that State parties balance the rights of different groups identifiable by race. An appropriate balance is not between miners, pastoralists, fishing interests, governments and Indigenous people, but between rights – civil, political, economic, and social – of Indigenous and non-Indigenous title holders.’

‘A relationship of equality is not one in which Indigenous people take their place, as just another group, among a vast range of non-Indigenous interest groups with a stake in native title. Rather, it is one where Indigenous interests are equal to the combined force of non-Indigenous interests, in all their forms and manifestations’ (ATSISJC, Submission 32, p13.).

It is important to look more closely at this submission, which first appears on page four of the report, within the ‘Executive Summary and Recommendations’. From an Indigenous peoples perspective it again omits the important category of rights, namely ‘cultural rights’. In a later chapter, on page 43, the same excerpt is again re-used, only on this occasion the five categories, political, civil, economic, cultural and social, are included. Here again, is the spectre of confusion.

Where the first paragraph seeks to explain that rights are not those of competing interests but rather the equal application of rights, which we will take to include – civil, political, economic, cultural and social- the second paragraph then argues for ‘equality with non-Indigenous rights’. Later material again argues that equity rights are interpreted to provide recognition of Indigenous peoples’ ‘distinctive’ rights and the ‘special measures’ also required by ICERD and ILO169.
17.8.1 The Nitty Gritty: Equity Or Diversity

Consideration of both ICERD and ILO 169 are worthy of further exploration. This is particularly so given the Governments' report examines the Native Title Act and its Amendments under the rubrics of obligations under CERD, solely as a consequence of the UN committees’ findings against it.

The arguments provided are those of equity of non-Indigenous rights such that special measures may be taken to:

‘secure adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment and exercise of human rights and freedoms’, Article 1(4).  

ICERD also states in Article 1(4) that

‘such measures do not, as a consequence, lead to the maintenance of separate rights for differential racial groups and that they shall not continue after the objectives for which they have been taken have been achieved.’

It might be argued therefore that the problématique of ICERD is that while it allows for special measures that protect racial groups, it does not accord these measures legitimation in perpetuity.

Addressing this issue, the finding was that while Article 1(4) exempts special measures from the definition of discrimination, Article 2(2) places an obligation on States to implement special measures. In submission Dr. Sarah Pritchard provided the historical contexting for this interpretation, which is consistent with the view of international jurisprudence established by the League of Nations in 1918. The test of legitimacy for differential treatment or special measures was articulated by the European Court of Human Rights after considering a Belgian Linguistic Case.
They held that under article 14,

‘...the principal of equality does not require absolute equality of treatment, but recognizes relative equality i.e. different treatment proportionate to concrete individual circumstances.’

Dr. Pritchard explained that it was this finding, which led the UN Human Rights Committee to apply the approach to their considerations and recommendations on Indigenous peoples. In light of this interpretation both CERD and the parliamentary joint committee found that:

‘Article 2(2) refers to concrete measures for the ‘development and protection’ of racial groups. It also allows for the maintenance of ‘unequal and separate rights for different racial groups’ until such objectives for which those measures have been taken have been fulfilled; it is possible that measures can be continued indefinitely where permanent protective measures are required to ensure the enjoyment by minorities of their unique cultural rights. Thus Article 2(2) is considered capable of supporting both temporary special measures for the advancement of disadvantaged groups and individuals (such as affirmative action measures), as well as a permanent regime for special measures for the protection of minority rights.’

By way of contrast

ILO169 Article 1, which elaborates to whom the Convention applies, clearly lists the considerations governments are expected to accommodate. In essence it flips consideration and spells out the categories of rights. In other words, categories of rights are listed, rather than ‘held to be contained’ and unspecified within provisions. Importantly, special measures must accord with the ‘wishes of the peoples’ and ‘exist’ or are a given, unless they themselves decide to the contrary. Special measures are thus not dependant on legislative arrangement, determination or the ‘good will’ of government. Indigenous peoples become the subjective and the pro-active of the
provisions rather than again the objective of a government accommodation under ICERD provisions.

ILO 169 Article 1

1. This Convention applies to:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulation.

(b) Peoples in independent countries who are regarded as Indigenous on account of their descent from the populations which inhabit the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. (A definition which it could be argued includes every Aborigine in Australia)

Article 4 requires special measures be taken to ensure these rights.

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environments of the peoples concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

The reference to ‘property’ and other categories or rights in Article 4(1), were then elaborated under the Declaration of Indigenous Rights. Cultural rights were elaborated under the Convention on Biological Diversity, which UNESCO’s Universal Declaration on Cultural Diversity might be seen as further underscoring. This latest Declaration
recognises that the protection of cultural diversity is inseparable from that of providing human dignity.

While I acknowledge that domestic negotiation is defined by those instruments which government has historically committed to and the extent to which national law harmonises, dialogue within Australia is a diminished negotiation. Advocates are limited to invoking international consideration of ICERD, in the hope that the outcome of this strategy potentially provides Indigenous peoples with some rights. The problématique of the ICERD approach is that it does not spell out specific rights, but rather establishes ‘equality’ of rights, and provides for special measures as a means of protecting racial groups or individuals through affirmative action addressing disadvantage or vulnerability. ICERD also requires states to obtain Indigenous peoples’ informed consent.

An accommodation in this light might then be revised native title legislation which accords with these criteria, and the provision of additional funding for affirmative action programs through further legitimated governmentally controlled Aboriginal organisations. This would again allow for cultural rights to be said to have been complied with through newer negotiation, the outcomes of which will continually be subject to the level of politicization of a peoples’ representation. Furthermore, without domestic law which fully harmonises with the provisions of ICERD, ICCPR, or ICESCR, these negotiations will be limited and fraught with ‘grief’. Where Aboriginal organisations are held to be the shadow of government, the lack of other ‘cultural voices’ to counter-balance official perspectives and dialogue might also lead to further diminishment because solely legitimated representation is dependant on government.

Interpreting the report it might be suggested that government need only de-colonize to the extent that Indigenous peoples are provided equity of citizenship, with special measures to address disadvantage, obfuscating other aspects of its international obligation under both ICERD and the International Covenant of Economic Social and Cultural Rights. Non-recognition of cultural rights throws into question Indigenous peoples’ claim to the rights elaborated under the Convention on Biological Diversity. A lack of cultural rights might also re-percuss on their claims to consideration under
UNESCO’ Heritage Convention, and the dignity of their culture provided for through UNESCO’s Universal Declaration of Cultural Diversity.

17.8.2 Applying The Act

While this analysis perhaps highlights the nature of accommodation being considered, the report’s examination of current native title processes reveals the nature of consideration Indigenous peoples are subjected to.

The extent to which Indigenous peoples have been discriminated against under the Amended Native Title Act led the Joint Parliamentary Committee to conclude that ‘…Indigenous rights and interests are extinguished, or impaired, for the benefit of non-Indigenous interests, in every case where there is an inconsistency.’\(^{94}\) (This ‘inconsistency’ sometimes being deliberately provided by paid anthropologists or by questionably devised counter claims).\(^{95}\)

The report argues ‘that the Government’s obligation is not to minimize the recognition of native title for its convenience or the convenience of others.’ Rather ‘the Government is obliged to ensure that the traditional title of Indigenous people is recognized and protected to the highest extent possible, irrespective of common law.’\(^{96}\)

‘In order to fulfil this obligation, the Government must first recognize that native title is not traditional title. Rather it is the means by which the traditional title is recognised by the common law. Traditional title is based on the laws and customs of Indigenous people and is far less vulnerable to extinguishment or impairment than native title. The extinguishment of native title does not extinguish traditional title to land. Traditional title to land will continue to exist, irrespective of the position at common law on extinguishment of native title, for as long as Indigenous people continue to observe the laws and customs which give rise to their title. In order to ensure genuine and substantive equality, and in order to ensure that the law delivers justice, it is necessary that traditional title is recognised and protected to its fullest extent.’\(^{97}\)
While this may look laudable and consistent with international thinking, later material within the report evidences another level of containment. Already we have noted the potential diminishment of ‘cultural rights’, as a right elaborated by the UN within the Covenants of de-colonization (1960s). The ‘artificial space of dialogue’ created by the Native Title Act and a splitting off of native title from traditional title, while claiming that the later informs the first, was the nexus which set the conditions for the processes of diminishment undertaken by both governments and other interests. The Act established a Native Title Tribunal to hear and process claims. Originally Indigenous peoples’ right of negotiation was recognized by the Act, but the latter Amendments severely limited them. The Tribunal as first enacted however was empowered to facilitate claims through negotiation or if agreement eluded conflicting parties, through a process of litigation.

In practice however the process might be viewed as another disconnected negotiation as the dominant again decides the legitimacy of criteria and the extent to which traditional title will be countenanced or accommodated. It could also be argued that while the UN Human Rights Committee has forced government to re-analyse their Act and Amendments, officials are still wedded to an internal accommodation. Hence the energy expended by the joint committee to redraft and recommend changes which will allow the legitimacy of the Act be retained.

Nowhere in the report is it suggested that the government embrace the international interconnective standards and re-frame their negotiation within the amplified and reforming international context. Neither is there any suggestion that government meet its already existent international obligations which would require that the provisions of the International Covenant on Economic, Social and Cultural rights be fully enacted within domestic law.

Instead the report continues to maintain the same line of argument and means by which to determine peoples’ ‘rights to territory’, now a diminished and disconnected ‘native title’ as elaborated by the Act.
‘It is important to understand that native title is a common law concept which reflects Indigenous traditional title. Stated another way, native title is not traditional title but rather it constitutes the means by which the common law can recognise traditional title which is sourced in the laws and customs of Indigenous Societies.’  

Expressed in terms more consistent with international perspectives it could be argued that traditional title is not merely ‘sourced in the laws and customs of Indigenous societies’ but is a fundamental aspect of cultural identity which similarly includes Indigenous knowledge rights, collective identity rights and their rights as peoples, rather then the suggested consideration of ‘societies’. The report continues pointing out that some judges deliberating in Mabo, sought to limit traditional title in exactly these terms.

‘The title, whether of individual, family, band or community, is “only a personal…right”…it does not constitute a legal or beneficial estate in the actual land.’

‘In other words, Justice Deane and Gaudron were proposing that traditional title be given only a limited recognition by the common law. The common law concept of native title – the means by which traditional title sourced in traditional laws and customs could achieve recognition – may, on this view, be limited to the status of a personal right.’

It is a proposition inconsistent with international conventions.

ILO169, Part II. Land Article 13, clearly states within its first point.

‘1. In applying the provision of this Part of the Convention government shall respect the special importance for the cultural and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.’

The lack of consistency between the perspective articulated by Justice Deane and Gaudron is self evident. Adding the opinion of Justice Brennen, we potentially end up
not only with a mechanism that allows for the omission of cultural rights, collective identity, and spiritual values, but also a Eurocentric notion that allows dominant interests to retain authority and control over Indigenous peoples’ land. While Justice Brennan’s comments were made to indicate the precariousness of native title, they simultaneously show the argument by which dominant interests might legitimate their right to use Aboriginal land.

‘Brennan J opinioned (again by way of incidental comment) that native title may be “proprietary or personal and usufructuary in nature”.’\textsuperscript{102}

‘If characterised as a personal and usufructuary right, native title could be susceptible to extinguishment by a Crown grant or Crown dealings with the land which were inconsistent with the continued exercise of the rights and interests recognised through the common law concept of native title.’\textsuperscript{103}

In other words, consideration of native title is a matter of personal rights, (not a peoples’ collective right) and usufructuary. This notion, borrowed from Roman and Scots law, provides for ‘the right of enjoying the use and advantages of another’s property short of destruction or waste of its substance.’\textsuperscript{104} This argument points to the potential and inherent weakness of the legally constructed notion of native title. Characterizing it as a usufructuary right, provides for a continuation of European usage of traditional land maintaining the dominant’s right to enjoy the advantages of the land, while simultaneously acknowledging that it is ‘another’s property’, or Aboriginal land. Equally applying the argument, perhaps Indigenous peoples might invoke the same usufructuary right to again gain use of traditional territories more recently locked away under conservation acts and National Parks, or the sacred sites now outside former traditional territory when boundaries were redrawn to accommodate tourist operators or indeed the burgeoning number of golf courses placed over traditional burial sites. These examples evidence additional strategies used to limit the Indigenous peoples claim territory.

Justice Brennen’s comments illuminate the depth of engagement the High Court had undertaken to navigate through its own laws to accommodate but simultaneously contain
traditional title. This often involves more and more elaborate definition and insight, judgement and interpretation all aimed at retaining the dominance of their own system, without having to legitimate cultural rights or provide the internationally required respect and recognition of the equality of Indigenous peoples’ distinct rights.

17.8.3 Extinguishing Title

Perhaps the clearest example of dominant intention is provided within the section of the report dealing with Extinguishment of Native Title and the circumstances under which traditional title may cease to exist. This section again highlights a Eurocentric system of language and thinking and the potential for confusion this may create when language is unclear. This could be seen as a limitation or strength of western law, depending on your status within it. Particularly given western law is continually open to re-interpretation, and re-working.

‘Traditional title, and therefore native title, will cease to exist where traditional titleholders lose their connection with the land. The judgements do not provide an exhaustive list of how this might occur. The death of the last remaining group member may be sufficient as may the physical separation from the land and the abandonment of traditional customs, although traditional title will not cease simply as a result of a modified lifestyle and a change in the laws and customs in which that title is sourced. Traditional title may be surrendered voluntarily to the Crown by the holders of the title.’

This may seem acceptable however, closer examination shows the tension and inconsistency with international perspectives and the opening for confusion and inconsistent determinations by courts.

Firstly ‘native title will cease to exist where traditional title holders lose their connection with land.’ What criteria is to be used? The specified list states: when loss is of a physical connection with land. Perhaps it is worth reflecting on the history of policies that have displaced peoples and seen many others forcibly resettled. While no doubt most readers are familiar with historical perspectives, it is important to note that
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separation from ‘country’ is still an ongoing process. Today, Aboriginal mothers in remote communities are often removed from ‘country’ before they deliver their child, being flown hundreds of miles from their traditional territories. Once they deliver they are discharged from hospital. Without the means to return to her community Mother and child may spend weeks, months or even years away from her country. Still others may never make it back. Unaware of their rights they simply are absorbed at some level by peoples’ locally. The town camps around Alice Springs are full of Aboriginal individuals who for one reason or another have ended up in town. Tribal conflict which emanates from the sicknesses of dispossession, i.e. poverty, inability to comply with cultural protocols, alcoholism and other destructive behaviour has resulted in a dozen or so camps being established to contain diverse peoples. Indeed the town of Alice is ringed by Aboriginal compounds which are worse than some refugee camps in the Third World. While this one example shows a personal level of displacement, strategic policies of displacement of whole peoples are also undertaken.

The peoples of the Kimberly Region in Western Australia were removed as late as the 1960s in order to facilitate the Ord River Scheme. Resettled in areas towards the coast, these peoples who have a first generation growing up outside of ‘country’, also see children as young as 8 and 9 years of age committing suicide.106 Even today displacement continues. Channel 7s, ‘Sunday Sunrise’ program recently covered the plight of the Pintupi. These peoples were evacuated when their territories were flooded in March 2001, the first occasion known to any of the Elders that their desert home was inundated throughout the history of their peoples. While attempts were made to relocate them appropriately the practice has again seen them stranded, hundreds and hundreds of miles from their traditional territory in the Gibson Desert.107

Importantly, these peoples have retained their traditional patterns of existence and Elders have deliberately kept the European ‘contaminants’ of alcohol and drugs out of their communities. Marapoi, the location to which they were removed has now exposed their peoples’ to these ‘sicknesses’. Elders maintain outsiders are deliberately coming into the community and selling them alcohol and drugs. They have asked that their peoples be allowed to return home. In light of these examples, what does the government and
judiciary propose is the determination regarding ‘loss of connection with land’. Indigenous peoples may not currently enjoy their country but their knowledge and identity is still linked. How does the court or government entertain a ‘just consideration’ if they are simultaneously proposing diminishment of ‘cultural rights’ as a consideration, relying instead on their confused and often politically influenced criteria for a notion of traditional custom.

Of even greater concern is the expectation that peoples’ may die out. ‘The death of the last remaining group member may be sufficient…’ No one for a moment expects isolated or remote settler communities or even an isolated ‘European’ family to die out, so why is this perspective legitimated by the Act. Having survived 40 to 60,000 years is it suggested that Indigenous peoples will not survive 200+ years of European settlement. While this criteria may have sought to cover areas in which massacres occurred, without additional qualification it could be said to leave the criteria open. Is government proposing to maintain policies and strategies which deliberately set conditions that provide for a continuance of the inhuman situation of Aboriginal peoples and their inability to practice culture and/or teach language, culture and traditional knowledge. The dependence on a politic that awaits attrition through wilful neglect is to be complicit of genocide.

‘The death of the last remaining group member may be sufficient as may the physical separation from the land and the abandonment of traditional customs, although traditional title will not cease simply as a result of a modified lifestyle and a change in the laws and customs in which that title is sourced.’

There are further problematic considerations with the ‘traditional customs’ approach. As already mentioned, in a number of instances Indigenous peoples have either been displaced or re-settled often hundreds of miles from their own ‘country’. In these instances the ‘continuation of custom’ is difficult. To explain further, it is not uncommon for coastal sea peoples to be sent to desert regions, for those who live in forests and mangroves to similarly be displaced and for desert peoples to have ended up on the coast or on Islands. The result is that peoples’ customary practice often does not have relevance, as traditional skills are not keyed to the new environment. At a deeper
level, traditional culture also hinders a peoples from undertaking cultural practice on another peoples’ country. In the past, some Elders who carry law and were still living fully within the ‘connectedness’ would not speak when on someone else’s country, and if needed, only used the extensive ‘hand language’ common to many Aboriginal peoples, particularly those in the continent’s centre. In other regions, law Elders will only speak while drawing breath inwards so that the words do not resonate on someone else’s ‘country’.

Culture does however require peoples to traverse and gather within country. These locations are shared responsibility within cultural connectives which intersect the continent. Traditional culture prohibits a peoples from undertaking cultural practice on another peoples country, other than when connective and shared identity responsibility is consistent and required within Aboriginal Law, or is consistent with more mundane consideration. It becomes clear why much of ‘the behaviour’ that Europeans often decide is evidence of ‘custom’ is not therefore readily manifest. It must also be remembered that under previous government policies many Aboriginal peoples lived under systems which forbade them their language, the conduct and maintenance of cultural practise and fear that any infraction of these rules would result in the removal of their children. Consequently, peoples have tended to protect their cultural knowledge and identity. Culture also prohibits the discussion of deeper knowledge.

Having said this however anyone who has ever lived within the Aboriginal world and its many communities will affirm cultural identity is extant. The vast majority of Indigenous peoples across this continent know who they are and where they belong. Despite the horrendous history they have had to live, Aboriginal peoples retain knowledge and connectivity. The tragedy is that even when they are prepared to share this knowledge dominant interests seek to usurp it for their own interests.

Often settled in remote enclaves with historic fear often impeding mobility and travel curtailed by lack of material resources, Aboriginal peoples often find it difficult or impossible to return or visit country. Disconnection from ones primary identity and cultural belonging results in spiritual impoverishment. Disconnection can also result in physical illness and even death. Often Elders are dependent on others, and/or await a
sympathetic European’s arrival in community to take them to visit country because it is felt that this affords them some protection should their presence be questioned by any other European. Visiting ‘country’ allows them to undertake the necessary ceremonies consistent with their cultural identities and philosophies. Some organisations also seek to provide opportunities for Elders and youth to visit country but under the present government these programs are now starved of funding.

As previously stated to assume that peoples somehow have lost connectivity or cultural knowledge is inaccurate. Some communities may have members who are unclear as to their cultural identity, but on the whole the great majority of peoples across this continent still know who they are and where they belong. Many groupings of peoples still regularly conduct culturally required ceremonies and others have retained their languages. Within Australia’s north, centre, and western regions, children still learn language. As with all Indigenous peoples’ many are multilingual, English being a third, fourth or even fifth language. Importantly, Aboriginal schools which taught in Aboriginal languages have also been de-funded in the Northern Territory during Howard’s tenure in office. One report indicates that the number of Pitjantjatjara speakers (stretching from Port Augusta to just south of Broome) is on the increase. Even those who have been more greatly impacted upon due to earlier settlement along the East Coast of Australia have been the inter-generational inheritors of their peoples’ cultural identity and knowledge.

A politic of negation which seeks to diminish ‘cultural rights’ is consistent with a strategy that sees Government determined to retain policies of assimilation or the newer re-stated objective of economic self-sufficiency, a code word for integration, some might argue. This might potentially be a slow and deliberate passage fraught with ‘grief’ which will see Indigenous peoples continue to ‘suffer’ under policies which still ascribe ‘negativity’ to Aboriginal ‘identity’; a strategy of attrition. Not recognizing cultural rights when officials know the extent to which successive governments and institutions have actively worked to diminish the cohesion of lived experience of Aboriginal peoples is not only morally reprehensible but it can be argued is also tantamount to genocide.110
17.8.4 A Diminished Response

Governments and Courts might more clearly examine the colonial nature of their processes to extinguish traditional title. The simple fact is that traditional title can never under any circumstances, be extinguished. Culturally, traditional title would not be ‘voluntarily surrendered to the Crown’ knowing some Aboriginal leadership ignored at the time of the Acts elaboration in 1993-94. In exchange they agreed to the possibility of freehold standards being applied to existing land title and the establishment of a multimillion dollar land fund to assist those who would miss out under the Act to acquire/purchase land and a social justice package.

This later consideration, to provide a social justice package never eventuated. In fact funding to Aboriginal organizations and programs was slashed under the Howard government. Markus writes: ‘In the first Howard budget more than $400 million was cut from Aboriginal programs. This represented an average reduction of 10 per cent but there was considerable variation, with funding levels maintained in health, housing and employment while other areas of spending controlled by the Aboriginal and Torres Strait Islander Commission such as land acquisition and cultural activities, suffered cuts of up to 30 per cent.’

Those who stood to gain the most from the Act were a minority grouping of Indigenous leaders from the Northern Territory where Indigenous peoples already had established territories. This same group of leaders were those predominantly consulted on the Native Title Act or were legitimated to carry passage of it. The great majority of Indigenous peoples around the continent and indeed all Aboriginal peoples within Western Australia were reduced to lengthy processes as claimants or purchasers in one move.

The tragedy of these negotiations is that the Act and the processes it elaborates, all hinge around the discourse of ‘authenticity’. Depending on criteria determined by Europeans to establish the degree of legitimacy of Aboriginal identity is to buy into this discourse. It is one which is open to negate or diminish Aboriginal identity. Under international Law, Aboriginality is determined by ‘self identification’ and ‘group acceptance’. 
It might also be noted that the establishment of the Land Fund was to provide monies to pay out European interests should their land become the subject of a claim which might appear to succeed. In other instances, the land fund was used to purchase properties on which Indigenous peoples may be living in community or to purchase ‘other’ land to replace that traditionally lost. Title to this land was on occasion vested in the name of an individual on behalf of the peoples under a corporate structure. In other instances trusts were established. Genealogies were supplied to determine who would now be considered party to the purchase agreement. These lists effectively limit those named from any other consideration. On occasion, members of these peoples were not consulted or involved in the negotiation and remain unaware of the status in which they are currently considered their names sometimes submitted by others negotiating at the time. Unaware and diminished they may also not enjoy the benefits of the land purchased.

The iniquitous sharing of any resources, royalties or other monies which some Aboriginal peoples already receive, further exacerbates conditions on the ground. Often monies are absorbed by bureaucracies that comply with official guidelines. In a few situations inequity is caused by external structuring of authority, i.e. legitimation of representation to a negotiation or deal has resulted in moneys being applied consistently with cultural perspectives and not as intended. To explain. The Aboriginal world operates as extended family - whereas programs and Eurocentric Aboriginal organizations operate as equal opportunity, with often disconnected representational employees. That is to say, those working within an organization said to represent a peoples may often not be of those peoples, albeit that they are Aboriginal.

In regions where mining interests operate it is not uncommon for royalties to be negotiated by this same legitimated representation but through other corporate structures. Monies are forwarded through to individuals with authority within an organization. The re-distribution will often be to their family and extended family. The result being that the local peoples may miss out. In essence however the situation has been created because official policy is still one by which identity as peoples is deliberately being denied. This modus operandi is also the reason why local Aboriginal
peoples own programs and workers and Elders are invariably not supported or funded. The central strategy appears to be not to legitimate culture and identity as peoples. Legitimating culture however and empowering those with authority within peoples has been shown to address problems and save government money.\textsuperscript{115} This understanding has seen both Canada and New Zealand move towards the funding of cultural programs created and run by Elders in community and administered by its peak Aboriginal bodies.\textsuperscript{116}

\textbf{17.8.5 The Need To Respect Culture}

Legal argument or political negotiation that claims traditional title can be extinguished, or ‘it can be voluntarily surrendered to the Crown’, is inconsistent with Indigenous cultural perspectives, and Aboriginal Law. No one who can genuinely ‘speak for country’ can relinquish cultural requirements to maintain or sustain ‘country’, nor would they want to. Elders want to be able to care for country. Not to do so brings in sickness. Responsibility is passed on as living law to members of the peoples. To propose otherwise, with the greatest respect, is purely Eurocentric legal mumbo jumbo, and political rhetoric. Additionally, while peoples may be ‘physically disconnected’ from ‘country’ as a consequence of displacement or resettlement, the cultural relationship remains.\textsuperscript{117} This point was similarly addressed by the Non Governmental members who made recommendation to the Joint Parliamentary Committee.

Where Mabo 2 had determined that:

\begin{quote}
the traditional title of Indigenous people will cease to exist where the Indigenous group no longer observes the laws and customs that give rise to their title (including where the group ceases to exist)\end{quote}

\textsuperscript{118} – a behaviourist/attrition approach which denied cultural perspectives;

Recommendation 8, of the NGO Submission to the Joint Parliamentary Committee reads:

\begin{quote}
The non-Government members acknowledge that native title, as recognized by Australian common law and as dealt with in statute, is capable of, and is
vulnerable to, extinguishment. They contrast this with the fact that extant traditional title emerging, from, and contained within, the laws and customs of Indigenous Australians remains for so long as those people and their beliefs survive. They therefore recommend that the Government enact legislation that recognizes and respects that fact, irrespective of findings that courts may make from time to time.\textsuperscript{119}

Leaving aside deeper extant cultural perspectives, this recommendation acknowledges that traditional title exists while peoples and their beliefs survive. This may set up a dangerous situation for Indigenous peoples when there is a link between peoples still existing and traditional title being held extant, particularly when the Act legitimates the death of the last surviving person as the moment traditional title ceases to exist. It is worth remembering a recent item by Channel 9’s ‘Current Affairs’ program on the KKK, and its activity. Broadcast on Wednesday 2\textsuperscript{nd} May 2001, it highlighted the growing influence of US white supremacist groups within Australia. These are well-funded organizations, which have extended their support to affiliated groups down under, such that KKK members have, it was alleged, infiltrated Australian political institutions. The re-settlement of ‘white’ South Africans and former Rhodesians in rural towns has also led to a growing unease in many Aboriginal communities.

Activity within community is also often subject to ‘undesirable influences’. As evidenced by the plight of the Pintupi, and regularly commented on by community workers are allegations of sly-grog runs and systemic sexual abuse. The link between violent television programs and more recently violent pornographic videos and accompanying changes in patterns of physical and sexual behaviour observed by community workers was highlighted in a study undertaken by Kathleen Hazlehurst. In her excellent publication entitled \textit{A Healing Place, Indigenous Visions for Personal Empowerment and Community Recovery}, Hazlehurst points out that ‘while mail-order traffic in X-rated and R-rated videos are subject to federal and state government legislation, the running of illicit and illegal videos is difficult to police’.\textsuperscript{120}

An excerpt by J. Atkinson published in the Aboriginal Law Bulletin, similarly articulates the problem:
‘...while the people who sit in the Legislative Assembly in Canberra consider pornography does no harm, they have not considered the circumstances of young males living in isolated and depressed circumstances in remote Australia. Sometimes such videos, brought in by white men as forms of entertainment, are the only understanding our young men have of mainstream culture. While the rest of Australia has received the message from law-makers and others in authority that such videos are ‘ok’, there are voices of concern coming from Aboriginal women who say violence and sexual abuse has increased since pornography entered communities.’ 121

Hazlehurst continues:

‘Where the impact is felt most, there are few local government or community controls over the nature, volume, or viewing of such material. Profits to be made by delivering these videos, it would seem, have attracted the same kinds of people who have conducted sly grog operations over the years. To unscrupulous interests, Aboriginal society is a ‘sitting duck’. In one northern Queensland community I visited it was the non-Aboriginal owner of the community garage who ordered in this material from Canberra, and rehired these to the Aboriginal men at a considerable profit. It was the Aboriginal women who were asked to perform the acts that were seen on these videos, or the young children who were assaulted by highly excited teenagers after viewing. Without proper authority to set their own controls these communities are a vulnerable and ready-made market for the worst of what western society has to offer.’ 122

This material clearly evidence peoples who have been so dispossessed and diminished that even the mechanism of self-preservation has been relinquished to the dominant. Peoples whose cultural values of ‘patients’ and ‘acceptance’ has made them vulnerable to the prolonged regime of contact which was and often still is brutal, cruel, exploitative and abusive. Central to all inter-relationships whether that of unscrupulous individuals or even sophisticated and civilized officials is the issue of authority.
All CANZ bloc governments assume this authority and seek to retain it over Aboriginal peoples. The assumption is that the dominant best knows what is in the interest of Indigenous peoples. Western ‘experts’ are thought to know how to address the current problems within Aboriginal communities. Hazlehurst, as indeed I do, argues that where communities have only confused ontologies and epistemologies to draw on, in which their own is discounted by externalities, communities must be allowed to revitalize culture and internal social order which legitimates Elders. This right is consistent with international standards. To do otherwise is to deny Indigenous identity and continue to relegate it to the negatively ascribed other. Hazlehurst’s study of similarly diminished communities in Canada and New Zealand which have implemented cultural programs with Elders, shows that within twelve months, communities have turned their situation around. The argument for ‘culture as a touchstone of wellbeing’ holds.

While writing this thesis, a new ‘Labour’ government in the Northern Territory has been piloting exactly this type of scheme in two Aboriginal communities. Within a year of community Elders being allowed to re-instate their cultural authority similar outcomes are being achieved. Both communities have shifted from extreme substance abuse and violence towards increasingly healthy and peaceful communities of hope. The Territory government is now considering extending this approach to other communities. 123

While this newest project of the Northern Territory Government serves to validate the argument for legitimation of cultural identity, national politics remains resolutely opposed to its accommodation. Central to this negation is the awareness that identity (even that which exhibits sickness) is linked to land. Coexistence as a conscientisation still eludes the powerful within the dominant.

17.8.6 Missing Out All Together

While registered claimants and native titleholders have continually found their aspirations the subject of continuing diminishment, Howard’s Amendments also raised the spectre that other peoples miss out entirely. Leaving aside the diminished lived experience of Aboriginal peoples, and the complexity and diversity of specifics of peoples; meeting legal criteria is additionally problematic. Under the Amended Act,
‘onerous procedural requirements’ were established in order to register a claim with the Tribunal. Addressing the issue of the criteria the report notes:

‘To pass the registration test, native title claimants are required to provide the Registrar with voluminous amounts of material, including the tenure history of the claim area, information held by State and Territory Governments. Also personal and genealogical information must be provided by claimants which raises privacy issues.’  

‘Dr Sarah Pritchard advised in evidence to the Parliamentary Joint Committee that:

The limited experience that native title lawyers have had to date with this aspect of the amended legislation confirms a very real danger that bona fide native title holders are being denied the procedural protection of the Act because of the rigours of the new registration test.’  

The report points out that the newer ‘substantive requirements’ for registration and ‘the manner in which it is being applied by the registrar and his delegates’, ‘arguably places a more onerous burden of proof on native title claimants then would be required to achieve recognition through the common law.’  

The parliamentary joint committee similarly found that the Amendment’s processes for establishing an ‘unbroken connection with land’ dating from European’s first arrival was also flawed and unjust.

The Claimants must also prove that at least one member of the group currently has, or previously had, a traditional physical connection to at least part of the claim area. There is an exception to this requirement if the group can show that physical connection would have been maintained but for an act of the Crown, any statutory authority of the Crown, any leaseholder or anyone acting under the authority of the leaseholder. This is known as the ‘locked gate’ exception. However this exception is unlikely to have any practical effect. Any claimant group that has been prevented from maintaining physical access to their land will have difficulty establishing other registration test criteria; for example,
proving that at least some of the native title rights and interests can be made out on a prima facie basis.

The physical connection requirement is arguably a more onerous test than that which is required at common law, or to achieve a determination in the Federal Court. As Dr. Lisa Strelein of the Australian Institute of Aboriginal and Torres Strait Islander studies explained in evidence to the Parliamentary Joint Committee:

In Australian law prior to Native Title Amendment Act there was a strong inclusion of the spiritual aspects of Indigenous people’s connection with the land in the concept of native title...In the Mabo decision the courts presented quite a non-physical representation of Indigenous people’s rights over land. The physical connection test makes it impossible to establish a connection based on absence, which for a lot of people over the history of dispossession means that it is difficult to prove.127

17.9 The Yorta Yorta: A Matter of Evidence

The ‘physical connection test’ and other procedural diminishment strategies are highlighted by the recent Yorta Yorta claim, and hearings, all of which have failed under Native Title. Central to the determination was the basis and moment in which the Justice decided Native Title had expired. Yorta Yorta peoples whose traditional territory straddles the Murray River, which forms the border between New South Wales and Victoria, have a strong and proud heritage that includes activism dating back to first contact. Famous Aboriginal leaders like Jack Patten, Doug Nichols, and William Cooper who created the Australian Aborigines League were all Yorta Yorta people who emerged in the 1930s. Other leaders have also come from the community of Cummeragunja, an Aboriginal settlement which was originally established as a mission within traditional Yorta Yorta territory.

In 1983 when NSW passed its Retrospective Land Rights Act to rescind previous arrangements, the peoples were given 2965 acres of land around the settlement. In
reality however they have only ever received ‘a little over half’ of these lands.\textsuperscript{128} When the claims were lodged the Yorta Yorta sought to regain this missing parcel and other crown land within their traditional territory. Wayne Atkinson, who is regarded by some as a principal claimant, a member of the Yorta Yorta Council of Elders and is viewed as a representative of some 1200 members party to the claim, points out the methodology used to negate their claim.

Principally Justice Olney construed that it was the original request for Cummeragunja land provided for under the 1983 Land Right Act, which implied the relinquishment of Yorta Yorta rights.\textsuperscript{129} This approach replicates the retrospective strategy of the 1983 Act, given that Native Title, to which they now made claim, did not exist in common law until after the High Court decision in 1992 and the subsequent elaboration of the Native Title Act 1994. In making his determination, which Chief Justice Black subsequently found ‘too restrictive’ and the basis for a retrial,\textsuperscript{130} Justice Olney was able to side step the evidence of customary connection to land provided by claimants. Albeit, that here again additional strategies were used to discredit claimants knowledge.

Central to these strategies were the privileging of Eurocentric anthropological/historic material over oral evidence consistent with Aboriginal cultural knowing. The privileging of ‘expert’ evidence also served to skew Tribunal processes in favour of vested interests. Of particular concern to claimants was the ‘mercenary character of some lawyers, anthropologists and historians’ and the values by which these ‘experts’ professionally conducted themselves.\textsuperscript{131} Atkinson writes:

\begin{quote}
\textquote{The knowledge and experiences appropriated from Indigenous studies and from other claims aided and abetted the attacks being made on our claim from opposing interests. Ethical bodies associated with such professions must give serious consideration to the implications of these practices. To obtain information from Indigenous people(s) and then to reformulate it in the fashion most suitable to the needs of a client opposing Indigenous interests places the researcher in the position of mercenary, or spy. It brings the professions concerned into disrepute and has the potential to destroy the trust necessary if these disciplines are to continue their dialogue with Indigenous groups.}\textsuperscript{132}
\end{quote}
With an ‘onerous’ physical connection test required, the process established demands Aboriginal claimants share cultural knowledge in the hope that it will prove their traditional title, in order that they might succeed in gaining the lesser common law native title. Colleagues who have been claimants have all shared one story or another regarding inaccurate and dated anthropological evidence used against them, processes and language which confuse them, and the lack of respect sometimes shown to Elders during proceedings. Adversarial tactics employed by lawyers for the Crown are seen as disrespectful.

17.9.1 Women’s knowledge

In one case, a colleague was said not to know her customs and have retained a connection with her grandmother’s ‘country’, although her birth certificate places her family on the ‘river bank’ and she had never been ‘taken away’. ‘My mother hid us’. ‘We were taught to stay out of sight and stay in camp’. After giving evidence for two days and sharing knowledge, lawyers for the Crown countered her ‘testimony’ by quizzing her on a hypothetical scenario described in an obscure and dated piece of ethnographic writing.

Uncomfortable with the process, feeling under attack, her sharing characterized as untruthful by virtue of adversarial cross-examination, sensing she was being set-up, and aware that the material was inaccurate, she did not fully respond or explain. Applying a cultural lens the hypothetical posed may have been explained had deeper cultural perspectives been provided. However, when her response was not consistent with the now dead authors ‘external observations’ and description of a day’s activity a hundred years ago, the Court claimed she had not retained customary links with the land. Given that this same individual still lives along the river bank, still uses traditional skills and knowledge to maintain a bush camp and supplement store bought food/provision and still visits her grandmother’s country, the non-sense of the finding is staggering.

Anthropologist Deborah Bird Rose sees modern theory and discourse as a ‘site of epistemological and social violence.’ In a recent publication she authoritatively exposes the limitations of modern western thought and challenges its assumption
regarding secret and sacred knowledge. Bird Rose also identifies the endemic colonialism of modern thinking and its application as a tool which silences the other. She convincingly argues the limitation of western thinking which denies Aboriginal women their knowledge and continues to seek to de-legitimate cultural knowing. In Bird Roses’ view the polemic of modern western thought which believes its knowledge is ‘built on the idea of progress…of its expansion, its refinement, its movement towards completion, its moral ground’ is that it simultaneously suppresses and excludes the other by labeling it ‘subjective rather than objective’.  

‘The modern theory of knowledge is thus monocentric in the extreme. It claims the ability to know the whole world (Davies, 1992), and thus claims that the whole universe is knowable - by a few of the members of a particular historically-situated culture, of a particular species on a particular planet in a small pocket of what may be one of an infinite number of universes. This claim is vigorously policed (Haraway, 1988), and the question of what counts as knowledge is a site of epistemological and social violence.’  

The Parliamentary Joint Committee report came to a similar conclusion. Pointing out that the ‘rules of evidence’ ‘have been evolved under a particular cultural and epistemic paradigm’, decisions which ‘operate to circumscribe consideration of cultural and customary concerns of Indigenous peoples will not lead ‘inexorably to “the truth”.’ They found the rules of evidence placed Indigenous peoples at a considerable disadvantage. The committee also acknowledged that the ‘adversarial nature of the court process’, and the ‘ordinary rules governing court procedure and evidence’, also meant that Indigenous peoples’ customary concerns could not be accommodated.

‘If ordinary rules of evidence are enforced, or where the Court chooses not to take into account the cultural and customary concerns of Indigenous people, then elements of Indigenous culture and knowledge, which are important to proving their unique entitlement to land, may not be considered by the Court.’

Again the example provided addressed the cultural consideration my colleague encountered within her two days of evidence.
'One example is where evidence is in the form of ‘restricted knowledge’. Knowledge may be ‘restricted in the sense that only people of a particular gender and/or people who have attained a level of ritual seniority may have access to it. This may (and often does) mean that the custodians of restricted knowledge – for example, women, when knowledge is restricted to women only – are not prepared to reveal it in the presence of men, or where men may have access to it by reading the Court transcript. If the Court cannot accommodate this concern it may lead to this evidence being withheld, and therefore not taken into account in the ultimate decision as to whether the group as a whole had proven the existence and extent of its traditional title. Another example is that Indigenous knowledge is transmitted through stories, song, dance and art. Rules of evidence, such as the rule against hearsay, may militate against such evidence being heard, or given much evidentiary weight in Court proceedings.'

Addressing the questionable veracity of dated anthropological material Atkinson writes:

‘In using Anglocentric sources as a basis for reconstructing Yorta Yorta connections to the land claimed, Justice Olney displayed ignorance of accepted standards of analysis. The need to look at the body of knowledge within the context in which it was written and against prevailing cultural biases of the time is universal practice. In reconstructing past and present Indigenous connections, ethnographic data is not exempt from the same standards of scrutiny that apply to other sources. It is but one part of the jigsaw puzzle of many pieces.’

Native title as currently enacted can be said to fail dismally in its claim to be a legitimate, just and ethical process by which Indigenous peoples might obtain recognition of their rights. While the process requirement continues to demand that Aboriginal peoples have to legitimate themselves and their cultural perspectives to a politically adversarial group of experts whose purpose is to obstruct their rights by imposing stringent and culturally inconsistent criteria, it will never provide a just outcome for Indigenous peoples. It renders bare the inability of the Justice system to provide justice to Aboriginal peoples.
17.9.2 The Amendments As Rule Of Empire

Having created the conditions by which the process for Indigenous peoples has become one of deliberate discrimination, diminishment and containment, Howard simultaneously enacted Amendments favouring pastoralists. Approximately 40 percent of Australia is covered by pastoral leases with individual leases often covering vast areas of land. Under Wik, pastoral leases were held to emanate from statutes and not common law. The historic nature of these statutes by which the Crown sought to provide for the coexistence of Aboriginal peoples and their right to continue using the land were written simply to ‘confer a license to graze livestock and to carry out any activity incidental to that purpose.’

Never substantially amended, Howard’s Amendments not only sought to amplify the range of activity the ‘incidental activity’ might consist of, but also measures which ‘allowed for the upgrading of a pastoral lease interest’.

Four sets of provisions were inserted within the Act all of which were specifically referred to as discriminatory by the CERD Committee in decision 2(54) on Australia.

Where the statute had not specified the ‘incidental activity’ which may have involved building dams, erecting fences, digging boreholes and other similar activity directly related to the grazing of live stock, Howard’s amendments elaborated a new range of rights. ‘Grazing rights’ now became ‘Primary Production Rights’ which provided for future acts. These included:

- **Primary production activity** – cultivating land, maintaining breeding or agisting animals, taking or catching fish or shellfish (diminishing Indigenous peoples rights to their sustainable cultural activity) forest operations, horticultural activities, aquacultural activities and leaving fallow or de-stocking any land in connection with doing any primary production activity (essentially locking away any parts of a property which is not being utilized such that Aboriginal peoples could again be excluded from seeking to utilize it for their own economic/survival activities).

Importantly for those not familiar with Australian pastoral leases, these may include
lease rights over huge tracks of land, some of which are the size of small countries. In the largest holdings, one or more Aboriginal communities may exist within the lease, contained in small sometimes remnant missions or little settlements, ‘enclaves’ consisting of a few dwellings.

- **Off-farm activities that are directly connected to primary production activities** – including *farm-stay tourism activity*, such that Aboriginal peoples would again be locked out of these opportunities to develop eco/indig-tourism within traditional land now under lease.

- **Grants to third parties** - including to cut and remove timber, extract, obtain or remove sand, gravel, rock, soil or other resources (except so far as doing so constitutes mining) - which again hindered Aboriginal peoples from utilizing any of these resources for their own community advantage. In Western Australia, local peoples have been involved in collecting and supplying native sandalwood to a highly successful fledgling industry. This amendment essentially prohibits Aboriginal peoples from utilizing any resources as either building materials, or for the making of traditional implements for resale/tourism or their use as ceremonial materials and items.

- **The upgrading of pastoral lessees’ interests in land, by renewal for a term longer then the original term of the lease, or to that of a perpetual lease.**

In addition to these 4 provisions, the report points out that the amendments also provided Pastoralists with rights over adjoining land.¹⁴⁵ That is to say, land not within their lease, adjustment lands and cattle trails, which have been and still are often used by pastoralists as additional grazing land, particularly during drought or when other pastures fail due to overgrazing or increased salination. These lands too now form part of pastoralist’s primary production rights. Provisions also allow pastoralists to gain water resources on adjoining land, again denying Aboriginal peoples’ rights to use or enjoy water, waterways, streams or rivers. This again sees many Indigenous communities remain totally dependent on purchased water, trucked in for their daily use, the locations to
which they have been resettled often being the most inhospitable within or next door to a lease holding.

Having now enacted amendments which literally severe Aboriginal peoples from any ‘resources’, the Amendment simultaneously diminished their right to negotiate. Under the original Act governments were required to provide native titleholders, or those with the potential of a native title in land with the same consideration extended to pastoralists, such that Indigenous peoples would be party to negotiation. This right was reduced so that only native title holders need be considered and only to the extent that ‘they are afforded the right to be notified and the opportunity to be consulted’, and ‘to be compensated for any impairment of their title…’ The CERD Committee found that this provision did not comply with international obligations because government was required to ‘ensure that members of Indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.’

Both the CERD Committee and the Parliamentary Joint Committee found that the ‘primary production’ amendments were ‘discriminatory’. ‘These provisions are discriminatory because they effectively allow the upgrading and embellishment of the rights of pastoral lessees and other overlaying interest holders at the expense of native title holders’.

The report also points out that the amendments not only alter the right to negotiate procedures, but also reduced the ambit of this right, and set up the conditions by which State and Territory governments could create alternative regimes to replace the right to negotiate. These amendments were then further brought under governmental control by giving additional scope to Ministers, to intervene either by ‘overriding the decision of an arbitral body or to make a decision in lieu of an arbitral determination.’ In essence this provides a backstop for private/capital interests. Should any tribunal find in favour of claimants, the Minister may simply override the decision in capital’s favour; a predicament which makes a further ‘non-sense’ of any ‘judicial’ process.
With all resources and potential future activity on pastoral and adjoining land now held to be part of a pastoral lease and the right of negotiation limited, it is interesting to consider Howard’s latest policy for Aboriginal peoples namely that of ‘economic self sufficiency’. I argue that Chomsky’s rule of Empire has again been achieved, by Amendment, providing the dominant with complete control while any Aboriginal development will simply be that of a complementary role.

17.9.3 Self-Determination As Internationally Provided

The provisions of ILO 169 shed further light on Australia’s processes and their inconsistency relating to the practice of ‘displacing’ or resettling Indigenous peoples.

Article 14 clearly states

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the people concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

This requirement that the peoples have the ‘right to use lands not exclusively occupied by them’ is consistent with the Crown’s intentions when originally creating ‘pastoral leases’, and the Wik decision which held that Native Title could coexist with pastoral leases. Many of these leases came up for renewal during Howard’s period in office. The requirement that Indigenous peoples also be able to access and utilize their land and resources is one all governments of Australia have to date determined to ignore but which they are again being expected to take ‘measures to safeguard’. This requirement would also extend to national parks and conservation areas, golf courses or any other land, sea or territory to which Aboriginal peoples retain cultural ties.

Political consideration of Aboriginal peoples has consistently failed to meet Crown directives, High Court rulings, and International standards and obligation. Governments continually ignore their duty of care and the equity of Indigenous rights.
ILO Article 14

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and guarantee effective protection of their rights of ownership and possession.

ILO Article 15

1. The rights of the peoples concerned to the natural resource pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

Or in other words, their right to determine to conserve their resources rather then find they are the subject of continually imposed destructive activity which inequitously benefits external interests, and jeopardises their

‘…right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual wellbeing and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development…’ As provided for in Article 7 of ILO169.

Leaving ILO169 aside, given that Indigenous leaders may or may not decide it is relevant to pursue this approach within ongoing negotiation, consideration under ICERD also provides a clear analysis of Government’s failure to provide recognition of Indigenous rights. Importantly the report also points to an aspect of accommodation of Indigenous peoples that needs to be highlighted. This deals with the discriminatory provisions, where by native title and traditional title are said to be extinguished.

17.9.4 Discrimination Legal By Consent

At the time of the Act’s elaboration, Aboriginal leadership and indeed the CERD Committee accepted that they could ‘contract out’ of the protection afforded to them by the Convention. In its examination of the Howard Amendments, the CERD Committee still held this position maintaining however that it can only occur with the peoples’ consent. In other words, under ICERD, discrimination can occur provided it is with the consent of those against whom it is done.151
This matter raises significant issues of representation, particularly when there are no laws to legitimate cultural identity, perspectives and values, or other representation of peoples’. Moreover, dependency of the officially legitimated representation on government serves often to diminish clear articulation consistent with international perspectives. In essence, I would argue that the splitting of a ‘right to territory’ into a legal process of confused and complex negotiation of both native title and traditional title, has simply been the means by which leadership’s energies have been deflected from other political strategies.

Pursuing Eurocentric notions and processes that hinge on a discourse of ‘authenticity’ determined by the ‘other’ is perhaps counter productive and not consistent with the international Indigenous politic, particularly when it is recognized that existing international conventions already potentially provide a ‘right to territory’ consistent with Indigenous perspectives. Moreover the native title process does not address Aboriginal claimants as peoples but rather as an existing grouping/community/society making claim to a piece of land. I would also argue that the Native Title Act in its original form, amended or re-amended is again a Eurocentric negotiation centring on externally validated legitimacy within an ‘artificially created space’, the processes of which leaves it open to interests which seek to apply a narrow normative approach rather than accommodate the diversity of Indigenous peoples and their rights.

What is staggering about the whole native title process is that its entire validity rests solely within an acceptance of the dominance of English law which did not exist on this continent before European settlement. Claiming legitimacy for 200 years, when it is known that Aboriginal peoples have been here between 40-60 thousand years is an increasingly difficult perspective to maintain or sell to the general public. It also brings into focus the true destructiveness of European settlement and raises a question as to whether this generation wants to be similarly responsible for the genocide of Aboriginal culture and peoples.
17.9.5 Flipping Consideration: A Challenge To Perspective

The fundamental truth is that land was taken and Aboriginal peoples were dispossessed by Empire. If one chooses not to validate an ‘Anglo’ perspective and applies instead the ‘commonsense perspective’ held by many Australians, particularly by younger Australians who have grown up under multiculturalism and those referred to as ‘ethnic’ Australians, the whole continent is Aboriginal land. Indeed this perspective would lead to the claim that all settlers (Anglo or post war migrants) are illegitimate until such time as a Treaty/Treaties with Aboriginal peoples is/are negotiated and signed.

Under such a scenario government could equally have aligned itself with Aboriginal peoples (also citizens) and their interests, and thus re-positioned Government with the front edge of international conscientisation and Law. This would have allowed Federal Government to re-visit and re-orient many areas over which official influence has been diminished, simply because it is increasingly becoming a client of transnational capital interests.

Hypothetically, Government might have recognized that all land was Aboriginal, legislated clear exceptions, (for example, urban, public works, free hold) and initiated processes by which those with other titles, particularly mining/expropriation rights and pastoral leases were put through hurdles by which they had to establish their legitimacy to claim rights of expropriation or to retain land. At least these groups would have the resources and expertise to mount legal cases and pay costs. To claim it would wreak economic ruin by reducing foreign investment is also inaccurate given that the natural wealth of this continent is still coveted and the same transnationals are currently engaged in similar negotiations with other governments and their Indigenous peoples elsewhere in the world.

This sort of Act might have also re-written conditions under which mining was undertaken, such that Indigenous peoples’ right to territory was recognized. This would be more consistent with World Bank requirements and the four steps towards partnership articulated by the Secretary General of the UN. The steps being: claim, recognition, negotiation, and then partnership. This contrasts with the Australian
approach wherein *partnership* is said by officials to already describe inter-relationship, while they simultaneously ensure *claims* are denied such that *recognition* is never achieved, leaving *negotiation* centred on creating newer mechanisms to contain political and cultural aspirations.

The Act might also have required that genuine environmental standards be met, and included terms requiring Transnationals to provide local peoples (Indigenous and non-Indigenous) with employment, and fund health, housing, education, and services within the remote communities and region they impact upon. The Act might similarly have facilitated process and ‘capacitation programs’ for Indigenous peoples, and equitable criteria for co-existing title on pastoral land.

Provisions might also have addressed appropriateness of agricultural practice, land-clearing issues, water resources distribution, and created cross-cultural or even indigenized programs targeting environmental degradation. Compliance with international interconnective standards would re-orient land practices towards eco-systems approaches.

I write this simply to challenge and reflect the inherent assumptions of systemic thinking knowing full well that these proposals would cause pandemonium within certain quarters. Perhaps however the perspective has some merit worthy of consideration.

It might also be argued that recognition of a ‘right to territory’ consistent with newer international frameworks would strengthen the sovereign integrity of Australia as a continent of co-existent title. This was the argument proposed by Tully, a perspective I would suggest that has seen both Canada and New Zealand seek internal agreements under which land might potentially be returned to Indigenous peoples. Nevertheless management frameworks often limit Indigenous identity rights and pre-determine the nature of development carried out. I argue that Indigenous ‘rights to territory’ do not negate pastoral rights or other rights, rather they potentially strengthen sovereign authority over land and resource use. In light of capital mechanisms and its accompanying worldview which is transboundary or anti boundary in impetus, this is an important consideration. Indeed it might be argued that co-existent title reframes the
contexting of external transnationals interested in exploiting resources under WTO regulation. Corporate rights provided by WTO do not require ‘capital’ to provide consideration for either newer International regulation and standards or more specifically, for the social and environmental considerations of Australian citizens, either Aboriginal or non-Indigenous.

Perhaps Australia is best to challenge its own xenophobia and recognize that a potential by-product of current politics is the diminishment of ‘government’. I argue that to be seen to be continually complicit with policy that systemically regulates all activity in the interests of a few, to the detriment of the many, even those in domestic businesses, undermines the democratic institution of government. The consequences of complete disillusionment in government will ultimately provide similar conditions to those which saw corporate America subsume its government with the instillation of President George Bush Jr.

The greatest failure of native title is that it is set up as a judicial process of competing interests. This approach again reflects the dominant’s ‘us and them’ dichotomy. Furthermore, the terms of reference are such that even when granted native title, as defined, it does not provide the same outcome as a negotiation of Indigenous peoples ‘right to territory’. Simply put, native title does not require a systemic or structural adjustment such that Indigenous peoples are provided the means (livingness /authority) by which to ‘develop’ their own futures. The need to address this hard political reality has so far been mostly avoided within the CANZ bloc. Instead, governments have managed to contain Indigenous peoples’ political aspirations by creating other ‘artificial dialogues’ by which it is said that Indigenous peoples might obtain their rights.

Some of these dialogues are specifically designed as soft diversions providing roles for an Indigenous leadership while deflecting their attention from other political strategies, which would necessitate hard political solutions. One such approach has been Australia’s Reconciliation process. It is examined next.
ADDENDUM: newer events within the Yorta Yorta Case.

An appeal by the Yorta Yorta to the High Court, again failed when the judges ruled they had no claim to Native Title because they had lost their connection to the land. In response Aboriginal leaders declared Native Title dead. A report by Michelle Fonseca for the ABC’s 7.30 Report\textsuperscript{152} encapsulates the sentiments and response, at the time, of those denied justice. One spokes woman for the Yorta Yorta commented ‘Australia may be a white country, but it’s got a black history. It’s got a black history but it’s a silent history’.

The head of the Aboriginal and Torres Strait Islander Commission (ATSIC) came out with the view that ‘the courts are stacked’, a perspective widely shared in all Indigenous communities around Australia. Kevin King a Gourmditch-Mara spokes person summed up what the loss of Native Title meant to his peoples. ‘There really isn’t any other avenue for them to take, except to accept that we’re just a walking dead person’. At the time of this deliberation some 641 claims were lodged with the Native Title Tribunal illustrating the scale of ‘unfinished business’.

Central to the High Courts decision was their determination that connection to land had been lost. Yorta Yorta peoples however maintained that even though they may now live and work near town their customs and traditions are still being passed down inter-generationally. Wal Sanders’ comments illustrates the problem when courts uphold dated stereotypes as the only authentic version of identity, expecting Indigenous peoples to live a connection to land which remains that of 200 years ago. ‘It’s just impossible you know’. ‘Like if there’s a Dutch person who doesn’t wear clogs, is he less Dutch? Just because I don’t carry a spear and a boomerang, am I less Aboriginal?’

Since the disappointment of the High Court Decision, events have continued to unfold. In May 2004, the Yorta Yorta signed an agreement. The terms of which recognise them as the traditional owners and focuses on protecting cultural heritage. The agreement signed with the Victorian Government applies to 6,500 square kilometres of land.
between Cohuna, Corowa, in southern New South Wales and Euroa. Of particular concern to Elders has been the management of rivers and forests within this region, where agricultural, forestry and pastoral practices have devastated both.153
The Declaration of Indigenous Peoples, the Biodiversity Convention and ILO169 together provide an interconnective framework in international law. Together these provide the basis for Indigenous and tribal peoples cultural identity rights.

Pocock points out that the effect of *terra nullius* was to relegate Australia’s Aboriginal people to a universe of *jus natural*, which has no history. This effectively caste them as animals, and therefore incapable of appropriating land, making war or peace. In contrast he argues that the existence of a Treaty in New Zealand at least conceded the Maori a presence in the universe of *jus gentium*. Pocock, J.G.A. ‘Waitangi as Mystery of State’ in Ivison, D., Patton, P. and Sanders, W. Eds. *Political Theory and the Rights of Indigenous Peoples* (2000), Cambridge University Press, p.32.

This notion that Australia was acquired by settlement is an interesting one to contemplate. Does it explain the Howard Government’s policy of ‘Fortress Australia’? Presumably in a hypothetical case should Australia be inundated by 10’s of thousands of ‘illegal’ refugees who take it upon themselves to settle a region to our north they might make the same claim to legitimacy. Similarly, Aboriginal peoples might seek to return and re-settle areas held as Crown land and claim sovereignty through settlement. Perhaps one might conjecture that the use of force or militarism is only needed when we do not have the equal application of justice. Or, the use of force allows the dominant to use his law as a means of disconnection and subjugation of the ‘other’.


This determination again reflects Hernando de Sotos’ insight that man’s law follows in the wake of unfettered settler activity. Settler nations have to legitimate this activity simply to establish their own existence as States.

Mabo (No 2) per Brennan J at 424 – 427 and 434, per Deane and Gaudron JJ at 439 – 446, per Toohey J at 484 cited in 4.8 in ‘*Undertakings Freely Given*’, Report of the Non-Government Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, June 2000, p.52.

Cited in 4.9, ‘*Undertakings Freely Given*’, Report of the Non-Government Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, June 2000, p.52


The expression “native title”…means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters where: (a) the rights and interests are possessed under the traditional customs observed by the Aboriginal and Torres Strait Islanders; and (b) the Aboriginal peoples and Torres Strait Islanders, by those laws and customs, have a connection to the lands and waters; and (c) the rights and interests are recognised by the common law of Australia. Incorporated into s.223 of the Act. ‘*Undertakings Freely Given*’. Report of the Non-Government Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, June 2000, p.58.

UNESCO’s Universal Declaration on Cultural Diversity was adopted by its General Council during its thirtieth session, which took place from 15 October to 3 November 2001. A Full text of the Declaration is available from the UN, or their site: [www.un.org](http://www.un.org). It is also available on-line through UNESCO’s site. Source: [www.unesco.org/confgen/press_rel/021101_clt_diversity.shtml](http://www.unesco.org/confgen/press_rel/021101_clt_diversity.shtml)


A description of a sector of humanity whom it is hope the World Summit of Sustainable Development, Johannesburg, 2002, would equally address. The full quote reads; The Johannesburg World Summit must take further our pledge at the Millennium Summit to eradicate poverty. It must focus on implementation and action. Its outcomes must make sense to she who has to walk for kilometres to fetch drinking water and to she who spends hours gathering firewood for energy. It must also speak to he who consumes more than the earth can give. Address by the President of the Republic of South Africa, Thabo Mbeki, on the occasion of the torch handing over Ceremony, ‘From Rio to Johannesburg’, Rio de Janeiro, 25 June 2002. Source: The Presidency. List server WSSD Info mailing list.

Within multilateral processes, Indigenous peoples’ activity and the instruments they have elaborated are increasingly seen and understood, as the keel in a raft of newer international law, which potentially provides for a sustaining and meaningful future of peaceful co-existence for all earth’s citizens.


UNESCO Universal Declaration on Cultural Diversity, Article 3 - Cultural diversity as a factor in development, *DocIP Update 43*, March –April 02, pp.11.


Prof. Michael N. Barber, ‘Researching Priorities for Australia: Setting our Future.’ Presentation to National Press Club, Canberra, broadcast by ABC TV, TX 26th June 02.

An example which illustrates the rest of the worlds engagement has been the elaboration of the Kyoto Protocol, which the USA and Australia refused to sign.


In the previous section examining the newer discourse of ‘indigeneity’, ‘revitalization of culture’ was one of the tenets of this politic within First world contexts. As was illustrated, self expression as political identity may diverge in the Third World where ‘survival’ as ‘ sui generis cultures and peoples’, is often a primary impetus for political activity.

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.


Ibid., p.75.

The challenge to dominant humanity is the recognition that their culture and societies are not the only way humans choose to live on earth. Neither can they any longer assume that their dominance means they have the right to impose their man made system on the rest of humanity and earths living systems, particularly as it is dominant First World culture which is currently unsustainable: economically, socially and environmentally.


Ibid., pp.75-76.

Ibid., p.76.

Ibid., p.76.

Ibid., p.77.

Ibid., p.77.

Ibid., p.78.

Ibid., p.79.

Ibid., p.79.

This argument has already been addressed within the chapter ‘Interconnective Standards’


The only international standard hindering elaboration of the Act was domestic consideration of the then Racial Discrimination Act said to harmonize with CERD and to which Australia is obligated. This Act owes its existence and strength to migrant ethnic community leaders, who historically worked to establish Multiculturalism within Australia.

‘Undertakings Freely Given’, Report of the Non-Government Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, June 2000, p.2.

Indigenous peoples living in the north of Australia are covered by the Northern Territory Land Right’s Act of 1976.

‘Registered Native Title claimants were that group who had lodged a native title determination application with the Tribunal set up to hear claims, and who had passed the ‘acceptance’ or ‘registration’ test. Their claim was then recorded on the Register of Native Title claims. To pass the acceptance/registration test an application had to meet certain formal requirements and the Registrar had to be satisfied that the application disclosed a prima facie case, and was not otherwise frivolous and vexatious.’ ‘Undertakings Freely Given’, Report of the Non-Government Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, June 2000, p.62

‘Native Title Holders were registered native title holders who had obtained a determination of native title either through litigation or negotiation and that determination had been recorded on the National Native Title Register.’ ‘Undertakings Freely Given’, Report of the Non-Government Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, June 2000, p.62.

Ibid., p.57.

para. 4.27, Undertakings, p.57.

para. 4.28, Undertakings, p.57.

para. 4.38, 4.39, Undertakings, p.59.

para 4.62.

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Undertakings, p.63.

para. 4.54 Undertakings, p.63.

para. 4.55 Undertakings, p.63.

para. 4.56 Undertakings, p.63.

para. 4.57 'Undertakings Freely Given', Report of the Non-Government Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, June 2000, pp.63-64.

para. 5.14 Undertakings, p.83.

The deliberativeness of strategies to undermine Native Title was the subject of a TV report for the Australia Broadcasting Corporations’ ‘4 Corners’ program. Stephen McDonell’s report on ‘Secret Whitemans Business’, broadcast 20 March 2000, revealed an elaborate campaign to undermine Native Title in Western Australia. The web sites description of this report explains ‘this bizarre tale from the outback features mining companies, a gun-for-hire anthropologist, an ex-politician as well as Aboriginal communities pitted against each other.’ See www.abc.net.au search archives of ‘4 Corners’ programme.

para. 5.14, 5.15 Undertakings, p.83.

The report’s footnote explains that under the Constitution, the judicial power of the Commonwealth must be exercise by a court. para. 5.7 Undertaking p.82.

para. 5.1 Undertakings, p.81.

para. 5.2 Undertakings, p.81.

para. 5.34 Undertakings, p.89.

Bartlett, Richard H. ‘Native Title in Australia, Denial, Recognition, and Dispossession’, Ch.15 in Havemann, P. Ed. (1999), Indigenous peoples Rights in Australia, Canada and New Zealand, Oxford University Press, p. 415.

Ibid., p. 415.

para. 5.36 Undertakings, p.89.

Undertakings, see Appendix p.194.

para. 6.1 Undertakings, pp.90-91.


Ibid., p.416.

Ibid., p.411.

Bartlett writes that when the Queensland government enacted legislation to extinguish native title throughout the Torres Strait Islands in 1985 in response to the Meriam peoples’ claim, a majority of judges found that ‘the statute must ‘fail’ because it did not comply with the Racial Discrimination Act’. (pp.411) Bartlett also points out that while the court dealt with the matter as an issue of equality before the law recognising the traditional interest asserted by the Meriam peoples, they did not ‘decide the question of whether they had rights over the lands’. For the purposes of the case it was assumed they had such rights, albeit that ‘ownership and inheritance of property’ as a human rights was said to be enjoyed to a ‘more limited’ extent (pp. 411-412). Or as Bartlett states, ‘equality did not mean uniformity’ (p.412). In Bartlett, Richard H. ‘Native Title in Australia, Denial, Recognition, and Dispossession’, Ch.15 in Havemann, P. Ed. (1999), Indigenous peoples Rights in Australia, Canada and New Zealand, Oxford University Press.

Ibid., p.412.

Ibid., p.118.


Undertakings, p.118.

The deliberativeness of strategies to undermine Native Title was the subject of a TV report for the Australia Broadcasting Corporations’ ‘4 Corners’ program. Stephen McDonell’s report on ‘Secret Whitemans Business’, broadcast 20 March 2000, revealed an elaborate campaign to undermine Native title in Western Australia. The web sites description of this report explains ‘this bizarre tale from the outback features mining companies, a gun-for-hire anthropologist, an ex-politician as well as Aboriginal communities pitted against each other.’ See www.abc.net.au search archives of 4 Corners.

Undertakings, p.2.

Undertakings, p.3.

Undertakings, p.5.

This statement is the first sentence of the report. ‘Undertakings Freely Given’, Report of the Non-Government Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, June 2000, p.1

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According to a UNESCO press release, ‘this is the first time the international community has endowed itself with such a comprehensive standard-setting instrument, elevating cultural diversity to the rank of ‘common heritage of humanity – as necessary for the human race as bio-diversity in the natural realm – and makes its protection an ethical imperative, inseparable from respect for human dignity.’ UNESCO Press release, in DoCip/Update No.43, p.13. Go to www.doCip.org or www.un.org.

Undertakings, p.2.


‘Undertakings Freely Given’, Report of the Non-Government Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, June 2000, p.5.

Undertakings, p.5.

Undertakings, p.53.

Undertakings, p.53.

Undertakings, p.54.

My emphasis

Undertakings, p.53.

Undertakings, p.53.


Undertakings, p.54.


The evacuation and its impact on the wellbeing of the Pintupi was reported by John Collis for Channel 7’s ‘Sunday Sunrise’ program TX 6th May 2001.

Undertakings, p.54.

They might have to drag me like a bullock’, The Tjilpi Pampa Tjutaku Project, Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council Aboriginal Corporation, Final Report, March 1995.

Genocide Legislation is also being re-written under the Howard government. The event, which triggered governments concern, arose when Aboriginal peoples from South Australia’s Lake Eyre region, took both the then Minister for Aboriginal Affairs and the Foreign Minister to court citing Genocide, when they refused their application to have traditional territory World Heritage listed.

Within Indigenous cultural perspectives, Dreaming law is in the ground and therefore one would not seek to be separated from it. As Bird Rose writes: Law is a serious life and death business for individuals and for the world; it tells how the world hangs together. To disregard the Law would be to disregard the source of life and this is to allow the cosmos to fall apart. p.56. She continues: It is implicit that all living beings have a choice in following Law. They can do what is necessary to maintain life or they can turn their backs on responsibility and, in so doing, allow destruction. In Bird Rose, Deborah (1992), Dingo Makes Us Human. Life and Land in an Australian Aboriginal culture, Cambridge University Press. p.57.

Undertakings, p.54.

Hazlehurst’s extensive study conducted in Canada, and Australia, proves, that cultural programs consistent with a peoples own socio-cultural inter-relationships of authority, result in dramatic change and an improvement in the wellbeing of Indigenous communities. See, Hazlehurst, Kayleen M. (1994), A...
Chapter 17: Australia

Healing Place: Indigenous Vision for Personal Empowerment and Community Recovery, Central Queensland University Press, Rockhampton.

Bird Rose points out that within Indigenous cultural perspectives, ‘relationship’ as with ‘knowledge’ exists in its own right. She writes: ‘Individuals of any species come and go, but the underlying relationship persists.’ p.56. In Bird Rose, Deborah (1992), Dingo Makes Us Human. Life and Land in an Australian Aboriginal culture, Cambridge University Press.


Undertakings, p.7.


Ibid., pp.27-28.


Undertakings, p.118.

Undertakings, p.118.

Undertakings, p.117.

Undertakings, p.117-118.


Ibid., p.19.

Ibid., p.19.

Ibid., p.21.

Ibid., pp.21-22.

Name withheld

Bird Rose, D. in Brock, Peggy (2001), Words and Silences, Aboriginal Women, Politics and Land, Allen and Unwin p. 95

Ibid., pp.94 - 95

Ibid., p.95.

Undertakings, p.95.

Undertakings, p.95.

Undertakings, p.95.

Undertakings, p.95.

Undertakings, p.95., At the time of writing the Australian High Court has just overturned the Hindmarsh decision in which the previous ruling was against Aboriginal women who claimed the site earmarked for development was a sacred site, and part of secret women’s business.


Undertakings, p.106.

Undertakings, p.103-105.

Undertakings, p.103.

Undertakings, p.103.

Undertakings, p.105.

Undertakings, p.45.

Undertakings, p.107.

Undertakings, p.108.

Undertakings, p.109.

Undertakings, p.147


‘Yorta Yorta celebrate signing of historic agreement’, ABC News Online, May 3, 2004. See www.abc.net.au

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.

17.10 Reconciliation: A Healing Or Another Containment

Analysis of Australia’s Reconciliation process illustrates a consistency between government policy and historic official attitude. Events at the start of a new century indicate that Aboriginal peoples may be subjected to yet another millennia of ‘unfinished business’. Although many people of goodwill are involved, reconciliation as part of political process has become another means by which government seeks to obfuscate genuine recognition of Indigenous peoples’ rights. As a process it provides a soft option, by which substantive issues need not be addressed. The following analysis seeks to context and highlight the steps within a methodology of containing political dialogue and negotiation.

Examination will provide a historical contexting of the process, and the legal and political manoeuvrings which were played out. Analysis also illustrates the diminishment inherent to agreements central to these processes involving all levels of government. An official approach which has simply hindered any forward movement other then on terms which suit dominant interests influencing government position.

As a Federal government initiative, the original vision for the Council for Aboriginal Reconciliation, established by Commonwealth Parliament in 1991 was to facilitate greater understanding between Aboriginal peoples and non-Indigenous people. The hope was that a united Australia would be achieved by the centenary of Federation in 2001, when the Council would end its term. The Council, was ‘comprised of 25 members, twelve Aboriginal, two Torres Strait Islander and eleven others’. In its first years the Council operated much as a good public relations office would. There were publications and reports, brochures, posters, and the staging of special events complete with T-shirts, badges, caps and other merchandise. Under the Howard Government, the Reconciliation Council may well be seen as the centre of a newer governmental strategy co-ordinated from within the Prime Minister and Cabinet’s Office. Perhaps it is worth remembering the contexting of events.
The political climate was dynamic, a consequence of the current governments discriminatory amendments to the Native Title Act, and increasing public awareness as to the contents of several reports. The first of these was the Royal Commission into Aboriginal Deaths in Custody, the recommendations of which governments have failed to address or implement. The second was the Human Rights and Equal Opportunities Commissions’ report into the stolen generation. Called ‘Bringing them Home’, it catalogued the legacy of official policies under which Aboriginal and Torres Strait Islander children were forcibly removed from their families and institutionalised. Additionally, Australian’s were increasingly concerned over Mandatory Sentencing laws which discriminated against Aboriginal youth. Australia’s treatment of refugees and migrants were also making headlines and engendering public concern. With Australia hosting the Olympics in October 2000 and the Centenary of Federation being celebrated in January 2001, there appears to have been a determined effort to lock Indigenous peoples into newer agreements which legitimated an extension of negotiation. Achieving this outcome would provide government with a number of benefits.

Firstly government could counter any negative international media during the Olympics by pointing to the outcomes of its Aboriginal Reconciliation process.

Second, having signed onto the agreements Indigenous peoples would not have recourse to the international level, for the duration of the agreement. This position not only limited negotiation to a domestic context, but also denied Aboriginal peoples the benefits of on-going international processes. As a strategy it would lock Indigenous peoples into framework agreements as a pre-emptive move to them gaining any of the rights internationally recognized.

### 17.10.1 A Peoples Movement Co-Opted

The re-orienting of the Reconciliation process was achieved when a new Chairperson was appointed to the Council in 1997. The former head had resigned in protest at Prime Minister Howard’s behaviour at an earlier Reconciliation event held in Melbourne that same year. On this occasion the Prime Minister thumped the podium and angrily berated the delegates and audience over what he termed a ‘black arm band view of history’ and
the ‘guilt industry’. The insensitivity of the Prime Minister’s response to the then recently published Human Rights and Equal Opportunities Commission’s report into the policy of systemic and forced removal of Indigenous children from family, not only resulted in the resignation of the Council’s Chairperson, but similarly shocked many in the wider community.

At the time Reconciliation as a process had two levels. An internal political level, which was comprised of official Agreement documents Council members were expected to sign (as though somehow they were representative of all Aboriginal peoples), and a public level which centred on a consultative elaboration of a Declaration of Reconciliation. This later document was to be widely canvassed in both Indigenous and non-Indigenous communities. In order to gain the maximum benefit from the public process, a significant Reconciliation event was staged at the Opera House. Corroboree 2000 was held on the weekend of 27-28 May 2000. The formal event was organized for the Saturday and included speeches, performances, and the official handing over of the now finalized Declaration of Reconciliation. It was attended by the then Governor General Sir William Deane, all levels of government and opposition members, and Aboriginal and non-Indigenous dignitaries. Attendance was by invitation. The Sunday was set aside for a ‘Peoples Walk for Reconciliation’ across the Sydney Harbour Bridge.

As the event drew nearer, Australian’s began to sense that Prime Minister Howard who had legitimated and endorsed the process and events now appeared to suggest that the outcomes should not perhaps be taken seriously. In the Prime Minister’s opinion, Reconciliation would not be achieved by the Centenary of Federation (2001) as originally envisaged, but would now take another 20 years. This shift in official attitude lay to a great extent with the ideas and language expressed in the ‘Declaration of Reconciliation’. Where originally the document had simply been ‘nice words’, the final draft contained language and notions more consistent with the international Indigenous agenda. The shift in government position was also reflected in the Document’s title which became a ‘Declaration Towards Reconciliation’ (see table 17:1).
Declaration Towards Reconciliation

We, the peoples of Australia, of many origins as we are, make a commitment to go on together in a spirit of reconciliation.

We value the unique status of Aboriginal and Torres Strait Islander peoples as the original owners and custodians of lands and waters.

We recognise this land and its waters were settled as colonies without treaty or consent.

Reaffirming the human rights of all Australians, we respect and recognise the continuing customary laws, beliefs and traditions.

Through understanding the spiritual relationship between the land and its first peoples, we share our future and live in harmony.

Our nation must have the courage to own the truth, to heal the wounds of its past so that we can move together at peace with ourselves.

Reconciliation must live in the hearts and minds of all Australians. Many steps have been taken, many steps remain as we learn our shared histories.

As we walk the journey of healing, one part of the nation apologises and expresses its sorrows and sincere regret for the injustices of the past, so the other part accepts the apologies and forgives.

We desire a future where all Australians enjoy their rights, accept their responsibilities, and have the opportunity to achieve their full potential.

And so, we pledge ourselves to stop injustice, overcome disadvantage, and respect that Aboriginal and Torres Strait Islander peoples have the right to self-determination within the life of the nation.

Our hope is for a united Australia that respects this land of ours; values Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all.

Genuine reconciliation required an official acknowledgement of past injustices and an apology, which Howard refused to express on behalf of the nation. As the number of voices calling on the government to officially apologise grew to include former Prime Ministers, church and religious leaders, human rights organizations, social justice advocates, judges and other senior political figures, the country began to understand that true reconciliation might not be the government’s objective.

By the Sunday, some 250 thousand ordinary citizens had walked across the Harbour Bridge to show support for the process and the need of an apology. The word ‘Sorry’, was sky-written over the city to the cheers of the tens of thousands of individuals, families, church and labour groups, green and welfare organization and local community action groups all partaking in the event. Corroboree 2000 was to prove a defining moment in national conscientisation and a huge blow to the government. The following weekend, Brisbane held a Reconciliation walk also attended by tens of thousands of citizens and support groups. Other cities followed repeating the expression for a desire of genuine reconciliation.

Markus writes of Corroboree 2000:

‘...the actions of the prime minister cast a pall over the proceedings. There could be no national acceptance of the Reconciliation Council’s ‘Declaration Towards Reconciliation’ because the prime minister refused to endorse some of its key elements. There could be no national apology at the major public ceremony, held at the Opera House and televised nationally, because the prime minister maintained his refusal to tender one. Nor could the People’s Walk for Reconciliation across the Sydney Harbour Bridge,... fulfil its potential for national healing in the absence of the country’s leaders and key ministers.’

Annoyed that events had not produced the desired result, Howard published his own version of the Declaration of Reconciliation, bringing his government into further disrepute for diminishing the decade of work the Council had undertaken to achieve the document. The Council’s Declaration was a public document widely canvassed across
Australia. Summing up events, ‘Sir Gustav Nossal, the Deputy Chair of the Reconciliation Council, who took a major media role on behalf of the Council predicted, “If an apology is not made by this Prime Minister, it most certainly will by the next”’.\textsuperscript{5}

17.10.2 The Game Behind The Public Facade

While the public aspect of Reconciliation served to expose the limit and nature of government’s consideration of Aboriginal peoples, the secondary and at the time hidden element of official processes, namely the Agreements, equally evidence a politic of containment. With the Council for Aboriginal Reconciliation ending it’s life, the Government offered Aboriginal leadership the opportunity to create a newer authority, capable of administering these agreements. This strategy again resulted in divisiveness.

At one stage, there were six different factions all seeking to position themselves. Simultaneously there was a growing awareness within the Aboriginal world, that Reconciliation, which should engender a ‘healing process’, was being re-oriented towards a protracted defacto treaty discussion. This was not the Reconciliation initiative ‘to win the hearts and minds of all Australians’. Additionally some leaders were concerned that the agreements would only serve to hinder recognition of Aboriginal rights by delaying negotiations for the period of the agreements.

Analysis using Critical Race Theory will illustrate that the agreement documents, of which there were a series of drafts, evidence a political strategy designed to contain and limit dialogue. It is one that seeks to negate any need by the Commonwealth to comply with international treaty obligations, or consider the body of Indigenous rights extant at the macro political level. It will also be shown that these same documents were a strategy designed to neutralize any genuine treaty negotiation, by maintaining that these agreements provided the framework to achieve the same end. Indeed this very view is expressed within the Council’s own background material on its website.

‘The idea of a “document of reconciliation” was developed as a way to deal with the sensitivities and differences of view which existed about a treaty. Other terms which could be use instead of ‘document of reconciliation’ could be settlement
compact, covenant or declaration, or an Indigenous word, such as Makarrata, which has an appropriate meaning.'

Where other nations have employed Reconciliation as a process of national healing, as in the case of South Africa’s truth and reconciliation process, Australia has sought to utilize it as a defacto treaty processes.

Legitimacy for this approach was found to exist within the Statues of the Council for Aboriginal Reconciliation Act 1991. The Council’s web site again provides the material.

Subsection 6(1) states that the functions of the Council include:

(g) to consult Aborigines and Torres Strait Islanders and the wider Australian community on whether reconciliation would be advanced by a formal document or formal documents of reconciliation and

(h) after that consultation to report to the Minister on the views of Aborigines and Torres Strait Islanders and of the wider Australian community as to whether such a document or documents would benefit the Australian community as a whole, and if the Council considers there would be such a benefit, to make recommendations to the Minister on the nature and content of, and manner of giving effect to, such a document or documents.

Subsection 6 (3) of the Act states:

The Minister is to cause a copy of any recommendations made by the Council in performing its function under paragraph (1) (h) to be laid before each House of the Parliament within 15 sitting days of that House after they are made to the Minister.

These provisions ensure that the Council’s recommendations about a document or documents of reconciliation are reported through the Minister to the whole Parliament. 6
The views of the Prime Minister are also included within the same site, and evidence a confused dichotomy, politically positioned as ‘cohesive’ but essentially one that casts Indigenous peoples’ rights as competing interests, needing to be neutralized.

…I hope we have some kind of written understanding. I don’t like the idea of a treaty because it implies that we are two nations. We are not, we are one nation. We are all Australians before anything else, one indivisible nation. But I would certainly be in favour of a document that recognises the prior occupation of this country by the Indigenous people, recognising their place as part of the Australian community and their right to preserve their distinctive culture. But within the notion of one undivided united Australian community where our first and foremost allegiance is to Australia and nothing else. A suggestion that Aboriginal peoples’ rights are somehow inconsistent with national interests or that their advocacy is un-Australian.

The agreements were held to be National strategies that would give effect to the Council’s ‘Declaration Towards Reconciliation’. These, it was suggested would provide governments, business, organizations and individuals with an opportunity to make a practical commitment to reconciliation’ by supporting the strategies. Some elements of the national strategies it was suggested could be more quickly agreed and were suitable for immediate implementation. Achieving other parts might necessitate a longer-term approach but by being contained within a formally legislated framework they would remain on the public record for future fulfilment.

The proposed strategies, drafted as framework Agreements included: A National Strategy to Address Indigenous Disadvantage; A National Strategy to Promote the People’s Movement for Reconciliation; A National Strategy to Promote Recognition of Human Rights; A National Strategy to Implement Constitutional and Legislative Changes; A National Strategy to Promote Indigenous Symbols and Protocols; and A National Strategy for Working Together to Sustain and Protect the Environment.

While all these objectives are laudable, the open ended procedural nature of the strategies titles needs again to be pointed out. From an Indigenous perspective, none of
the documents add anything new to the discussions. Rather, they simply spelled out the obvious, while establishing that they are as yet unachievable aspirations by virtue of requiring a strategy, which might ‘one day’ provide for them. Given that this chapter of my paper essentially seeks to highlight the political processes of diminishment and containment, which result in Indigenous peoples continually being denied their rights, I will deal with the strategy to promote recognition of Human Rights.

17.10.3 Rights By Referendum

The last available draft copy of ‘A National Strategy to Promote Recognition of Human Rights’ is dated 16 February 2000 with comment accepted until 4th April 2000. There was a later version, however, no one, not even the delegates consulting on this document at the time were provided with a copy. Indeed as one colleague commented to me: ‘it was passed around in the meeting in Canberra, and when I tried to make some notes, the guy from the Prime Ministers office who was standing over me and behind me as I was reading it, took it away from me’. Leaving aside the questions this comment raises as to the nature of the ‘consultative’ processes inherent in any documents elaboration, the contents of the existing draft point to other concerns.

Contents of the Documents again evidence an official approach which seeks to contain recognition of Indigenous peoples through a Constitutional preamble re-write limited to acknowledging their pre-existence; a need to context reconciliation within a process of de-colonization limited to the 1966 UN Covenants; the dilution of political rights through the use of language inconsistent with that used in international Law, particularly Conventions providing Indigenous peoples’ rights; and a view that these National strategies would remain open ended. A reference to the Indigenous peoples’ Draft Declaration and processes in the UN seeks to suggest a link between the two processes. In short, the implication is that any recognition of rights is contingent on the outcome of this one International process. The amplified contexting of ILO 169, and the Biodiversity Convention, which also provide Indigenous peoples rights, or even the framing of UNESCO’s Universal Declaration on Cultural Rights, are again missing.
Of even greater concern is the complete lack of a timetable for the implementation of any rights (such as they are), and the insertion of criteria which states that achieving these rights will require ‘the Commonwealth to enact legislation for a referendum’ on these matters. In other words, contrary to every other human being’s right to inalienable, universally acknowledged, indivisible rights, Aboriginal peoples are to have theirs subjected to a referendum. Given the level of racism within sectors of Australian society, the unlimited funding capital interests have at their disposal to skew public sentiment, the complicity of major media groups, the dependency on this mechanism might again be seen as an attempt by government to hinder Indigenous peoples from ever obtaining their rights.

Markus who tracks the ascendance of the ‘New Right’ and its ‘race politics’ within Australia, points out that ‘a leading propagandist Hugh Morgan, executive of Western Mining Corporation, former chair of the Mining Industry Council, and various right wing ‘think tanks’, which he lists, had provided the National Farmers Federation with a ‘fighting fund’ of over $10 million and an annual budget for its Canberra secretariat of $2.3 million by the mid 80’s.’9 One can only imagine the unlimited funds made available post Mabo 1992 and Wik 1996. Unconfirmed figures allege funding of 200 million dollars.10

17.10.4 Systematising Containment

The processes elaborated by the draft agreement are worthy of inclusion. Page 7 sets out the steps the government hoped to legislate as their strategy before 2001. Consistent with Critical Race Theory, I have chosen in figure 17:2 (over page), to provide a detailed analysis of these Agreements, to illustrate how they impact on Indigenous peoples. To achieve this I have provided another interpretation of the same clause from the space of those who are continually legislated into oblivion, marginalised and expected to be happy simply to be party to these dialogues.

**A National Strategy to Promote Recognition of Human Rights.**


<table>
<thead>
<tr>
<th>Actions – what needs to be done and who will do it.</th>
<th>Critique using Critical Race Theory</th>
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<tr>
<td><strong>A.</strong> By 2001, Commonwealth, State and Territory parliaments and local governments pass formal motions of support for the Declaration for Reconciliation, which recognises the status of the first Australians.</td>
<td>The government meant its version of the Declaration. Apart from this, all that is being conceded in this clause is a statement of the obvious.</td>
</tr>
<tr>
<td><strong>B.</strong> From 2001, Commonwealth, State and Territory parliaments, when making or amending legislation directly affecting Aboriginal and Torres Strait Islander peoples, include statements declaring the status of Aboriginal and Torres Strait Islander peoples as the first Australians.</td>
<td>Again – so what, there are no rights being provided, rather a simple commitment to repeatedly state the obvious.</td>
</tr>
<tr>
<td><strong>C.</strong> From 2000, ATSIC and other Indigenous leaders consult communities about the draft statement of Indigenous Rights (Attachment A) to establish a starting point in the establishment of a framework to negotiate with governments and develop representative structures through which they will undertake negotiations to resolve unfinished business with governments.</td>
<td>Activity being created to keep the Aboriginal leadership (those re-appointed to a new Reconciliation body) and those of the existing statutory body ATSIC occupied in developing networks into community so as to engender support for this process of negotiation. This approach will be held to be consultative, while simultaneously diminishing any other voices that do not agree with the process. Attachment A as referred to, was a draft Document of Indigenous Rights generated by Council members, many of whom had never previously been involved in rights discussions nor seen a copy of the UN’s Declaration of Indigenous Rights. When members of council were finally provided with a copy through independent sources, the reaction was such that it became evident to other colleagues that ‘some members did not know what it was, others were not sure how it related to the Council’s process’.</td>
</tr>
</tbody>
</table>
D. Commonwealth, State and Territory governments establish legislation which gives effect to a process of negotiations between governments and Indigenous peoples, and which

- incorporates the Declaration in a preamble

- incorporates the underlying principals of the national strategies

- recognises advances made since the 1967 Referendum

- recognizes that there are still areas of discord within the nation which are yet to be reconciled; and

- provides a framework that encourages the progressive resolution of these areas of discord, including through agreements.

- the Government meant it’s version and not the one the Council finally presented

- all levels of government legislate the strategies and their processes into law, ensuring that all Aboriginal peoples are locked into these strategies

- Motherhood statement which provides nothing to Indigenous peoples, and I would suggest a real challenge, given that none of the recommendations of the Royal Commission into Aboriginal Deaths in Custody have been implemented, health statistics are still amongst the worst in the world, the government would not apologise for past injustices, cultural programs have been closed, ATSIC suffered cuts and has since been disbanded, and governments amendments to the Native Title Act were found to be discriminatory by both the UN and it’s own joint parliamentary committee into Australia’s obligations. Essentially this clause is designed to provide government with positive public relations in order to obfuscate the true and negative.

- stating the obvious, and sidestepping the requirement that government should lead, rather then leave it up to xenophobia and racism to determine

- A clause which opens up the possibility of a dependence on multiple and differing domestic/local negotiation with other levels of government, and inconsistency of outcomes because discussion is conducted without recourse to any domestic or international standards in any resulting agreements. It also takes advantage of peoples lack of politicisation and awareness of the nature of existing rights at the international level.
<table>
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<tr>
<th>Statutory functions could be given to Reconciliation Australia to enable it to be the body to facilitate negotiations between governments and Indigenous stakeholders regarding unfinished business.</th>
<th>An offer to some leadership to become the negotiators for and on behalf of Aboriginal peoples, essentially setting up conflict between those elected to ATSIC by indigenous peoples, and others who might be appointed by government to a newly constituted Reconciliation Australia</th>
</tr>
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<tr>
<td><strong>E.</strong> In the spirit of reconciliation, and within the broader context of constitutional reform, the Commonwealth Parliament enacts legislation for a referendum which seeks to:</td>
<td>Clause E. can essentially be read as creating the mechanism by which Indigenous rights could become the subject of highly politicised and well funded scare campaigns by the ‘new right’, such that the public votes against any ‘concession’. That Indigenous peoples have rights can be negated by public outcry, much as occurred in the lead up to the 1996 Federal election. E (iv), which authorizes the Declaration of Reconciliation, was included to ensure that the Constitution only had to provide and acknowledge the consideration government had determined as contained within the Prime Ministers version of the document. A problem when council re-wrote it. E (ii) and (iii) show just how far Australia has still to travel for the legacy of its white Australia policy to be finally expunged.</td>
</tr>
<tr>
<td>(i) prepare a new preamble to the Constitution which, amongst other things, recognises Aboriginal and Torres Strait Islander peoples as the original owners and custodians, and acknowledges the history of dispossession that many have suffered since colonisation;</td>
<td></td>
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<tr>
<td>(ii) amend section 51(26) of the Constitution to authorise the Commonwealth to make laws which are for the benefit of any particular race;</td>
<td></td>
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<tr>
<td>(iii) remove section 25 of the Constitution, and replace it with a new section making it unlawful to adversely discriminate on the grounds of race; and</td>
<td></td>
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<tr>
<td>(iv) amend the Constitution to include a provision which authorises the Declaration of Reconciliation.</td>
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<tr>
<td><strong>F.</strong> Commonwealth Government initiates a parliamentary inquiry into the desirability of a legislated Bill of Rights that includes measures to prohibit racial discrimination and entrench principles of equality and non-discrimination. The inquiry should provide for the involvement of Aboriginal and Torres Strait Islander people as witness and as specialist advisers.</td>
<td>Another process is elaborated. An inquiry into a Bill of Rights, which would do nothing except at best to provide those rights already universally provided by 1966 Covenants to which Australia is party. These however have not been legislated into existence within domestic law and thus all citizens miss out. The second part again simply provides roles within a governmentally controlled process, albeit that a few will function as specialist advisers. Who, and how they are officially</td>
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Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.

chosen and appointed is not explained. The limiting of all other involvement to that of ‘witness’, evidences that the inquiry will not include the Aboriginal voice, having been relegated to participants of an ‘observer status’.

G. State and Territory governments each consider legislating their own Bill of Rights, including measures to prohibit racial discrimination and entrench principles of equality and non-discrimination, consistent with any relevant Commonwealth legislation.

So now having spent time on an inquiry, the processes of which has ensured the Commonwealth has been able to determine the outcome by virtue of owning the process, the whole is then repeated at State and Territory levels. The outcome again dependent on, and now limited to the Commonwealth Bill which resulted from F. Again note the lack of reference to any international Human Rights standards.

The referendum approach towards providing Australian citizens/Aborigines with rights can only be seen as a deliberately iniquitous political strategy. All human beings have rights. These are inalienable and thus they cannot be subjected to referendum. Under its international obligations, it has been argued, Government is already committed to providing Indigenous peoples with their rights. The hypocrisy and selectivity is that Governments regularly enact newer legislation and signoff on international treaties without referring them to referendum. Government feels no compunction to put to referendum Australia’s signing of WTO treaties, which it might be argued have a greater impact on citizens by skewing Australia’s ‘way of life’ to comply with external capital interests and Transnational corporations (TNC’s).

17.10.5 A New Foundation

With the outcome of Corroboree 2000 in disarray from a governmental perspective, and viewed as un-reconcilable by the public, the Reconciliation process was left to one side. Public attention now focussed on the injustices perpetrated against refugees who were and continue to be subjected to private USA transnational penal solutions under this government. Following the release of a final report the ‘Council for Aboriginal Reconciliation’ wound up its operations at the end of 2000. The following year, government created a new entity to take it place. ‘Reconciliation Australia’ was
established as a foundation in 2001. Categorized as an NGO, Reconciliation Australia has nine Directors, including an Indigenous and non-Indigenous Co-Chair.

The foundations’ Constitution requires that five Directors be Indigenous and at least one of these be Torres Strait Islander. Provided with a ‘tax deductibility status’, a one-off Commonwealth grant of $5 million conditional that $3 million of this amount be invested, the Federal Government might be seen to have essentially set the process free and adrift, subject to the winds and currents of public, community and business influence and support. However, closer examination reveals that the processes government hoped to legislate prior to Corroboree 2000, are still in place. In other words government seeks to legitimate Reconciliation Australia, a foundation of appointees as the locus of negotiation between the state and Aboriginal peoples, sideling the statutory authority of elected officials represented by ATSIC.

17.10.6 The Game In A New Dress

Newer material provided by Reconciliation Australia clearly evidences the incorporation of the main points of the agreement process outlined above as central to its activity. Indeed 6 points became the recommendations of the Council of Reconciliation’s final report. Again the approach is one of applying an interpretation from within a framework of Critical Race Theory.

TABLE 17:3 Final Recommendations Of The Council Of Reconciliation

<table>
<thead>
<tr>
<th>Official Text</th>
<th>Critique</th>
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<tr>
<td>1. The Council of Australian Governments (COAG) agree to implement and monitor</td>
<td>In other words, the very accommodation identified as the potentially limited outcome of negotiations under CERD, (see previous chapter) come into effect. Cultural rights are negated while government maintains it is committed to ‘practical reconciliation’ pursuing ‘programs to address disadvantage’ instead. These in turn become the defacto means by which Indigenous leaders are said to have their aspirations met. No doubt these programs will again comply with the dominant’s indigeneity discourse, which seeks to re-structure Indigenous identity, and as</td>
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<td>a national framework whereby all governments and the Aboriginal and Torres</td>
<td></td>
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<tr>
<td>Strait Islander Commission (ATSIC) work to overcome Aboriginal and Torres</td>
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<tr>
<td>Strait Islander peoples disadvantage through setting program performance</td>
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</tr>
<tr>
<td>benchmarks that are measurable (including timelines), are agreed in</td>
<td></td>
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<tr>
<td>partnership with Aboriginal and Torres Strait Islander peoples and</td>
<td></td>
</tr>
<tr>
<td>communities, and are publicly reported.</td>
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</table>
such Eurocentric methodologies of statistical analysis, and economic return on investment will apply. Presumably, all other forms of assessment, including community cultural indicators created by Indigenous peoples and utilized elsewhere in the world are negated.

| 2. All parliaments and local governments pass formal motions of support for the Australian Declaration Towards Reconciliation and the Roadmap for Reconciliation, enshrine their basic principals in appropriate legislation, and determine how their key recommendations can best be implemented in their jurisdictions. | All levels of government commit themselves to this process and the values by which it operates such that any other approaches are negated |

| 3. The Commonwealth Parliament prepare legislation for a referendum which seeks to | Again, Indigenous rights are the subject of referendum. The Constitutional change requiring government to make laws for the ‘benefit’ of Aboriginal peoples has not been included, rather they will simply be recognised as the first people of Australia |

- Recognize Aboriginal and Torres Strait Islander peoples as the first peoples of Australia in a new preamble to the Constitution; and
- Remove section 25 of the Constitution and introduce a new section making it unlawful to adversely discriminate against any people on the grounds of race.

| 4. Recognising that the formal reconciliation process over the last decade has achieved much and has helped bring Australians together, all levels of government, non-government, business, peak bodies, communities and individuals commit themselves to continuing the process and sustaining it by: | -now everybody is locked into the Commonwealth initiative, such that they are not required to move forward faster, or examine other approaches which perhaps genuinely address the real issues and concerns of Aboriginal peoples |

- Affirming the Australian Declaration Towards Reconciliation and actioning the Roadmap for Reconciliation;
- Providing resources for reconciliation activities and involving Aboriginal and Torres Strait Islander peoples in their work; | -roles and jobs being provided for a few Aboriginals. Who defines reconciliation activities is not specified. Presumably, this may include new garden programs,
5. Each government and parliament:

- Recognize that this land and its waters were settled as colonies without treaty or consent and that to advance reconciliation it would be most desirable if there were agreements and treaties; and

- Negotiate a process through which this might be achieved that protects the political, legal, cultural and economic position of Aboriginal and Torres Strait Islander peoples

- The potential for Reconciliation Australia to be the negotiating locus of treaties.

- In other words, all government has to do is negotiate to protect and fund programs said to do this, rather than genuinely provide Indigenous peoples with these rights.

6. The Commonwealth Parliament enact legislation (for which the Council has provided a draft in this report) to put in place a process which will unite all Australians by way of an agreement, or treaty, through which unresolved issues of reconciliation can be resolved.

Now having got all sectors and all levels of government involved, and re-positioned Reconciliation Australia as the de-facto treaty negotiators, legislate the whole process to lock it in as the legitimated negotiation.

17.10.7 All Of Government

The Council of Reconciliations final points were also incorporated and considered when framing the commitment various levels of government around Australia would make to reconciliation. The limited criteria which the Council of Australian Governments (COAG) signed off on in November 2000, also evidences official perspectives regarding
Aboriginal peoples. Again the central aim appears to be to avoid any genuine discussion of rights. Instead the focus is to neutralize culture and skew consideration towards an in-systemic prescription which defines the nature of social disadvantage, and to determine appropriate programs and assists economic opportunity. Nowhere is there any acknowledgment of the Recommendations made by the Royal Commission into deaths in custody, which clearly articulated lack of rights as the main contributor to the maladies and disfunctionalism lived by Aboriginal peoples. A Communiqué from the Department of the Prime Minister and Cabinet, dated 3 November 2000, clearly sets out COAG’s limited consideration of Aboriginal peoples.

### TABLE 17:4 Extracts Of Communiqué From Prime Minister And Cabinets Office Detailing Agreed Points And Commitment To Indigenous Peoples By Council Of Australian Governments.

<table>
<thead>
<tr>
<th>Investing in community leadership initiatives</th>
<th>more social dismantling if exterior interests elevate individuals to the detriment of internally recognized and culturally consistent authority. A newly legitimated representational network extending into community is created silencing other voices.</th>
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<tr>
<td>Reviewing and re-engineering programs and services to ensure they deliver practical measures that support families, children and young peoples. In particular, governments agreed to look at measures for tackling family violence, drug and alcohol dependency and other symptoms of community dysfunction; and</td>
<td>programs are streamlined, such that newer people and approaches which more closely accord with integrationist approaches can be implemented. Communities find that workers who have genuine knowledge of community and know what would work, but who have continually been unable to achieve outcomes because there has never been any real level of funding are sidelined, it being claimed they failed. Community, again finds itself the subject of a new wave of 'experts', governmentally contracted specialists, who think their programs (Eurocentric) will address malaise. It might be noted that both Canada and New Zealand, who have already gone through this process have now recognized that the most successful</td>
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Drawing on the lessons of the mixed success of substantial past efforts to address Indigenous disadvantage, the Council (COAG) committed itself to an approach based on partnership and shared responsibility with Indigenous communities, program flexibility and coordination between government agencies, with a focus on local communities and outcomes. It agreed priority action on three areas:
programs are those which are culturally devised and implemented by Elders. Canada spends some $360+ million on Indigenous programs. These include cultural programs designed by Elders which address ‘learnt’ abusive, violent, and self-destructive behaviour within community.

- Forging greater links between business sector and Indigenous communities to help promote economic independence.

Training programs for Aboriginal peoples, and financial incentives to companies to employ them. There is no reason to believe that this round of opportunities will differ from those already experienced by Aboriginal peoples. Many such programs have been implemented around Australia, the outcomes of which has often been either a) their employment/traineeship comes to an end when the funding runs out. or b) funding runs out before they complete their training and receive their diploma or certificate providing them with a credential. It should again be noted that all that is being offered are complementary roles. Recognition of rights would provide Indigenous peoples with their own resources, and thus an independent rather then dependant economic future.

The Council agreed to take a leading role in driving the necessary changes and will periodically review progress under these agreements. The first review will be in twelve months. Where they have not already done so, Ministerial Councils will develop action plans, performance reporting strategies and benchmarks.

Evidence that COAG sees itself as the driving force designing development action plans and its own reporting systems. A top down, in-centrism systemic approach devoid of any Aboriginal voice or consideration, and not required to provide for it.

In summary, the Reconciliation process is again the mechanism through which government is seeking to contain the Indigenous agenda. In its newest form, Reconciliation Australia is being used to re-orient discussion towards addressing Aboriginal disadvantage as economic development (self-sufficiency) determined by government, while simultaneously negating any need to provide Indigenous peoples their rights. Hindering this containment however is the leadership of ATSIC, which is calling for a Treaty.
17.10.8 Cynical Politics

Reconciliation might be viewed as yet another official process negating any genuine engagement with the need to provide Indigenous peoples their rights or implement the recommendations of the Royal Commission into deaths in Custody. The strategy also splits the Indigenous agenda into two different discussions; the first being promoted by government while the second is neutralized. On the one hand, Government characterizes the inter-relationship as one of ‘social justice’ and the need to address ‘disadvantage’, a project euphemistically referred to as ‘practical reconciliation’, while on the other, the hard political need to undertake systemic adjustment is contained. The tragedy of this approach is that it again only provides for a Eurocentric outcome. Official process is designed to deny Indigenous peoples their rights while maintaining negativity for cultural identity and values. This continues a predicament which will perpetuate the ‘sickness’ lived in community and by peoples.

Government’s leadership runs contrary to the aspirations of millions of ordinary citizens who desire genuine reconciliation and for whom the process is of mind and spirit. The denial of Indigenous peoples’ inter-generational experience resulting from going relationship with Europeans, denies the aggrieved the possibility of forgiveness. As Archbishop Desmond Tutu explained of the reconciliation processes he headed for South Africa, without forgiveness there is no future together. Cynical politics denies both the goodwill and commitment of the many who have personally begun a journey of Reconciliation. Government processes diminish those working with Reconciliation Australia and ATSIC. The hope is that ordinary citizens will continue to carry forward a healing of this continent and all its people.

Perhaps, the last voice on this matter should be that of Dr. William Jonas. From his vantage point as the Aboriginal and Torres Strait Islander Social Justice Commissioner he has a clear view on the current state of play within Australia, regarding both Reconciliation and Native Title. In his annual Social Justice Report 2001, Dr. Jonas expresses serious concern about the federal government’s commitment to reconciliation.
This report and a second one reviewing native title\textsuperscript{12} were both tabled in the federal parliament on May 15, 2002. Dr Jonas made the following comment:

‘It is difficult to identify any public material that demonstrates that the federal government has engaged in a good faith process to consider the Council for Aboriginal Reconciliation’s (CAR) recommendations by reviewing current programs and policies and consulting and negotiating with Indigenous people about ways to improve them.’

‘Not only has the federal government not explicitly responded to the CAR document, it has deliberately sought to shut down debate and avoid any engagement about the documents by using its stated commitment to practical reconciliation.’

Dr. Jonas has called for a Senate inquiry into the reconciliation process and in particular into the documents produced by the CAR and the recommendations of the Social Justice Report 2001. Amongst the concerns to be considered are:- the progress made in the 10 years since the Royal Commission into Aboriginal Deaths in Custody made its final report and recommendations; issues of mutual obligation and welfare reform; Indigenous governance and capacity building in communities; diversionary schemes for juveniles in the Northern Territory and Western Australia; and Mandatory sentencing in Western Australia.

In the Native Title Report 2001, Dr. Jonas expresses concern at the failure of the Native Title Act to deliver lasting outcomes for Indigenous peoples.

‘As an embodiment of social relations, the native title system places Indigenous interests at a lower level than non-Indigenous interests, every time. As an embodiment of economic relations, the native title system removes Indigenous people’s effective control over their only asset: exclusive rights to land and sea
country. And as an embodiment of political relations, native title fails to recognize traditional decision-making structures.¹³

Perhaps the world will soon come to realise Australia, through its Native Title Act and its Reconciliation mechanism has created the means of ensuring Indigenous peoples’ rights potentially remain ‘unfinished business’ in perpetuity. In this light, the Australian federal government has achieved what South Africa’s Apartheid delivered; a second and lesser class of people, who are and will continue to be, denied their human dignity.

As has been illustrated in this case study of Australia, dialogue has been replaced by narrow and deliberately cynical political processes. Emanating from historic and hostile relationship these processes are still characterised by dated thinking and conditioning of settler narratives about who ‘they’ are. Further more it was shown that these narratives inherently inform official demeanour and attitudes. ‘Determined denialism’ of everything and anything, might best sum up an official stance. Refusing genuine dialogue, and acknowledgement of Aboriginal experiences of co-existence (since colonization), evidences a fearful position of a dominant society whose achillis heel is the manner in which Aboriginal peoples were dispossessed and their continual relegation to the problematic and the margins of this continents future.

While Anglo-centric legalism and politics characterises all dialogue and exchange, (reflecting dominant values and thinking), the central issue on which legitimacy of any claim to territory/land/country hinges is ones ‘identity’ and capacity to show an unbroken continuity of relationship to country. As the Yorta Yorta case illustrated however, there was also another layer within official consideration which has to do with notions of authenticity. An authenticity again defined by the dominant. As claimants suggested, this resulted in a judgement that only a stereotypic Aboriginal retains connection; one that carries a spear and or throws a boomerang. A traditional identity which still exists within this continent, but which other sectors of the Aboriginal world have as a consequence of often brutal settler expansion, particularly on the East Coast, had to forego in order to survive. This is the adaptation any living system or entity will
undertake to retain life, but as has been continually illustrated, it does not mean that the identity has been relinquished. Indeed where this entire thesis is an examination of the inter-play between relationship, identity and authority (as power and or knowledge by which one acts), it is identity which remains central to confusion. Confusion, both as lived identity by those who are Indigenous, as well as identity that is diminished as a consequence of its historic relationship to dominance. These parameters are further examined in the next case study which is both contextualised and grounded in New Zealand.

Here Identity and authenticity are again central to understanding relationship. Indeed as was explained in the beginning of this thesis, identity as a track, both brings together that which is different and that which is the same within the political landscapes that this thesis journeys. As the positioning of CANZ countries tends to be that of one bloc within international contexts, there is a requirement that all three take a somewhat consistent approach in dealing with their own internal minorities of Indigenous peoples. New Zealand, where the Maori represent some 13-15% of the population, provides the contexting within which to further examine the discourse and dialogue centred on ‘identity’. A key which not only illuminates the historicism of Anglo-centrism within national landscapes, but similarly presents the newer framework within which to comprehend the challenge global integration represents for all peoples.

ADDENDUM: in March/April 2004, both major political parties stated their policy was to dismantle ATSIC. The Prime Minister Mr. Howard, maintaining that the experiment in self representation had proved a failure, announced his government would now ‘mainstream’ all programs. In response ATSIC Commissioners pointed out that the areas of failure they were being blamed for, namely Aboriginal health and education had never been their responsibility. Instead government had retained control denying Indigenous peoples the right to determine these programs and services for themselves. They also argued that government’s decision to replace ATSIC with an advisory body of appointed Aboriginal leaders, was a step back into the dark ages. A leading Aboriginal
spokes person and one time head of the former Reconciliation Council, who described the advisory boards as a waste of space, predicted the Federal government would have difficulty finding anyone to serve on its new board.

‘Some people will find the old trick of being rubbed on the head and 10 cents in the hand and roll the eyes for the master on an advisory board attractive... but he continued... most of the senior people who have had a long track record of doing business with governments as well as departments and trying to handle the rights of indigenous people in this country won’t go anywhere near an advisory board.’

Others argued that the mainstreaming of programming was bound to fail, citing education and health which had always been government’s responsibility, and for which statistics illustrating infant mortality and adult morbidity and the rate at which children fail to complete schooling proved the point. White experts it was argued, would not have the answers nor understand the problems.

Other matters raised but not more fully explored involve alleged fraud within the new ATSIS agency created by the Howard government to administer the finances of Aboriginal programs but for which ATSIC was now being blamed and said to be responsible. The Federal Opposition said its policy will be to retain regional representative authorities.

In short, it might be said that Aboriginal peoples within Australia are again being subjected to a new version of the same historic game which seeks to deny history and the nature of settler identity within this continent which still emanates from and operates within an ‘us and them’ dichotomy.

There is also a further point to be made regarding representation. Where ATSIC might originally have been described as a ‘shadow box’ the recent introduction of elections for official positions within the organization by Indigenous peoples within community had seen agenda and articulation begin to more clearly reflect Indigenous perspectives.
and priorities. In effect, just as Aboriginal peoples began to utilise the entity to express their own agenda, having grasped the workings of the statutory body and its potential effectiveness (having been required to make this adaptation to a Eurocentrically constructed form of representation) government moved to eliminate it.

This again raises the issue of identity and as a consideration resonates the thread of ‘cultural revitalization’ being drawn through this thesis as a politic of resistance to dominant strategies and methodologies which continue to contain and diminish Indigenous peoples. The next case study will also examine this consideration as part of its analysis of identity and culture.
Chapter 17: Australia

3 Many claim the true figure is actually closer to 500 thousand people. Some have suggested that in total 1 million people have marched for reconciliation.
5 Ibid., p.112
7 Name withheld
8 Perhaps it is again worth mentioning the argument against a politic which is exclusively reliant on the outcome of official processes in the UN concerning the Draft Declaration on Indigenous peoples Rights. Kingsbury points out that on its own, the UN Draft Declaration, in its present stage of elaboration does not have the primary effect of establishing ‘Indigenous peoples’ as a special category of right holder enjoying a vast panoply of rights not held by others… “…Vines that Won’t Bind…” Indigenous Peoples in Asia. Proceedings of a Conference held in Chiang Mai, Thailand, 1995. IWGIA Document 80, Working Group for Indigenous Affairs, IWGIA, Copenhagen, 1996, p.61
10 An official, name withheld.
11 Additional detail regarding the Council’s final report, the ‘roadmap’, and the ‘draft legislation’ mentioned in item 6 can be obtained from the Council for Aboriginal Reconciliation’s website at: www.reconciliation.org.au
12 Native Title Report 2001, HREOC.
13 Text taken from an article on Dr. William Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner, and the two reports published by the Human Rights and Equal Opportunities Commission called ‘Whatever happened to reconciliation’ in the National Journal of the United Nations Association of Australia. UNITY, May 31, No. 299. UNITY Publications can be accessed through www.unaa.org.au
Chapter 18: New Zealand: Normative Theory And Practice

Central to the confusion regarding an accommodation of Indigenous peoples is the issue of identity, and the values and thinking of the culture from within which identity emanates. New Zealand provides the context in which to analyse a newer discourse on identity. Unlike Australia, which does not recognize Aborigines as peoples, and Canada which similarly views native peoples as a society or community of people (note the lack of an ‘s’) 1 New Zealand has historically recognized ‘Iwi’ (Tribes), and prioritised their consideration within State processes. With the CANZ bloc now proposing the newer political discourse of ‘indigeneity’, which advocates a ‘re-structuring of Indigenous identity’, theoretical responses supportive of these processes are sought in order that consistency is achieved in all three nation-states.

As has previously been shown, western identity theory and its inherent tension of ‘difference’, assists in essentialising ‘dated stereotypes’. Political and judicial processes embedded in the colonial project of ‘inclusion and exclusion’ still hinge on a dominantly defined notion of ‘authenticity’. The advent of ‘indigeneity’ as a political discourse, said to express Indigenous self articulation, now requires that western ‘identity theory’ address ‘contemporary’ identities. Argument that achieves theoretical inclusion would further legitimate the political accommodation of ‘socio-political communities’.

New Zealand provides the context within which to explore these ideas in more detail. The Treaty of Waitangi frames domestic dialogue. Signed with specific peoples, successive governments have legitimated ‘Iwi’ (tribes) in nation-state processes. As a consequence of a High Court decision, this situation may change. *Indigenists* maintain the Treaty is an international agreement and as such, evidence of their sovereignty. With Maori language being the one language common to all Indigenous peoples in New Zealand, culture and protocols have been maintained. Representing some 13% of the total population, 2 New Zealand has perhaps been required to undertake greater consideration of Indigenous ‘cultural identity’ through the centuries, than Australia or Canada where Aboriginal people represent roughly 2%. Negotiation however remains embedded in dominantly owned judicial and political processes.
With self determination being a right of peoples under international law, as was previously shown indigeneity as an ‘ethno-political’ discourse is said to provide internal ‘self governance’ within Canada, ‘self-sufficiency’ within Australia and in New Zealand a bi-cultural model of people to peoples relationship and governance. Ranginui Walker’s case study however evidenced that ‘tikanga rua’, or bi-cultural governance has been frustrated. Successive governments have remained opposed and unwilling to alter fundamental constitutional arrangements\(^3\) (see Vol. II, Chapter 14, p.350).

In my view ‘indigeneity’ as a newer political discourse now seeks to provide ‘another’ solution: an accommodation which potentially legitimates a diminishment of extant cultural identity where in nation state processes will re-structure identity. Levels of politicisation and cohesion within Iwi and between Iwi and other Maori will determine outcomes and the shape of administrative policy or partnership in which any ensuing accommodation will result.

In order to address the issue of identity, the following section will examine the divergence in voice and the nature of dialogue. This chapter seeks to draw together the various themes pertaining to identity, which have already been canvassed, and to build on these providing additional insight. Central to understanding are the countervailing perspectives of first world and Third World Indigenous peoples which occur as a direct consequence of the separate arenas within which they tend to operate. While this geopolitical differentiation serves to broadly explain divergence between their project, cultural politics, as primary identity is also part of First World peoples’ dialogue. The dynamic between indigeneity and that of indigenists is again central to debate (see previous chapter on indigeneity).

The diversity of identity encountered and the confusion experienced by many seeking to legitimate their ‘identity’ requires additional levels of consideration. While official figures (UN) indicate that Indigenous peoples constitute only 4% of the Earth’s populations, they simultaneously represent 95% of cultural diversity (and by extension biodiversity).\(^4\) Figures also show that 2/3rds of Indigenous peoples live in Asia.\(^5\) When geographic, historic and political differences are added, any discussion of identity cannot hope to provide definitive insight. And yet, it is the commonality of experience and of
expression emanating from these peoples that serves to highlight a consistent pattern of inter-relationship with the dominant. Consequently, this section will seek to ground the dialogue on ‘Indigenous identity’, from within the First World and address the discourse which informs the position taken by these dominant nation states.

Given the concern that outcomes within the CANZ Bloc might be used and extrapolated around the globe, examination of newer articulation emanating from this grouping of nation states has been the basis of analysis. Various lenses serve to recontextualise internal process and dialogue within the CANZ bloc.

Where international events and conventions often serve to precipitate a State position vis their domestic dialogue with Indigenous peoples, political identity theory emanating from the globalising project provides a first level of consideration. Its relevance is also derived from the global nature of the Indigenous movement.

A second lens will amplify consideration with cultural perspective, given self-articulation as politic emanates from and expresses ones culture and its values. The third level of analysis borrows from psychology.

All three approaches serve to recontextualise the ‘instrumental’ dialogue that characterizes and informs official processes that define relationship. The chapter will then move on and examine events being played out juridically and politically within Aotearoa.

Seeking to ground engagement in the specifics of New Zealand as a means of unravelling and highlighting the arguments contained within instrumental discourse and the points at which cultural inconsistencies arise, the voice of Manuhuia Barcham provides the canvas. Manuhuia Barcham’s contribution is entitled ‘(De)Constructing the Politics of Indigeneity’. It both distils the arguments and points to the Eurocentrism of the exercise and context. My engagement with Manuhuia Barcham’s material is not because I disagree with his view that Eurocentric discourse distorts and is limited in its capacity to address an Indigenous’ worldview. Rather, the aim is to re-contextualise his material, pointing out that international standards already address many of the issues
arising from imposed Eurocentric theory and practice, and that current argument might only serve to diminish Indigenous peoples. While the contexting may be New Zealand, this chapter also reflects the nature of an emerging dominant dialogue and politic across the English speaking world. As previously stated, the case studies might be seen as one story.

I preface the following material with a degree of reflexiveness. My engagement, which seeks to provide insight on a divergence in Indigenous articulation can in some ways be seen as a consistently Eurocentric exercise in that it again describes Indigenous peoples, is presented authoritatively, and by identifying the locus of divergent resonances within their movement might equally be viewed as contributing to ‘separation’. I acknowledge that within *indigenist* articulation this project might not necessarily be undertaken because identity and ‘connectivity’ with cultural knowledge, philosophy and worldview, or its loss, is known to have been impacted on by colonization. *Indigenist* perspectives and cultural values are of inclusiveness.

*Indigenists* know that all humans are essentially the same because they share the same shape, and that it is only beneficiaries of structured dominance who promote and need cling to a notion that some humanity is less human and maintain their system need not be adjusted to provide all with justice and dignity. The world’s majority are peoples who operate in separate and divergent cultural realms to that of First Worlders. De-colonization, insights on historic relationship and living systems collapse have all served to crystallize thinking at the global level. Third world and cultural peoples no longer subscribe to a historic presumption that they need relinquish ‘who they are’ in order to join or benefit from an integrating world. The counter dialogue at international levels, increasingly advocates ‘cultural locality’ as a practical achievable means of providing both sustainability and stability. It seeks an alternative to the dominantly informed paradigm and solution of capitalist militarism which reasserts and results in an even smaller grouping of humanity benefiting from an ‘us and (growing) them’ dichotomy; or a ‘U.S. and them dichotomy’. The conscientisation of global reform articulated in Johannesburg 2002 demands adjustment in the operation of man’s unsustainable globalising system. It requires a shift from exploitative, competitive, exclusive and
irresponsible (some would argue criminal) dominant ‘self interest’, to that of equitable and just inclusiveness expressed as ‘we the peoples in the UN’s charter. This project requires the political legitimation of ‘cultural diversity’ of both peoples and species.

As this thesis has set out to support the instructive international politic of Indigenists who have spearheaded global conscientisation, deconstructing confused dialogue regarding this agenda has at some level necessitated identification of the divergence of voice within their movement. Or to provide a musical analogy, a need to separate out and individually resonate the notes within the movements chord if only to address western modes of thinking and understanding. The exercise has been to examine the various tunes being played in and around the notion of ‘identity’ as a mean of illustrating the interplay between identity as self expression and that which is an ascription, and the pattern which emerges.

The dialogue within New Zealand reflects the same problématique addressed throughout this thesis. Official approaches remain embedded in colonial historicism where in the methodology of denying ‘rights’ has depended on Eurocentric theoretical frameworks consistent with an ‘us and them’ dichotomy. In effect identity theory predicated on ‘difference’ has to date served to ‘exclude’ and diminish original peoples. This historic reality, wherein positivist (and often multiple) definition relegated those it defined to the margins, has been and remains central to state power (see Vol.2. Chapter 11, p.227). The debate over ‘authenticity’ and its utility emanates from these processes.

18.1 An Overview Of Indigenous Identity

Within New Zealand, the existence of a Treaty has served to preference ‘prior identity’ (of Iwi/tribes) over ‘contemporary’ identity. The later group includes those who for survival have undertaken the greatest degree of adaptation, and for the most part constitute communities of urban-based Maori. This is in contrast to Canada, where the converse might be said to have occurred. Historic constitutional recognition of Métis (albeit a separate people to Indigenous peoples) and their dominant role as policy formulators, advisors and governmental officials has essentialised a ‘politic’ of the ‘contemporary’. This has often served to diminish the cultural and inherent identity of
native peoples whether these are peoples who have a historic Treaty, or those living within regions of Canada not covered by treaty. In Australia, identity and politics are even more diminished. National frameworks have engendered judicial and political processes that deny rights to any version of Indigenous identity, while Aboriginal organizations and departments continue integrative processes determined by dominant interests (previous case study, p.423). With the CANZ bloc now seeking to replicate the one normative standard of ‘indigeneity’, legislative amendment and ‘settlement’ is being implemented to achieve a consistent accommodation of ‘contemporary socio-political people’. For New Zealand this means shifting legitimation of Maori representation from ‘Iwi’ to ‘another’ newly defined category.

In Australia, where culturally informed identity as a ‘separate’ identity remains extant within all historic communities, the national debate is being played out with reference to the situation found within the island state of Tasmania. Against a backdrop of horrendous historic relationship, media and officials have played an instrumental role is characterizing the debate. Identity is presented as a conflict between historic community of adaptive identity and a newer grouping comprised of individuals who ‘recently re-discovered and claim’ Aboriginality. Consisting of self styled Elders and individuals, this newest grouping have in the last decade been provided with a level of legitimacy as the recipients of government funding. Additionally it is often individuals from within this ‘re-discovered’ grouping, who have become the profiled voice on Aboriginal affairs for the state. This newer emergent grouping is separate from ‘historic community’.

In Tasmania, historic community was forced to adapt but is comprised of those who have inherited and continued the struggle for survival. These communities were directly involved in the Aboriginal movements earliest land rights campaigns of the 1970s and 80s. As one long time Aboriginal activist commented, ‘those people who now claim to be Aboriginal, are the same ones who were ‘white’ when I went to school with them, the very ones who looked down on me, and called me names’ ‘Now they are Aboriginal and they get the jobs and are writing policy which effects me.’ This experience is not uncommon across the CANZ bloc. Individuals of ‘recently re-discovered identity’ are often the ones asked to speak on Aboriginal matters.
For historic peoples of greatest concern is the assumption by some academics and the public in general that these individuals know ‘culture’ or as some Australian Aboriginal peoples refer to it ‘kulta’. Their articulation on Aboriginal spirituality, philosophy and science creates confusion. The concern stems from knowledge that often what is being shared is not only erroneous but its uptake has led in instances to ‘sick’ and ‘inappropriate’ beliefs and/or practices within ‘new ageism’ as a version of ceremony. Academia has also on occasion been responsible for writing up ‘inconsistent’ ideas and spreading them. Sometimes scientist, unaware of the entire contexting required to carry a knowledge, have acted upon a part understanding also setting up sickness.

Political concern centres on the deliberate utility this newly self discovered group provides any government, which seek to play the race card. Skewing public debate filtered through an ‘authenticity’ lens serves to negate the legitimacy of historic community, and by omission, that of traditional communities (those which the wider public where taught had died out). This in turn again fuels an impression that all Indigenous identity is suspect. In other words where the CANZ bloc dialogue, as a newer normative politic is concerned with ‘contemporary identity’ as an expression of historic community of adaptation, and of community which remains culturally coherent and traditionally informed through language (communities which exist on the Australian continent), Australia’s debate has been shifted to centring on a newer grouping of self-expressed Aboriginality as a recent re-discovery.

Simultaneously it needs to be also acknowledged that ‘re-vitalization of culture’ as an in-peoples dialogue also exists and has profound significance for those historic groupings who to date have been marginalised because of their Aboriginality. Australia’s dialogue is shaped by a dominant aim to deny ‘cultural’ identity in order that a consistent accommodation of ‘socio-political communities’ might be achieved. This dialogue is keyed to other nationalist objectives, which at the time of writing consists of structural, political and cultural adjustment to accommodate the global vision elaborated by militarist neo-capital unilateralism. The theoretical adjustment in dominant ‘identity discourse’ as a potentially global approach is in my analysis being provided from within New Zealand.
In New Zealand, as elsewhere, a diversity of identities exist, albeit that a strong cultural base and language informs this dialogue. Under international law, and the interconnective framework elaborate by Indigenous peoples, identity is ‘self identification’ and ‘group acceptance’. Applying it to New Zealand we find that urban groups identify as Maori and maintain theirs is a separate identity from wider society. Group acceptance or lack thereof has lead to dynamics within the Maori world. The focus of this dynamic as played out in the court is the control of Treaty assets.

Writing from within the New Zealand context, Manuhuia Barcham confirms this view. The current dynamic framed by the Waitangi Treaty hinges on ‘the allocation of pre-treaty assets and over the validity of emergent Indigenous organizational forms’, Barcham unravels the impetus and reasons for internal conflict.

‘The tensions leading to the emergence of these struggles can be traced to fundamental disagreements over issues of identity and authenticity, including the questioning of who and what constitutes an “authentic” Indigenous subject, and debate over the forms and configuration that “legitimate” Indigenous institutions can take.’

‘These problems of “Indigenous identity” are in turn, symptomatic of a more fundamental deficiency in current theories and praxis of Indigenous rights; the recognition of difference only in terms of the maintenance of prior identity.’

From these statements it is clear that Manuhuia’s treatise centres on key elements, which emanate from historic relationship between colonizers and the colonized. These elements centre domestic dialogue as a conflicted negotiation over ‘productive and reproductive institutions’ in Eurocentric terms. As a dominant dialogue it has political consequences, which again impact on the cultural landscape in which Maori live. Instrumentally the states dialogue contains and diminishes cultural consideration. The elements identified by Barcham and the nature of containment might be understood as follows:
• Conflict over pre-treaty assets and their administration and use. (A state/dominant systems dialogue)

• Questions over the legitimacy of representative institutional forms of Maori. (A dominantly informed dialogue which re-narrates in-Maori processes serving to further conflict internal dynamics).

• A Treaty and juridical approaches that legitimate ‘prior identity’ negating ‘contemporary identity’. (Legitimisation of the states’ dialogue by structurally containing it at the domestic level and situating it in the judiciary)

• A domestic dialogue defined by Eurocentric notions of ‘authenticity’. (Containment of the dialogue to Eurocentric i.e. monocultural discourse and theory)

This state dialogue is separate to the dialogue being conducted by Maori peoples themselves. Asymmetric power imbalance, however, requires that cultural dialogue ‘within Maori’ remain cognoscente of the nature of the dominants project and its impact on lived landscape. Providing additional insight on cultural processes, Linda Tuhiwai Smith writes: ‘the pressure internally (i.e. within Maori) is frequently manifested through struggles over leadership, over what counts as ‘traditional’, and over which interests within the community are being privileged by particular deals and settlements.’

This scenario serves to illustrate the centrality of identity theory and the utility of Eurocentric definition, which has remained ‘fixed in time’. Authenticity as discourse now serves to re-narrate an ‘in-Maori’ dialogue about what ‘counts as traditional’. Where the ‘in-Maori’ dialogue is keyed to distinct language and cultural philosophy, the state’s dialogue and its process remains coupled to Eurocentric theory. Official definition, often informed by historic anthropological view remains locked into dated definition as to whom Maori are. The polarities of these dynamics now serve to illustrate the problem ‘contemporary’ identities pose.

Manuhuia explains that where official recognition has to date essentialised a notion of ‘prior’ identity, organizations which reflect ‘neo-traditional values’ are ‘prioritised’ and
importantly have ‘come to constitute the definitional means by which Maori are identified as “authentically” Indigenous.’\(^{16}\) He writes:

‘The inability of current political and juridical frameworks to recognize the legitimacy of difference not predicated upon the maintenance of a prior identity (Patton 1995a: 1996b) has meant that the implementation of official frameworks for the recognition of Indigenous rights in New Zealand has led to the exclusion and delegitimisation of associated forms of Maori organization’.\(^{17}\)

In my view much of the academic writing currently being published in English emanates from and seeks to address an accommodation of contemporary Indigenous groupings in Eurocentric terms. Augie Fleras refers to these communities as:

‘related people who define themselves as the rightful occupants of a historical homeland with an imagined sense of ‘peoplehood’, who reflect a division of the world into moral communities of like minded individuals with a distinctive identity and culture, emotionally charged membership, and a passionate attachment to a homeland as the site of pre-existing entitlement.’\(^{18}\)

While this definition seeks to address groupings of currently ‘unspecified identity’, it neglects the majority of Indigenous and tribal peoples globally who maintain cultural identity of peoples (Vol II, Chapters 12).

Paul Chartrand also raised the issue of historicism and contemporism. He promoted ‘contemporary socio-political communities’ as the basis of Indigenous identity, negating both the lived existence of the majority of Native peoples in Canada, and the findings of the UN Treaty study which evidenced the continued socio-cultural life of the Cree and plains peoples.

The UN report clearly found that the Cree ‘were not the survivors of a socio-cultural life which has long disappeared. On the contrary…most of it, if not all features… are alive and well, although appearing in a completely different historical context.’\(^{19}\) This finding evidences the inability of Eurocentrism to engage with the specifics of continued and extant Indigenous identity. In effect what is continually being omitted from all
levels of engagement and dialogue within the CANZ bloc is the issue of divergent cultural contexts from within which identity and thus understanding is derived. It also illuminates a lack of understanding of *indigenist* identity and the impetus of their global movement. Moreover, current dialogue remains embedded in and of a historically determined continuity in thinking, limited to and contained at a domestic level. Perhaps newer identity discourse consistent with international dialogue might provide additional insight.

### 18.2 Globalisation And Network Identities

As all Indigenous peoples within the CANZ Bloc have lived with hundreds of years of governmental and institutional intervention at every level of ones daily existence, and most research focuses on their ‘difference’ (from us), and problematises their ‘being’, Manuel Castells’ study of identity provides additional insight. In a globalising world, his perceptiveness and hypothesis formulated to deal with network societies serves to explain the processes to which Indigenous peoples sense of identity have been subjected and the shifts which have accompanied the growth of their international movement and networks. In Castells’ analysis processes of social change are accelerated by globalisation. As he explains:

> ‘*subjects, if and when constructed, are not built any longer on the basis of civil societies, that are in the process of disintegration, but as prolongation of communal resistance.*’ ‘This is because the network society is based on the systemic disjunction between the local and the global for most individuals and social groups... and by the separation in different time-space frames between power and experience.’

Castells commences his treatise by arguing that ‘identities can... originate from dominant institutions’, ‘when and if the social actors internalise them and construct meaning around their internalisation.’ He further suggests that while ‘some self identification can coincide with social roles’, ‘identities are a stronger source of meaning than roles...’ ‘In simple terms, identities organize the meaning while roles organize the functions.’ In Castells’ treaty, meaning is defined as ‘the symbolic identification by a
social actor of the purpose of his/her action’. 24 He also proposes that ‘for most social actors, meaning is organized around a primary identity (that is an identity which frames the others), that is self sustaining across time and space.’ 25 He writes:

‘It is easy to agree on the fact that, from a sociological perspective all identities are constructed. The real issue is how, from what, by whom and for what. The construction of identities uses building materials from history, from geography, from biology, from productive and reproductive institutions, from collective memory and from personal fantasies, from power apparatuses and religious revelations. But individuals, social groups and societies process all these materials and rearrange their meaning, according to social determinations and cultural projects that are rooted in their social structure, and in their space/time framework. I propose, as a hypothesis that, in general terms, who constructs collective identity, and for what, largely determines the symbolic context of this identity, and its meaning for those identifying with it or placing themselves outside of it.’ 26

Castells further proposes that as ‘social construction of identity always takes place in a context marked by power relations’ 27 three forms of identity building can be distinguished. These he calls Legitimising identity, Resistance identity and Project identity. Castells explains that identity which starts as ‘resistance identity’ may lead to ‘project identity’ which in turn can become ‘legitimised identity’ when the ‘project’ becomes dominant and institutionalised. Feminism is the example he initially uses to illustrate this progression. 28 Castells explains his identity building constructs in the following terms:

- ‘Legitimising identity: introduced by the dominant institutions of society to extend and rationalize their domination vis a vis social actors.’ ‘This identity generates a civil society’,… ‘as a set of organizations and institutions’ ‘as well as a series of structured and organized social actors, which reproduce, albeit sometimes in a conflicted manner, the identity that rationalizes the source of structural domination’. 29 Castells points out that it is the very ambiguity of this identity which
both ‘prolongs the dynamics of the state’, while simultaneously being ‘deeply rooted among people’, that gives legitimising identity its dual character and privileges it as the terrain of political change.\textsuperscript{30}

- ‘Resistance identity: generated by those actors that are in positions/conditions devalued and/or stigmatised by the logic of domination, thus building trenches of resistance and survival on the basis of principles different from, or opposed to, those permeating the institutions of society.’ ‘Resistance identity leads to the formation of communes or communities.’\textsuperscript{31} Castells suggests that this identity is constructed as a collective resistance to ‘unbearable oppression, usually on the basis of identities that were apparently, clearly defined by history, geography, or biology, making it easier to essentialise the boundaries of resistance.’ Summing up resistance identity Castells maintains this identity may be the most important type of identity-building within society, and that often it inverts the terms of oppression resulting in what he calls the \textit{exclusion of the excluders by the excluded}.\textsuperscript{32} The source of oppression has a direct bearing on an appreciation of Indigenous identity. Where dialogue is limited to the realms of the state, as in first world contexts, the state is the oppressor. Within Third world context the oppression comes from international globalising mechanism and institutions which in effect represent the interests of the same first world states.

- ‘Project identity: when social actors, on the basis of which ever cultural materials are available to them, build a new identity that redefines their position in society and, by so doing seek the transformation of overall social structures.’ This identity produces ‘subjects’, which he points out, are not ‘individuals’ but rather ‘the collective social actor through which individuals reach holistic meaning in their experience’.\textsuperscript{33} Importantly Castells explains that while ‘in modernity (early or late) project identity was constituted from civil society’, ‘in network societies, project identity grows from communal resistance.’\textsuperscript{34}

In a globalizing world, Castells’ hypothesis serves to illuminate the broad pattern within identity construction. Although it needs also be acknowledged that within this pattern a multiplicity of locally defined dialogues exist (as in the case of Australia illustrated
above, and the other case studies provided throughout this thesis). For the purpose of analysis, the three levels of identity construction provide important insight. Applying Castells’ theory to Indigenous peoples it can be argued that what is currently occurring within the English-speaking world is the confusion created by two divergent processes. On the one hand the State as the legitimiser continues to define in dominant terms and for its benefit who Indigenous peoples are. On the other hand is the articulation of Indigenous peoples some of whom resonate ‘resistance identity’ while others, namely Indigenists, have moved on to become ‘project identity’. Castells points out, identity is stronger than role, and as such those who have most internalised dominant precepts and thinking reside within resistance, while those who have retained cultural identity, have as a global movement become a project aimed at legitimisation.

The political discourse of indigeneity now serves as a function of state interests. It becomes an expression of the resistant or contemporary identity. While this might initially seem surprising, it must be remembered that this grouping tends to be comprised of individuals with roles within institutions and departments. Much of this identity has centred on lived activity oppositional to official policy and dominant practice. From the perspective of the State, this is the grouping with which they are most familiar. Similarly, the oppositional nature of relationship resonates with historically informed eurocentrism, hence the continual casting of Indigenous aspirations as a competitive agenda. Negotiation with this grouping often creates confusion, which serves to negate the project of cultural peoples. In a sense the grouping of ‘contemporary’ people have no specific identity, in that the system does not currently legitimate them within its structure. That is to say, they are not ‘traditional’ or ‘authentic’ in Eurocentric terms and neither are they ‘European’ or ‘ethnic’. Simultaneously this grouping as a ‘community of related and like minded people’ (Fleras’ definition) demand that the State find an accommodation for them. While this challenge is a genuine requirement on the state, its universal relevance or lack there of, needs to be continually kept in mind.

In effect what is occurring politically within the English speaking world is a preferencing of ‘unspecified identity’ to define who Indigenous peoples are, in order to
sideline the internationally legitimated voice of cultural peoples, or those who dominantly inform the Indigenous global project spearheaded by Third world peoples and groups within the first world. This second voice is an indigenist voice. It emanates from peoples who have always lived in community, and thus have no need to create one. Peoples who have retained connectivity with their inheritance of history, geography, biology, collective memory, creation stories, social structures, laws, language, knowledge, philosophy and Cosmovision. What is at stake is their ‘productive and reproductive institutions’ or in their terms, the means of survival and continuance consistent with their knowledge, values and worldview which are either under threat (Third world) or have been denied them (first world). These peoples are also, to varying degree, of a de-legitimated identity, albeit that the state often has positivist definition which classifies them in terms which diminish their rights, and institutionally designed practice (policy) which continually denies them their dignity. It might be argued that this grouping has always been of resistance identity in that genocide and oppression that began with colonisation only served to make them hang on even tighter to cultural identity. In effect cultural survival and continuance as ‘meaning’ is the primary preoccupation of Indigenists, albeit that often and particularly in the first world, negativity of identity (provided by dominant institutions) was internalised, explaining the ‘sickness’ many cultural peoples live with. As a global project indigenist activity and process is concerned with the meaningful survival of all life as a diversity of cultures.

Linda Tuhiwai Smith and James Sa’ka’j Youngblood Henderson explain the shift of cultural peoples to a project identity from within the first world. Both speak of a ‘decolonisation of the mind’ as contributing to the growth of the Indigenous movement. In light of this explanation I argue that where international law provides Indigenous peoples with legitimacy, dominant interests are currently seeking to achieve political and theoretical discourse to replace indigenist peoples own project. The impetus for such a response by the CANZ bloc can be directly attributed to Indigenous peoples own cultural processes and activities. Cultural revitalization as an internal process of peoples (not the states version) leads to ‘de-colonization of the mind’ and an amplification within which to construct identity. Cultural re-vitalization also leads to
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greater community wellbeing. Central to these processes have been those Indigenists who have served as pockets of cultural resistance and whose knowledge and worldview results in greater numbers joining the movements project.

18.3 Identity As A Cultural Project And Of The Unspecified

Perhaps the insights provided by Linda Tuhiwai Smith might best explain the divergence between indigenist articulation and those pursuing indigeneity from within First world contexts. Writing from within an integrity of Maori culture, her perspective sheds further light on much of the confusion within the CANZ bloc. Tuhiwai Smith makes a distinction between the project of ‘community’ (that which has always been there) and that of others active as either ‘separate organizations or as a small group of individuals’ whom she writes ‘became much more intent on engaging in reorganising political relations with the state.’ In her view the strength of the Indigenous movement is found in community, and emanates from its local mobilization and grass root development. ‘It is at the local level that Indigenous cultures and the cultures of resistance have been born and nurtured over generations’. The community (the one that has always been there) is the locus of cultural identity and strength. It is from within historic community that cultural revitalization as an Indigenous project emanates. Linda writes:

‘The cultural and linguistic revitalization movements have tapped into a set of cultural resources that have recentered the role of Indigenous women, of elders and of groups who have been marginalised through various colonial practices. These groups in the community were often the groups who had retained ‘traditional’ practices, had been taught by elders, were fluent in the language and had specialized knowledge pertaining to the land, the spiritual belief systems and the customary lore of the community’.

While ‘separate organizations’, and those operating as a ‘small group of individuals’ may be seeking to re-connect with the cultural resources available within ‘historic community’, their locus of existence often dominates. These people whose ‘role’ or ‘function’ (as opposed to identity) is legitimated by the state have continually absorbed
systematized thinking and knowledge. Colonization and roles within the national project, often perceived as validation of success, often hinder the ‘decolonisation of mind’ that gives rise to indigenist politics. Where the state ‘privileges neo-traditional forms of Maori/Indigenous organization’ as the official definition of an ‘authentic’ identity, institutional criteria, as suggested by Castells, often becomes the ‘internalised meaning’ around and in relationship to which identity is constructed. In other words, much contemporary identity is an identity that is still primarily concerned with ‘resisting’ the states definitional form of identity albeit that activity (role/function) is embedded within the same framework of thinking and criteria. Hence the focus on domestic juridical and political processes in which their role/function is legitimated.

Simultaneously, cultural revitalization (as an in-peoples project) where in traditionally informed identity holds authority and remains extant also leads to a desire and need to create and legitimate contemporary community. In other words, much contemporary identity again becomes a separate identity from historic community. In structured and instrumental discourse this means that ‘difference’ now needs to be expressed from both mainstream society and traditionally informed community. The dominants colonially defined and continuing politic of ‘disconnectedness’ might then be understood as supportive of a grouping of contemporary people who are most vulnerable to a re-structuring of identity consistent with Eurocentric precepts and their political discourse. Indigeneity might be seen as a political discourse, which systematizes and legitimates a version of Indigenous expression, albeit that the dialogue between Indigenous peoples themselves is increasingly being informed from its cultural roots. Thus it can be argued that indigeneity seeks to respond to Indigenous cultural revitalization as an in-peoples process, by defining who they are in newer ‘fixed’ terms which provides the State with ‘another’ normative they can again apply and impose.

By these means, identity theory would provide consistency with the political theory, which informs Eurocentric indigeneity. In other words indigeneity as both a politic and an identity are consistent. Both inform a newer national and pan-CANZ normative of ‘contemporary socio-political communities’, which will serve to negate and diminish ‘cultural peoples’ and thereby the rights available under international law. This approach
as a domestic solution will also result in all internal Indigenous people(s), being subjected to further state owned processes: judicial/political on a road of integrationist assimilation. The outcome of these processes again being determined by their representatives’ level of politicisation and/or the utility they place on ‘connectivity’ with cultural knowledge. The problématique can again be said to lie with Indigenous in *legitimated roles* that are simultaneously of a group belonging and ‘identity’ which is *not legitimated*. In effect they become the turn-key used to sideline the central role of women and cultural peoples’ leadership of Elders (male and female) within historic and culturally informed community.

Confusion is often created through state processes and the operation of its Indigenous institutions. Those with roles within dominance (organizations, institutions, consultants) are often involved in policy implementation and or resource agreements and said to be Elders, albeit that culturally they may not be, and from within historic community (the one that has always been there) are seen not to have authority.

As previously explain by Tuhiwai Smith: ‘*the pressure internally is frequently manifested through struggles over leadership, over what counts as ‘traditional’, and over which interests within the community are being privileged by particular deals and settlements.*’

Contributing to the dominance project is the confusion over what is meant by terminology. A word or concept is often understood differently by Indigenous peoples. Within their own cultural contexts and dialogue terms carry ‘other’ meaning. English as the one common language for all parties within the CANZ bloc further limits understanding. Many Indigenous notions are not available in this language and remain outside its knowledge. The activity of that grouping who constitute resistance identity (as a need to create community) can compound confusion. Concepts and notions being canvassed by *Indigenists* from within an integrity of their own cultural activity and processing are often picked up and used in official dialogue (the one conducted by individuals of ‘unspecified’ identity and the state) in such a way that they become open to reinterpretation and redefinition which may potentially benefit the dominant.
In a sense it might be argued that what we end up with is three separately informed articulations all being expressed in English: The states’, which dominates; the Indigenists, which is culturally rooted but diminished; and a newer sometimes confused one, emanating from that grouping whose roles are legitimated but whose identity is not. The later utilized to legitimate state processes and dominant theory. In effect the dominant (loudest) dialogue in English, is being conducted between those ‘unspecified’ identities and the state, which it is thought and claimed represents all Indigenous peoples. Indigeneity as a political project of dominant power can now be positioned as consideration of Indigenous identity in terms of a Eurocentric and theoretic exercise centred on ‘prior identity’ versus ‘contemporary identity’.

In effect this is exactly the approach taken by Barcham. To achieve the exercise, he argues that ‘difference’ has been subordinate to ‘identity’ and as such created a ‘rarefied and ahistorical idealization of the Indigenous self.’

‘The prioritisation of identity over difference leads to a necessarily synchronic prediction that bodies (be they concrete or abstract, singular or plural) exist in an ahistorical essentialism where-in reality is collapsed into a timeless present such that what is now, is the same as what was, which in turn is the same as what will be, thereby effectively excluding any chance of recognizing notions of social transformation and change.’ He continues: ‘...the atemporality of difference predicated on the maintenance of a prior identity implicitly, and perhaps unintentionally reduced group identity to a dichotomy of ‘being’ or ‘non-being’, thereby effectively excluding recognition of the possibility of ‘becoming’. ‘The prioritisation of identity over difference thus acts to restrict the possible forms that identity can take, as identification becomes a process structured around recognition of fixed selves – wherein lived existence is devalued as subordinate to the idea of an ahistorical ideal of community – a process therefore effectively limiting the capacity of these theories to truly recognize difference.’

Several points emerge. Firstly ‘contemporary identity’ is not addressed by the legitimated definition of ‘prior identity’ applied to Maori. Secondly, identification, as suggest by Castells, becomes a process structured around institutionally provided ‘fixed
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selves’. Thirdly, that where ‘difference’ provided the historic fault line between Maori and wider society, ‘difference’ between Maori as a newer structured legitimation (or in international language, ‘diversity’ of identity) is now being called for. Otherwise, ‘contemporary identity’ remains that of ‘non-being’ as Eurocentric theory, as argued, currently excludes ‘becoming’, and as a grouping they do not fit the legitimated or ‘authentic’ category of ‘being’.

Where Manuhuia’s engagement responds to the states instrumental approach, it needs to be remembered that this argument is an in-systems or monoculturally defined dialogue. As such its focus does not reflect the concerns central to in-Maori cultural dialogue. Within the Indigenous world and their cultural contexts identity is concerned with ‘connectivity’ (and thus levels of ‘disconnectivity’) with the inherent precepts, concepts and notions contained within distinct language\textsuperscript{49} philosophy and worldview. This identity, which remains rooted in culture, has been nurtured within historic community despite the hundreds of years of struggle for survival.

With Canada providing the ‘political’ discourse for inclusion of Indigenous peoples as socio-political communities, Barcham’s argument might inadvertently further this project. In seeking to address the issue of ‘contemporary’ identity and provide for it’s legitimation his treatise might be used to negate extant cultural identity and diminish in-Maori dialogue centred on cultural action. In my view responding to ‘authenticity’ as an essentialised discourse is to buy into Eurocentrism. Albeit that I recognize the exercise is necessitated by the inequity and injustice of structured identity and as such Manuhuia’s writing has a two-fold objective. The first, being to legitimate newer forms of Maori institutions representative of contemporary community; the second being to extend the consideration and application of the Treaty of Waitangi to these groupings, and in particular urban communities. The perceived need for this second requirement directly emanates from political identity shaped by domestic dialogue and process. International law (as previously shown) potentially requires the state legitimate a diversity of Indigenous identity and provide flexibility of accommodation.

The main problem I perceive within Manuhuia’s argument is that it remains within the purview of Eurocentric discourse, and neglects to augment contexting with other cultural
perspectives. Arguing for a re-ordering of the relationship between academic notions of ‘difference’ and ‘identity’ is a theoretical exercise. Moreover as an exercise within Eurocentrism, it again serves to inculcate Maori cultural identity into a western system of structured and disconnected identity, which I argue is a diminishment. More importantly it does not require the academic world to recognize the failure of their identity theory to address Indigenous cultural identity. In other words it does not require self-reflexive ‘de-colonization’ of the dominants thinking. Instead the exercise potentially allows them to negate cultural identity, in preference of a newer categorization consistent with ‘ethno-political’ precepts. As will be shown shortly the outcome of this exercise now provides the dominant, with theoretical argument, consistent within their own worldview, terms of reference and understanding of their indigeneity discourse.

From the perspective of other cultures, academia often overlooks underlying assumptions. Dialogue occurs within a context that remains culturally European. Language also limits discussion. Historic relationship also hinders dialogue; the values of which still imbue perspective. The limitations of a discursive in ‘difference’ stem from the locus of perspective. Operating in visible time underpinned by historic discourse, Euro-monocentrism often results in a dialogue with the ‘other’ assumed to be inter-subjective: a mutual exchange of ideas, shared knowledge and common experience.

Academic perspective of discourse is positioned as the subject against which to contrast ‘other’ knowledge, it’s ‘difference’ becoming the locus of engagement (the very process I’m involved in). Dominance of culture results in either the legitimation of this ‘difference’ as understood from within European perspective, or it is denied. The centrality of academia again held to be of greater importance. The underlying belief being that ensuing discourse is universally relevant, and/or explains ‘truth’. Aileen Morton-Robinson similarly argues the limitations of discourse predicated on an engagement with notions of ‘difference’. She points out that the subject position of theory, is not only structurally and historically located but remains invisible within discursive and cultural practice.
‘Differences such as [non-white] race, class, sexuality, ableness and gender are mapped out in ... literature, either as structural markers of oppression or as located within the subject. However, the identification, interrogation and elucidation of whiteness as “difference” are missing from the majority of this literature. This works to avoid an engagement with the Indigenous critical gaze on the white racial subject who constructs and represents the “Other”.'\(^{52}\)

Here again we encounter the splitting and separation inherent to Eurocentric thinking. Literature provides the structural markers, denying the ‘others’ cultural perspective and self-articulation. Newer discourse emanating from literature study concerned with ‘border identities’, or ‘cross-culturalism’ also remain subject to Eurocentric language, thinking and modalities. Morton-Robinsons’ writing resonates with perspective shared earlier in this thesis, on African identity. In the chapter on Definition it was shown that much of Africa’s internal dynamics is the direct legacy of colonially constructed ‘ethnic tribes’, which were instrumentally created. This historic project served to disconnect ‘identity’ from cultural roots/territory and simultaneously provide a lesser (culturally inconsistent) hierarchy of humanity reflective of and subject to dominant interest administration.

Identity theory, like dominant political theory can be seen as another power theory. Dominant theory is rooted in colonialism, the ‘us and them’ dichotomy and dated ‘ologies’. Hence theory, which in my view, is predicated on ‘difference’. In the dominants world view, which emanates from a historically Feudal and currently classist society, discourse has continually sought to legitimate the inclusion of settler societies within the structured world of Empire’s systematized expansion and wealth creation. This projects continuation is contingent on ensuring that only those whose identity and thinking are consistent with its power politic be given status. Theory which legitimated the categorization and separation of humans, i.e., discourse predicated on ‘difference’ provided the rational by which to exclude pre-existing local humanity, or ensure their contained diminishment. In effect the theoretical preferencing of ‘difference’ while instrumental to processes establishing an ‘exclusionary’ nation state comprised of
settlers, has to be recognized as an historic remnant. Eurocentric identity theory cannot be separated from its colonial project.

18.4 Inheritance And Reflexivity

Where Manuhuia’s treatise perhaps seeks to achieve this conscientisation, several considerations are neglected. A key one being inheritance which dominant theory does not fully deal with because settler identity and structured existence has lead to its diminishment. Within western concepts, inheritance has been essentialised within man’s law. The Oxford Dictionary presents the three considerations that underpin Eurocentric inheritance. It defines ‘inherit’ as 1. To receive (property, rank, title etc.) by legal descent or succession. 2. derive (a quality or characteristic) genetically from one’s ancestors. 3. succeed as an heir (a younger son rarely inherits). In settler societies inheritance became a reflection of Empire’s expansion and its project. British law provided a newer notion of inheritance concerned primarily with the rights of settlers to ‘own’ property or retain their status within their system of structured exclusive human inter-relationships. The second definition by which ‘a quality or characteristic’ is genetically ‘inherited’ serves to illustrate the thinking by which Eurocentric science presumes a right to alter DNA. That is to say, because genes carry ‘a quality or characteristic’ which science directly attributes to a ‘piece’ of DNA, science now seeks to colonize and own gene’s ‘property’ as a resource. In effect it is simply a newer level of colonization, whereby science becomes the instrument by which ‘livingness’ is denied its autonomy (culture/law) and becomes subject to man’s law. Perhaps it is worth remembering that western science is not the only knowledge base familiar with genetics. Indigenous cultures have (or traditionally had for some first world groups) knowledge of and pertaining to genes that pre-dates their ‘discovery’ by modern science in 1957 and their recent ‘mapping of the human genome’ (2001). Moreover Indigenous cultural traditions have an amplified understanding of genetics, which remains outside scientific thinking.

With inheritance being primarily concerned with ‘property’ as the basis of power and status, culture in turn became the project wherein the ‘included’ identity and its activity assisted in the building of a new nation. A project, which from the perspective of
grounded cultures has served to underpin ‘disconnective’ progress and identity through the centuries. The project of settlers became wealth creation within man’s law, which ensured their inheritance (and still does), as a means of their continuance. That this project denies ‘other humanity’ their survival, their notion of ‘inheritance’ consistent with ‘other’ philosophically informed law, was and is overlooked.

The geographic shift, to unfamiliar lands already inhabited by ‘other’ ‘different’ ‘lesser’ cultural peoples now set the stage for theory that essentialised ‘difference’. The dominant who arrived were already imbued with thinking in which society was divided into constructed identities or parts within a system of human existence. Belonging to a category pre-determined ones access to wealth, power and status within their system. As time progressed, additional ‘differences’ were utilized to further categorize access to or denial from the means of ‘wealth power and status’, hence, race, gender, religion, ethnicity, and increasingly age. Settler nations have simply continued believing in their project and its discourse and as the dominant, its universal relevance. Identity theory goes hand in glove with competitive power, explaining why as a model of thinking it continually re-enforces a historically ingrained limitation of human–human relationship, neglecting all other relationships.

Geographic shift also resulted in a society wherein the natural world was perceived as hostile and in need of taming which required it be ‘broken in’. Eurocentrism often led to settler activity replicative of prior familiar landscape. Settler identity historically resulted not only in the wrong relationship with land/country (oppositional, exploitative) but also the deployment of the wrong cultural knowledge base. To explain, all ‘country’ has ‘language’. Livingness as country has multiple inter-relationship within itself. Livingness (animate and inanimate in Eurocentric terms) exist as living systems within the one living system. All living systems have language and communicate of themselves. Language conveys both a system’s culture and their knowledge of other systems (with which they have relationship). Within Indigenous knowledge, all living systems follow their own law (culture/Dreaming) within the one Law of Mother. The knowledge (‘in God’ = ‘meaning’) all living systems operate in (except some human
systems-cultures) is that not following Mothers law is to invoke destruction. Hence all living systems follow Mothers law as a matter of self-interest.

Historic discounting of Indigenous peoples meant that settlers did not openly value their cultural knowledge gained through millennia of specific livingness/country. Devoid of knowledge keyed to locality, settler co-existence with country and livingness, while initially dependent on ‘bushcraft’ often absorbed from Aboriginal people, was later increasingly informed by science and technology. Eurocentrically informed science further served as a systematized disconnection from locality. Livingness was replaced by mono-culture, which served to create imbalance between other relationships within livingness as country. Activity and thinking which essentialises livingness as ‘product’ of commercial utility in turn led to an acceleration and enlargement of inappropriate land use and practice. Examples from Australia include the growing of rice (a species adapted to monsoonal living) and cotton (a thirsty plant) within arid regions of a dry continent. The more recent shift from agri-culture to agribusiness (which simultaneously undermines rural farming communities) now serves to create divergence within the dialogue on ‘diversity’.

From a cultural perspective, ‘diversity’ is keyed to the equity and autonomy of all ‘living systems and their parts’. Within the dominants narrative ‘diversity’ is that which man’s system hierarchically preferences and its science sees as necessary to sustain their ‘unbalanced’ activity of ‘wealth creation’. In Science, ‘diversity’ has become the number of species within a given plot. This approach presumes science knows what’s there, and understands what inter-relationships are going on. I would suggest that many levels of inter-relationship/dependence within livingness will continue to elude much of science because it lacks various lenses by which to perceive life. Or, the criteria, methodology and thinking which is modern science hinders its understanding.  

A third problem is now also arising. Genetic engineering, which assists agribusiness to override the need to comply with Mothers Law, results in all bio-diversity being shifted from the millennia long processes of farmer's innovation, to a capitalized system of
corporate ownership of living diversity. The outcome being that farmer’s relationship to land and livingness, some of which is ‘continuance/produce’ is diminished. Of greatest concern is the methodology of this newer engineering, which necessitates the use of a sick/weak ‘envelope’ and its insertion into a ‘chain’ (helix) simply so that ‘other’ species ‘bits’ of DNA might be inserted. In other words, science is again contaminating a level of life, and imposing sickness on the most sacred and fundamental level of creation. Contrary to capitalized scientific claims GM sickness does spread and contaminate other life forms. This has already occurred in Mexico and Canada. More importantly, the consequences of this activity will be lived by all life on Earth. These problems directly emanate from the monocentrism within science and serve to illustrate the reason why cultural peoples and many within civil society, academia (which includes some scientists linked to environmental and ecological disciplines) and even governments, are increasingly sceptical and wary of capitalised knowledge. In effect much of science might be seen to have become the legitimating discourse of dominant capital interests, which currently writes man’s law (government compliance with structural adjustment which favours ‘self regulatory’ transnational or ‘non living entity’ interests).

Within settler nations, social engineering and a re-orienting of human activity to increasingly adopt technological and scientific advances has through time seen the nexus between government and capital become ‘disconnected’ partners in a project of wealth creation as ‘development’. The advent of neo-capitalism with its accompanying ideology of rationalization and privatisation has led to the locus of power shifting to (non-living) transnational entities. Governments, formerly partners are diminished and as clients are increasingly persuaded to re-orient national regulation to provide for a newer systematisation of capital creation devoid of responsibility. The activity however remains rooted in the historic project of Empire. Where colonization expanded Empire, Globalisation as concretised by the WTO, accelerates it. In effect, government has become another institution that operates to protect the system. Unilateralism as a dominant project seeks to ensure that all humanity is forced to accept and conform to their systems logic, knowledge base and transnational interests. The counter hegemony argues the system is that which must be adjusted to conform with the amplified knowledge of diverse human and species cultures, and the logic of common-sense.
The other problem with Eurocentric theory emanates from the inherent notion of time and space, which informs dominant culture. This in turn, leads to another divergence in how one understands oneself. The west’s ‘rationalism’, ‘reductivness’, and presumption that the world can be explained mechanistically and/or mathematically is a modality of thinking which leads to an experiencing of the world as being comprised of things, of inert nature, of fixed truth, and the fixed self. In short a way of thinking concerned with and comprised of nouns and ones relationship to them. Nouns in turn are structured and hierarchically prioritised by their utility in a system of existence imposed by men and in which the shared project is wealth creation and the acquiring of status and power.

The hierarchy of life (from white males, through all species down to inanimate things which are also preferred in accordance with white male interests) results in an assumption that this cultural view explains existence. In other words science to date has served to legitimate a worldview wherein the ‘foodchain’ explains values inherent to the relationships of life. That is to say, the relationship between each level in a vertical is competitive and the dominant value of ‘continuance’ is of killing/consuming the ‘other’. Hence a human culture which prioritises power as dominance. Much of science and biology remain wedded to a vertical perspective that does not know or understand autonomous relationship, which all living systems follow and priorities for continuance.

This is not to deny that the values as understood in a vertical worldview don’t exist, but rather to explain that this is not all that there is. Living systems prioritise other values as a matter of self-interest. As a simplistic characterization relationship is Horizontal and is collaborative (to give it a term). Living systems all ‘balance’ each other as a matter of self-interest and recognize that exchange between them must also be balanced if the wellbeing of all systems is to be retained. This appreciation underpins cultures of genuine sustainability, as it leads to relationship, which is essentially respectful rather than exploitative and of imposed dominance.

Size and or number also challenge western minds. The greater the number, the more importance attached, the smaller a ‘thing’ the less consideration it requires. Hence a cell (which has knowledge and language understood by that which it is in relationship to) is perceived of as important (its number) but simultaneously of less consideration (size).
then say a dog or a human. In the west preferencing and consideration is predicated on shifting notions of ethics and morality, both of which are in decline in face of the acceleration of capitalized re-structuring, and militarist self interest. Within Indigenous epistomy all are equal, no livingness/country is boss of the other. Livingness holds to the same laws of relationship. To provide a simple metaphor, all are in the circle, which has no top and no bottom. Living systems co-operate in multiple relationships in a complex web of existence.

Indigenous and tribal peoples maintain that identity is an inheritance. Culturally this notion is not that of the Europeans, simply because these peoples did not undergo radical geographic shift, nor the Cartesian split, nor are they devoid of inter-relationship and knowledge of the livingness of which they are part. Western identity theory as a discourse of structured power does not address the amplified realm in which time operates, nor explain space, nor comprehend that there is no fixed truth. Cosmos and life are an enfolding continuum (to use a concept from quantum physics). Indigenous cultures are of the verb. Their focus is the ‘meaning’ within exchange and the values inherent to relationship. Further more within their cultures, relationship is not limited to other humans. Relationship is to all livingness within country within cosmos within onetime.

Indigenous peoples have and had identity before Europeans defined them and demanded they learn to think of themselves in our terms. Indigenous identity remains an Indigenous project, which like European identity has evolved through 500 years of colonization albeit that the philosophical worldview of Cosmovision remains distinct and outside European existence. That some people as a process of adaptation have absorbed European precepts and thinking as the modalities within which to understand themselves in relationship to the dominant, while maintaining their right to separateness does not negate the extant and distinct cultural identity of a majority of the worlds Indigenous peoples and Indigenists.
18.5 Anxiety And Continuum… Of Being

From a cultural perspective while Manuhuia writes to suggest that the collapsing of time, such that what ‘was’, ‘is’ and ‘will be’ is a weakness in theory, the locus for an erroneous perspective, is in fact a central distinction between Eurocentric and Indigenous peoples cultural philosophical perspectives. In other words, this is the very argument. For Indigenous peoples, notions of time and space do differ, and are consciously experienced differently. Humanness/identity is of values and philosophy, which are universal and constant, and in the case of Indigenous culture also consistent with Mothers law. Within Indigenous cultures, the world is intelligible and ordered. Europeans continually assume that their experience of time and space, a linear appreciation, is shared by all other cultures. The oppositional tension of ‘difference’ invoked to provide an appreciation of ‘an-other’ context, generally results in the proposition that Indigenous time must be circular. Neither perspective is sufficient. As has already been shown within the chapter dealing with the cultural contexts within which to understand Treaties, the realm of Indigenous peoples is contingent on a world view and experiencing of time and space which Bird Rose describes as ‘everywhenow’. Gray’s description serves to remind us further that this notion, which he called ‘invisible time’, is fused with and of spirit, a philosophical worldview shared by all Indigenous traditions.

The proposition Manuhuia makes might further be addressed with reference to psychology. Barcham’s argument that current theoretical approaches demand that what is now is the same as what was, which in turn is the same as what will be, thereby effectively excluding any chance of recognizing notions of social transformation and change resonates with a study by William Fischer, from Duquesne University. His work on Anxiety provides the keys by which to understand the need by all Maori for legitimation of their identity, and more specifically that grouping as community, which represent ‘unspecified’ identity.

Fischer’s study which ‘attempts an explicit descriptive analysis of anxiety experience’, provides insight ‘on the “internal” point of view’. His study explores the anxiety
associated with processes, which may or may not result in the validation of an identity. The lessons and insight gained from two case studies are instructive and in my view can be borrowed to explain the concern faced by many Indigenous groupings, particularly those who have less ‘connectivity’/ceremony and may feel they are not ‘traditional’, but who simultaneously know they have a separate identity from that of the dominant. What follows is the application of Fischer’s findings that have been paraphrased in order that they may be applied to the specific issue of contemporary Indigenous identity.

In the first case study, an anticipated ‘event’ which is experienced as an ‘ordeal’ provides the moment of analysis. For my purposes, the dialogue over authenticity and legitimation, which is being played out in court, might similarly serve to illustrate an ongoing event that creates anxiety for Maori. In particular those who have a legitimated role (but not identity) whom Tuhiwai Smith described as ‘a small group of individuals’ ‘concerned with re-negotiating relationships with the state’. Extrapolating from Fischer’s analysis, the anxiety experienced by this group centres on the court case which as an anticipated event is present in its ‘virtuality’ and ‘abstract in nature’. As an ‘ordeal’ it creates relationship between both thought and feeling. The court case ‘is not conceptualised as an event in itself’. It is not simply a thought that presents itself as unrelated to the group’s life. Rather as an event, ‘so much depends on it’.°

‘The meaning of this “so much” reveals itself to be a complex network of relationships (to the state/court, each other, their community and families), projects (securing a role, income, housing, services), and identity (being a somebody/legitimation).’° The meaning associated with the requirement that they ‘perform’ in court – ‘it being this that they are in fact oriented towards’- ‘points not only to an anticipated future, but also illuminates a past, a context of relations in which plans were made, and promises enacted’ or broken. ‘There is a continuity, an unfolding, which is at stake here.’ ‘In other words the experienced meaning of the to-be-encountered (court case) is that of a hurdle or milestone.’ ‘If it is passed, then a door is open to a world of ‘being somebody,’ a world that has already been envisioned and experienced.’ ‘If it proves to be insurmountable, this lived-and-planned-for-world vanishes into meaningless oblivion; the past goes nowhere; the future is being nobody.’°
‘The character of the hurdle or milestone (a court case on this occasion) raises questions of preparedness, ability and adequacy.’\textsuperscript{71} For those Maori whose roles have been central to ‘re-negotiating relationship with the state’ the issue of authenticity/legitimacy raises great anxiety. They must not fail, and yet, history has shown that any outcome often creates additional difficulty for their people. The event results in ‘their vacillation between hopefulness, or wishful anticipation, while surveying the consequences of failure.’ Fischer points out that this vacillation is experienced as alternately ‘being somebody’ and ‘being nobody’.\textsuperscript{72}

He continues explaining that in this type of case ‘identity is not a concept or a thing, but rather a road upon which personal and collective history has been and is unfolding.’ Ones life, ones world and ones sense of self, ‘are all grasped as a having-been-being-becoming that, in its unfolding, has its own internal unity and which, at all times, is constituted by an interlacing network of relationships and projects.’\textsuperscript{73}

Fischer points out that this identity, which hopes to be going somewhere and become somebody, ‘is tied to and actually expressed through a world in jeopardy’.\textsuperscript{74} The struggle to sustain this world is the struggle to sustain themselves. ‘Each reflects the other.’\textsuperscript{75} Moreover for identity to be meaningful, the ‘lived-for-world’, must succeed. No other outcome will do. ‘The motivational component of this experience is a must’.\textsuperscript{76} In other words, the outcome of a court case ‘must make possible a certain way of life, a certain identity and a certain world’.\textsuperscript{77}

For many Indigenous, ‘ones sense of self is grasped as a having-been-being-becoming, as a road that is constituted by milestones marking the achievements of various relationships and projects.’ ‘Where a desired outcome may be perceived as unachievable, the whole road is called into question.’ Fischer writes that when this identity, which aspires to ‘become somebody’, feels it is unattainable, ‘that which has already been achieved and lived as supporting the road, now appears as going nowhere, and is pointless.’ This insight serves to explain the anomie in which many Indigenous people live. As Fischer points out if becoming somebody is denied, ‘what is the alternative?’ ‘Nothing!’ ‘Being nobody!’ ‘Thus the world that has been and is lived-for must be.’ ‘There is no other.’ ‘Nonetheless, the achievement of the milestone is
uncertain and the whole road trembles in this uncertainty.’ ‘In the face of possible collapse, and confronted with the potential pointlessness of their life, the (community stands) alone in (their) world and (are) anxious.’ The second case study centres on behaviour and the need for affirmation. Given the dominants ‘authenticity’ discourse and its utility re-narrating in-Indigenous peoples processes and dialogue, this case study provides insight on a community who internally feel their identity is and has been diminished. This is particularly so when this group belonging is perhaps contrasted to other Indigenous who have retained culture and language and are more readily perceived by the dominant as ‘traditional’.

Two keys describe the pathology. Firstly the group are not sure ‘where they stand’ in relationship to the state. Secondly, the requirement is that, as a group they are favourably viewed. Fischer explains it is ‘how they are viewed’ that becomes the focus, albeit they may simultaneously act in a way, which often presents as though this is not of concern (the aggressive defensiveness of emotionally charged individuals). In this case, a group’s identity is continually at stake because their lives are a never-to-be-completed project that endlessly seeks to determine the level of their acceptance. A domestic goal which throughout history has been continually denied despite often huge efforts to absorb and assimilate ‘European’ language, behaviour, thinking, skills, lifestyles and education. No amount of adaptation leads to full, equal or just acceptance.

When finally this group realizes they will continually fail to elucidate a response that serves to provide certainty as to ‘where they stand’, the need shifts towards demanding legitimisation of their ‘separate’ identity. Affirmation (legitimation) of their ‘resistance’ identity again becomes a must, otherwise they do not know where they stand. Fischer writes: it is the affirmation (legitimation) which tells them who they are. ‘Otherwise, the having-been-being-becoming of their lives is transformed into a sequence of repetitions.’ Affirmation (as roles) has to date gone nowhere; ‘the group becoming stuck in a rut –fixated.’ ‘When the world that is sought and demanded cannot affirm the identity that is equally required, and vice versa, neither can be achieved.’ ‘Life becomes bogged down at one of its milestones; the road is forgotten.’ ‘Instead there is a chronic
vacillation between attainment and rejection of attainment.’ ‘One can go no farther.’ ‘Life is endless repetition.’

In both cases identity is an expression of the individuals’ and their groups’ lived world. Moreover in both, ‘meaning’ and ‘implication’ are rooted in an unfolding continuum. The past, present and ‘lived for future’ all inform present activity as contemporary community needing legitimation. Moreover the ‘milestone-to-be-achieved’, constitutes the basis on which the groups’ world rests. The first case reflects the lived-for-and-toward realization of that world. As such it suggests the perspective evidenced in Barcham’s argument, albeit that in his treaty the continuum identified by Fischer, which reflects a consistency with Indigenous cultural perspective and quantum physics is being negated. In my estimation this is because Barcham’s analysis is framed in Eurocentric terms and informed by it’s notional consideration of a ‘fixed’ and ‘static’ Indigenous identity. I would even go a step further and propose it responds to the difficulty man’s structured system has in dealing with time and space. Hence the continual need to ‘fix’ a ‘thing’ so that it might be incorporated on its terms. In other words, the argument Barcham is addressing is inconsistent with the laws of living systems, which operate within an enfolding continuum. In this sense Barcham’s argument does address the inadequacy of structured powers discourse, but to achieve it, he has argued for another ‘differentiated’ identity and status which potentially negates the historically informed continuance which is fundamental to understanding all identity, be it Indigenous, cultural or contemporary.

In light of Fischer’s work, I would argue that Barcham’s proposition directly responds to the Eurocentric notion of authenticity, and the need for legitimation born from centuries of not being affirmed or legitimated as ‘ones self’. I would also question the need to undertake this exercise, given that Fischer’s work illuminates the inconsistent and constructed nature of authenticity or ‘fixed’ identity discourse. In effect, it might be argued that the instrumentality of authenticity only exists where individuals retain internalised ‘institutional’ self-definition in line with Castells’ insight that ‘some identity can originate from dominant institutions when and if the social actors internalise them and construct meaning around their internalisation’. In other words, authenticity as a
problematic of self-understanding has greatest resonance with that grouping who are of resistance identity. People whose role/function is legitimated but whose identity is not. Hence a newer politic which seeks to legitimate the identity born of role within structured dominance.

In contrast, cultural peoples know who they are and where they belong and fit (in country/livingness/cosmos/ontime), even if their identity/culture/knowledge is currently denied by the state and globalising self interests. Cultural peoples pursuing a global project do not derive their legitimacy from state processes or institutional definition, rather their inner identity constitutes the strength on which they draw to articulate a distinct and philosophically informed politic at local grass root (community) and international levels. In a sense, cultural identity is autonomous of institutional definition and dominant theory and as a project reflects an inherent and collective worldview. This distinction serves to explain why cultural peoples as a self identity of sovereign peoples sought the international area where dominant power is essentialised as the locus of their projects legitimation.

Fisher writes:

‘We found that whatever the identity that was at stake, it could be grasped as a temporally constituted project, as a having-been-being-becoming, oriented towards some lived-for state of being. Thus identity was not a matter of self concepts or intrapsychic dynamics: it was instead, a question of lived biography, a style that the individual has, is and projects as theirs, and with which they are more or less at home. If we now attempt to relate these questions of world and identity, we find that whether they reflect or contradict each other, they are inseparable. They constitute the object and subject poles, respectively, of a fundamental unbreachable structure.’85

The second case dealt with the continual negation and diminishment of identity with which Indigenous people live. With the international community working to achieve adjustment to man’s globalising system, wherein ‘diversity’ (human and species) requires flexibility of response within man’s law, as a means of ensuring sustainability
and stability (peace), Indigenous people(s), of all identities are legitimate and deserving of their human dignity. That nation state laws and inter-national practice currently do not harmonize with this position does not negate the existence of an inter-connective framework and a newer Declaration on Cultural diversity (see previous chapter International Standards and Australian case study)

Fischer’s studies also evidenced that where identity is a lived-for-and towards-expression of self, either affirmation or negation result in ‘musts’. ‘The demanding of identity does not have the character of a want or even an ought.’ ‘Rather, it is experienced as a question of necessity, an absolute requirement of life.’ ‘There is no conceivable alternatives, or to put the matter differently, the alternatives all involve not-being (oneself).’ An insight which pertains to both cultural and contemporary Indigenous identity.

Fischer’s’ work also supports Castells' hypothesis. His finding that ‘whatever the identity that was at stake, it could be grasped as a temporally constituted project, as a having-been-being-becoming, oriented towards some lived-for state of being’, reflects the shifts associated with ‘resistance identity’, ‘project identity’ and finally ‘legitimising identity’ the stress and anxiety of globalisation engenders.

18.6 Authenticity: Who One Is Decided By Them

Manuhuia’s proposition that difference was subordinated to identity needs also to be addressed. Within Eurocentric identity construction ‘difference’ provides the border for self-identification which is already structured. Identity becomes a process of finding ‘like’ within structured society which already preferences one group or another. Hence the relevance of Castells’ hypothesis wherein the challenges all identities face through globalisation results in newer constructions which begin as communal resistance to systemic injustice, inequity and/or destructive excess.

The dialogue Manuhuia addresses however is a historic and domestic dialogue. In this framework structured difference allows for the exclusion of ‘others’, inherent to modernity and its system which operates within the ‘us and them’ dichotomy. Difference
then was/is a ‘legitimated marker’ defined by the dominant, around/in relationship to which, many systemically absorbed people construct identity. Difference is limited to social construction, i.e. it is about difference from other humans. Hence class, race, gender, religion and ethnicity all of which are Eurocentric discourses which seek to essentialise difference. An orienting towards prioritising difference is what gives rise to racism. Where ‘prior identity’ as a ‘fixed’ notion of self is institutionally provided, as in New Zealand, ‘contemporary identity’ which ‘differs’ becomes an ‘unspecified identity’.

Within a structured world, identity then becomes the greater framework within which one’s role (function) or lack thereof was/is understood. Where one’s role and function is the only definitional element to have legitimacy and provide ‘meaning’ within the structure, the framework which denies identity simultaneously becomes the very ‘space’ through which one seeks to elucidate legitimacy of identity. ‘A need to know where one stands’ as explained by Fischer.

For colonized peoples subject to domestic dialogue, identity, especially that of the systemically absorbed has often been derived from internalisation of dominant perspective. A proposition evidenced in Barcham’s writing, albeit that in New Zealand even contemporary identity increasingly draws on knowledge held within historic community. ‘Cultural peoples’ on the other hand, who have always known the system is not in their interest - being that grouping of peoples who are continually the target of the greatest discrimination and genocide, remain marginal (invisible) often as a means of self-protection, and have continued to struggle to distance the system and its institutions from involvement in their lives and territories. Simultaneously it is this grouping of peoples cognoscente of both ‘Cosmovision’ and ‘globalisation’ who inform the project of Indigenous peoples at international levels and were originally involved in elaborating the inter-connective framework which legitimates their identity and ipso facto cultural diversity; of humans and species.

Linda Tuhiwai Smith’s text again serves to underscore the divergence between Eurocentric approaches and discourse and Indigenous peoples own cultural understanding and activity. In her view where ‘authenticity’ serves as criteria for determining ‘who is really Indigenous, who is worth saving, who is still innocent and
free from Western contamination’, it negates Indigenous peoples own dialogue and assumes that ‘Indigenous cultures cannot change, cannot recreate themselves and still claim to be Indigenous.’

Where ‘Authenticity’ is essentialised within dominant discourse in terms consistent with often inaccurate and dated stereotypes, it simultaneously contains the seeds for ‘re-organizing “national consciousness” in the struggles of decolonisation’. In Tuhiwai Smiths view this leads to simultaneous meanings;

‘it does appeal to an idealized past when there was no colonizer, to our strengths in surviving thus far, to our language as an uninterrupted link to our histories, to the ownership of our lands, to our abilities to create and control our own life and death, to a sense of balance among ourselves and with the environment, to our authentic selves as a people. Although this may seem overly idealized, these symbolic appeals remain strategically important in political struggles.

The world of Indigenous community, within which the ‘essence of a person is discussed in relation to Indigenous concepts of spirituality’ does not correlate with Eurocentric discourse. Tuhiwai Smith writes:

In these views, the essence of a person has a genealogy which can be traced back to an earth parent, usually glossed as an Earth Mother. A human person does not stand alone, but shares with other animate and, in a western sense, ‘inanimate’ beings, a relationship based on a shared “essence” of life. The significance of place, of land, of landscape, of other things in the universe, in defining the very essence of a people, makes for a very different rendering of the term essentialism as used by Indigenous peoples.

The arguments of different Indigenous peoples based on spiritual relationships to the universe, to the landscape and to stones, rocks, insects and other things, seen and unseen, have been difficult arguments for Western systems of knowledge to deal with or accept. These arguments give a partial indication of the different worldviews and alternative ways of coming to know, and of being, which still
endure within the Indigenous world. Concepts of spirituality which Christianity attempted to destroy, then appropriate, and then to claim, are critical sites of resistance for Indigenous peoples. The values, attitudes, concepts and language embedded in beliefs about spirituality represent, in many cases, the clearest contrast and mark of difference between Indigenous peoples and the West. It is one of the few parts of ourselves which the West cannot decipher, cannot understand and cannot control…yet.\textsuperscript{88}

Consequently it can be argued that ‘authenticity’ which emanates from a discursive in ‘difference’ is Eurocentric discourse. It is an externally legitimated framework imposed on the ‘other/Indigenous’, which by virtue of perspective is a non-issue from within Indigenous cultural contexts. Indigenous peoples know who they are and how they want to live. The problem lies in having to constantly seek to legitimate and explain their identity to Europeans who by virtue of their own thinking and values refuse to genuinely engage or accept other cultural worldviews.

The continual need to invoke a discourse of authenticity, evidences the degree to which current thinking retains a former (but still employed) negatively characterized discourse of race – racism, a historic scientism, and the initial tool employed by colonizers to crudely determine ‘difference’. The overlay of eugenics, and in Australia, accompanying policies by which station managers were provided with a chart to enable them to ‘breed out’ Aboriginality, has also left an imprint on Eurocentric thinking. Even today people offensively remark or may call an Indigenous individual a half-caste or half-breed. Authenticity is simply the next step in discourse.

Where once race alone made division clear, as contact and time progressed, a newer tool was required to address additional complexity resulting from increasing numbers of inter-racial children, those who had been removed from family, and still others forced to adopt European modes of behaviour and language. Authenticity again allowed scientists – the ‘ologies’ and the dominant to determine the legitimacy of any Indigenous identity by applying its own expedient criteria. Indeed, this methodology as shown within the
section dealing with Native Title, is still used to great effect, albeit that its shelf life and success is dependant on Indigenous peoples believing they need to refute it or engage with it.

If we take the externally applied and negatively ascribed notions of race (ism), difference between humans, behaviour (role), and authenticity out of the equation, we end up with identity being of culture and self-understanding. The boundary of a culture’s context within which self-understanding is informed through relationship becomes the determinant of identity.89 In a sense this perspective as an idea, provides a neutral and perhaps common starting point humanity can agree on. A position of sameness.

This perspective also provides for the divergence in self-understanding and identity that culture results in. Simultaneously if ‘being human’ becomes a project of ‘sameness’, ‘cultural locality’ and differing notions of ‘time’ and ‘space’ become the keys to understanding inter-relationship. Moreover, where ‘livingness’ is understood as the vital necessity of life, the values inherent to relationship become central to discourse. Deborah Bird Roses’ work provides insight on the amplified realm of Indigenous cultures and the meta-rules of relationship. (See next chapter)

**18.7 Applying International Perspectives**

Perhaps by considering cultural contexts and overlaying internationally consistent views another level of analysis of the notions canvassed within Manuhuia’s contribution to academic dialogue might be understood. The specifics of lived existence and political events again provide the material.

Manuhuia explains that within Aotearoa, governmental policy has enshrined a historic identity of ‘Iwi’ as the authentic. Citing various authors it becomes clear that Manuhuia’s argument centres on a claim that ‘Iwi’ as a political identity can be challenged and that originally ‘Hapu’ was the level of social authority of peoples. Additional problem arises because legislation has limited the application of Waitangi
Treaty rights only to those Maori who retain kin-ship relationship of Iwi, which the author maintains is an historic identity based on questionable ethnographic and anthropological material. Manuhuia then goes on to cite two instances in which organizations which represent urban Maori have challenged the government.

The first involved social welfare funding, which a trust representing urban Maori in West Auckland claimed they equally had a right to, because they represented Maori in community. The crown argued that not being representative of an ‘Iwi’, they were not eligible. Manuhuia writes:

‘This restrictive interpretation by the New Zealand government of the recognition of difference, such that the recognition of Indigenous rights was only accepted through the maintenance of prior identities, has resulted in the effective exclusion of one of the largest Maori organizations in the country from representation as a legitimate ‘Indigenous’ institution. Moreover this interpretative exclusion has the potential for even greater political, social and economic ramification for the New Zealand Maori population, as hinted at in the massive amounts of monies now being made available in the treaty-settlement process.’

The example provides a study in state processes wedded to historic inclusionary and exclusionary value. As a dominantly defined negotiation the focus is on the ‘means of continuance’ and the right to access wealth, power and status. From the perspective of the international reform agenda, at issue is the need for consistency with the ‘transformative values’ being articulated within the inter-connective Indigenous agenda. International perspectives as suggested by Kingsbury provides for flexibility of definitional indicia and thinking. Cognisance of these developments leads to a view that the official inclusion and exclusion being played out in New Zealand is a matter of politics, and a dated approach of divide and conquer. Government should recognize the legitimacy of all Maori and provide flexibility within policy such that it accommodates the differing specifics, of peoples.
From the perspective of those engaged with inter-connective standards, there is a degree of danger however if urban Maori leadership is solely seeking to recreate the hegemonic, i.e. to replicate the system which itself is needing reform. Urban Maori / Aboriginal / Native peoples are but a drop in the ocean of 100’s of millions of Indigenous-tribal and traditional agrarian peoples elsewhere, who do not want to have to undertake a radical or imposed absorption of dominant thinking and values, by being subsumed. Rather they want to retain their traditional territories and cultures. It is imperative that First world Indigenous peoples do not lose sight of this consideration, and un-intentionally end up being the agents by which the international Indigenous movement might be diminished.

The second example provided by Manuhuia, involves ‘Pre-settlement Treaty Fishing Assets’. In this case, the government, in 1992, ‘signed a deal giving Maori $150 million worth of commercial fisheries assets and 20 per cent of future fisheries quota allocations.’ ‘This deal allowed the Waitangi Fisheries Commission to distribute 200 million dollar worth of assets it held before the settlement to various Maori organizations’. These moneys were to buy out and expunge Maori fishing rights which had been recognized earlier under fisheries legislation.⁹²

As Manuhuia explains, while urban Maori argued that they also have ‘ownership rights through the treaty of Waitangi’, and the right to choose the institutional mechanism through which to claim these rights, the government maintained that only Iwi were entitled to settlement. ‘Iwi groups also argued that since the fisheries assets were a Treaty based property right they must remain in Iwi hands.’⁹³ The case has gone back and forth through the courts. A decision by the Court of Appeals in favour of the urban group was overturned by the Privy Council who referred it to the High Court. ‘The fundamental problem underlying this new case was whether or not Iwi meant ‘a people’ or was defined merely as a specific ‘traditional’ form of Maori social institution.’ ‘The High Courts final decision on appeal was that all settlement moneys could only be allocated to Iwi and/or bodies representing Iwi.’⁹⁴
Manuhuia points out that this case demonstrates that ‘while recognition of difference is reconfiguring the space of politics, the atemporal basis of this recognition means that political repositioning is not necessarily a change for the better for many Maori.’ Consequently ‘non-Iwi Maori act to destabilize the currently accepted bases of ‘indigeneity’.\(^95\)

Here again we come to the issue of what is understood by the notion ‘indigeneity’. From a reading of Augie Fleras’ text, and Chartrand’s argument, indigeneity is self-articulation of Indigenous peoples which provides for their systemic inclusion as socio-political communities. Simultaneously the way in which Manuhuia has used the term results in appreciation that ‘indigeneity’ as perceived by some Maori is believed to be ‘of the traditional/prior identity’. A perspective which again illustrates the confusion the one language of English creates, where in terms are understood differently. This is why I have sought to canvas the issues which create confusion. Divergence in understanding results in action by Indigenous peoples which sometimes becomes counter-productive at a state level. Further more these outcomes add to conflicted internal dialogue while serving to diminish gains made by one or other grouping. In effect where ‘indigeneity’ might be believed to be culturally consistent, it is not, albeit that it has been elaborated as a discourse which potentially provides an accommodation of self-governance.

As has already been shown in the chapter dealing with indigeneity, the term has political definition which is keyed solely to Eurocentric legal and political considerations. In effect, what I argue and this chapter seeks to explain is that the shift of contexts from Canada to New Zealand where the term is understood differently, results in Manuhuia’s text inadvertently serving to provide newer ‘identity discourse’ and consistency. It could be argue that the process of modernization, i.e. the homogenisation inherent to the term ‘indigeneity’ as a political term has more confluency with educated urban Maori. The problem with this politic and argument is that it excludes all those others (the majority of Maori) who still identify as ‘Iwi’ and live with treaties, or live urban existence and equally identify as ‘Iwi’, and still more ‘Iwi’ in traditional marae who were not party to the Treaty of Waitangi.\(^96\)
The current problem as identified by Manuhuia however emanates from dated historicism, thinking and policy which results in the preferencing of one grouping over another grouping. Eurocentric precepts are used to limit domestic frameworks to argue Maori rights and legitimacy. The inherent injustice experienced by one grouping or another within NZ, necessitates Manuhuia’s engagement.

The variance in Maori identity and existence, emanating from historical interaction and policy, creates the challenges urban Indigenous people present the first world. Accommodating the Third world and traditional Indigenous peoples and cultures is to some degree clearer if not perhaps less inviting given dominant identity and self interest. Accommodation consistent with international standards is perceived to run contrary to capital interests seeking to exploit the Biodiversity and knowledge of Indigenous peoples in Third world and first world countries.

18.8 Unspecified Identity As The Legitimated

Within an international inter-connective contexting, urban Indigenous are something of an anomaly. This is not to say they are somehow less Indigenous, or their claim less legitimate. All indigenous peoples are potentially covered by the UN Conventions. However, having no territory leaves them vulnerable, as the potency of the transformative agenda within international perspective is that Indigenous peoples are territory and their traditional cultures are Biodiversity.97

The positioning of urban Indigenous is a particular challenge of the First World. Where dislocation from territory has its origins in history, the New Zealand study indicates that a drift towards the cities occurs.98 A scenario continually being played out around the world as peoples and communities living in relationship to land are increasingly marginalised by national economics. The advent of urban marae has been the accompanying adaptation. Importantly, while these developments reflect a desire to retain identity, the variances in consideration between an urban Maori agenda, and that of others active at the international level needs to be remembered; particularly as activity
is oriented towards advancing the international reform agenda and the recognition of traditional peoples. A politic which seeks a global system that legitimates and affirms cultural diversity of locality.

While urban groups might gain ‘equity rights’ (a level of self governance) in accordance with the 1966 UN Covenants (Civil, Political, Economic, Social and [Cultural] rights), by engaging in adversarial conflicting litigation which inevitably prioritizes one approach or another by government; they may set the conditions within which, the Indigenous rights (self determination) as contained in newer Conventions (ILO 169, CBD, and Indigenous Peoples Declaration) are denied other Maori, who are ‘Iwi’ and thus able to claim ‘distinct rights’. 99

Amplifying the context culturally and applying the flexibility of international indicia establishes the legitimacy of Indigenous people (urban), and requires governments to provide equitably for the diversity of Indigenous groupings within their borders. A further argument might be made that the lack of an ‘s’ on the end of a group identity presents an additional problem. The Waitangi Treaty, and national legislative frameworks which have excluded urban Maori, may not be the basis for initially pursuing consideration. Perhaps an additional accommodation might be negotiated.

Within a number of 3rd world countries, the approach to dealing with the anomalies urban groupings created within the inter-governmental dialogue establishing the existence of Indigenous rights, (consistent with international frameworks/and not limited to historic treaties and national agreements) was to negotiate a treaty between urban representation and Iwi/peoples in the first instance essentially eliminating any externalities. Such a response and an alliance could be seen as a positive move towards a consolidation of Maori, negating the states classic imperial strategy of setting up internal conflict between sectors of the colonized.
18.9 Buying Into Eurocentric Discourse

Manuhuia may argue that ‘Iwi’ or ‘hapu’ are historic, dated or inaccurate identities, but today a majority of Maori still retain this socio-cultural identity. As identity, both are extant and operate as family, extended family, or clan and peoples consistent with the world of Indigenous-tribal peoples today. A great majority of Maori claim this identity, even those living within an urban setting or externally settled within Australia. Importantly, Maori who may live an urban existence, for the most part retain cultural identity connection with traditional marae, and observe the protocols when and if seeking to return to community. Indeed the advent of urban marae underscores a desire by many to revitalize and retain cultural connectivity. It should be remembered that the modern existence (which is unsustainable) only belongs to 20% or the world’s entire population and that any adapted Indigenous identity within these societies, while equally deserving of recognition and consideration within the vastness of human diversity, should not be the determinant, of all other Indigenous peoples’ accommodation or lack of accommodation.

In my view the way forward for adaptive urban groupings, who have lost territory and are seeking legitimation of newer representational institutions does not lie in an argument which diminishes and potentially negates the legitimacy of all other Indigenous peoples and a majority of Maori who retain ‘Iwi/hapu/peoples territory/cultural identity. Rather the politic should hinge on requiring government to adopt flexible indicia as internationally proposed. Government would then be obliged to implement policy that accommodates Indigenous diversity, resulting in separate and differing negotiation and agreements. This approach also neutralizes the power government wields against and between Maori, played out in its courts; the findings and judgements of which are continually being used to promote in-Maori enmity, while legal arguments by virtue of their Eurocentrism, add another layer of inappropriate and confused complexity. This only serves to further weaken either one grouping or the others’ basis for claiming legitimacy, a process that continually seeks to establish one normative framework catering to ‘indigeneity’; a notion, which has already been
dominantly defined and carries political consequences; these being the diminishment of socio-cultural peoples to a status of socio-political societies, and processes that again require the re-structuring of their identity to accord with dominant interests.

18.10 Cultural Re-Contexting

Interestingly, the strongest approach for gaining consideration by urban Maori did not stem from argument couched in Eurocentric discourse, but emanated from a re-engagement with Maori cultural notions. Until more recently, negotiation, litigated or otherwise, has tended to focus on that parcel of ‘rights/property/assets’ said to have been provided or excluded under the Treaty of Waitangi. It could be argued this politic was a response to government initiatives. Manuhuia’s material also evidences that the conflicted politic was an internal argument over ‘authenticity’, inclusion and representation. Newer approaches hinge on amplifying the cultural perspective and interpretation of what was understood at the time of signing the Treaty. This politic requires an engagement with Maori ‘identity’, simply because it seeks to incorporate Maori concepts and language which emanate from another cultural context.

This shift, from a diminished rights agenda to an identity discourse demanded greater self-reflexivity by the dominant, engagement with subaltern history, raised the question of values and more importantly required Maori to engage with inherent philosophical precepts. It was an approach, which created the conditions for an ‘in-cultural/peoples’ discussion, with the potential for producing deeper self-understanding/identity, while strengthening emergent subaltern history.

Cultural politics has the potential to engender greater awareness and clarity for all Maori regarding the differing epistemological frameworks in which they have grown up, been required to navigate, and inherited, such that the capacity for strong, bi-cultural identity and wellbeing might be achieved. The dynamic is still on going, and argument continues over the degree to which urban groups have truly understood the values bound up with
traditional notions, and language and/or the legal processes to which they have employed them.

The need for cultural politics and strong Indigenous identity was also part of Senora Pocaterra’s presentation to the Secretariat of the World Council of Indigenous peoples, Canada, in 1997. Her inter-linking circles (see Vol. I, Figure 2.1, p. 21) representing divergent worldviews, philosophy, values and politics are also an expression of cultural identity. This is why the dynamic she outlined between contesting realities, which lies in their intersection, can also be seen as a newer transcendent space potentially achieved through inter-cultural dialogue.

**FIGURE 18:1 Cultural Dynamics**
18.11 Waitangi A New Outcome

A cultural recontexting of the Treaty of Waitangi has resulted in a newer dialogue and outcome from the Waitangi Tribunal. Manuhuia writes:

*It is a commonly acknowledged fact that the Treaty partnership in New Zealand arose out of the transferal of the Maori right of governance (kawanatanga) to the Crown, in exchange for the promise of the Crown to protect Maori rangatiratanga. With respect to this the Te Whanau o Waipareira Trust argued that: “The adoption of an exclusive Iwi paradigm... is to deny that Maori can be Maori outside that paradigm and to deny treaty rights to Maori who do not fit within it” (Waitangi Tribunal 1998: 163), and that while “kinship and descent provide ready-made networks of relationships among Maori... it is rangatiratanga that determines which of those relationships have current significance” (214).*100 (Evidence that some Maori see their entire legitimacy only in terms of the Waitangi Treaty within a domestic litigated negotiation, and not emanating from international perspectives, discourse or Law.)

*In response to these arguments the Waitangi Tribunal found that rangatiratanga101 lay with Maori people, not with some specific institutional or organizational form such as a tribe. The Tribunal went on to conclude that while devolution itself had not been detrimental to the Treaty relationship between Maori and the Crown, the restricting of the devolution to tribal authorities had been. In ruling on the Waipareira claim, the Waitangi Tribunal therefore found that the Te Whanau o Waipareira Trust was established to address the results of the Crown’s Treaty breaches and to reconstruct traditional Maori structures and patterns in an urban context, and therefore should be considered as a legitimate treaty partner representing West Auckland Maori community.102 The Tribunal thus found that the Trust exercised rangatiratanga103 on behalf of a Maori community in West Auckland. In accord with this finding, the Tribunal recommended that the government should aim to apply the principals of the*
Waitangi Treaty to protect the rangatiratanga of all Maori in contemporary situations, kin-based or not, where evidence points to the exercise of rangatiratanga; as Iwi, while being modern descendant of earlier forms of kin-based Maori institutional form, did not provide a complete explanation of Maori identity.\textsuperscript{104}

Arguing that Maori performed best when the principals of rangatiratanga are maintained, when a community is empowered to determine its own needs and resolve its problems in its own ways\textsuperscript{105} (Waitangi Tribunal 1998: 236), the Tribunal suggested that section 396 of the Children, Young Persons, and Families Act 1989 be amended by substituting the term ‘Maori social service’ for the term ‘Iwi social service’. The release of the Te Whanau o Waipareira report therefore sent a clear signal to the New Zealand government that Maori are the Crown’s Treaty partner, not Iwi, hapu, or whanau.\textsuperscript{106}

18.12 Litigated Diminishment

While Manuhuia cites this outcome as evidence of ‘a new beginning’, I would point out several concerns. Firstly, as NZ has to date legitimated Iwi, the grouping who by virtue of an identity which carries an ‘s’ and are still linked to territory, are those who politically have the strongest hand when demanding confluency of national frameworks with international laws, this case might water down and diminish Maori. Secondly, not being Iwi, hapu or whanau, does away with culturally consistent and predominately extant social structuring of peoples. Thirdly and more importantly, the case may re-casts Maori as socio-political communities (as proposed by Chartrand) rather than socio-cultural peoples requiring a political accommodation. The shift is potentially accompanied by a reduction of the rights available at the international level. Simply put: ‘self determination’ becomes ‘self-governance’ as an in-systemic accommodation; the confusion being masked by the political (of Eurocentrism) use of the Maori term ‘rangatiratanga’ which in contemporary terms is said to mean ‘self-determination’. 

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Within Maori as spoken by Elders rangatiratanga is sovereignty. It can also be understood as the knowledge one carries of cultural philosophy and the authority this knowledge (and thus the individual who carries it) is accorded by others. The mantel being an inherited one, not automatically conferred, the requirement being that knowledge is learnt throughout one's life. For those more familiar with Australian contexts an individual who has rangatiratanga might be understood as a law man/woman; a community member who is recognized for his/her cultural knowledge and the accompanying authority with which he/she carries law and responsibility for and within peoples and country.

Herein lies the issue of urban Indigenous identity, the basis on which to make claim. It also explains parallel strategies of ‘economic development’ promoted by governments which recognize that to date Indigenous success within its system is a limited experience. There is awareness that the vast majority of Indigenous peoples still retain identity keyed to cultural perspectives and territory. Official recognition now results in a desire to promote newer identity construction (indigeneity), by offering limited opportunities (complimentary roles) within the system, while promoting those groupings already seeking an in-systems socio-political accommodation.

From within this perspective, this case might be seen as setting the conditions that allows NZ to sidestep its international obligations by promoting disconnected (from traditional territory/cultural philosophy) Indigenous identity. Dialogue would remain a conflicted domestic negotiation, being pushed/lead by urban/educated Maori who are happy to litigate to change the requirement and framework (normative) within which the New Zealand government deals with all peoples. Urban Maori now become the first socio-political grouping of Maori, with ancillary legislation also being altered to provide for this accommodation. A countervailing argument might claim that this case provides some level of consideration for ‘diversity’ in Maori identity, and that this evidences N.Z.’s willingness to harmonize its position with international thinking promoting flexibility.
Given the finality of Manuhuia’s interpretation and the reports last statement, that Maori are the treaty partner and not Iwi, hapu or whanau, and N.Z.’s lack of commitment to Indigenous conventions at the international level, I would suggest that this argument does not hold up. Rather it appears consistent with the accommodation first world governments and others are hoping to achieve within the UN. A political accommodation that is said to be equitable but which contains the Indigenous agenda by limiting it to addressing issues of social disadvantage through systemically consistent economic opportunity and newer representational frameworks. An accommodation, which simultaneously denies cultural identity, territory, livingness and traditional knowledge rights - the sui generis cultures of Biodiversity. These later considerations might then be addressed through co-operative land and resource management agreements (territory), as company or trust structures (individuals), and forms of legislated frameworks for the protection of artisan products such as an Indigenous authentification label. Such an approach seeks to ensure peoples’ traditional knowledge is denied or limited to intellectual property rights (capital’s system of patents). Newly legitimated and established governmental/commercial research institutions provide the mechanism through which to co-opt and subsume Indigenous knowledge. Having said this though, New Zealand must be recognized for having introduced Maori language as a compulsory subject in mainstream education, for its initial commitment to ‘green’ agriculture and positioning as a nuclear free country.

It might be argued that urban Indigenous identity lends itself to an in-systemic accommodation limited to the dated Covenants dealing with Civil and Political rights, or Economic, Social and [Cultural] rights. Government maybe seeking to legitimate these voices in preference of those still grounded in territory and cultural philosophical frameworks of identity and belonging. My issue is not that some Maori seek or even gain this accommodation. Rather, this dialogue is to point out that by re-interpreting and defining in Law (the nation’s normative framework), an accommodation of themselves (urban), they may diminish others. Moreover the real question it raises is, do Maori know that this is the accommodation being proposed, and have they made an informed choice. Are they wanting an accommodation which provides citizens rights with some
level of local governance, within and consistent with the logic and values of the dominating system, or are they pursuing recognition as distinct peoples, of identity and values couched in cultural philosophy which gives rise to a transformative politic and an other global vision.

*Indigenist* voices, including those within New Zealand calling for the protection of their whakapapa\(^{109}\) from genetic engineering, have chosen the later; the reason why they will remain the spearhead of a globalising conscientisation project that seeks a fair and just world for all Earth’s people and creatures. *Indigenists* are not seeking institutional inclusion in an often corrupt and criminal system of neo-capitalist imperialism, but rather the reform of man’s dominantly owned system and its institutions in order that life’s vital diversity; the living systems within the one living system of Mothers Law, to which all life on Earth is subject, may continue meaningfully.

The international statement of an Indigenous Alliance encircling the equator bringing together Indigenous peoples from 31 countries reflect this voice.

> ‘We support the call for an international movement to defend Mother Earth, a movement which our Alliance is fully committed to. We call on all Indigenous peoples to stand firm in the struggle to retain and recover our lands and ways of life.’\(^{110}\)

**ADDENDUM:** New Zealand has now moved to replicate the Native Title system both Canada and Australia have utilised, albeit that within Aotearoa the judiciary are involved in determining a ‘Customary Title’. This creates a new process for Maori, who until now as ‘Iwi’ had held customary rights recognised by Treaty.

Within Maori perspectives ‘customary rights are said to be derived from mana atua, mana tupuna, and mana whenua\(^{111}\) and are exercised according to practices which vary between Iwi and hapu, and from place to place. Customary rights are recognised in English common Law, and include such things as self-
governance (ownership, control, regulation, management, and allocation), development (cultural and economic benefit), exclusivity (in accordance with tikanga), use (in its many forms), and access.'

Newer legislation which seeks to provide the Crown with title to the foreshores and seabeds while simultaneously allowing it to extinguish Maori rights has resulted in a new dynamic within New Zealand. Maori see these newer developments as a betrayal and in contravention of Tikanga, Common Law, and International Law. Furthermore, they argue the Treaty agreement says the foreshore and seabed belong to Maori. In May 2004, New Zealand witnessed a march by some 25000 Maori to Wellington to petition government to withdraw its legislation.
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1 See Vol. 2, 9.5, pp. 177-178 where the significance of the ‘s’ on people as in ‘peoples’ was explained.


4 Gray, Andrew (1991), Between the Spice of Life and the Melting Pot: Biodiversity conservation and its impact on Indigenous peoples, IWGIA Document 70, p.ii


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8 In a worldview where in all physical manifestation (animate and inanimate in Eurocentric thinking) is of spirit, (the two being inextricably linked, there being no physical without spirit, no spirit without physical,) and everything is the same (western science only found DNA in 1957), and the world consists of living systems within a living system, ‘difference’ becomes ‘shape’. Bird Rose writes: ‘To be the same, minimally, is to share a shape and hence the potential to share a culture. To be different, is initially, to have a different shape, a different physical being’. ‘Out of that shape emerges other differences-animals of one shape, one species, share a language, a set of ceremonies, certain kinds of food, a way of life. In Kriol this specific way of life is termed ‘culture’. This usage is similar to that of many anthropologists; it differs primarily in identifying culture as a necessary part of life. We are not different from other species by having culture which they lack: we are different in that our culture, like our shape, is different from theirs’ pp445-46. Having the same shape (as other humans) and being able to share a culture is the reason why man’s system as culture, has such potency. However as it is monodimensional in thinking, i.e. hierarchical, that culture which currently dominates lacks authority. Authority –leadership is not power.

9 Authority as Indigenous peoples mean it is leadership which proposes positions and action that benefit all parts of a system. First world dominance is simply power which benefits one part, themselves, hence it is not authoritative leadership, only a structurally legitimated notion of leadership. Its dominance is the imposed- threatened use of destructive power. ‘Difference’, also become the locus of ‘relationship’. ‘Relationship only exists where there is difference’. Bird Rose, Deborah (1992), Dingo Makes Us Human Cambridge University Press, p.45.

10 Mick Mansell interviewed, ‘Blackfella Whitefella’, reporter Quentin McDermott for the ABC’s Four Corners program, ABC TV, TX 28 August 2002.

11 The advent of many North American ‘native’ individuals has further contributed to confusion. Issues and events became such that peoples of tribal authority have moved to ‘out’ these individuals and expose them as frauds. From North America, to Australia and New Zealand, traditional peoples are working to ensure that ‘unrepresentative’ cultural articulation is eliminated, and their ceremonies and knowledge are not expropriated and misused.

12 Refer back to section on Definitions, Vol.2, Chapter 11. At international levels and from Indigenous peoples themselves UN conventions and directives serve as the basis of rights to their identity, albeit that flexibility of criteria is also needed in order to genuinely address the diversity of peoples, in multiple settings and contexts. The same chapter contains Kingsbury’s proposed list comprised of ‘essential’ and ‘relevant indicia’ which might serve to provide the required flexibility of consideration. See 11.5.1, ‘Flexibility as Practice’, p. 275.


14 Ibid., p.137.

21 Ibid., p.7.
22 Ibid., p.7.
23 Ibid., p.7. What Castells has identified is the divergence between cultural peoples and modern identity. The later have through linear time come to inhabit a structured world such that identity has been increasingly engineered towards a self understanding of ones ‘function’ within it. Meaning has shifted from that of ‘disconnected identity’ to meaning derived as a function. This also serves to explain why identity theory has been accompanied by reductive consideration, its main objective being to explain ones relationship to structured power and its institutions. Cultural peoples however derive their identity from amplified consideration albeit that they too now need address globalising power and its thinking.
24 In the dominant world, meaning has shifted to identity of function. i.e. symbolic meaning is of belonging to a grouping within structured identity which the system allocates value and importance to. Stratified humanity each has its own culture/politic determined by its function to access wealth, power and status.
26 Ibid., p.7.
27 Ibid., p.7.
28 Ibid., pp.7-8.
29 Ibid., p.8.
30 Ibid., pp.8-9.
31 Ibid., pp.8-9.
32 Ibid., p.9.
33 Ibid., pp.8-10.
34 Ibid., p.11.
35 I refer you back to Vol. 1 Chapter 7 ‘Diminishment of First World Indigenous Peoples’, and in particular 7.7 ‘Blaming the Diminished’ (p.135), and 7.8 ‘The Rule of Empire’, explaining learnt helplessness, and sickness, (p.136).
37 Re-vitalization of culture within the First World, and indigenist expression has ancillary effects on national debate. In the longer term it conscientises the population by establishing greater self-reflexivity. In the short term, depending on the nature of government, it can be characterized as a radicalization of the Indigenous population. Where representatives and community leaders were previously compliant, negotiation often becomes more difficult. Un-used to dealing in living diversity, which the system is currently incapable of accommodating, (a failure the State continually denies it needs to address), State responses are often one of force. Simultaneously media and press will begin highlighting negative stories and preferably those centred on a few criminal elements. Vilification is extrapolated to all, with the result that the general population are denied access to genuine dialogue and in turn, the true and meaningful message contained within indigenist expression.
38 See Hazlehurst’s study which evidences that where Indigenous communities have re-introduced culture, they have turn around ‘lived sickness’ (alcoholism, violence sexual abuse) in twelve months. Hazlehurst, Kayleen M. (1994), A Healing Place: Indigenous Vision for Personal Empowerment and Community Recovery, Central Queensland University Press, Rockhampton.
39 Tuhiwai Smith’s writing also expresses the divergence in understanding of cultural revitalization processes. She explains that while it may imply that cultures need rescuing, this in and of itself does not explain its fullness, nor its origins. She writes: ‘The movement developed simultaneously out of the
survival strategies and cultural systems which have nurtured peoples, their values and their beliefs within their own communities, reserves, tribes and nations over 500 years. … What is agreed is that generally the movement began out of sight (of the dominant society) before bursting on to the national and international stages.’ Smith, L.T. (1999), Decolonizing Methodologies, Zed Books, p.108.


41 Ibid., p.110

42 Ibid., p.110

43 Ibid., p.11

44 An exception being that of Canada’s Metis, who were constitutionally legitimated as a separate people to First Nation (Indian) peoples.


46 Unspecified identity is not solely a nation state ascription. Unspecified identity is a lived and confused self-identity in which the individual’s sense of self (spirit) is diminished. De-colonization of the mind, frees the individual of negative internalized dialogue, centres the spirit and liberates the individual from fear.


48 Ibid., p.139.

49 This includes languages within historic community which may be viewed as a form of English, but which in and of itself carries distinct cultural subtext.


52 Ibid., p.181


54 As Sarkar points out, where modern nation states maintain they are democratic, there is not one constitution anywhere in which economic equality figures. On the contrary, almost all declarations of human and fundamental rights ceremoniously proclaim the right to property. See Sarkar, S. (1999) Eco-socialism or Eco-capitalism?, Zed Books, p.234

55 A colleague from Chile shared the following joke with me, when discussing the presumption of Europeans which in her view is a belief that they are God. As humour is another vital key to understanding separate cultural perspective I include it. The joke concerns a bet between God and man. The man tells God he is no longer needed as he, man, can now do everything the creator can do. He can even design and make a flower. When God does not seem appropriately impressed by this, the man challenges him to a wager. The bet is that should the man prove he can do this, God will leave everything to man. ‘Alright’ says God, ‘show me how you make the flower’. The man proceeds to scoop up a handful of Earth. ‘No’… says God, ‘that’s my Earth’…. ‘go create your own first.’


57 While I recognize this statement is a direct challenge to modern science, I reference Jeremy Narby who as a consequence of his experiences within the Amazon similarly found himself challenged to reflect and to write. Narby’s journey through the landscape of Biochemistry, examines DNA and reframes the context of understanding with his indigenised perspective. See Narby, J. (1998), The Cosmic Serpent, DNA and the Origins of Knowledge, Phoenix, UK.

58 Indigenous knowledge and its wisdom, poses a challenge to science.

59 In an article for IPS, published in Health E-Newsletter, posted Sat. 6th March 2004, Diego Cevallos writes: ‘The United Nations Environment Program warned Wednesday in Mexico that transgenic crops could pose a threat to biodiversity and human health, and recommended that the countries of Latin America and the Caribbean act with caution in using genetically modified organism (GMO’s). He noted that ‘this stance clashes with the position taken by its sister organization UNDP in 2001.’ In the three years since then however contamination of local seed varieties has occurred and been documented. ‘The
UNEP opinion on the controversial issue is laid out in its Global Environment Outlook report (GEO 2003) in which it was put ‘that the introduction of genes from one species of plant or animal into another could endanger natural genetic diversity.’ They also ‘warned of the possibility that modified genes might be spread accidentally amongst other species outside the laboratory, and could pose a real danger to the biodiversity that is fundamental to humanity’s food security’. The report further stated that ‘the debate on GMO’s involves polarised positions and major commercial interests, and that the precautionary principle should be applied as the norm until scientific consensus exists on the matter.’ The report also points out the contamination which has occurred in Mexico where wild species of maize have been contaminated by transgenic seeds. Contamination of local varieties has also occurred in Canada. The five leaders in transgenics are Monsanto, Dupont, Syngenta, Aventis and Dow.

Historical perspective supports an argument that science is the legitimator of Man’s law and simultaneously a ‘disconnection’. Having eliminated God’s law, Mothers law is now being assailed.

The events of September 11 bring into focus the issues central to systemic inequity and injustice. The twin towers were known as the ‘World Trade Centre’. The tallest silhouette in the NY skyline is again the ‘Empire state building’. Not the ‘Nation state’ building, but the ‘Empire state’ building.

Theoretical physicist David F. Peat who has spent time with Indigenous peoples, in particular the Blackfoot peoples of Turtle Island (North America) writes similarly. In a chapter on Time and Number he explains that while the presumption of Europeans is that mathematics at its highest levels is identical for Europeans, Chinese, Mayan, Arabs and Indians and it translates across cultures, this may in fact not be the case (pp.189-190). Peak argues that where western science treats mathematics as value free and abstract it is also possible that mathematics is inseparable from language and culture. He writes: ‘Some linguists have argued that mathematics is a particular, formal expression and extension of the various relationships, transformations, and interconnections that exist within language. And language in turn, is to a greater or lesser extent connected to culture and the particular way people live. Thus what we take as our universal value-free mathematics may be connected in certain subtle way to the set of common paradigms and ways of thinking that are embedded in all Indo-European languages. These include, for example, the strong role of nouns (objects) in the languages, the importance of categories, as well as certain notions of time and casualty’ (p.190). Peat also points out that by treating mathematics as abstract and value free, western science overlooks a knowledge common to both Indigenous peoples and ancient Greeks, ‘and that is the idea that mathematics is sacred and deeply connected with the whole nature of time and ceremony, with the proportions of architecture and the human body, and with the structure of the cosmos and sacred sites’. See Peat, F.D. (1996) Blackfoot Physics. A journey into the Native American Universe. Fourth Estate, London, p190.


‘Onetime’ is the term used by Aboriginal peoples in Australia to refer to their notion and understanding of time.


Ibid., p.123.

These concerns are not necessarily consistent with the political aspirations of ‘indigenists’. See previous Chapters 12, 13,&14, analysing ‘Indigeneity’, in which the divergence in articulation and political demands are explained in greater detail.

Ibid., p.123.

Ibid., p.123.

Ibid., p.123.

For cultural peoples pursuing a ‘global project’ their inner identity constitutes the strength on which they draw to articulate a philosophically informed politic at international levels.


Here in perhaps lies the basis to understand fundamentalism. In a world dominated by capitalist militarist self interest, colonization and Imperial expansion which is unjust and inequitable may lead to groupings, who having exhausted all other ‘peaceful’ avenues to systemically gain legitimacy of their identity, will replicate the methodology of repressive power i.e. terror, in the hope, that this will bring about some ‘balance’.


Such a perspective explains the relevance of the three laws which express not only separate conscientisation within the human family, but also the realm philosophy explains and culture incorporates. Here too lies the divergence in understanding the importance of culture. In the west and particularly the USA ‘culture’ is increasingly a ‘product’, the outcome of progress/development. For more than 80% of humanity ‘culture’ is the collective knowledge and meaning by which a living system and its parts operate to ensure wellbeing, and as such it frames ‘development’.


Within Manuhuia’s footnote is additional material supporting this claim. He writes: ‘The 1996 Census showed that 26 per cent of all individuals who identified as being of Maori descent gave no Iwi identification. No differentiation can therefore be made between individuals who were unable to identify with an Iwi, or those who were unwilling to identify with an Iwi.’ See *Political Theory and the Rights of Indigenous Peoples*, Ed. Ivison, D. Patton, P. and Sanders, W. (2000) Cambridge University Press. p.275.

A perspective that similarly holds for a great majority of tribal and traditional cultural peoples still living within natural and local systems, having not been integrated into the globalizing project of capital. Career trajectories of individuals and groups who were not party to the Treaty of Waitangi, and still live on traditional territory.

*Author’s emphasis. Discussion regarding what is meant by ‘rangatiratanga’ is an on-going dynamic, albeit that increasingly a more consistently Eurocentric appreciation is gaining ascendance. Barcham writes: ‘Rangatiratanga is derived from the root noun rangatira. Rangatira is often defined in older dictionaries as a chief or a person of noble breeding. More modern dictionaries similarly define rangatira as meaning a chief or a noble. Older dictionaries define rangatiratanga as evidence of breeding and greatness, while newer dictionaries translate it as sovereignty. The latter meaning is more in accord with modern parlance of the word. Gaining widespread popular acceptance in the 1970s and 1980s the term is now used as the basis for Maori rights to self-determination or empowerment. Thus while the term does...*
not directly translate as ‘Indigenous rights’, its modern usage as the basis for Maori rights does, however, lend itself to the inclusion of the sense of the word. The word should be interpreted in this sense throughout the chapter. (The word tino, often found conjoined with the word in the phrase tino rangatiratanga, is a modifier that acts to intensify the meaning of the word.)


102 Ibid., p.150.
103 Authors emphasis.
105 Emphasis added. While, this accommodation is a diminishment of Indigenous peoples’ aspirations which emanate for amplified cultural perspective and identity, it simultaneously represents the position proposed for systemically dependent societies under newer principals of global governance - a necessary first step towards making the disconnected, unaccountable man made system responsive to local conditions of human and environmental specifics. In other words it might be argued that the Indigenous agenda is being skewed to fit a newer emergent normative proposed for all. The limitation of this proposition however is that neither the values of the system, nor destructive human activity need alter, only the locus of decision/authority is considered. A further understanding of the need for governments to embrace the raft of newer Conventions of the UN which articulate globalising positions regarding environmental and human rights consideration
107 Explanation provided by the late, Whatahua Hona, Maori grandmother.
108 Brackets were added to remind readers that it is cultural rights which are being denied, albeit the political dialogue within the CANZ Bloc currently hinges on these two UN covenants.
109 Whakapapa is a people’s heritage— the concept situates family genealogies and ties to ancestral lands within their traditional creation stories. This Definition was provided within a Press Release from PAN AP Pesticide Action Network Asia and the Pacific dated 8 Dec. 2001. Entitled “Maori declare war on GE”, it reports on a Hui (gathering) of Maori leaders which took place at Te Ao Hou Marae in Wanganui, at which all Maori were called on to protect their whakapapa. The hui also concluded with a commitment to immediate direct action that targeted political parties, and scientists at universities and research institutions involved in GE experimentation.


You will note within each list of English words given as the meaning of the Maori word, there is terminology which reflects both a cultural space of relationship to the concept, and a European (coming from English worldview) understanding. For example Mana, meaning honour and prestige. The first reflects the reverence which is accorded those with knowledge as authority and way of being, where as ‘prestige’ reflects the modern framework of existence which operates in ‘status’ and ‘power’. Similarly with the term Atua. Here its meaning is given as God (which itself has separate meaning) and as a ‘super natural being’, a reflection of European perspective which sees spirit as a separate state of being, that is, outside of physical/ natural phenomena. Tupuna carries within it the concept of inter-generational continuance and genetic memory, while Whenua reflects the separate understanding of land, where country is self, as opposed to the European appreciation which simply sees is as a valuable ‘other’. Maori refer to themselves as Tangata Whenua, meaning ‘people of the land’, and here, which land becomes important, as the term is used to distinguish between those of a Marae or tribal area, and any
other visiting. *Tanagata Whenua* is also used as a collective term for all Maori in relationship to overseas visitors. The term distinguishing the foreigner, the one not of the land referred to as *Manuhiri*. Maori also speak of Australia’s Aboriginal peoples as the *Tangata Whenua* of Australia, meaning they are acknowledged by Maori as the First peoples of that land, continent.

112 Press Release, 10.30 pm Wed 13 April 2004 ‘We’re Marching’.


Here again are terminology which carry within it clues to a distinct worldview and understanding. Contained within *Tikanga* is the concept of ‘right action’ as a known way of being of the collective, i.e. a peoples and tribe, so it might also be understood as protocol, the way of doing which is grounded in a philosophical knowing of self as part of a living system in right relationship with other living systems and cosmos.
Chapter 19: Linking The Case Studies

An examination of dialogue and processes in New Zealand confirms a view that First World governments of Commonwealth nation states borrow policies and approaches from each other in an endeavour to create a consistency in position and stance. This allows them to manifest as a bloc within International Fora. Further more as was shown, the utility of ‘indigeneity’ as a newer Eurocentric politic, provides all three countries with the endgame of an internal (contained and controlled) accommodation potentially denying the rights available to internal minorities under international UN Law and standards.

In all three case studies, man’s law became the framework through which to make implicit a diminishment of Indigenous ‘identity’ and aspirations. ‘Relationship’ being characterised in Anglocentric terms and thinking, and ‘authority’ being institutionally located as power and a perspective which does not either legitimate or accept Indigenous identities, worldviews or knowledge.

Where Canada illustrated the methodology by which aspirations may be re-narrated and re-presented by officials of separate identity, New Zealand served to show that the entire system works to relegate every Indigenous identity to a newer category of the unspecified, ignoring cultural identities. Canada’s lack of specificity had to do with the utility of voice that divergent legal relationships with the state and crown result in. A confusion which by not being explained, can be instrumentally continued. In New Zealand where relationship has been characterised by cultural identity, processes now preference a newer grouping of contemporary identity who until more recently have had no legitimacy.

Within Australia identity, notions of authenticity were again shown to be central to dialogue. But here identity remains subject to an ability to prove ‘connectivity with land’ and claim a Native Title. Australia provided the nitty gritty of a legal process and illustrated the ease with which all rights can be blocked and denied through strategic
undermining. Processes within which Aboriginal peoples, their knowledge and their sharing is dismissed as being of less worth then that of a European ‘expert’.

All three case studies as reflexive texts illustrate the historic embeddedness of dialogue and negotiation. They also provide insight as to the divergence in voice and the pressures peoples are continually subject to, despite their own efforts at cultural revitalization and healing. The disconnect between officially devised processes in which language and contexting remains Anglocentric and asymmetric in power were also explained. As was the effect of the continual denial of ‘being’ on the psychological state of many Indigenous groups. An analysis which in and of itself may also explain the radicalisation of other peoples globally who are equally being forced to reconstruct identity in ways that are perceived as counter their own interests and survival.

What becomes clear from these case studies is the confusion created through the use of English. Particularly when the one term ‘indigeneity’, is understood differently in the three CANZ bloc countries. This confusion allows for a consistency of theoretical argument to emerge. Its utility being the support it provides for the ‘ethnicity’ politic of inclusion being advocated as the final accommodation.

Settler interests continue to cast Indigenous peoples and their aspirations as a competition and challenge to their self narratives. Narratives which it is being argued have long past their ‘use by date’ within an integrating world, but which still inform the official policies of ‘deliberative denial’. A stance and positioning which does not serve the wider community but rather one that plays on a fear to explore in any real way that which needs to be reconciled not only with those against whom injustice continues to be perpetrated, but also with the self. Nations are doomed to repeat their past unless they face them. There can be no forward movement until there is understanding, and the possibility of the aggrieved being given the opportunity to forgive. An essential aspect of ‘healing’ which it has been shown government currently denies all Australians.
Indigenous peoples are the oldest in the world, and raise their voice in a chorus of ‘Advance Australia Fair’, but this denies the true nature of relationship. Or does it? Aboriginal people will tell you that this reframe is a play on words, much like the one used in Queensland when post war migrant workers in the sugar cane fields began consolidating within country townships and the rural district. Real estate agents began placing large signs in their windows suggesting the Aussie might ‘Buy land before the day goes’. The last two words being phonetically identical with a derogative and racist term in Australian slang used to describe new migrants. ¹ ‘Advance Australia Fair’ then means just that, advance the fair, the light, the white, the settler Australian, the young and the free, an exclusive and exclusionary identity which it can be argued holds little promise for continuance as a ‘superior’ and ‘prioritised’ being in the face of global integration.

Indeed it might be argued that the unilateralist militarism to which global processes are being subjected may reflect the belief of this identity that it need remain separate and of dominance; a perspective which holds little understanding of or respect for other cultures, because this worldview and thinking is operational simply through money and force (power) which insulates and protects them and their interests. All of which means they believe they can continue to exist without having to live the consequences of their action or ‘way of being’ which other humanity and living systems now carry for them.

This is the systemic flaw inherent to dominance and the newer SLaw by which governments are seeking to create a restructuring of the world. Political re-orienting and diminishment of existing institutions which provided human and environmental consideration but which are now being over ridden while regulation is re-written to omit any need by capital to comply with the voice of humanity. The reaction to governance which operates in the self interest of the few who increasingly advocate newer policy and activity often hostile towards others, has been the emergence of newer network identities, which Castells’ work served to explain. Indigenous peoples, as one social movement in a collective of social movements (which include environmentalists, women
and youth), and the creation of network societies results in a next level of challenge to former colonialist identity.

The normativism inherent to modernity because it is Man’s law or institutional and structured existence has and continues to demand that every other part of the human family replicate this same form of existence. The historic assumption being that as powerful, technologically and scientifically informed secular nation states, they as collectives represent an advanced expression of human identity. But as has been reflexively illustrated, this is not necessarily the case. Furthermore from the perspective of many other peoples of cultural identity and worldview, modernity and its ‘way of being’ is not seen as the path to follow, particularly as its failures and disconnect become increasingly evident, socially, environmentally and even economically.

While identity and relationship are the tracks of experiencing divergence in worldview, it is authority which represents the locus through which change will be engendered. Dominant groupings may continue to believe in their superiority but daily it becomes increasingly self evident that they are devoid of either the will or the wisdom by which to orient the global systems or even national architecture such that it allows for societies of wellbeing, and for peaceful continuance. In other words ‘the disconnect’ within authority by which lack of right thinking has become an increased use of power/force is currently being played out on the world stage for all humanity to observe and ponder.

What these case studies have illustrated is the need for the conscientisation which is integral to Indigenous perspectives and philosophical worldview; a reframing of the human project and new ways of thinking. Settler nations would do well to examine a journey toward a cultural renaissance which has roots in their own country/livingness and its peoples, rather than remain a construct of imperialist history. In the end, the human being lives in a locality, where their feet walk, and in relationship with the living systems they share space. It is these relationships which again need to be factored into conscious awareness, language and a knowing of self. Dominant societies will also need to address the insecurity which ‘difference’ as they experience it, creates in their own
sense of self. Particularly when it becomes a negative lens by which all inter-relationships with other humanity are mediated and acted upon. It is not sufficient given the global challenges faced by all life.

Much of the world’s humanity is no longer convinced of the First World’s ‘superiority’ or moral rectitude. Nor are they of the view that these nations should unilaterally continue to set the direction and agenda determining our collective future. Many third worlders see the ‘disconnect’ between the dominants stated identity and intent, and what is practised or actioned. The radical change often foisted on nations and peoples is also being questioned. The world and its humanity can no longer simply be forced to become who one small group decides they want them to be because it suits them; particularly when they don’t know who ‘they’ are to start with.

Social engineering which resonates negative dichotomies is counter productive. Values conducive to inter-relationships of wellbeing are needed, as are those which will positively support the notion of ‘variation’ in life. Newer narratives are required which allow for positive identities within a belonging which embraces diversity but simultaneously has grounding in a national linguistic/geographic locality and boundary. This should be a first step in orientation. It can be further adjusted later as integration continues should capital finally shift to harmonise with the UN standards and International law, and as societies become conversant with the notions of tolerance and coexistence. Or, societies reach levels of inner security which lived and experienced inter-relations with others serve to affirm as a reality. This is the human renaissance available and inter-cultural approaches as diplomacy and dialogue can engender.

Normativism which has allowed for the continual and often traumatic shock therapy whole societies and nations have been subjected to, similarly needs to be re-oriented toward a flexibility which values diversity. This requires that those governments which historically retain veto over the global architecture and its mechanism recognise that the scale of challenge requires all of humanities involvement, knowledge, and innovation to address. In effect space needs to be created for other authority which currently lies
outside dominant knowledge and control. Its incorporation however will need to be on terms which respects the authors of this knowledge and the meta-rules of relationship. This allows for contribution of mutuality and reciprocity which is experienced by all parties as beneficial to wellbeing. In effect, processing needs to engage constructively with conscientisation.

As a ‘way of being’, homogeneity which began as a settler project to build a cohesive national identity has through time (linear western appreciation) simply continued as part of institutional political process. In effect it underpins the social engineering by which dominant capital interests inter-generationally create a grouping which believes it requires the product their research and development (R& D) creates. In other words, capital creates the conditions for its own self interests. It is sobering to contemplate the perspective of futurists, who point out that innovation and advances in industrialised modernity have emanated from military R& D.\(^3\)

Hence we return to the identity of that part of humanity whose entire modus operandi remains often hostile interventive dominance, reflected in their institutions and ways of being, in their thinking and knowledge and in their presumption about human nature which they then simply extrapolate to all other life.

This worldview continually justifies defensive aggressiveness with reference to history. It does not perceive a need to transcend or demand that humanity strive to resolve global diminishment. Nor do they see they are creating diminishment such are their self narratives and the ‘disconnect’ of their identity. This is why they miss the need to raise the vibration of existence, to resolve diminishment in a major key, such that human ‘ways of being’ again harmonise with the rest of nature, the livingness with which we share a Mother: Earth.
1 ‘Daigos’ plural of ‘Daigo’, a derogative term in Australian slang used to describe any person who is not of Anglo-Saxon extraction. Most often used to describe migrants from Mediterranean countries.

2 In Commonwealth countries generations of children grew up looking at a world map and learning that they owned the pink/red bits (countries within the British Empire being coloured pink/red). This was a repeated realization as I shifted countries throughout childhood. Be it Africa, Asia, or Australia, white children absorbed this identity while it was known (un-stated) not to extend to any children of colour in our midst. I was always struck by how pervasive this view was and how nonsensical it seemed, given that outside the school yard the colonialist stood out, their ‘being’ often ajar and sometimes fearful in a contexting of diverse richness, vibrancy and language. As an idea though, explaining ones presence in a country as its ownership, could be found in many playgrounds.

3 Dr. Hutchinson writes that 40-50% of R&D since 1945 has been directed toward military-related objectives, a reality which he points out is ‘hidden’ in high school physical sciences and economic textbooks. He continues: ‘The problématique of social responsibility in science and technology and the opportunity costs of military-related R&D for civil development and environmental security are ignored or almost entirely neglected.’ Hutchinson, Francis, P., ‘Educating beyond violent futures in children’s media’, in Slaughter, Richard, A. (1996), New Thinking for a New Millennium, Routledge, p.159.
Chapter 20: Concluding Reflections: Challenges for Conscientising Dialogue

The initial aim of this thesis was to understand my journey and to share the challenges and insights provided by another philosophically informed worldview. Engagement with Indigenous perspectives led to an expansion in project as their worldview holistically reframes the many challenges humanity faces. Consequently inter-cultural analysis of existing dialogue in a variety of fora reflected both the limitations in understanding, and the conscientisation taking place within global processes and the nature of newer agenda.

The thesis operated on three levels. The first provided the story of the Indigenous movement, the second concerned political analysis and discourse, and the third involved philosophical recontextualisation and amplification.

At each level of this thesis, the pattern became the same illustrating that inter-relationship as process and exchange continues to results in the diminishment of Indigenous peoples. Being denied is the good ecological order Indigenous peoples’ vision and politics offer humanity; the inter-cultural diplomacy and exchange which would engender a renaissance in thinking and innovation; and conscientisation regarding the inter-connectedness of all life and its living systems. All of which are reflected in the various inter-linking international instruments and mechanisms Indigenous peoples have assisted to elaborate through a variety of fora.

These three levels provided the means by which to examine and share knowledge outside existing discourse and literature. While the story tended to follow the chronological development of the Indigenous movement and its activity within shifting contexts, the political character of the landscape reflected the meaning within voice which emanates from contesting realities. Critical Race Theory coupled with Indigenous methodologies of recontextualisation and amplification revealed the inherent and
systemic qualities in thinking, practice, action and intent, which are ultimately reflected in policy and other relationships with Indigenous peoples.

Analysis revealed that within negotiation over which groups of rights Indigenous peoples might receive as ‘citizens’, these being civil, political, economic, social and cultural, it was culture rights which were being systematically targeted and eliminated. And yet as was revealed, culture is that which provides the framing of identity and law which is ones ‘being’ and is contained within the body of a locality as knowledge and language.

Examined further was the political vision of Indigenous peoples and its relevance in addressing global challenges. This highlighted the failure of the global architecture and the need of its reform. Providing insight Hernando de Soto’s study explained why capitalism works in the USA but fails in the Third world. Following in the wake of unfettered and unrestrained self interest, the system legitimates the dominant’s activity, ignoring and often eliminating the ‘informal’ or ‘local economy’ within a country. The development model addressed continues to require that peoples relinquish who they are in order to join the system as ‘nobodies with nothing’. Arturo Escobar’s study revealed that dominant development and progress narratives no longer address collective imagination. Instead as the thesis bears out, being advocated by many groups is a return to people centered activities, to sustainable technology and agriculture and other product and produce which have a cultural locality. This level of analysis also served to explain that much activity was already taking place within international and national contexts as conscientisation continues to grow, with governments, officials and civil society adding their voice to process.

20.1 An Integrating World And Its Political Story.

Traversing political landscape this thesis became a story comprised of inter-related dialogues and their contribution in shaping the nature and character of humanities shared future.
The diagrammatic representation of these processes provided by Ms. Pocaterra again illustrates the space in which to revisit the many meeting places within this journey.

**FIGURE 20:1 Situating the Space of Dialogue**

![Diagram illustrating the space of dialogue accompanying processes of global integration and my locus as an inter-cultural interpreter of these same dialogues.](image)

The diagram also sets out the project of this thesis. While dominant politics and power remains focused on managing or owning the global processes by which humanity is being integrated technologically, institutionally, politically, legally, socially and economical, the consciousness that Indigenous peoples' articulate as a separately informed voice is the knowledge that our Earth has always been integrated or inter-connected as Nature.
This awareness or consciousness as either an embodied or intellectual understanding has precipitated much of the conscientising activity at international levels within multilateral fora and informs the politic of Indigenous peoples.

As analysis revealed the diagram illustrates the separate character of two contesting worldviews and realities. At one end of the human spectrum we have a dominant group who continue to pursue and impose existence which is ‘devoid of nature’ as ‘consciousness’, other than in concessional terms as the conservation and preservation of species or as ‘resources’ capable of being incorporated in an economic system. On the other, we have Indigenous and Tribal peoples’ who either live, or still retain as inheritance, ‘the knowledge of being’ which result in ‘cultures of harmony’ consciously informed by and empathic with nature.

The thesis therefore engaged with and examined the impact and values contained within the various processes of integration, and highlighted both their limitation, and the conscientisation another philosophically informed perspective provides.

The First Volume *Introducing the Journey Across A Macropolitical Canvas* framed all the dialogues contained within the thesis. It described the macropolitical context, explained the various entities, organizations and groups active in this landscape, and provided a historical overview of the processes. The story tracked the shifts from Empire to de-colonization and newer democratization processes, and the accompanying development and activity of social civil groups and environmental activism North and South. It also examined the Indigenous peoples’ journey highlighting the many themes which inform the nature and character of the dialogues to which they are party.

Tuhiwai Smith’s\(^3\) model introduced in Chapter 2 (see Figure 2.2) clarified the impetus of Indigenous peoples’ politics as processes of **mobilization, decolonization, healing and transformation**. The *transcendent* aspect of Indigenous peoples’ worldvision or ‘Cosmovision’ was shown to be concerned with the *continuance of cultural diversity as a wellbeing of all life*. It was further revealed that while this objective resonates aspects of social theory in particular cultural, feminist and peace studies, Indigenous
philosophies take us beyond inherent assumptions contained within discourse. The transcendent space is the philosophical level of this thesis which involves a shift to a new paradigm beyond ‘difference’, to that of ‘sameness’. Perspective and insight which will be addressed in more depth momentarily.

The political story however examined First and Third World contexts and broadly identified how diminishment is achieved. First World contexts illustrated the instrumentality of issues, while neo-colonial agenda was shown to still predominate and shape relationship within the Third World. First World dialogue was shown to be generally concerned with representation, partnership negotiation, economic development as employment opportunities, education, artistic expression, processes of official negotiation and national reconciliation, within a framework which often denies the historic reality of dispossession and its role as the cause of Indigenous anomie.

Informing much inter-relationship is the pervasive nature of negative Anglo-centric perspective in which Indigenous identity is confused for the problematised statistics collected as data on Aborigines. This contexting also highlighted the veracity and instrumentality of Chomsky’s ‘Rule of Empire’ which ensures ‘natives’ are never allowed to develop competitively and are only ever provided a complimentary role.

Within the Third world, it was revealed that dialogue still tends to reflect the realities of slavery, military incursions and death, forced removal and resettlement, transmigration, loss of land and the means of continuance (resources), habitat destruction, impoverishment and desertification. While the denial of identity, knowledge, culture and voice were common to all Indigenous peoples.

This divergence reflects the differing stages of the dominant’s one progress narrative which has defined international processes accompanying ‘development’. Phases reflected by the tides of survival, recovery, development and self determination in Tuhiiwai’s model (Figure 2.2, Vol.1, p.27) which describe the ‘states of being’ that Indigenous communities are moving through.
This insight further illustrated the shared nature of Indigenous experience, and the 
commonality which informs the growth of their movement. Divergence in voice which 
reflects additional aspects of Indigenous ‘states of being’ were addressed in subsequent 
analysis (Volume 2 and 3) revealing political strategies and argument, thinking and 
discourse which again diminish or subvert Indigenous processes conscientising 
international agenda.

This conscientisation was shown to dovetail with the United Nations’ reform process 
which aims at democratizing inter-relationships between all nations and peoples, 
including the hundreds of millions of peoples and nations who currently have no official 
status or representation. Analysis further revealed that de-colonization and even 
democratization mean different things to diverse peoples, especially those who may 
have already lived the realities of these processes, and found them wanting.

A time line of International events (see Appendices) detailed the multiplicity of on-
going dialogues which shape unfolding processes. It indicates the shift in resonances 
and themes which have informed humanities common journey as processes of de-
colonization and democratization. These processes have historically involved ‘states’ 
and their development. Terms such as ‘under-developed country’, ‘developing nation’, 
‘emerging nation’ and finally as part of capital’s globalizing agenda, ‘nation in 
transition’ all express various stages within the dominant’s development/progress 
narrative.

Opening up United Nations processes to social civil movements, environmentalists, 
youth and Indigenous peoples was shown to have amplified perspective within these 
international processes. Their agendas brought human rights and environmental 
consideration to the fore in a series of Conferences and Summits where newer 
International frameworks, mechanism and agreements were reached.
Highlighted too was the ‘disconnect’ between the UN and the newer trade mechanism of the World Trade Organization (WTO). Maintaining its separateness from the United Nations system, the WTO has cooperating arrangements and practices with the organization. These however do not currently require parties of a WTO agreement, to comply with the human rights and environmental standards or mechanisms elaborated within the UN. Presently ‘good corporate governance’ remains a voluntary consideration for any transnational or capital entity seeking to globalize its reach and impact.

While the international community has been working to implement the necessary mechanisms and frameworks which might engender a world of peaceful co-operation, by addressing: the need for newer sustainable development models and knowledge; peoples right to self determination; food security and freedom from terror; bio-cultural diversity; pluri-culturalism and a requirement for inter-cultural diplomacy; *Volume I* situated the relevance and centrality of Indigenous peoples’ in these processes of global conscientisation.

A more detailed examination of the Indigenous footprint within multilateral fora and the debate to emerge from Academia was provided in *Volume II: Dialogue and Debate Within International Fora and the Academy*. It examined two aspects of the same dialogue. The first canvassed the International ‘space’ in which Indigenous rights and their vision for humanity have been expressed within newer standards. The second, involved the Academy’s response to the need for a newer political discourse encompassing Indigenous aspirations. Both aspects inform each other, and analysis served to highlight the inter-linkage.

Diagrammatically the first part examining Indigenous peoples’ processes within international fora, sits in the space of multilateralism represented by the United Nations as a meeting place for all. It revealed not only the processes by which Indigenous peoples’ have worked to attain the equality of their human dignity, but also the manner and process which have stalled their agenda within this fora throughout much of the International Decade of Indigenous Peoples, 1994-2004.
This section also examined the standards which have been elaborated, and revealed the need for these to exist within differing conventions, resulting in an inter-connective framework, which potentiality offers all of humanity a ‘good ecological order’. Governments however have continually used the need for an official definition to hold up discussion. This was shown to be a strategy aimed at limiting to whom the term ‘Indigenous peoples’ applies, potentially excluding whole groups of peoples’ who might seek to claim the rights contained within the relevant documents.

Various approaches to definition and its development were explored revealing the historic nature of the strategy which categorizes Indigenous peoples allowing the dominant to determine their level of legitimacy as ‘authentic’ humans. Historically, inconsistent and multiple categories gave colonial administrators great flexibility in their interpretation and application. The legacy of ‘definition’ has often been static and inaccurate categories still informed by dated anthropological perspective. This insight explained the importance to Indigenous peoples of ‘self identification’ and ‘group acceptance’ by other Indigenous peoples.

Africa and Asia as regional studies became the landscape in which to analyze the impact of ‘definition’. Here specificities of geography and history which result in differing social, cultural, economic and political realities, illustrated that no one definition of ‘Indigenous peoples’ suffices or addresses the diversity of peoples. Rather for international processes to deliver ‘justice’, definition needs to be flexible. Benedict Kingsbury 5 provided a list of essential and relevant indicia which might best serve such an approach.

The story then moved on to examine the procedural aspects of the Indigenous peoples’ journey within the United Nation. Analysis revealed that often the source of newer frustrations to outcomes for Indigenous peoples were ‘unspecified identity’ and related matters of ‘representation’. Newly arrived Indigenous groups often played an inadvertent but instrumental and key role in undermining the advancement of the Indigenous agenda within the international arena. Unfamiliar with United Nations processes and not previously party to the parallel strategies being run concurrently by
their brothers and sisters from other regions of the world, this Indigenous leadership may often depend on government officials to orient them within the various meetings.

Opportunities have been missed, and the call for a global boycott of a key Convention by a few ‘English’ speaking Indigenous leaders did little to assist wider adoption of an instrument which establishes Indigenous peoples existence in international law elaborating categories of standards and rights.

The repercussions of the boycott, coupled with dominant interests influencing of processes within UN fora was shown to have global implications. Internationally what had already been achieved was the extension of jurisprudence to include ‘internal minorities’ of nations and peoples’. This obliged the United Nations to consider ‘peoples’ in addition to ‘states’ within multilateral processes and outcomes. The Working Group on Indigenous Populations and an opening up of UN processes had further resulted in newer conventions and inter-linking instruments which potentially provide Indigenous peoples with consideration and their human dignity. These are International Labor Organization Convention No. 169 (ILO169), the Declaration on the Rights of Indigenous Peoples’, and the numerous provisions included within the United Nations’ Convention on Biological Diversity elaborated and opened for signature at the Rio Conference in 1992. Also relevant is the newer Declaration on Cultural Diversity currently being elaborated (see ‘Appendices’ for copies of these documents).

The boycott, followed by the creation of a second ‘governmental’ Working Group to review the Indigenous Peoples’ Declaration of Rights further served to stall conscientising agenda. The consequence of this level of subversion is that hundreds of millions of peoples’ have continued to be subjected to repressive and often racist processes in their own countries. What was revealed was an official impetus to retain dated and historically informed dialogue and relationships which deny Indigenous peoples their dignity and ‘space of being’, and their means of sustained continuance as wellbeing. Perhaps the 2nd International Decade of Indigenous Peoples, 2005-2015 may provide a more just outcome.
Acadia was shown to be grappling to find a way forward and create a newer political discourse; one which might encompass Indigenous peoples' legitimate aspirations. Their response was linked to Indigenous peoples' own processes of cultural revitalization as both a decolonization and healing of peoples which has led to their mobilization and activity within international and national contexts seeking transformation. The relevance and utility of Indigeneity as political discourse and its claim to represent the conscientised voice of Indigenous peoples was examined.

As a discourse Indigeneity emanates from the dominant circle in Figure 20:1 (p.585) but aims to represent voices both within its own circle and that of the inter-section. The suggestion that this newer political discourse has ‘universal relevance’, meaning it encompasses the entire system depicted in Figure 20:1 (p.585) revealed how this dialogue might potentially become another shadow box (Vol. I, Figure 7:1, p.123) in which nations and peoples are recast as a newer ‘ethno’ political grouping (see Vol. II, Chapter 12.1, p.290).

This concern that negotiations framed by Indigeneity might also be subverted was addressed. Africa’s decolonization processes in the 1960s (Vol. II, Chapter 11.3. p.242) provided the context in which to understand how this might be achieved, particularly as the juggernaut of externally situated self interests still define the reality of lived existence within African landscapes. The utility of ‘ethno’ political categories of tribes instrumentally created by colonial administrators was shown to be a key aspect in a fault-line often exacerbated by interests seeking control of the continent’s resources. Also revealed was the desire of Africans to engage in genuine processes of de-colonization as a healing of their peoples. The recovery of ‘Land’ was shown to be the central issue, with voices increasingly suggesting that the continent’s future is ‘Africa for Africans’.

An analysis of Asia (Vol. II, Chapter 11.4, p.259) demonstrated the long term effects of colonization on national psychology, and the need this creates to determine a newer space of existence which reflects one’s own traditions and histories but which
simultaneously allows for equality within the globalizing system. Asia reflected the rapid **transformation** taking place within society and landscape when the tide of development has outstripped any **healing** associated with processes of **cultural revitalization**.

Consequently Indigenous peoples within Asia were shown to be doubly diminished peoples. Subject to the impact of both dominant capital’s expansionism and the activity of their own elite often partners within these processes. A lived reality in which **survival** and **self determination** are the tides or resonances which inform Indigenous **mobilization** within a wider project which seeks to support a national recovery and **healing**.

Indigeneity as a discourse of political accommodation was revealed to be a two edged sword, because while it has the potential to provide Indigenous peoples with a solution to ‘unfinished business’, it might also create further diminishment. Instrumentally Indigeneity potentially exchanges self-determination for self-governance and ones ‘inheritance’ as an Indigenous ‘peoples’ or ‘nation’ for the newer ‘ethno’ political category of a ‘socio-cultural society’.

Outcomes to any negotiation over the models or levels of self governance potentially available, were shown to rest on the level of politicization Indigenous peoples have achieved, and their understanding of dominant processes and language. Analysis also revealed that any satisfactory outcome requires that the basis of continuance as an inter-generational inheritance of peoples be open to newer processes involving a reconstruction of identity. This also explained why resulting settlements often do not reflect the terms Indigenous peoples thought they had negotiated. While Academics have sought to reflect the aspirations and voice of Indigenous peoples, their discourse may not sufficiently safeguard the ‘meaning’ contained within cultural voice. In these circumstances Indigeneity was identified as another potential diminishment. With Indigeneity promoted as the framework in which to satisfactorily conclude historic negotiation, the story moved on to a detailed examination of national dialogue.
Volume III contains the three case studies and illustrated the borrowing of policy within the CANZ bloc. Three Case Studies: ‘…The One Solution…’ grounded the various threads being drawn through the thesis giving them tangible form within the context of national dialogue and landscape.

The three case studies of Canada, Australia and New Zealand were chosen because these governments as a ‘bloc’ have generally tended to work to delay international consideration of Indigenous rights within the United Nations and their own nation-states, hindering not only their internal minorities but also hundreds of millions of other peoples globally from attaining consideration as equal humans. This position also delays a step toward the vital and necessary reform of global architecture, and the imbalance in relationship its processes currently produces between nations and peoples.

Canada, which generally provides the political lead for the CANZ bloc and effectively the rest of the Commonwealth of Nations, illustrated how the political discourse of Indigeneity might be grounded as practice. Historical perspective served to contextualize the reason for a divergence in voice and explain the ascendance of a politic which recasts Indigenous peoples identity as ‘socio-cultural societies’, while simultaneously reducing the aspiration of ‘self determination’ to a negotiation over the degree of ‘self governance’ they might attain. Métis people often play a role within these discussions as the dominant group within governmental departments and institutions administering Aboriginal and Native Affairs. Their standing as a distinct historical people included within the Constitution and granted land by script in 1870 was examined. The differentiated status of Métis to that of Indigenous peoples often referred to as ‘First Nations’ was shown to often confuse dialogue masking the voice of others within the same landscape, in particular the traditional and cultural voice and that of Treaty peoples’ who make claim to their ‘inheritance’, which includes territory and its resources under international law. Peoples who are not interested in joining the dominants project as the administrators of their own misery.
Despite government’s attempts to rectify historic errors in policy, newer problems might arise should the confusion caused by divergence in voice not be appreciated at policy level. Because many of the aspirations of Indigenous peoples are expressed similarly in English, as demonstrated in Canada, divergence between those whose identities still draw on their Cosmoconsciousness as a peoples within a territorial integrity of knowledge and/or Treaty, can be confused with those articulating a separate politic which may subscribe to a nationally determined agenda. Canada illustrated how the international and national are divergent dialogues, and the nature and characteristics which define this divergence. Furthermore this study illustrated how this divergence can be instrumentally achieved, and result in dialogue being replaced by national process of diminishment.

This led to an examination of juridical processes. Australia provided the case study. The High Courts decision in Mabo #2 set the stage for a political dynamic in which governments have sought to address Aboriginal peoples’ right to land. The Act and processes of Native Title which require Aboriginal peoples prove an ‘unbroken connection to land’ using criteria determined by European anthropologists, experts and the Tribunal, was shown not to result in justice. The Report of a Parliamentary Inquiry into Native Title and an historical recontextualisation of events surrounding processes revealed how powerful interests and levels of government worked to ensure the legislation and Tribunal fail.

Fueling a fearful political dynamic, wider society was led to believe that granting Aboriginal peoples land rights, would be at the cost of their own future and wellbeing. Indigenous aspirations were miss-represented as a ‘competitive rights’ agenda implying a choice between ‘them or us’. Here too was the deliberativeness of tainted anthropological evidence, of cultural insensitivity within juridical process, and a government prepared to rewrite the rulebook, even if it meant transgressing international Human Rights Undertakings. The story of one Tribunal involving the Yorta Yorta peoples and its outcomes, demonstrated the diminishment of Indigenous peoples
contained within processes, and the denial of women’s knowledge. The Australian Case Study demonstrated how legal frameworks and methodologies can be subverted.

The case study also explained the impact a subsequent and official report by the Human Rights and Equal Opportunities Commission had on wider society. ‘Bringing Them Home: The ‘Stolen Children’ Report’ detailed the impact of official policies of removal which saw children inter-generationally taken from family. It set out the nature of historic relationship and the devastating legacy this left Aboriginal peoples. The report’s release lent support to a growing and national people’s movement dedicated to Reconciliation between Aboriginal peoples and wider society. A defining moment in national history took place in Sydney at Corroboree 2000, when hundreds of thousands of people came out into the city streets to support the movements Declaration of Reconciliation and express their solidarity with Aboriginal peoples.

Contrasted with this, however, was the Australian Government’s position and a Prime Minister who refused to say ‘sorry’ or apologize to Aboriginal peoples for official past injustices. Also revealed and critically analyzed were the redrafted ‘Points’ the Australian Government enacted to ensure Indigenous peoples achieve nothing through Native Title processes.

Reconciliation and the agreements which underwrote this process were also examined, revealing their limitation in that various clauses contained within the agreements hold in abeyance any rights or entitlements for Indigenous Australians. Instead an open ended process was proposed, which should it ever conclude and agreement be reached, be subject to a referendum. The Australian case study demonstrated the need for Critical Race Theory as an academic approach where justice and human dignity are continuing to be denied by both political and juridical institutions and process.

New Zealand became the landscape in which remaining threads being drawn through the thesis might similarly be grounded and tied off. New Zealand has historically recognized Indigenous peoples cultural form of identity of ‘Iwi’. This landscape also
reflects the divergence in voice and perspective which Treaty and non-treaty peoples present to government and dominant interests. This case study brought together issues of identity, and representation, while rebutting the need to address ‘difference’ and ‘authenticity’ as elements determining the legitimacy of Maori identity or as the basis on which to decide access to resources.

Where Tuhiwai’s model (Vol I, Chapter 2, Figure 2.2,) explained the impetus and processes of Indigenous politics and the ‘states of being’ through which they are moving as an expression of Indigenous identity, New Zealand became the landscape in which to further analyze the tension between divergent voice within political and juridical processes. Dialogue within New Zealand tends to be far more ‘inter-cultural’ in character. Despite political and juridical process remaining inherently Anglo-centric, revitalization of cultural identity has seen many Maori concepts and notions incorporated and redefined within official process. Understanding divergence in voice however required additional perspective particularly as historic definition as static categories of authenticity frames and informs much of the dialogue.

Manuel Castells’ insight on the emergence of ‘network societies’ explained the divergence in Indigenous voice and the role ‘culture’ plays in determining identity. Applying his treaties to Indigenous peoples within an ‘integrating’ world, revealed that Indigenous identities which are ‘constructed’ as a collective resistance to unbearable oppression, diverge from those who have always been a community or nation of peoples’ and who, as a project have moved on to seek legitimation within the structures and systems by which humanity live. This insight highlighted the distinction between peoples whose identity reflects a cultural inheritance of language, knowledge and philosophy, with those, who through colonization have been required to undertake the greatest adaptation simply to survive, and whose ‘contemporary’ identity or ‘resistance’ identity may be ‘disconnected’ through language and inter-generational history.

The application of Anxiety Theory further addressed divergence in voice and demonstrated a universally expressed requirement that identity be legitimated and
respected as part of a deep psychological need for self-understanding and continuance as inheritance. When a group fails to achieve certainty of their standing, despite undertaking arduous adaptation they will ultimately demand legitimation of a separate identity. As noted by Fischer, all identity requires continuum, be it Indigenous or otherwise, in direct contrast to ‘authenticity’ which serves to make identity static.

Central to this case study was the insight that the newer political discourse of Indigeneity was understood differently in Canada and New Zealand by its Indigenous peoples. In Canada it was thought to reflect a ‘contemporary identity’ but in New Zealand it was thought to reflect the ‘traditional’. Consequently a number of Maori academics who tend to belong to contemporary and urban identity have argued ‘authenticity’ and ‘difference’ as a means of incorporating their identity within the discourse, while simultaneously fighting political and legal battles within New Zealand to change the definition of Maori. The result of this activity was to produce across the CANZ bloc one consistent and new Indigeneity discourse which might only need accommodate Indigenous peoples’ as ‘socio-cultural societies’, potentially sideling any need to accommodate the traditional or Treaty peoples whose identities and rights are an ‘inheritance’ and contained within interconnective frameworks within the UN.

The three case studies in Volume III, confirmed that at some level all processes said to provide Indigenous peoples with dignity again targeted ‘culture’; that which gives Indigenous peoples their space of being, belonging in country and inherent ecological knowledge of locality. Indigenous peoples are still required to relinquish who they are, or undergo dominantly informed processes of identity reconstruction in order that they again fit the newer ‘ethno-political’ category of socio-cultural societies which can be systemically incorporated.

All three case studies served to illustrate that the transformative or transcendent quality of Indigenous politics which resonates beyond conflicted dichotomy as an inclusive Cosmovision for all humanity, is absent within official dialogue and dominant discourse. The disconnect between international conscientised perspectives and national
dialogue was clearly revealed by the case studies. This also explained the divergent contexts or levels of consciousness informing voice and activity, with project identity addressing their equal inclusion as part of humanity within processes of global integration, and those of resistance identity pursuing systemic incorporation within dominantly determined state processes. It was also revealed that governments are only moved to address Indigenous ‘issues’ as a systemic accommodation when the economic, social and political cost of ignoring and excluding Indigenous peoples become too much.

The case studies demonstrated that the newer discourse of Indigeneity, and other processes such as ‘Native Title’ negotiation, or ‘Reconciliation’ do not address the wider need for systemic and architectural reform, or demand compliance with the newer standards and mechanisms elaborated within multilateral fora. Diagrammatically what the case studies serve to do is flip consideration. Where dialogues are situated within the dominant circle in Figure 20:1, p.585, the analysis brought to bear is consistent with the conscientised perspective available within the intersection. In effect the challenge presented to dominant society is to engage in the same processes which provide the Indigenous peoples their political impetus, processes of mobilization, decolonization, healing and transformation as part of a collaborative journey towards a transcendent future.

The case studies combined revealed that no matter at which stage or phase Indigenous peoples might be within their own journey, paradigmatic realities still inform relationship, be it 500 years ago or today. Further more, just as the global system begins to address ‘internal minorities’ and include ‘peoples’ and the ‘environment’ within legal instruments and create newer mechanisms which might guide humanities common future as a shared journey, historic interests which currently benefit from the existing architecture have created a newer organization and its mechanism through which to continue to orient global processes in their self interest.

This future potentially involves the subordination of the United Nations to the WTO, the supremacy of corporate rights, and the values and priorities of dominant capital. As this
thesis has illustrated however, there are many agents for change, including governments, which advocate in preference inter-cultural diplomacy and the subordination of the WTO to the United Nations so that it, like other agencies, complies with the United Nations’ Charter and its newer standards and mechanism. 

20.2 A Philosophical Reframe

The third level of this thesis was the philosophical level of Cosmoconsciousness which informs Indigenous politics. This level provided intercultural understanding of a holistic living systems sensibility and way of being in which the elements of fire, wind, water, and Earth are the same for all life. This worldview understands that all life is part of a continuum and implicate order in which the physical is a manifestation of spirit. This level served to amplify understanding and provide another standpoint from which to review human activity.

The philosophical precepts informing Indigenous voice provided new insight with levels of consciousness being linked to cultural identity and expressed within politics. Identity and self understanding were shown to be shaped by the Law one lives, which in turn determines the qualities and values, the level of consciousness and meaning that is one’s life. The three Laws introduced at the beginning of the thesis served to explain divergence in ones ‘space of being’. Man’s Law, God’s Law and Mothers Law became the shorthand and means by which to jump boundaries and contexts within a dialogue, allowing for a divergence in worldview to be expressed. A fourth law, $Law was shown to be an aberration of Man’s Law and the dominant force currently reconfiguring all of life on Earth. This technique of jumping contexts and boundaries which again borrows from Indigenous peoples, assisted to provide a shift in perception as parties to a dialogue gain an understanding for what has previously been experienced as a contesting voice.

These Laws also allowed for the shifts in consciousness associated with Critical Race Theory, and provided a holistic schema which does not separate humanity but rather honors a view that we are all part of the one family, one Earth and one Cosmos. These
Laws also explained the difficulty western frameworks have in expressing Indigenous Cosmovision; a profound consciousness in which neither science nor religion are in conflict, but rather both are contextualized within a holistic understanding.

The inter-cultural nature of this thesis also resulted in a methodology which borrowed from that of Indigenous peoples. Strings as boundaries served to structure the thesis while resonance like music allowed one to shape form within flux. A reality which reflects the verb centered languages and view of Indigenous peoples which operate within the enfolding space and continuum of ‘onetime’. Throughout this journey the strings of identity, relationship and authority have been the weft on which all the dialogue has been woven reflecting another sensibility of life. In this worldview, everything is relationship. The continuum is comprised of relationship. We may come and go but the relationship remains. One’s reality becomes the experiences one has, the values implicit in moments of exchange, the intent that informs action, and the knowing within which events are contextualized and understood.

So if everything is relationship what does this mean? What are the choices we face as humanity? Who are we in a globalizing world? How do we create peaceful co-existence within the human family? Increasingly the global challenge we all face is being defined as a dialogue and negotiation about values. What are the shared values by which humanity might co-exist within a living universe? What values should inform institutions and governments determining policy? What values might best serve to reform global architecture so that the activities of the global system might be re-oriented towards outcomes which provide for an ecologically good order of existence?

All these questions resonate the string of relationship which the holism available within Indigenous philosophy again serves to recontextualise. Emanating from Indigenous consciousness expressed through Mothers Law are the meta-rules of relationship which underpin the whole of this existence.
20.3 Indigenous Meta-Rules of Relationship

Deborah Bird Rose\textsuperscript{10} identifies four meta-rules bound up with the Law governing relationship. These are: \textbf{Symmetry, Balance, Response, and Autonomy}. All are experienced as one living breathing resonance within the ‘Onetime’ of being. The meta-rules are but an aspect of the Living Law, the one Law of all Earth born creation and can be understood on a number of levels.

\textbf{Balance}: denotes the idea that every living part shares in the responsibility of sustaining itself and balancing others within the interconnectedness. Bird Rose writes: ‘\textit{A system cannot be life-enhancing if it is out of kilter, and each part shares in the responsibility of sustaining itself and balancing others.}’\textsuperscript{11}

\textbf{Response}: is the second meta-rule of relationship. This meta-rule is concerned with communication which is reciprocal. Bird Rose noted that ‘\textit{there is a moral obligation; to learn to understand, to pay attention, and to respond’}.\textsuperscript{12} All parts have their own viewpoint, which they communicate. Parts tell of themselves through messages and signals. Interaction between parts and within parts is reciprocal and must result in exchange that ensures balance.

\textbf{Symmetry}: refers to the equalness between parts of the living cosmos. Bird Rose explaining symmetry writes: ‘\textit{In opposing and balancing each other, parts must be equivalent because the purpose is not to ‘win’ or to dominate, but to block, thereby producing further balance’}’\textsuperscript{13} Symmetry also exists between the physical realm and the spiritual. An imbalance in one will affect the other. Symmetry and balance can be lost when one part overwhelms another. Symmetry is maintained when that part being annihilated pushes back, re-establishing equalness.\textsuperscript{14}

Symmetry also means asymmetric relations exist. These relationships generally occur within parts. They are usually relationships of authority: a dis-equal relationship.\textsuperscript{15} Bird Rose explains: ‘\textit{Asymmetric relationships are those in which options are limited and}
The example she provides is that of a parent’s relationship and a child’s. Sickness can be brought in through these asymmetric relationships when another relationship to that with authority within a part, is radically altered. Sickness which may precipitate death of a part or a living system occurs when one part or living system continues in a prolonged and authorized imbalance.

Bird Rose uses the Sun and Rain to illustrate the operation of these meta-rules. Sun and Rain are Symmetrical. They are equal and balance each other. Neither dominates the other. Both are equally accommodated and block each other so that balance is ensured. When the Sun is out, the rain is eclipsed. The relationship is equal in reverse, or reciprocal. Sun and Rain communicate of themselves and the energy of their exchange is balanced. Both are required to sustain life. As complete systems within a system, the fourth meta-rule, Autonomy is invoked. Each follows their own Law and sustains each other with balance. There is no hierarchy as the meta-rules apply to all parts or systems within a system.

**Autonomy** is the fourth meta-rule. In some respects this Meta rule goes to the heart of an Indigenous understanding of our place in the world. Bird rose writes: that ‘parts’ are autonomous’… and that ‘this is established as fact through Dreaming law: no species, group or country is “boss” for another; each adheres to its own Law.’ Each is an autonomous part, or system within a system. ‘Authority and dependency are necessary within parts but not between parts’.

These Meta rules are not only relevant to consideration of systemic and architectural reform, but equally to their purpose. The Meta rules also directly impact on the intent and action of any entity or part within the system.

The first understanding of relationship is that humans which belong to a country and ‘Dreaming’ are family and are expected to care for each other. In other words, humans are not a resource you mine for profit (cell lines/genome) or exploit (slavery); they are in fact that with which you share a shape, and that for which you care.
A global conscientisation of humanity living within many countries is one which recognizes that the project of caring for each other, must equally allow the other the capacity to care for their own, and that the inter-relationships unique to the other’s living systems with which they share space within their country, requires that the one global architecture honor and accommodate this diversity. Simply put, the system needs to be oriented again towards caring and sharing in their truest meaning, as all humanity is part of self in relationship to a richness of life which is interconnected and dependent on each others collaboration for continuance. Perhaps too it is worth remembering that this is the context in which ‘trade’ originally sits, as a mutuality of exchange which benefited all parties.

Second, where the notion of morality and ethics are disconnected from primary identity as constructed and lived within modernity and its thinking and structures, a shift to a newer underpinning of Indigenous Meta rules takes you somewhere else. Bird Rose explains:

\textit{Moral actions are those which sustain balance, immoral ones are those which violently threaten it. Human intention is considered in moral evaluations, but usually it is the act and its results which determine the context. Morality and immorality are most consistently identifiable at this very abstract level: to act, to respond, and to take responsibility within a cosmos in which life is inextricably bound up with death.}\textsuperscript{20}

So here now are the contexts within which to understand action and the impetus for action. It is to care for and to share, it is to ensure balance and at the same time to live within relationship by authority and knowledge which engenders this good order.

Understanding morality as part of the Meta rule of Balance also leads to insight regarding relationships of power which result in destruction. Within an Indigenous worldview, acting immorally is to create imbalance. This is also central to destructive behaviors and action, to violence and to fighting. No individual would chose this action
because to do so is understood as diminishing them self. A further understanding regarding violence and aggression are provided by Bird Rose.

*Symmetry and balance among people, like balance among countries and species, can be lost in two directions. If one part overwhelms another, as in conquest, balance is lost. If one part self-destructs or diminishes drastically, balance is lost. Aggression and self-destruction threaten, in different but related ways, the relationships which sustain country and peoples.*

So here now is the response to power which lacks authority because it is unable to articulate or action contexting which honors mutuality and reciprocity such that all living systems benefit from the collaboration.

Here too are the necessary shifts as I understand and see them should we choose to elaborate a more meaningful world of being.

- Firstly, where the dominant currently promotes *co-operative* relationship, the Indigenous suggest *collaborative*.

- Second, where relationship is currently *power*, they suggest *authority* (knowledge/wisdom).

- And third, where Christian teaching as a remnant (currently being revitalized) within Man’s law suggests *morality and ethics*, Indigenous suggest *right action*.

The asymmetry of power explains why it is ‘collaborative’ rather than ‘co-operative’. Power can easily affect a co-operative relationship where as a collaborative relationship contains within it a notion of the autonomous choice of a party to join in an agreed and shared venture. Collaborative relationships require empathic and sympathetic resonance which only a mutually beneficial goal produces. Collaboration honors relationship which
is consistent with a living systems understanding of the world and Cosmos. This not only has profound implications for agriculture (now agribusiness) and other industries, but equally for the global architecture of institutions and other entities of structured power. It further impacts on governance and the locus of authority, and on processes of democratization and activity which engender product for exchange and trade. In effect it becomes part of the journey through a ‘doorway’ to achieving a newer paradigm.

This is also why relationship is predicated on knowledge as authority and not power, because here again those with power may lack knowledge, or even should they have knowledge they may lack wisdom. Hence the project is one of collaboration rather than co-operation. Because as has been shown, the later simply becomes concerned with altering and skewing either representation, or systemically legitimating a ‘disconnect’ such that the powerful ultimately benefit and the ‘other’ is marginalized and excluded.

20.4 The Solution Is Political

So where does this bring us and what are the options we have? Saral Sarkar suggests that the fundamental choice humanity faces is between Eco-socialism and Eco-capitalism. But as this thesis has shown Indigenous philosophical contexts which operate in a Cosmoconsciousness and understanding that within this existence no-one can or will ever be outside nature, provides yet another step in thinking.

Such awareness brings into relief the vital importance and need for that knowledge perspective and understanding which allows one to live collaboratively with Mother Earth, such that inter-relationships mutually provide for a continuance of wellbeing.

It is modernity, its knowledge, processes and intent which currently creates a ‘way of being’ which is damaging for all life. Chemical, technological, nuclear and now genetic modernity has an ecological impact which extends beyond immediate relationship so that activity results in waste and contamination which spreads and accumulatively affects all other life or living systems within Mothers’ body. Other societies may also
appear environmentally destructive, but their technologies and ways of being only affects the immediate locality with which they are relationship, and because activity is part of culture as a living systems sensibility, it, unlike the modern version, allows for regeneration and rebirth which is healthy.

Modernity is thus a ‘way of being’ which is disconnected from its ‘nature’, from its essence (spirit), and because of this, is increasingly devoid of meaning (universal consciousness). In contrast, there are hundreds of millions of Indigenous and Tribal peoples whose ‘way of being’ remains consistent with the philosophies and values which are the meta-rules of relationship. These are peoples and humanity whose voice has largely been ignored and whose lives are being turned into chaos by destructive forces which serve the interests of others.

So sharpening our lens how do the choices look?

One option is being provided by modern settler nations who appear to currently prioritize their ‘economy’ over and above their societies’ wellbeing or a belonging to a community of nations and its representative global organization the United Nations. This politic potentially continues the historic legacy of a colonialist ‘us and them’ dichotomy. It promotes the corporation as the legal and political means by which to orient existence and as the agents driving and owning global processes of integration. These entities however are largely un-regulated and in general the processes to which they subject nature, do not result in the wellbeing of living systems or their parts.

Furthermore interests driving this paradigm and benefiting from their activity have also skewed the dialogue on ‘sustainability’. In dominant contexts sustainability has become a politic and use of power to ensure that resources (nature) provide for the continuance of the corporation; not the sustainability (continuance) of peoples and cultures, or even of other living systems, which these interests do not deem necessary or to which they have not ascribed an economic value. This is the consciousness of terra nullius.
While Indigenous peoples have been instrumental in conscientising global integration processes through the Rio Summit of 1992 and related agenda, the events of September 11 changed the dynamic and character of international dialogue. Providing impetus to explain the forceful activity often accompanying capital’s globalization process, some political theorists suggest we are living through a ‘clash of civilizations’. My own view is that this perspective again reflects on the values of modernity. Within my own journey around the world, living in many contexts and countries, ‘culture’ is not the ‘stuff’ of conflict, rather the fault line of conflict is about ‘authority’ (knowledge) and the law (locus of authority) by which society is ordered.  

My reasons for stating this comes from an appreciation that there is a divergence in understanding what politics is and its purpose. Within western discourse and self understanding, politics despite its rich traditions, has increasingly become the legitimating arm of hostile capital, reflecting Foucault insight that politics is, ‘war pursued by other means’. In effect this might be seen in the wording of the Charter guiding USAID’s activity, in which one of its key objectives is to make foreign countries safe for American investment. 

Thomas Friedman also identifies the link between capitalism and security when he writes that key to understanding US Foreign policy is a recognition that First world national security is driven by a desire to retain a balance of power (hence the continual need of a hostile ‘other’), and an acknowledgment that Foreign Policy and International financing are linked. He refers to it as ‘commercial diplomacy’.  

In an article written for the 4th World Social Forum (WSF), Vandana Shiva also links militarism and corporate globalism, contrasting it with the message and values of the growing social movements taking part. The WSF, which took place in Mumbai, India, was established in response to the World Economic Forum (WEF), in Davos. In the article she writes:
'The first message of the Forum to the World Economic Forum (WEF) is in the name itself: the World Social Forum (WSF) gives primary importance to people and society; the WEF puts corporations and capital first. The second message lies in the systems of organising – one controlled by capital, the other selforganised by thousands of groups. It is in the diversity and plurality of selforganization that a new emergent politics has started to take shape. The third message to Davos is peace and non-violence. Violence is both the means and the end of an economy based on greed, economic dictatorship, and militarism. Nonviolence as both means and end is the choice of the people. Corporate globalisation needed militarism, explicit and implicit. When 25,000 Indian peasants are forced to commit suicide, when Korean farmer Lee sacrifices his life at the barricades in Cancun saying the WTO kills farmers”, globalisation is exposed as war by other means. When Halliburton and Bechtel emerge as the real winners of the Iraq war, it becomes clear that war is globalization by other means.27

Within Indigenous cultural contexts where one’s identity and relationships are embedded in a continuity of intergenerational inheritance, politics reflects identity which remains connected to the eco-systems with which one is in collaborative relationship, and is of worldview and language which retains and continually re-enforce this self conceptualization and value. In these contexts and in the face of dominant forces which often act aggressively pursuing ‘war by other means’, politics becomes about the right to a ‘space’ within which to provide for the continuance of self identity. Politics becomes about knowledge, and about authority. Here in lies the divergence in consciousness and political impetus.

As this thesis has argued these two distinct political projects which inform negotiation are continually conflicted because divergence as an expression of bio-cultural diversity is not accepted and its vital importance as the basis for the continuance of all life is not genuinely understood by those who hold power. This divergence in consciousness,
vision and values again serves to illustrate how Indigenous perspectives and philosophies reframe and re-contextualize western liberalism and its theories.

Importantly while the dominant hegemony is a modern secular society\(^28\) based on Man’s Law and increasingly $Law legitimated through the exercise of power, a great many of the world’s people still live within self-sustaining cultures based on either God’s Law, or Mothers Law.\(^29\) Here again there may be a divergence in political project but those who live Mothers Law represent humans systems of inter-relationship as cultural peoples living an ecological locality who are currently threatened; peoples whose values and ‘way of being’ reflect other knowledge and priorities. In effect, what ever the dominant may determine is the character and dynamic of international processes, Indigenous voices continue to remind us that ‘the’ future which contains within it the ‘wellbeing of humanity’ is the one their cultural politic addresses.

Dominant interests may argue that culture is the fault line of conflict to obtain legitimacy for the militarist solution being implemented but this is in direct contrast to the position elaborated within the ‘Universal Declaration on Cultural Diversity’\(^30\) of the United Nations Educational, Scientific and Cultural Organization (UNESCO), which sees cultural diversity as the vital necessity for the continuance of all life on Earth.\(^31\)

Within its preamble it reaffirms that:

> 'culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs'.\(^32\)

The Declaration continues:

> 'Noting that culture is at the heart of contemporary debates about identity, social cohesion, and the development of a knowledge-based economy’, [the document]
‘Affirm(s) that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security’.  

Within this conscientised framework ‘cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of peoples belonging to minorities and those of Indigenous peoples.’ Article 4 further states that: ‘No one may invoke cultural diversity to infringe upon the human rights guaranteed by international law, nor to limit their scope.’

The assumption that uni-centric language and knowledge coupled with media/communication conglomerates provides the dominant with ownership of the global narrative potentially hinders First World interests from engaging with the global challenge of values and collaborative co-existence. While the events of September 11 and ensuing hostilities might be seen to overshadow the need for an engagement with the Indigenous agenda, it is argued that their inter-connective framework comprised of newer standards within multilateral fora becomes more critical. The unilateral response of the US and its allies, may only serve to further a continuance of the ‘us and them’ dichotomy inherent to capital’s globalization.

This said however, the corporation and business are here to stay. Trade is and has been conducted throughout millennia by all parts of humanity and as such it is not an invention of corporate beneficiaries, rather, this latest elaboration continually diminishes trade. $Law identities need to appreciate that the challenge lies beyond re-orienting institutional activity of power and the law to preference themselves. While highly critical of the current impact of capital systems and its entities, many of which have been criminally tainted, this thesis does not advocate their dismantling.

What is being argued is that the exclusive prioritizing which has its roots in colonialism and later historic inception of the IMF and United Nations, and further enshrined with
the establishment of the WTO, needs to be addressed. Adjustments both in the architecture and purpose of the global system are now required. And this is the challenge. *Settler nations* whose interests it serves need to be aware that they too must now undergo a *reconstruction of their identity*. But it is not the one being advocated by some sectors of *law*. Namely the fearful, xenophobic, aggressive, lawless invasion of other peoples worlds, and the theft of their knowledge and resources. This world is simply a continuance of the traumatic experiencing which is colonialism and Empire creation.

Rather the reconstruction required is a journey of *recovery*, of reconnecting with both nature and spirit; a journey of *healing* that becomes reflexive at all levels of the self; a process of *decolonization* which ultimately leads to a shift in consciousness and its communication. This in turn alters the nature of inter-relationships and ones experiencing of the world and *transformation*.

In effect what is being proposed is that processes of democratization be extended. But for this to be genuinely achieved humanity (and in particular dominant humanity who is disconnected) will have to:

1. Understand that they cannot continue as they do now.

2. Appreciate that the peoples they often most marginalize and harbor racist views and thinking about embody another consciousness and perspectives which offer humanity other ways forward.

3. Realize that science as they currently understand it is not universal truth nor will it ever be.

4. Accept that values and attitudes need to be re-oriented towards engendering a just, tolerant, sustainable, peaceful and meaningful integration of the world.
5. Recognize that where currently every inter-relationship, exchange and space of existence prioritizes them, other humanity and living systems equally need their ‘space of being’ and autonomous continuance.

6. Gain an understanding that within this existence they will always be within nature and that their own survival and quality of life is directly linked to the survival of bio-cultural diversity, which refers to both humans and species.

7. Comprehend that the resonance of life they experience is directly linked to the values they employ in relationship within a conscientisation which provides meaning for this existence.

These represent initial points from which to mobilize processes which ultimately can provide the necessary transformation. By this means dominant people also become part of the human and global project. In a sense the step is towards the Indigenous consciousness of sameness.\(^{35}\) This means that ‘difference’ which currently acts as the fault line for conflict becomes instead the space of shared resonance. In such a reframing ‘difference’ becomes variation. This in my view is how humanity might be re-orientated towards a world community.

Replacing ‘difference’ with ‘sameness’ as a newer consciousness reorients humanity toward brotherhood and sisterhood. A ‘way of understanding self in relationship to other humans’ such that processes of globalization which currently are being militarily imposed become instead tolerant and peaceful processes of integration. We move from political gamesmanship as power, to dialogues of mutual exchange, from a dated worldview of ‘us and them’ to the much needed newer world construct of ‘we the peoples’.

This means the architectural framework of structured entities will also be required to validate a newer order or Law; one which both guides our common destiny towards a shared future of mutuality inclusive of all life, as well as provide accountability of action.
of all peoples and nations and by extension their entities and institutions. As this thesis has argued the *sui generis* for such a global project is again enriched by Indigenous perspectives and philosophies.

Contained within their Cosmovision is a conscientisation and good ecological order which might serve to assist humanity. As this thesis has shown many agents for global reform similarly share aspirations contained within their agenda. Within the UN various conferences and summits have resulted in newer standards and mechanisms. As most of us are used to thinking in dichotomies, I have provided a list of paradigmatic shifts in thinking which might serve to re-orient activity.

**TABLE 20:2 Shifts in Perspective and Thinking .**

<table>
<thead>
<tr>
<th>The Dominant DOMINANT DISCOURSE</th>
<th>The Other CONCIENTISED DISCOURSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Us and Them</td>
<td>We the peoples</td>
</tr>
<tr>
<td>Unilateralism</td>
<td>Multilateralism</td>
</tr>
<tr>
<td>Wealth, power and status</td>
<td>Identity, relationship, authority (knowledge)</td>
</tr>
<tr>
<td>Ethno politics</td>
<td>Cultural politics</td>
</tr>
<tr>
<td>$Law formerly Man’s Law</td>
<td>A newer framework or Common (multilateral) Law</td>
</tr>
<tr>
<td>Unitary</td>
<td>Diversity</td>
</tr>
<tr>
<td>Chaos</td>
<td>Stability</td>
</tr>
<tr>
<td>Noun</td>
<td>Verb</td>
</tr>
<tr>
<td>Hierarchical top down</td>
<td>Local consensual, of the circle</td>
</tr>
<tr>
<td>Neo-colonialism</td>
<td>De-colonization and Democratization</td>
</tr>
<tr>
<td>Freedom as an unconstrained and disconnected $</td>
<td>Autonomous individual whose activity is not to the detriment of the whole.</td>
</tr>
<tr>
<td>entity.</td>
<td></td>
</tr>
<tr>
<td>Centralized power disconnected from the context</td>
<td>Dispersed authority within system of governance accommodating of cultural locality, as continuance of diversity.</td>
</tr>
<tr>
<td>of impact or outcome of decision.</td>
<td></td>
</tr>
<tr>
<td>Monocultural/homogeneity</td>
<td>Multiculturalism/diversity</td>
</tr>
<tr>
<td>Progress as dominantly and centrally defined and</td>
<td>Prosperity as self-determination within a diversity of cultural locality.</td>
</tr>
<tr>
<td>mediated.</td>
<td></td>
</tr>
</tbody>
</table>

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
### Chapter 20: Concluding Reflections

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Disconnected from nature and spirit.</td>
<td>Connectedness within consciousness of universal meaning.</td>
</tr>
<tr>
<td>Corporate rights as an unaccountable and self-regulating system.</td>
<td>Human Rights and Environmental consideration as continuance of wellbeing and priority of global system, framing innovation and activity.</td>
</tr>
<tr>
<td>WTO, Transnationals impose a future.</td>
<td>United Nations, Governments and peoples shape our common future.</td>
</tr>
<tr>
<td>Free Trade</td>
<td>Fair Trade and a living wage</td>
</tr>
<tr>
<td>Money as a means of its own creation</td>
<td>Money as a medium of exchange</td>
</tr>
<tr>
<td>Speculative wealth</td>
<td>Real wealth</td>
</tr>
<tr>
<td>Oil, Coal, Nuclear, Chemical, poisonous technologies which destroy life and which will ultimately make Rainbow Serpent (DNA) permanently sick.</td>
<td>Green (renewable and sustainable) science and technologies, and an equitable accommodation of traditional knowledge as a complimentary system respectful of its authors’ authority and rights.</td>
</tr>
<tr>
<td>Adversarial</td>
<td>Collaborative</td>
</tr>
</tbody>
</table>
|Inheritance as the inter-generational passing on of ‘property’ which underpins wealth, power and status. | Inheritance as a bundle of inter-relationships within a cultural locality and continuum.  

Gender as a subset of a male dominated world system and view requiring equity.  

Gender and knowledge as a balancing within the human living system in relationship to other living systems.  

Life as a commodity, and reproduction as an activity of interventive and determining science.  

Life and continuance as a gift of Mothers birthing and song within a living continuum.  

Land as an inanimate resource of exploitation.  

Land as life, as self, and as a ‘space of being’ as belonging and inheritance.  

Agribusiness as an imposed and disconnected monoculture, and as GMO, interventive practice in which nature and a living organism is not understood to have intelligence. As such it is assumed human priorities are sufficient reason to impose criteria and determine a version of life. (Sucking out ‘meaning’ from cell/DNA and injecting ‘bits’; cell/Rainbow Serpent has no say other than to mutate and or die from the violence).  

Agriculture in which humans recognize that nature is comprised of living systems within living systems whose parts are conscious, communicate of themselves, act and react, and as a matter of self interest and free will adhere to the same set of understandings and as such they have their own intelligence and will autonomously make the best decision from a range of options presented. (May also include selective breeding).
Chapter 20: Concluding Reflections

<table>
<thead>
<tr>
<th>Constructed nations</th>
<th>Peoples and nations of earthed belonging and cultures.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflict</td>
<td>Dialogue</td>
</tr>
<tr>
<td>Politics as power and force.</td>
<td>Politics as expression of identity and authority (knowledge).</td>
</tr>
<tr>
<td>Dominant and prevailing mindset and worldview for all inter-national relations.</td>
<td>Pluri-culturalism and Inter-cultural reframing of exchange and meaning.</td>
</tr>
</tbody>
</table>

Agriculture as activity informed by knowledge of cultural locality which results both in ‘produce’ and the enrichment of the other living systems which share the space in which activity has taken place.

These shifts represent the continuation of earlier dialogues which began with the simple exchange of view points from within contesting realities when the United Nations opened its doors to social movements. Dialogues which remain open ended but which are maturing and represent the space of newer engagement involving a growing civil society, government, institutions, and agencies. This is a shared and collaborative journey, and an opening of space within thinking and process which aims to equitably and justly accommodate cultural diversity.

Similarly what has been shared is the possibility that Indigenous philosophies offer; the prospect of a global renaissance, of exchange and sharing from within diversities of knowledge systems and cultures. This is a project of mutuality, of reciprocity, of respectfulness, within which the Meta rules of existence are understood and resonate.

This is a better world being made possible through a genuine democratization of institutions and processes and a re-orienting of macropolitical processes back to the local. A world in which ones identity will again have a cultural locality that provides wellbeing, while ones self understanding will be that of a global citizen. A world of inter-cultural learning and of languages which extend beyond the human to again include nature and the other living systems with which our own continuance and
wellbeing is bound. A living world which again priorities life and as such, will address those activities and processes which run counter to this shared interest.

A world already in the making in which newer mechanisms are being created which might reflect higher levels of conscientisation, and awareness that the environmental, social and economic challenges we all face will not be solved by militarism and the use of force, but rather through the collaborative endeavor of every human and institution. A world which communicates information which empowers and capacitates societies enabling them to sustain wellbeing and continuance. And of television programming and media content which fires the imagination and the desire to innovate within a newer framework of thinking and values.

This worldview is informed and conscientised to understand sameness and variation as enrichment, rather then as ‘difference’ and a ‘threat’. This worldview respects ‘quintessence’ albeit that this shift, which is best experienced in verb centered cultures and languages, may prove to be a life’s attainment. Such respect ensures a good journey in preference to the crude one which rests on a systematized training of militarism and death squads. A worldview which recognizes that while we live in a cynical and jaded world, ‘innocence’ is being born around us every day presenting humanity with the option to shift from a diminished worldview of ‘suffering’ as ones salvation, to one which understands the natural state of humans is happiness and joy. A newer way of being in the world, a way of walking in which the qualities imbuing relationship are those which nurture and support the capacity for right action and the development of the human spirit. A journey in wisdom. A ‘state of being’ in which we honor and respect our Mother who provides us with both the substance and space of life: herself, Earth.

20.5 La Coda

This thesis has been an inter-cultural journey through landscape. But it has also been much more. It has ultimately been about bringing together, about sharing and caring and about the type of future we might have. Encompassing a broad canvas in thought and
geography it has reframed and recontextualised the many and various dialogues to which parties are in discussion and negotiation over the dignity and value we will collectively place on life and on our humanity. Embracing the entire project of my journey, figuratively, literally and metaphorically have been Indigenous peoples’; a humanity from whom I have been learning and from whom I have drawn the resonances which imbue this text and its perspective. A philosophical worldview which holistically encompasses my own knowing and experience living in a diversity of cultures and which has served to address my internal challenges to understand and find solutions and express another vision for humanity.

The starting premise of this thesis says it all. My methodology which also borrows from Indigenous peoples served to initially express the intent and purpose of this journey. Like the explanation of boundaries provided at the beginning of the thesis, (see Vol. I, Chapter 2.1, p.32) the journey has been about recasting the dialogues as meeting places which might potentially bring together. A shifting of consciousness from what is ‘different’ which underpins dominant thinking and worldview to one of ‘sameness’, and of variation. By this process of analysis and examination, dissecting policy and law, engaging in debate, addressing voice, providing explanation and reinterpretation of terms and notions as an expression of meaning, the thesis has actually illustrated and thrown into relief the impediments which hinder this ‘coming together’.

That which humanity must address should they choose to live in peace and as wellbeing.

The journey is not that hard, nor is it impossible. As has been amply illustrated many groups of humanity are already engaged in processes which can assist to bring about this ‘better world’. Human beings have an incredible capacity to adapt and survive and to shape their existence, but the vision, the will and the intent must be there.

Quintessentially there is only the shared project of life on Earth within this existence, and it is at onetime wondrous and of beauty, born of Mother in innocence and of a potential we are to discover as self as humanity.
This thesis does not romanticize Indigenous peoples or their way of life. Anyone who has ever lived within Indigenous communities will know the rigor this demands, or the distressed nature of existence which remains when inter-generationally peoples have been disconnected from self as country. This thesis is not suggesting that everyone has to live a traditionally Indigenous way of life, intimately dependant on living systems. And neither is this what Indigenous peoples’ advocate.

Similarly though dominant societies must also respect that they cannot demand or impose by force or other measure, how other humanity who have a distinct worldview and philosophy must live within their space of existence. This process of ascribing negativity to that you wish to diminish as part of wealth creation for self is the aggressive and destructive aspect of human nature which currently is devoid of balance. This will not be provided by creating another ideology to argue or enemy to battle. Rather the journey required is a reconnecting with nature and with spirit; a balancing with the elements of life of which we are part. This process we are to discover as self as humanity.

Indigenous voices are about being part of humanity on terms which allow them their continuance as inheritance, as humans with dignity equally contributing to the collective and collaborative project of a diverse but shared life.

However the pattern or template to emerge from this thesis has been the continual diminishment of Indigenous peoples and the deliberately subversive nature of dominant activity within all processes claimed to ultimately provide justice. How then might this be amended so that parties to a dialogue shift to a next level in understanding and negotiation?

In summary what is being suggested is adjustment and reform of the global architecture. A genuine democratization of relationships between peoples’ and nations. A respectful and inter-cultural recontextualisation of other language and knowledge which may serve to assist find another vision to that which is currently unfolding. Indigenous peoples and
much of humanity want the man made system which excludes and diminishes, which separates and divides, and which reduces all Earth’s life to a pitiful level of survival, to shift. What they want is the global system to acquire new thinking and operate within a newer conscientised paradigm. A paradigm which again resonates our humanity and is of meaning within a continuum that is part of an enfolding and implicate order that is our universe. A world in which international activity shifts to an inclusive agenda concerned with the continuance of diversity and the quality of all life on Earth. This is a politic which has at its heart our humanity and wellbeing. A desire to again live within universal meaning in which we embrace life in all her beauty, take hope, and learn to sing in harmony with the breath of this existence.

I thank you for your company and ask that Creator guide your forward journey on the good road…
Chapter 20: Concluding Reflections

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.


2 NGO’s active within multilateral processes and attending the World Summit on Social Development, projected a multilateral system in which the global financial and trade bodies would be brought within, or subordinated to, the human rights, sustainability and social standards developed through the UN. Without defining the structures, the NGO “benchmark” statement outlined processes which would bring the IMF, World Bank and World Trade Organization (WTO) policies under human rights treaties, ILO conventions and regular social and environmental audits. They argued that ‘only thus could the world community begin to get at the structural causes of poverty, unemployment and social disintegration’. See, Foster J.W. and Anand, A. Eds. (1999), Whose world is it anyway? Civil Society, the United Nations and the Multilateral Future. United Nations Association in Canada, p.468.


9 The publication of the United Nations Association of Canada, which questions Whose world is it anyway? provides further insight on the dialogue concerning the role of capital and the nature of the critical perspective emanating from these international fora and the reform measures being promoted. ‘Conflict has sharpened between, on the one hand the aspirations for the emancipation of the world’s citizens and their pressure to participate in decision-making about the use, protection and sharing of the world’s resources and the life of the world community, and on the other, the aggressive pressure to “free” markets and “liberate” the movement of capital and investors who control it, reduce government, diminish taxes and lower standards’ (p.464). The stand alone position assumed by the WTO in relationship to other processes of the UN and capitals pursuit of corporate rights through this forum, such that all other rights, human and environmental need not be considered, has seen many academics call for the reform of Capital systems. Many models are being proposed. Importantly, ‘flexibility’ of design and policy are again being argued for. Danni Roddik and John Gray comment that the ‘tendency to seek universal ‘one size fits all’ answers, (leaves) global institutional designs and policy prescriptions little room for national, cultural and historic differences’. Mr. Sfeir-Younis, the World Banks chief liaison officer, further advices that the focus needs to be on functions rather then argument over institutional boundaries. Kamal Malhortra of Focus on the Global South, suggests that ‘the starting place for effective change is in making what he calls three subordinations:’ *The re-subordination of the financial systems to the real economy, *the subordination of macro and other economic policy to social policy and human development objectives and strategies, and *the subordination of the global level of governance to the local, national and regional levels, especially the national’. Importantly, the measure of any reform proposal ‘is the extent to which they amplify accountability and transparency and are open to those most seriously affected by policy’ (p.468). See, Foster J.W. and Anand, A. Eds. (1999), Whose world is it anyway? Civil Society, the United Nations and the Multilateral Future. United Nations Association in Canada,


11 Ibid., p.45.

12 Ibid., p.45.

13 Ibid., p.45.

14 Ibid., p.45.

15 Ibid., p.45.

16 Ibid., p.125.

17 Ibid., p.45.

18 Ibid., p.45.
Chapter 20: Concluding Reflections

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.


19 Ibid., p.103.
20 Ibid., p.103.
22 This perspective has been supported most recently by the Secretary General Kofi Annan. The ‘rule of law’ being central to his address to the General Assembly of the United Nations in New York, 12 September 2004, on the occasion of its 59th session. He reminded all members that ‘the vision of “a government of Laws and not of men” was almost as old as civilization itself.’ He referred to the 3000 year old tablets on which are etched the code of Laws promulgated by Hammurabi from a land we now refer to as Iraq. A code of Laws which set out the principles of justice: Legal protection for the poor; Restraint of the strong, so they cannot oppress the weak; and Laws publicly enacted, and known to all. He commented that such a code was a landmark in mankind’s struggle to build an order where, instead of might making rights, right would make might. Annan went on to remind all members that the UN itself was founded on the same principles, while pointing out that fortunately international law which provides ‘a fair framework’ already exists, but that members where not adhering to them or implementing them at home. He went on to say that the prevalence of horror and destruction was the result of a collective failure to uphold the Law and instill respect for it in our fellow men and women. ‘…we must start from the principle that no one is above the law, and no one should be denied its protection. Every nation that proclaims the rule of law at home must respect it abroad; and every nation that insists on it abroad must enforce it at home.’ Full text available on UN website: www.un.org
23 This understanding provides one of the analytic frameworks utilized by Scott Michaelson and David Johnson to examine ‘Border Theory and the Limits of Cultural Politics’. In a sense my own thesis again reframes the discourse that is Border Theory, by amplifying notional consideration with Indigenous perspective in that the ecological sui generis nature of Indigenous peoples, as perspective is distinct. Michaelson, S. and Johnson, D.E (1997); ‘Border Theory: The Limits of cultural politics’, University of Minnesota Press.
24 Indeed, Friedman’s writing suggests exactly the same when describing the dimensions of US foreign policy revolving around national security which involves arms control, superpower competition, Cold War Alliance management and power geopolitics. Friedman, T. (1999), The Lexus and the Olive Tree, Harper Collins, p.17
25 Friedman, Thomas (1999), the lexus and the olive tree: fast food and fanaticism – the world we live in today, Harper Collins, London.
26 In her address as the 2004 recipient of the City of Sydney Peace Prize, Award Winning Indian writer and human rights advocate Arundhati Roy gives a profound and chilling insight on the machinations behind current US foreign policy. Detailing the relationships between the corporate military cabal and government and the source of the disinformation used to initially justify the invasion of Iraq, she sums up realities by saying “…nine out of thirty members of the US Defense Policy Group were connected to companies that were awarded Defense contracts worth 76 billion dollars. Time was when weapons were manufactured in order to fight wars. Now wars are manufactured in order to sell weapons’. ABC Radio National, Big Ideas, Lecture broadcast 7th November 2004. For full transcript see <www.abc.net.au/rn/bigideas/stories/s1232956.htm>
27 Shiva, Vandana (2004), ‘WSF Threatened by Giganticism, Centralised Control, article of e-journal IPS.
28 I have on this occasion quite deliberately used the term society rather than culture because, the aim of the dominant hegemony is to disconnect people from culture embedded in landscape, language, sui generis knowledge and differing epistemology and values, essentially replicating ‘settler identity’ of the First world. Achieving disconnection (through political and economic means), allows the dominant to again subsume other peoples and their resources by imposing their man made Laws, reducing populations to part of a growing global society dependant on them and their capital system. Further more dominant culture today lacks the profundity of philosophical ‘meaning’ it having become a commodity of capital. In the US everyday culture is ‘Forest Gump’, ‘The Superbowl’, ‘Music Videos’ and Televised ‘Sitcoms’. Thomas Friedman similarly sees American culture as a homogenising Disney thematic. Commodification, capital imperatives and global ownership of communication systems beamed into remote villages has precipitated a growing Third World view that US culture is of self propagandising ‘meaninglessness’, and social engineering of downward spiralling values, disconnected from its ‘activity’ of militaristic/capitalistic
dominance. Or US culture has two pillars, ‘virtual’ identity/myth making & militarism which support the dominants ownership and commodification of ‘livingness’.
25 These Laws were introduced in Chapter 4.3 ‘Law as a Space of Being’, p.71.
30 The Universal Declaration on Cultural Diversity (UDCD) was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, (UNESCO), at its 30th session, which took place from 15 October -3 November 2001. A full text of the Document can be sourced at: www.unesco.org/confgen/press_rel/021101_elt_diversity.shtml It may also be found through the United Nations site: www.un.org and the UNESCO site: www.unesco.org
31 Universal Declaration on Cultural Diversity, UNESCO see Vol.4 appendices and www.unesco.org for a copy of the Declaration.
32 ‘This definition is in line with the conclusions of the World Conference on Cultural Policies (MONDIACULT, Mexico City, 1982), of the World Commission on Culture and Development (Our Creative Diversity, 1995), and of the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998)’. In doCip / Update No.43, March-April 02, Indigenous Peoples Centre for Documentation, Research and Information. p.11.
34 Ibid., p.11.
35 In a worldview in which everything is a physical manifestation of spirit birthed through Mother, or as scientists state comprised of the same DNA, difference becomes shape. We are human because we share the same shape, a tree is a tree because it has its shape, and so on, each has its own culture based on its knowledge, ceremony and law, all of which follow and harmonise with Mothers Law as a matter of self interest. Bird Rose writes: ‘To be the same, minimally, is to share a shape and hence the potential to share a culture. To be different, is initially, to have a different shape, a different physical being’. ‘Out of that shape emerges other differences-animals of one shape, one species, share a language, a set of ceremonies, certain kinds of food, a way of life. In Kriol this specific way of life is termed ‘culture’. This usage is similar to that of many anthropologists; it differs primarily in identifying culture as a necessary part of life. We are not different from other species by having culture which they lack: we are different in that our culture, like our shape, is different from theirs.’ Bird Rose, D. (1992), Dingo Makes Us Human, Cambridge University Press, pp.45-46.
36 In their chapter explaining Indigenous ‘Heritage’, Battiste and Youngblood Henderson write: Among Indigenous peoples, possessing a song, story or medicinal knowledge carries with it certain responsibilities to show respect for, and to maintain a reciprocal relationship with, the human beings, animals, plants, and places with which the song, story, or medicine is connected. Cajete (1986) and Maruyama (1978) have discussed this as mutualistic logic and reciprocal causality. For Indigenous peoples, heritage is a bundle of relationships, rather than a bundle of economic rights or policy considerations. The ‘object’ has no meaning outside relationship, whether it is a physical object such as a sacred site or a ceremonial tool, or an intangible such as a song or a story. To sell it is necessarily to bring the relationship to an end. (p.71).
38 As a project this was important because nothing can be healed if you do not first know what the sickness is, who and what is responsible and why and how it is being spread.
39 Modernity itself illustrates the human capacity to adapt and survive even when the ‘way of being’ is ultimately toxic and anathema to ‘living’.
Further Reflection – Response to an Examiner’s Critique

I would like to thank my three distinguished Examiners, Dr. Marie Batiste, a Canadian Indigenous academic, and a Mu’kmaq educator who is internationally recognized for her involvement in the United Nations Working Group on Indigenous peoples, assisting with the formulation of protection principles and guidelines affecting Indigenous heritage at the International level; Associate Professor Veronica Brady, a leading Anglo-Australian academic, known for her close affiliation with Indigenous peoples, her commitment to spiritual principles, advocacy of human rights and involvement with the ecological movement; Dr. Irene Watson, an Australian Indigenous academic and the first Indigenous law graduate in Australia, involved in advocacy and participation before the UN Working Group on Indigenous peoples, and invited by the Chiefs of Ontario to sit as one of seven Indigenous judges on the ‘First Nations’ International Court of Justice’.

Introduction

Two examiners wrote highly favorable comments on the thesis, but the third raised a number of specific issues which I have been asked to address. The divergence between examiners may be because Indigenous politics is highly contested and political. The comments of the Third examiner, an Indigenous Australian, could be attributed to a misunderstanding of where I position myself in the research process as well as the very paradigm of the research. The research was multidisciplinary, drawing on philosophy, sociology, theology, history, political and economic theory, psychology, linguistics, physics, biology, literature, cultural studies, and music. Battiste and Brady saw the merit in this approach whereas Watson noted it was both a strength, as well as being problematic, suggesting it resulted in a lack of disciplinary depth.

A key issue which Watson appears to raise is whether I am speaking for Indigenous people and consequently perpetuating colonial approaches. As stated in my thesis on page 13, I was not speaking for Indigenous peoples but rather seeking to analyse the dialogue between Indigenous peoples themselves and with European officials in both United Nations processes and in national contexts. I called this role that of an inter-cultural interpreter. Watson also suggests that Australian Aboriginal voices, and other Indigenous academics, which she nominates, are missing from my references. This thesis did not aim to provide an overview of various Indigenous literature as such, but rather to integrate and synthesize my own experiences and engagement in the dialogues being examined, in which I have participated as an invited inter-cultural facilitator for both Indigenous leaders and officials. It appears that I needed to explain myself more clearly for the third examiner.
The first two examiners have suggested that the thesis should be published. I acknowledge, perhaps there are others coming from a different political position for which the issues addressed in this thesis need to be more explicit, illustrating the on-going and politically fraught nature of debate concerning Indigenous peoples and their agenda.

I have been asked by the Research Committee to address the following points:

- The nature of sources (below).
- Relevant literature by Australian Aboriginal writers (p.6 of this response).
- The issue of ‘voice’ and my role and position as an ‘intercultural facilitator of exchange’, and the close borders between appropriation and cross-cultural translation (p.10 of this response).
- The issue of protocols as discussed by Watson (p.19 of this response).

THE NATURE OF SOURCES

A particular concern expressed by Watson centres on primary and secondary texts, and the apparent omission of some Indigenous writers, in particular Australian Aboriginal Literature. Given the current impasse at International levels where the Indigenous agenda has been stalled through political process, the particular project I was seeking initially to achieve was:

1. The amplification of those voices and perspectives which have been instrumental in the elaboration of a number of interconnected documents within the UN, and

2. a recontextualisation of other voices which inadvertently serve to assist governments to hold in abeyance the provisions contained within these documents, i.e. they have been co-opted by the dominant political process.

These documents (listed on p.3 of this response) not only potentially provide Indigenous peoples the equality of their human dignity, but when combined, manifest an Indigenous vision...for all people to read, and unleash the power of a vision of an ecological theory of a good order and human rights (p.11 in my thesis).

Consequently the choice of voice and the particular position taken by various Indigenous individuals within UN processes and the interpretation and understanding they reflect of these UN documents was central to the analysis.
Similarly, the politically challenging nature of my thesis meant that the voices chosen emanate from individuals who are recognized in UN proceedings as an international representative of Indigenous peoples, rather than as an Aboriginal member of a Government delegation representing a State.

Watson questions my extensive use of Youngblood Henderson’s primary voice within Chapter 9 of my thesis, explaining the historical context and debate surrounding the elaboration of these UN Documents. While I acknowledge there are other Indigenous academics which have written on the Working Group and its processes, I chose to source my material from within a text published by the United Nations Association of Canada, which documents the growth and participation of social movements within a diversity of UN fora, and their contribution to newer and emerging agenda. This approach was used to contextualize Henderson’s voice in a wider social movement for global change. This should also provide a level of political legitimacy which may neutralize the degree of contestation which my thesis might draw internationally, given the politically fraught nature of its contents and the on-going debate.

This also explains my use of texts published by other authoritative and internationally recognized organizations such as the International Work Group for Indigenous Affairs, Survival International, The International Development Research Centre, Canada, and others, which are key contributors of published material to international processes inclusive of Indigenous perspectives and which resonate a cultural articulation, informing UN reform processes. This same approach of sourcing voices and perspectives from within authoritative publications was extended to the consideration of national contexts. In these case studies it is often a government report, ministerial statement, human rights organization or other recognized contributor to ongoing negotiations which has been incorporated.

The UN documents which are primary sources and central to my analysis of the Indigenous peoples’ agenda and processes are:

- International Labor Organization Convention No.107
  (now replaced by)
- International Labor Organization Convention No.169, (ILO169)
- The Convention on Biological Diversity, (CBD)
- The Declaration on the Rights of Indigenous Peoples, (now the Draft Declaration on the Rights of Indigenous Peoples or Draft Declaration)
- UNESCO’s Declaration on Cultural Diversity
ILO169, The Convention on Biological Diversity, and the Declaration on the Rights of Indigenous Peoples, now the Draft Declaration, are central to a framework being examined, and copies of these documents, as well as the Declaration on Cultural Diversity are provided in the appendices (See back of Vol. 4 References and Appendices)

The positions regarding how UN documents are understood and interpreted varies within Indigenous groups around the world. It is this divergence in perspective which has contributed to the impasse experienced at international levels, stalling the Draft Declaration from passing into law.

Consequently where I have referenced a document as part of someone else’s work, this was specifically so the reader might follow the interpretation of the documents by others, as this is central to explaining different perspectives. For example, while some Indigenous groups have understood the Draft Declaration as a stand alone document, others see it as part of an interconnective framework, and in Vol. 2, p.204, I have referenced Kingsbury. This was specifically to provide his interpretation of the document, as it again underscores the particular interpretation I am seeking to give prominence to through analysis.

Interpretation of the documents being analyzed and the relevancy they are given by a ‘voice’ is an important aspect of the thesis, as it is this nuance which is being examined, and then carried through the rest of the thesis. The analysis and perspective achieved in the chapters dealing with international considerations (Chapters 9, 10 &11), provide the basis on which to recontextualise national and regional dialogues, illuminating consistencies and inconsistencies. This in turn reflects on the diversity of voices used to extend insight in subsequent Dialogues.

Secondary sourcing has been used in my thesis for a couple of reasons, such as to give voice to an Indigenous perspective on a particular point being made.

An example of secondary sourcing, involves a quote cited in a HEROIC report by Michael (Mick) Dodson in his former capacity as the Aboriginal and Torres Strait Islander Social Justice Commissioner (see p.8 in my thesis). This was because it is an English language reference, expressing an important point made at the time the international community was coming to terms with a newer conscientisation in perspective, one which linked Indigenous peoples’ cultures with the existence of Biodiversity. The quote is of Indigenous Nobel Peace Prize recipient, Rigoberta Menchu-Tum who served as the Goodwill Ambassador for the International Year of Indigenous Peoples in 1993. Rigoberta Menchu is recognized for
assisting to establish this understanding within the wider global community at that time. The quote is both relevant and poignant to the historical contexting being provided in which to appreciate the interconnective nature of UN documents. Menchu’s voice which expresses an Indigenous perspective was added to a primary source, Andrew Gray, a European, making the same point (p.8). Together they illustrate that the conscientisation shared by Indigenous peoples had been incorporated by European conservationists at that time. In other words it had become an accepted inter-cultural perspective.

Secondary sourcing was also employed when the voice I was incorporating again used a concept in a particular way and provided a definition or explanation from another source. For example on p.247, I have incorporated a definition by Mamdani which is included in Castells’ publication. As it is the perspective and view of Castells I include as a voice, it was important to illustrate what he meant by a ‘bifurcated state’ and how he had arrived at a particular position. To this end my inclusion of the quote again served to underscore the point being made. Incorporating his use of Mandami’s definition also allowed me to add my own analysis to Castell’s interpretation, providing additional perspective.

Both Batiste and Brady made specific comment on my capacity to include a multiplicity of voices and allow them to speak for themselves while skillfully weaving an original, carefully documented and clearly argued position.

As this thesis is global in its nature and traverses a broad canvas seeking to integrate and synthesise my own experiences and knowledge, the choice of texts from within the extensive literature available in each of the academic disciplines incorporated, was based on a desire to allow for a diversity of expression in voice and to elucidate ‘meaning’. These voices also serve to move my story forward, while simultaneously making my argument and final analysis clear.

**Nominated Authors**

Watson’s concern that I have failed to consult relevant literature, led her to nominate four Indigenous academics writing in English. These are: John Borrows, Moana Jackson, Ward Churchill, and Haunani-Kay Trask. All four are distinguished authors in their own right, and are strong and articulate in their positions, but I had originally decided not to include them for specific reasons. Trask and Churchill, through the course of their high profile activities, have been the subject of some controversy. This controversy is not relevant to my thesis and I felt their inclusion might unnecessarily embroil my work in those controversies. Moana
Jackson is also a strong Indigenous leader and academic of long standing within the Indigenous movement, I had sought not to highlight his voice in my current thesis because at the time of writing he was involved in an Indigenous action which I refer to and include within my thesis, without naming him (See Vol.3, p.567, Addendum). This was an ethical stance given that Indigenous leaders are often targeted for taking a position when engaged in political action. John Borrows’ writing which is Canadian focused, was also not included. While his work incorporates and draws on the cultural perspectives of Canada’s Indigenous peoples, in a final analysis his position is somewhat similar to Chartrand’s, who also comes from Canada and with whose voice and perspective I have comprehensively and critically engaged (See Chapter 16, p.393). Therefore inclusion of Borrows’ work was not thought necessary, given that the particular points I was seeking to analyse were so clearly articulated in Chartrand’s text.

All four authors have in the past been generally State specific in their focus, activity and writing, albeit that they draw on the international level where they may also be active, or to which they contribute. In contrast, my thesis is concerned with a global synthesis, (accommodating the particular perspectives these individuals may write about), through an engagement with a multiplicity of voices (Indigenous and non-Indigenous academics) who have contributed to two ‘front edge’ texts central to my study. These texts include and build on the work of others, and represent current perspectives on the newer academic discourse of Indigeneity, which I again analyse (Vol. 2, Chapters 12,13 &14).

Battiste writes that my thesis richly fills a void in research and literature on the international and national policies affecting Indigeneity and discourses of diversity.

RELEVANT LITERATURE BY AUSTRALIAN ABORIGINAL WRITERS.

Watson also suggests there is a paucity of Australian Aboriginal Literature and voice within my thesis, although there are some twenty four Australian Aboriginal individuals referred to and incorporated within the body of the thesis. Fourteen of those cited in my thesis are individuals who have either been directly involved in processes within national contexts, and several have also been actively involved at international levels. All but two of these individuals are referenced from primary sources as a published text, report, paper, journal, speech or broadcast transcript. Again their inclusion was specifically for the perspective being shared and the meaning contained within their voice. Their voice was used to explain a particular point within the dialogue being examined and to provide an Aboriginal perspective on it.
They include:

Mick Dodson, p.206
Dr. Irene Watson, pp.58-59, p.66
Prof. Marcia Langton pp.368-371
Mary Graham endnote 27, p.224 provides supporting argument and additional rationale for a position on p.210
Moreton-Robinson pp.536-537
Wayne Atkinson p.469, p.472
J. Atkinson pp.464-465
Kim Scott p.230
Noel Pearson p.135, p.140, endnote 7 on p.223 providing additional perspective on a point being made on p.202
Mick Mansell p.228, p.521
Peter Yu p.431 (secondary source) cited in Jonas
Patrick Dodson p.513
Indigenous Activist p.241 (secondary source) cited in Jonas

I have also included the voices of six Traditional Elders, and three community spokespeople from different regions of Australia, so as to give voice to their perspective within the thesis. Several of these voices and the quotes attributed to them emanate from my own time spent in community and in discussion. In three instances I was asked not to name the individual. An ethical position was taken to comply with their wish. One of these individuals is a secondary reference from within an Australian Aboriginal Thesis, but included because he is a Traditional Elder and Law Man whom they interviewed. Like all the others his voice provides a particular insight which allows my story to move forward, confirming the interpretation I am providing and giving preference to within my analysis. Additionally I make mention of a report which contains the voices of some 100 Traditional women from the central desert.

This group of Australian Aboriginal voices includes:

Mowaljarlai p.36 (Aboriginal thesis)
Traditional Elder and Law Man
Given the scale and breadth of my thesis, which is global, and that Australia represents just one case study (chapter) amongst five other regions examined, which include: Canada, New Zealand, Africa, Asia, and South America, it is felt that when these voices are added to all the other Indigenous and non-indigenous voices woven within the fabric of my thesis, a strong representative sample of the diversity in perspectives of Australian Aboriginal peoples has been included.
There are two other points regarding my choice of voices and the manner in which they have been sourced and incorporated. Firstly, the thesis is about integration and synthesis, and not specifically about literature reviews. Its focus is about the ‘meaning’ within voices party to the dialogues being examined as a project of inter-cultural interpretation. Second, as the perspective I am seeking to give preference to emanates from the grass-roots as community, it must be recognized that currently there are relatively few published works by Traditional Elders and these community leaders which address the substantive issues my thesis explores, particularly in English. The voices I have included are so important, because they either express a community perspective, and/or have been directly involved in shaping the nature of national dialogue within Australia.

As a final comment on the inclusion or exclusion of voice, the text list is not necessarily exhaustive nor does it reflect the extent of my knowledge of other Indigenous peoples’ work, or their contribution to the advancement of the movement. Rather, the voices and texts were chosen and included because they reflect a diversity of positions and perspectives which inform the various dialogues being examined within the thesis. The manner in which they are sourced and contextualized provides these voices with an authority their perspectives may not normally be accorded within the various dialogues examined.

THE ISSUE OF ‘VOICE’ AND MY ROLE AND POSITION AS AN ‘INTERCULTURAL FACILITATOR OF EXCHANGE’, AND THE CLOSE BORDER BETWEEN APPROPRIATION AND CROSS-CULTURAL TRANSLATION

Examining Watson’s report it becomes clear that her reading of my thesis and my own context of research are in different paradigms. It is also clear that the issue of voice is central to her concerns. Her pencil marks in the margins also show that she has difficulty with my incorporation and utilisation of indigenous methodologies and concepts, which her report suggests represent co-option, and perhaps another level of colonization. In particular Watson states that I claim to speak for Indigenous peoples.

The Issue of Voice

This thesis has not sought to speak for Indigenous peoples, rather the voice is ultimately my own. The engagement is intercultural in quality within an integrating space of concern, both as a lived reality and an internal process, while drawing on distinct cultural philosophies and worldviews. The thesis is about addressing the global challenges as I see them and the need
to find a solution to the conflicted impasse which hinders humanity shifting to a tolerant, peaceful, inclusive, mutually respectful, culturally diverse, sustainable, and just future as an integrated world. An aspiration I not only share with Indigenous peoples but with a vast humanity living on Earth.

As my thesis reveals, Indigenous peoples and their journey towards gaining the ‘equality of their humanity’ serves as a microcosm, the ‘fractal’ in which to see the barriers and hindrances of historic self narratives, dated discourse and thinking, presumed universalism, and inherent perspective which in turn have informed structure, policy, legislation, and systemic process. Recontextualisation and amplification of these considerations with Indigenous perspectives and newer non-indigenous discourse serve to reveal the values and intent of dominance which currently diminish all Indigenous peoples, remaining stuck in its ‘us and them’ dichotomy which is anathema to achieving global transformation.

This explains my research paradigm and contextualizes my voice within it. Addressing Watson’s other concerns of role and position, intercultural facilitation, and the borders between appropriation and cross-cultural translation will allow for additional explanation and appreciation of my voice.

**My Role and Position as an Intercultural Facilitator of Exchange.**

As I am not speaking for Indigenous peoples, what then is my position and role? I repeatedly explain in the thesis my role and position as a facilitator of intercultural interpretation and cross cultural translation. Noeli Pocaterra’s diagram on p.21 in my thesis, figuratively explains this position and role. It spans and draws on the illustrated contexts which currently shape and inform global processes and related dialogues within national and regional contexts. This expresses the breadth and expanse of personal learning and experience to which is added my academic study. It is a synthesis of these multiplicities of contexts and the voices engaged in process, which is being brought to my thesis and role, and constitutes the new knowledge offered to the academy.

Intercultural interpretation and cross-cultural translation go hand in hand, or they are symbiotic. I define both in the endnotes on p.17 of my thesis and incorporate them here for facility.
Intercultural interpreter: someone who can contextualise communication between parties embedded in distinct cultural worldviews. Good intercultural interpretation leads to an appreciation of the other party’s context such that sameness is understood but divergence in thinking, knowledge and point of view is illuminated.

Cross-cultural translation: This is translation of words presented within an exchange between parties embedded in separate cultural contexts and the process and intent by which language is translated between them. Cross-cultural translation presumes that the parties are consistent in their use of terms and their meaning. In other words, while translation may be ‘the act of an instance of translation, a written or spoken expression of meaning of word, speech, book etc. in another language’, there is also the idea that a translator simply relays the message from one to another. ‘Translator’ not only refers to ‘the act of translation between languages’ but also to ‘a television relay transmitter’, hence the idea that the message is fully reflected and forwarded on. Good cross-cultural translation conveys nuance, subtlety, and emotion and matches the level of energy, and feeling of parties within exchange. ‘Cross’ denotes ‘movement or position across something’… a bridging… as well as ‘interaction’… exchange. Thus cross-cultural translator denotes a bridging and interaction between cultural contexts by which meaning is fully relayed from one party to another and is experienced (p.17).

Where Watson sees a tension between cross-cultural translation and inter-cultural interpretation, pointing out they ‘don’t match up’, this is because they do represent separate but inter-linking approaches in specialised expertise, as they are ultimately concerned with conveying ‘meaning’ within communication.

Both are employed within my thesis, as there is a need to genuinely reflect what is being said by the multiplicity of voices being incorporated. Where I have used other peoples’ texts and insights, it was important to allow them to speak for themselves, and to transmit and relay their words with all their nuance and subtlety allowing the reader their own interpretation. This approach, which is consistent with the definition I provide for cross-cultural translation, was to ensure that I do not transgress boundaries. Cross-cultural translation establishes a bridge in communication allowing for interaction or exchange between parties to a dialogue who may all hold different points of view, allowing meaning to be relayed and experienced.

Incorporation of a multiplicity of voices in my thesis in this manner allowed me to carry forward the synthesis and argument I was weaving through my thesis, providing inter-
cultural interpretation of the events and processes which contextualise these voices, which they in turn either serve to underscore, provide additional perspective, or refute, be they Indigenous or non-indigenous voices.

Facilitating intercultural interpretation then is about conveying contexting for a particular voice and its point of view. This is why I continually explain that my role and process involves recontextualisation and amplification because both these approaches allow voices to retain their integrity of viewpoint and meaning.

Recontextualisation shifts the boundaries of a context in which dialogue is occurring, allowing a voice to be heard and understood differently. Recontextualisation serves to illustrate the point at which divergence in thinking, understanding, priorities and values informing a point of view, occurs.

Amplification allows for a particular voice and its interpretation or meaning to be highlighted in this recontextualisation so that it is given prominence. Amplification brings into focus voices and perspectives which emanate from another point of view which has hitherto been diminished or marginalised within a dialogue being examined.

In other words, a facilitator of intercultural interpretation does not speak for any party as such, but provides explanation to that point where each party gains a newer appreciation of the separate worldview or contexting from which a voice emanates by bringing to the fore voices which clearly express this worldview and its meaning. It is incumbent then on a facilitator of intercultural interpretation to have knowledge and understanding of the diverse contexts from within which a voice is being expressed and to have an appreciation of the meaning contained within their point of view.

The facilitation of inter-cultural interpretation therefore is a specialised expertise, which can engender improved relationships. This is why at International levels, the call is for ‘Intercultural Diplomacy’ (thesis pp.28-29), as the gaining of additional understanding for each others’ contexts, or contesting worldviews, is paramount to achieving a peaceful integration of the world and its diverse peoples.

**Who privileges my voice to speak and who authorises me to speak as I do.**

Watson’s concern reflects a view that I claim to be speaking as an insider, and a request to know who gives me this authority. Perhaps these concerns again illustrate the nature of good
intercultural facilitation, as I do not claim to be an insider, having clearly stated in my Abstract that I am a non-Aboriginal person, and having provided my genealogy in Chapter 3:2, p.53. Rather, as I acknowledge within my thesis on p.4, I have been learning from Indigenous peoples at community levels and Elders in particular, in a diversity of settings and contexts. My Abstract also explains that I have been repeatedly invited by Indigenous representatives and UN officials to facilitate intercultural interpretation in their meetings and exchanges.

This explains why my thesis is comprised of a series of dialogues, because these have been the contexts in which I have had an inter-cultural role within my journey. Examining these dialogues within a thesis allows me to remain within this role. The personal requirement being to ‘create a cohesive narrative, a holism within which to contextualise and make sense of the many disparate and complex experiences and learnings which have been my journey’ as explained on p.13 of my thesis.

I acknowledge however that had I attempted another type of thesis in the research paradigm Watson imposes on my work, I would have difficulty personally and perhaps academically in justifying a role or place. This explains the protocols I chose to impose on myself while undertaking my research and writing (see p.19 of this response).

The Close Boundaries between Appropriation and Cross-Cultural Translation

Several factors contribute to a need to incorporate and utilise Indigenous methodologies, and other approaches which resonate their perspective, as well as elaborate additional tools which assist to appropriately contextualise point of view and meaning. These are:

- The nature of indigenous knowledge and worldview
- The diversity of perspectives being addressed
- The philosophical context of engagement
- The complexity and expansiveness of the synthesis
- The differing levels of consciousness expressed within voice
- The intercultural quality of analysis

The nature of Indigenous peoples’ knowledge and worldview has meant there was a need to appropriately contextualise their voices otherwise the thesis would become another diminishment of their perspectives. Similarly I would have failed in my role as a cross-
cultural translator and facilitator of intercultural interpretation. The divergent backgrounds of my two positive examiners however, serve to illustrate my having achieved this quality of analysis.

The diversity of perspectives and worldviews was also a challenge, particularly as parties to these dialogues have been in negotiation, often for centuries and despite the rhetoric of self determination, the lived reality for Indigenous peoples globally is that they are still being denied the equality of their humanity and dignity. Obviously newer bridges were required, across which interaction might be better relayed and transmitted, allowing for a clearer exchange of meaning.

Cross-cultural Translation

The requirement for cross cultural translation emanates from the breadth of indigenous perspective and the very nature of their knowledge. Indigenous perspectives and philosophies are holistic, giving rise at international levels to the incorporation of a Spanish speaking Indigenous term Cosmovision, to describe their unique and distinct perspectives. This term is now so widely used, that one of the agenda items at the recent World Social Summit, Caracas, January, 2006, uses Cosmovision in one of its conference themes.

Indigenous peoples’ knowledge is often referred to as sui generis knowledge, as it provides Indigenous peoples who still retain territorial integrity with the basis of self generation which many other Indigenous groups around the world seek to recover and also pass on as cultural inheritance. Indigenous knowledge remains a contested arena of debate, because while the Convention on Biological Diversity includes a number of specific articles on their rights to their knowledge (see document provided in the Appendices), transnational interests are actively seeking to patent this knowledge. In these contexts, Indigenous sui generis knowledge is defined as a system of knowledge that is unique and does not belong within existing categories of Intellectual propertyii (p.8), the patenting regime of corporations.

Consequently, and as explained within my thesis (p.6, p.8), Indigenous cultural knowledge and their perspectives sit outside European discourse. I examined a number of methodologies and academic frameworks within my thesis, which to some degree resonated with Indigenous peoples’ perspectives (Vol. I, Chapter 2, pp.22-24). But a need remained to find cross-cultural tools which would allow me to present voices, and for their meaning to be relayed in order to further facilitate inter-cultural exchange.
Noeli Pocaterra’s diagram was to situate my voice within the integrating dialogues and processes the thesis traverses and examines (p.22). Tuhiiwai Smith’s research model provides the framing of my thesis and describes the elements integral and central to Indigenous research (pp.26-28). Bird Rose’s work on an Indigenous understanding of ‘boundaries’ and ‘strings’ provides a structure for my thesis and explains it as a synthesis or ‘bringing together’ central to my approach and role (pp.32-33). Australian Traditional Law man, David Mowaljarlai explains that understanding is about seeing the pattern (p.36). Together they inform and allow for the construction of a cross cultural bridge and simultaneously for the recontextualisation of a multiplicity of voices. They also allow me to explain my own process and provide further inter-cultural perspective.

The holism, complexity and scale of the thesis also needed to be accommodated, particularly as the voices being give preference reflect a perspective bound up with Cosmovision. Music theory was used to express the continuum or implicate order inherent to Indigenous languages, and perspectives. Music allows for flux and yet an ability to form and give shape to emergent patterns while expressing hue and tone. Music also allows for multiple relationships between ideas, thoughts, notions, concepts and themes, all of which become chords within a particular chapter or dialogue, allowing for explanation of another conscientisation and worldview (p.31). Music theory also served to explain my use of the terms dominant and diminishment (p.68). Rose’s explanation of strings and boundaries, and my introduction of music which is universal to all humanity produced a further synthesis, explaining an appreciation, although limited, of Indigenous cultural notions which express a separate consciousness informing point of view (p.33, pp.38-39).

Philosophical amplification also resulted in a need to express different levels of consciousness and this requirement led to my own elaboration of four Laws. It is one of these which Watson takes particular issue with. (I return to this point on p.17 of this response.)

**The Boundary and Appropriation**

So when does utilising a methodology become an appropriation? Does the academy not accept full acknowledgment of authorship? Or does the nature of my thesis and its inter-cultural quality mean that on this occasion it does not suffice? Are Indigenous peoples’ concerns only for Indigenous peoples to write about? Does my European background preclude me from having a context for these concerns? Are they not global in their nature and of a human scale not limited to Australian Aboriginal peoples? Watson’s pencil marks
clearly indicate that where I have included Tuhiwai Smith’s work, and then sought to remain consistent with the Cosmoconsciousness of Indigenous Australians (p.32) she has some difficulty accepting this. Similarly and already addressed above, Watson has concerns with my use of Bird Rose’s insight and appreciation of Indigenous perspectives (p.33).

A specific example raised by Watson in her report on (p.4) has two aspects. The first is my incorporation of a Pitjantjatjara word *Nintila* which occurs on p.31 of my thesis. The second aspect has to do with my explanation that this illustrates and gives rise to a divergence in perspective and understanding of Dialogue and the values informing exchange.

Addressing the first aspect, the sentence which she highlights reads ‘My thesis seeks to give voice to Indigenous perspective and “knowing” within political articulation.’ To which she notes ‘through your lens’, again indicating her concern that I am claiming to speak for Indigenous peoples, rather than appreciating that the incorporation of Indigenous methodologies and concepts is specifically to provide cross-cultural translation and facilitate intercultural interpretation. Their incorporation means that later in the text when I introduce a multiplicity of voices, the Indigenous ones will have a cultural contexting which allows them to *speak for themselves* and *share* their *meaning*, while simultaneously providing for a recontextualisation of non-indigenous voices and perspectives. My own last sentence in the same paragraph states this. ‘*Nintila* then provides a framing for the inter-cultural quality and nature of the exchange being presented.’

The second aspect again reflects a paradigmatic divergence in understanding the *role* of an intercultural facilitator and cross-cultural translator. This also refers to my own *voice* which is informed by its journey. The incorporation of Indigenous perspectives and methodologies therefore serve a dual purpose, explaining my own processes as synthesis and the synthesis within the thesis which builds towards an understanding and appreciation of the holism contained within Indigenous voices.

A specific example in which Watson suggests appropriation concerns my incorporation of another Indigenous notion, again explained by Rose. In response I suggest this can be explained by both cross cultural translation and intercultural interpretation. Just prior to the particular paragraph she highlights on p.35 of my thesis, I have introduced Birds Rose’s voice in full quotation explaining that an Aboriginal understanding of relationship along a track or string is concerned with *sharing*. The term used by some Aboriginal peoples to express this being ‘Fifty’… ‘to divide things fifty fifty’. My introduction of Rose’s work is consistent in terms of cross cultural translation. In the next paragraph I then recontextualise
the ideas to provide an intercultural interpretation of my own position and to further explain my voice, and its intent and quality. I am using Rose’s work as a cross-cultural bridge to initially transmit a concept or idea in its entirety, and then shift contexts from hers to mine. This recontextualises my voice with her perspectives, allowing me to again provide an intercultural rendering of my position within the thesis.

This again reflects Indigenous ways of understanding in which there is no ‘fixed’ point of view from which to view knowledge, only flux and continually changing boundaries and context. This is further explained in my response to the very next example Watson raises.

On page 4 of Watson’s report the concern is with a concept I elaborated and termed ‘Mother’s Law’. Reading her subsequent points illustrates the paradigmatic difference in understanding my thesis. Watson has interpreted my thesis through a prism of Australian legal process, and in this particular instance, a paradigm informed by the debates which occurred in 1996 over Hindmarsh Island, in which Aboriginal women were subsequently denied their Law.

In contrast my usage of Mother’s Law was to convey a level of human ‘consciousness’ separate from that of modern European culture. I arrived at and described this concept as a consequence of additional study into the Trinity which is central to a Judeo/Christian understanding of the sacred. This study also took me into other religious traditions and a variety of languages including Italian, Greek, Hebrew, and Aramaic. The outcome was an elaboration and description of four categories of consciousness. These being; Man’s Law, God’s Law, Mothers Law and Dollar Law. These explain the meta-levels bound up in dialogue pointing to the possible transformation available through inter-cultural exchange and diplomacy. The Laws serve to provide clarity and explanation for the differing values, priorities and objectives of parties to negotiation and discussion. They become a short hand allowing me to shift and jump boundaries within a context revealing the multiplicity of players, interests and positions within a specific Dialogue and Chapter, while simultaneously challenging the wisdom of some of these.

Reading Watson’s pencil marks in the margins, it appears she extends her concern of appropriation to also include my use of a metaphor of weaving (p.41), suggesting I should have acknowledged it as an Aboriginal methodology. Weaving is universal, and is often used in conjunction with academic thesis writing. This does not deny it is also part of Aboriginal perspectives or perhaps that it has similarly been used by Indigenous academics to explain
concepts or methodology. Perhaps Watson’s concern serves to illustrate that weaving is a valid cross-cultural tool.

A thesis which employs cross-cultural translation and inter-cultural interpretation is going to introduce terms and use concepts outside main-stream thinking and knowledge, as I have done with ‘Cosmovision’, ‘cultural locality’, and perhaps even ‘Traditional Resource Rights’, which are not widely used within the English speaking academy. Within my thesis I have also coined a term ‘Livingness’, in order to retain holistic understanding for indigenous peoples’ ‘living systems’ sensibility, and differentiate it from other concepts such as eco-systems, environment, and biodiversity, which already carry definition. Even this last term, ‘biodiversity’ was similarly coined in 1986 to express a new conscientisation gained by Europeans of Indigenous cultural perspectives on nature, and which has since entered daily usage.

The thesis is rich in concepts, including Indigenous concepts and terms, a number of which are Maori, because without their inclusion there would be no cross-cultural translation/bridging or inter-cultural interpretation and analysis of Dialogue.

The need to reveal ‘pattern’ embedded in and reflective of a multiplicity of relational boundaries also explains my methodology and incorporation of Indigenous approaches to research. A key element of the thesis’ exploration rests on it, explaining that Dominant discourse, as it is currently understood and generally applied by Europeans, does not allow one to express the holism contained within traditional Indigenous perspectives, nor to frame their knowledge. Consequently allowing voices an amplified framing which includes, allows and opens a space in thinking and approach more consistent with cultural perspectives and methodology, served to recontextualise and amplify consideration of the multiplicity of discourse. What is revealed are the points at which ‘understanding’ by Europeans and Indigenous peoples diverge within a given exchange or Dialogue. The cross-cultural approaches shared within the thesis and the inter-cultural interpretation serve to further explain this in concrete terms, often extending the boundaries of a given discourse.

While I respect Watson’s concerns, and recognise we are operating in different research paradigms, I have difficulty with Watson’s apparent objection to my fully acknowledged and respectful incorporation and use of Indigenous methodologies to write my thesis. Particularly when these are available in print, being shared with the world and when the very nature of my thesis needs to reflect its argument that cultural voices remain appropriately contextualised in order that they not be diminished.
THE ISSUE OF PROTOCOLS AS DISCUSSED BY WATSON

Having responded to the previous points raised by Watson, I feel I have almost defused the requirement to write more on the subject of Protocols, as this only arose because of Watson’s view that I am speaking for Indigenous peoples and the imposition of her own research paradigm on my work. The paradigmic context of my research has already been explained above on pp.9-10, in the section addressing my voice. My response to subsequent points raised by Watson explains that my role and context are those of a cross-cultural translator and facilitator of inter-cultural interpretation.

The voice is my own and that of a story teller whose process seeks synthesis, weaving together a multiplicity of themes and threads. This engagement allows the reader to traverse a rich and complex terrain of ideas, notions, events, documents, theory, perspective, and values. The contested nature of knowledge and worldview are integral to a capacity to elucidate meaning. This requirement explains the important use of endnotes which include additional explanation of both Indigenous and non-indigenous perspective.

I have also refuted Watson’s statement that I am speaking as an insider (see pp.12-13 of this response), while pointing out that it is incumbent on anyone employing the specialised expertise of intercultural interpretation to appreciate and have some knowledge of the separate cultural contexts from within which voice and meaning are being articulated.

Watson’s comments illustrate that she has presumed I am researching into Indigenous peoples, rather than appreciate, as stated in my thesis on p.22, that I am expressly avoiding this paradigm as it is an imposed and problematical framework. In other words I am not conducting research into ‘human subjects’, but rather revisiting the Dialogues in which I have been repeatedly invited by both Indigenous peoples and official to provided cross-cultural and intercultural interpretation. These Dialogues are clearly defined and provide their own integrity. The level of engagement and analysis is global, while grounded through case studies and addresses a multiplicity of relational boundaries. What is revealed is the pattern and continuing nature of diminishment of ‘other’ peoples, pointing to the vital need for the global architecture to be reformed and for humanity to gain another level of conscientisation. In other words, the thesis is about my processes and the need to understand with profundity, where I have walked, also a need to synthesise and achieve a cohesive narrative which incorporates the multiplicity of perspectives and disparate knowledge which have been my experience.
This synthesis was achieved by examining the dialogues in light of Indigenous perspectives and non-indigenous discourse. Here I ensured that all the perspectives being shared were already in print, and that they similarly express and resonate my understanding gained from living and learning with Elders in a variety of Indigenous community settings in different parts of the world. In other words, I sought to honestly reflect my understanding while at the same time not crossing a boundary delineated by knowledge already available in the public space in published material.

Finding texts within the vast literature written on Indigenous peoples and their perspectives was a challenge, as I imposed another ethical consideration on my work regarding the choice of texts. This was a requirement that an author’s perspective similarly be informed by the experience of living at community levels learning from Elders, or that they themselves be cultural leaders. Such an approach was necessary if I was to provide cross-cultural translations and inter-cultural interpretation, as most Europeans do not operate within the same realm of consciousness. This is often the reason they do not understand other cultural contextualisation or respect traditional knowledge.

I have used these texts extensively to provide explanation, without claiming to express an entirety of worldview, because the values and perspective shared provide a more appropriate cultural contextualing of voice. These texts express some insight on Aboriginal philosophy in terms Europeans understand, while not claiming to present the ‘living’ profundity contained within culture. They were added to the richness of Indigenous voices being given preference and woven through the thesis which similarly expresses this vision as an Indigenous politic.

Another protocol I have adhered to has been to continually consult with both Indigenous and non-indigenous Elders throughout my writing, often asking them to read sections and comment on them. In all instances I have honoured their point of view and complied with their suggestions. Similarly where I have drawn on the perspective and voice of an Indigenous colleague which emanates from personal exchange, these have been included with their informed permission and knowledge. In all instances the particular section was either read to them and discussed and adjusted if required, or forwarded for their comment.

Where an individual has asked to remain anonymous, my ethical position has been to honour their wish. This consideration was also extended to all Indigenous peoples and contexts with which I have relationship. It also explains my reliance on authoritative publications and/or official reports and documents. The need has been to protect individuals, families and communities, particularly in other regions of the world, where political targeting can result in
military incursion and death. This further explains my ‘Acknowledgement’, in which I chose to express and honor the spirit of relationship as broad categories and within description, because ‘naming’ may have and often has other real consequences for many of my colleagues. The values which have informed my thesis writing and express the mutuality of exchange are: respect, honesty, trust, responsibility, and integrity as an honouring of collaborative relationship.

Perhaps the concerns raised by Watson reflect on the nature of Australia’s dialogue, where, (as my thesis points out on p.469), specific Indigenous knowledge often bound up with a cultural locality and shared by Elders has subsequently been re-interpreted and re-narrated and applied, often by unscrupulous anthropologists or experts to deny them Native Title. I acknowledge that had I provided such knowledge I would have transgressed a boundary. However, as already explained, all the perspectives being shared and incorporated in this thesis are published or included with the informed permission of the individual involved, and are used to shift or recontextualise the European paradigm in which Aboriginal peoples have to live. This is an imposed official context and problematic paradigm which results in the often conflicted nature and adversarial character of inter-relationship within Dialogue.

No site specific or sacred knowledge has been included in my thesis. Neither has any knowledge which might be patented. Rather, I have provided argument and analysis which illustrates why existing legislative frameworks, political discourse and the corporate rights regime are culturally inappropriate. The cross-cultural and inter-cultural perspectives incorporated, shift context and amplify meaning, illustrating where divergence in thinking, priorities and values lie. All perspectives and voice have been accurately incorporated and respectfully acknowledged, and their source provided.

As a final comment I do acknowledge Aboriginal sensitivities with a European in my role given the inter-generational nature of relationship and the fact that Indigenous peoples have been saying the same thing since first contact with Europeans. This is why I have tried to ensure that my role has simply been to facilitate inter-cultural amplification of their voice and its meaning within the multiplicity of dialogues to which I have been party. The new material I bring to the academy being the breadth of synthesis of debate and perspectives contained within these dialogues and the pattern which emerges through analysis.

Batiste’s comments serve to confirm my having achieved insight on these complexities, she writes: *The Thesis provides a rich explicated foundation for clarifying complex debates centred on the international dialogue involving Indigenous peoples, policies, laws and*
resistances revealing the complicities of political maneuvering within nation states that diminish Indigenous peoples capacity to make effective and transforming changes. It offers a timely and important analysis... and should be made available soon to scholarly journals.

Perhaps too, my journey which is informed by international activity serves to again explain my role and context. Internationally and regionally where other major groupings of Indigenous peoples are engaged, and where one of the aims of their political activity directly involves conscientising ‘others’ to their perspective and values, there are many Europeans working collaboratively with this leadership.

Traditional Elders and community leaders who represent their peoples internationally see benefit in involving non-indigenous people. The critical nature of challenges confronting humanity requires a next level in conscientisation. The living systems within the living system and bio-cultural diversity are imperative to life’s continuance and wellbeing. Consequently, involving non-indigenous people is part of a wider project which seeks collaborative approaches with a whole range of groups involved in addressing the vital issues which will determine the future and quality of all life on Earth.

Throughout my journey I have conducted myself in accordance with a number of protocols, some cultural, others official, and still others academic. The cross-cultural and inter-cultural nature of my role within a multiplicity of contexts, international positioning and cultural learning have served to establish these as guiding principles which underscore the writing of this thesis.

I thank Dr. Watson for sharing her concerns as this has allowed me the opportunity to reflect on and further clarify my thesis as it is seen by another.
I first encountered this term when it was used in conjunction with three other Indigenous words, each from a different Aboriginal peoples of Australia, to explain the values and principles that defined the World Indigenous Peoples Conference: Education, Wollongong University, 1993. At that time I had been invited by the Aboriginal Secretariat to be a part of their Conference co-ordination and to provide interpretation and translation for the Spanish speaking groups attending. Nintila was to again make an appearance in 1997, when I attended a residential at the Hawkesbury Campus of the University of Western Sydney. Here, another student who had been living and working with the Pitjantjatjara for eight years, and was fluent in Pitjantjatjara, again explained its meaning as part of a sharing between a number of students who had inter-cultural backgrounds. My use and explanation of Nintila is consistent with the two occasions in which I have encountered it and had it explained to me. Its incorporation was to explain and again situate my voice as an intercultural facilitator of ‘exchange’, and to express the value which an exchange of ‘meaning’ may engender, namely wisdom.

---

3 I first encountered this term when it was used in conjunction with three other Indigenous words, each from a different Aboriginal peoples of Australia, to explain the values and principles that defined the World Indigenous Peoples Conference: Education, Wollongong University, 1993. At that time I had been invited by the Aboriginal Secretariat to be a part of their Conference co-ordination and to provide interpretation and translation for the Spanish speaking groups attending. Nintila was to again make an appearance in 1997, when I attended a residential at the Hawkesbury Campus of the University of Western Sydney. Here, another student who had been living and working with the Pitjantjatjara for eight years, and was fluent in Pitjantjatjara, again explained its meaning as part of a sharing between a number of students who had inter-cultural backgrounds. My use and explanation of Nintila is consistent with the two occasions in which I have encountered it and had it explained to me. Its incorporation was to explain and again situate my voice as an intercultural facilitator of ‘exchange’, and to express the value which an exchange of ‘meaning’ may engender, namely wisdom.
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REFERENCES

Bibliography

And

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Z. Kutena
PhD. Thesis in Social Ecology
University of Western Sydney, 2004.
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- Figure 2:2 The Indigenous Research Agenda.
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- Figure 3:1 Indra’s Net Gestalt: A Connected Universe.
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Appendix E: Declaration on Cultural Diversity (UNESCO)
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Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
REFERENCES


Kidd, Rosalind (1997), The Way we Civilize, University of Queensland Press.


Langton, Marcia (1998), Burning Questions. Emerging Environmental Issues For Indigenous Peoples In Northern Australia, NTUniprint, Northern Territory University, Darwin.


Waqi’ Q’anil, Demetri Cojti Cuxil (1997), El Movimiento Maya (en Guatemala), CHOLSAMAJ Centro Educativo y Cultural Maya Documento IWGIA No. 20.


World Media Institute, Tribute…to Barbara Ward. Lady of Global Concern, WMI Vol. 1, Ottawa.


REPORTS, OFFICIAL DOCUMENTS, JOURNALS AND PUBLICATIONS


Council for Aboriginal Reconciliation (CAR), National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights, 4 April 2000, Prepared by the Documents Committee of the Council for Aboriginal Reconciliation.


*DoCip Update* 43. March-April 02.


IWGIA, (1993), “…Never Drink from the Same Cup”: *Proceedings of the conference on Indigenous Peoples in Africa*, Tune Denmark, Centre for Development Research and The International Working Group for Indigenous Affairs, CDR/ IWGIA Doc No. 74, Copenhagen


Report of the Non-Government Members Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Undertakings Freely Given, Australia’s International Obligations to Protect Indigenous Rights, CERD and the Native Title Amendment Act 1998, June 2000, Australia.


DICTIONARIES


Dictionary of Political Thought, Roger Scruton (1996), Macmillan.


SPEECHES, TRANSCRIPTS AND NEWS MEDIA


Cevallos, Diego, Article in ‘Health E-newsletter’, Inter-Press Services (IPS), 6 March 2004.


Interview with Bill Fletcher, President of Trans-Africa Forum, on Lehrer’s News Hour, Public Broadcasting Service (PBS), Broadcast 10 July 2001.


Ray Suarez interview with George Ayittey, Free Africa Foundation, Washington, for Lehrer’s ‘News Hour’ programme, PBS, 10 July 2002.


Thabo Mbeki, President of the Republic of South Africa, From Rio to Johannesburg, Address on the occasion of the torch handing over ceremony, 25, June 2002, Rio de Janeiro.


Tony Jones, Interview with Mrs. Sejai Holland, Secretary for International Affairs, The Movement for Democratic Change (MDC), Zimbabwe, ‘Late Line’ programme, ABC TV, Broadcast 4 March 2002.

WEB SITES AND E-JOURNALS

Aboriginal and Torres Strait Islander Commission (ATSIC):<http://www.atsic.gov.au>

Amnesty International:<http://www.amnestyusa.org>

Asia-Pacific Research Network (APRN):<http://www.aprnet.org>

Australian Broadcasting Corporation (ABC):<http://www.abc.net.au>

Briefing papers of the UN World Conferences:<http://www.un.org/geninfo/bp/wprconf.html>


Conventions on Climate Change:<http://www.unep.ch/iuc/>

Convention on Biological Diversity:<http://www.biodiv.org>
Conferences and Events of the UN:  
<http://www.un.org/events>

Council for Aboriginal Reconciliation, Australia:  
<http://www.reconciliation.org.au>

Earth New Bulletin (ENB):  
<http://www.iisd.ca>

Earth Times: <http://www.earthtimes.org>

Indigenous Peoples’ Centre for Documentation, Research and Information (DoCip):  
<http://www.docip.org>

Institute of Liberty and Democracy (ILD):  
<http://www.ild.org.pe>

International Development Research Centre (IDRC):  
<http://www.idrc.org>

International Institute for Sustainable Development (IISD):  
<http://www.iisd.org>

International Labor Organization:  
<http://www.ilo.org>

International Monetary Fund:  
<http://www.imf.org>

Inter Press Services:  
<http://www.ips.org>

Public Broadcasting Service:  
<http://www.pbs.org>

Third World Network:  
<http://www.twnside.org.sg>

Transatlantic Business Dialogue (TABD):  
<http://www.tabd.org>

United Nations (UN):  
<http://www.un.org>

United Nations Association Australia (UNAA):  
<http://www.unaa.org.au>
United Nations Association Canada (UNAC):  
<http://www.unac.org>

United Nations Documents: general:  
<http://www.un.org/Docs>

United Nations Educational Scientific and Cultural Organization (UNESCO):  
<http://www.unesco.org>

United Nations Environment Programme (UNEP):  
<http://www.unep.org>

Universal Declaration on Cultural Diversity (UNESCO):  
<http://www.unesco.org/confgen/press_rel/021101_clt_diversity.shtml>

Unrepresented Nations and Peoples Organization (UNPO):  
<http://www.unpo.org/news>

World Bank:  
<http://www.worldbank.org>

World Intellectual Property Organization (WIPO):  
<http://www.wipo.org>

World Summit on Sustainable Development (WSSD):  
<http://www.johannesburgsummit.org>

World Trade Organization:  
<http://www.wto.org>

5th International Conference of New and Restored Democracies:  
<http://www.icnr5-mongolia.mn>
Bibliography


Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.


IWGIA Newsletter, April-September, 1990, Nos. 60-61.


Indigenous Peoples: Towards an Interconnective and Consenting Dialogue.


Sykes, Roberta B. (1989), Black Majority, Hudson Publishing Victoria, Australia.

Tatz, Colin, Editor-in-Chief (1997), Genocide Perspectives 1. Essays in Comparative Genocide, Centre for Comparative Genocide Studies, Macquarie University, Sydney.


Wheelwright, Ted (1991), Oil & World Politics. From Rockefeller to the Gulf War, Left Book Club Co-operative Ltd, Sydney.

Wright, Alexis (1997), Grog War, Mugabala Books Aboriginal Corporation, Broome, Western Australia.
Reports


Woenne-Green, Susan, for the Ngaanyatjarra, Pitjantjatjara Yankunytjatjara Women’s Council Aboriginal Corporation, ‘They might have to drag me like a bullock’. *The rights, needs and care options for the senior men and women of the Ngaanyatjarra, Pitjantjatjara, and Yankunytjatjara communities in the cross-border region of Central Australia*. Final Report, March 1995.

**Journal**


**Media and Specialized Publication**

*Australian Mosaic*, Magazine of the Federation of Ethnic Communities’ Councils of Australia (FECCA).


*Ethnic Spotlight*, Journal of the Federation of Ethnic Communities’ Councils of Australia.


Life Lines, Bulletin of the Community Biodiversity Network (CBN), Sydney.

Quarterly news magazine, INFOCUS, Ethnic Communities’ Council (ECC) of NSW Inc., Published by the Ethnic Affairs Commission of NSW.

**Discussion Papers, Reasearch Monographs And Conference Papers**


*Australia’s National Report to the Fourth Conference of the Parties to the Convention on Biological Diversity*, Community Information Unit, Department of the Environment, Canberra, 1998.


TWN Trade & Development Series 12, *Developing Countries, the WTO and a New Round: A Perspective* Ransford Smith, TWN Third World Network, Malaysia.

**Other Documents**


*Coolangatta Declaration* 1993, Coolangatta.


Detailing Landscape As A Timeline

Where big brushstrokes served to paint the macropolitical canvas in Volume 1., this appendix provides a more detail overview of the same landscape. The timeline encapsulates power relationships between levels of activity and information flows which have shaped our current position and our common future. The timeline is presented on three levels each of which informs the other.

Applying Indra’s Net Gestalt (Figure 3.1, page 61), the ‘jewels’ are represented by the ‘years’, the ‘threads’ which are the ‘net’ and would intersect or meet at these points, are presented instead in parallel form as a chronology through time. Each thread is a level or ‘resonance’ and has its own column. Together they reveal the inter-relationships between seemingly separate arenas of activity while illustrating the progression in thinking which has accompanied process and events.

The first column reflects the macropolitical arena of inter-governmental relationships of ‘states’. This level is where power resides and until just over a decade ago it had remained a closed sphere of activity and dialogue involving officials and experts. The Rio Conference in 1992 marks the occasion when the United Nations widened its processes to include non-governmental representatives of four main ‘social groups’, these being: environmentalists, women, youth and Indigenous peoples.

The second column reflects events at ‘state’ levels, or those being played out internationally and covered by media. These events either inform dialogue within the United Nations, or represent a reaction to outcomes emanating from the macropolitical level in column ones. The third column reflects dominant discourse and emerging concepts which are again reflected in and of columns one and two.

For example in 1944 when Bretton Woods established the International Monetary Fund, ‘reconstruction and development’ was the dominant concept informing international thinking. The Yalta Agreement and the establishment of the United Nations in 1945
with its Charter affirming fundamental human rights and respect for the ‘self-determination’ of peoples, followed by the advent of the first multilateral bank of the World bank in 1946, set the conditions for both the ‘reconstruction of Europe’, and newer processes addressing ‘colonialism’. With the world community promoting ‘self determination’ and India achieving independence through partition in 1947, South Africa legislated Apartheid in 1948.

Interpretation of the timeline is left to each individual as the inter-connections one sees will vary depending on ones perspective. Neither is the timeline an exhaustive list of events or moments. Rather it centers and contextualizes the various on-going dialogues and Conferences some of which have been part of my journey across landscape, while providing additional and relevant information. The substantive contained within the timeline however reflects economic, political, social, and juridical processes concerned with the emancipation of states and peoples and their inter-play. Environmental and cultural considerations are accented a bit later reflecting their advent within the progression of thinking and conceptualization.

Timelines encapsulate the dynamic contained within moments and reveal pattern. What this timeline illustrates is that despite a collective post war commitment to a world comprised of ‘self determining’ peoples and on-going processes aimed at achieving this peacefully through dialogue, humanity has only incrementally moved forward. Negative events such as war are an indication that at one level or another dialogue either failed or was needed.

This timeline draws on a diversity of sources for its information which it is hoped resonates with Indigenous peoples, civil society and others who are committed to conscientising processes nationally and internationally.

The timeline might be seen as a combination of moments strung together within a web of meaning.
### Year | The Global Dialogue Within Institutions and Agencies. | International, Civil, NGO and Australian Events and Dialogue | Dominant Discourse and Emerging Concepts
---|---|---|---
1944 | Bretton Woods: International Monetary Fund (IMF) established. Articles for an International Bank for Reconstruction and Development (IBRD) drawn up. | | Reconstruction and Development


1946 | International Bank for Reconstruction and Development (IBRD) begins operation as the 1st of four institutions which today make up the World Bank Group or World Bank (WB). 90% of IBRD lending is funded by international capital markets with capital paid into bank by shareholders. 72 Non-Self-Governing Territories (NSGT) and 11 Trust Territories listed by Australia, Belgium, Denmark, France, the Netherlands, New Zealand, the United Kingdom and the United States, known as Administering states. United Nations Children’s [Emergency] Fund (UNICEF), established to meet emergency needs of post-war children. UN Department of Public Information (DIP) established. | Cold War begins. Peron in Argentina. Jordan independent. | Cold War
<table>
<thead>
<tr>
<th>Year</th>
<th>The Global Dialogue Within Institutions and Agencies.</th>
<th>International, Civil, NGO and Australian Events and Dialogue</th>
<th>Dominant Discourse and Emerging Concepts</th>
</tr>
</thead>
</table>
| 1947 | General Agreement on Tariffs and Trade (GATT) established.  
UN’s Economic Commission for Europe (ECE) created.  
UN’s Economic and Social Commission for Asia and the Pacific (ESCAP) established. | India Independent. Partitioning of India and creation of East and West Pakistan.  
Czechoslovakia seeks inclusion to Marshal plan.  
| 1948 | UN’s Universal Declaration of Human Rights.  
UN’s Economic Commission for Latin America and the Caribbean (ECLAC) set up. | Jan Masaryk fenestrated.  
Gandhi assassinated.  
Apartheid legislation in South Africa.  
Ceylon joins Commonwealth. Malayan emergency (1948-60). | |
| 1949 | | Truman's Point Four aid program (forerunner of USAID).  
Comecon and NATO formed. Republic of Ireland formed. People's Republic in China. | |
| 1952 | | Britain tests atomic bomb. European Coal and Steel Community formed; Britain refuses to join. Elizabeth 11 Queen. | |
| 1953 | Dag Hammarskjold takes oath of office of Secretary General of UN.  
ILO, FAO, WHO, UNICEF, UNESCO initiate Andean Indian Programme, Bolivia, Venezuela, Ecuador, later Argentina, Chile and Colombia.  
ILO report on living and working conditions of Indigenous people. | Stalin dies. Egyptian Republic formed. McCarthy era in US.  
<table>
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<tbody>
<tr>
<td>1955</td>
<td>Spain and Portugal join UN, their colonial territories later added to UN list of Non-Self-Governing Territories.</td>
<td>West Germany joins NATO. Warsaw Pact formed. Messina Conference. Bandung Conference of Third World nations.</td>
<td></td>
</tr>
</tbody>
</table>
| 1957 | Dag Hammarskjöld accepts 2nd term as Secretary General UN.  
| 1958 | De Gaulle President of France.  
Pope John XXIII elected, Rome.  
Australia: Federal Council for the Advancement of Aborigines set up. |                                                          |                                                          |
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<th>Dominant Discourse and Emerging Concepts</th>
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<tbody>
<tr>
<td>1960</td>
<td>UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples. World Bank creates 3rd Institution within its group; the International Development Association (IDA) to provide financing on highly concessional terms for the world’s poorest countries and those unable to service loans from IBRD. IDA loans are known as ‘credits’ which may be extended interest free for 35-40 years only attracting an administrative fee.</td>
<td>U2 Spy plane wrecks US/USSR summit. End Malaysian Emergency. Sharpville Massacre, South Africa. Belgian Congo Independent. Nigeria Independent. Vietnam War Begins (1960-1975).</td>
<td>Independence, Self-determination.</td>
</tr>
<tr>
<td>1961</td>
<td>Organization for Economic Cooperation and Development (OECD) founded. Today it has 29 member states. Dag Hammarskjöld, Secretary General of the UN pursues efforts to encourage reconciliation and end foreign interference in Congo. Plane he is on crashes during final approach. Hammarskjöld is killed.</td>
<td>Berlin Wall erected. Bay of Pigs South Africa Republic J.F. Kennedy President of USA. Australia: Aboriginal Advancement Council protests apartheid in Australia.</td>
<td></td>
</tr>
<tr>
<td>1962</td>
<td>UN General Assembly establishes the Special Committee on Decolonization.</td>
<td>Cuban Missile Crisis Vatican II Britain grants independence to Jamaica, Trinidad and Tobago, and Uganda.</td>
<td>‘Silent Spring’ by Rachel Carson on DDT, beginnings of Environmental discourse in West.</td>
</tr>
<tr>
<td>1963</td>
<td>UN General Assembly approves revised list of Non-Self-Governing Territories (NSGT) totaling 64 countries. List includes remaining Trust Territories; Nauru and the Trust Territory of the Pacific Islands, Namibia (referred to as South West Africa) and South Rhodesia (now Zimbabwe) UN’s World Food Programme (WFP) established.</td>
<td>J.F. Kennedy assassinated. OUA formed. Eritrea War begins Kenya Independent. Test-Ban Treaty in Moscow. French veto Britain’s EEC bid.</td>
<td></td>
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### APPENDIX A

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<tr>
<th>Year</th>
<th>The Global Dialogue Within Institutions and Agencies.</th>
<th>International Civil, NGO and Australian Events and Dialogue</th>
<th>Dominant Discourse and Emerging Concepts</th>
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<tr>
<td>1967</td>
<td></td>
<td>Biafra War (1967-70). Indira Gandhi Indian PM (1966-77 and again 1980-84) Six day war Israel France vetoes Britain’s second bid to join EEC now the EC. Australian Referendum - Federal Government given conjoint jurisdiction with the states for Aboriginal and Torres Strait peoples who will now, for first time, be included in the national census.</td>
<td></td>
</tr>
<tr>
<td>Year</td>
<td>The Global Dialogue Within Institutions and Agencies.</td>
<td>International Civil, NGO and Australian Events and Dialogue</td>
<td>Dominant Discourse and Emerging Concepts</td>
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Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
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</thead>
<tbody>
<tr>
<td>1973</td>
<td>UN's Economic and Social Commission for Western Asia established (ESCWA).</td>
<td>US withdraws from Vietnam War. Yom Kippur War, Israel against Arab States. Denmark, Ireland and UK enter European Community. Australia: National Aboriginal Consultative Committee (NACC) established, 41 delegates elected to advise government.</td>
<td>Environmental consideration to be keyed at inter-government levels and Ministries created.</td>
</tr>
</tbody>
</table>

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<tbody>
<tr>
<td>1978</td>
<td>UN Conference to Combat Racism, specifically refers to Indigenous peoples and their ‘right to be named properly, to have their status recognized, to form their own representative organizations as NGO’s in UN system, to their own language, to appropriate education and to develop’.</td>
<td>Camp David Accord (President Carter, Israel and Egypt). Boat people leave Vietnam. Civil wars in Chad and Nicaragua. Pope John Paul II elected.</td>
<td></td>
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<tr>
<td>Year</td>
<td>The Global Dialogue Within Institutions and Agencies.</td>
<td>International, Civil, NGO and Australian Events and Dialogue</td>
<td>Dominant Discourse and Emerging Concepts</td>
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<td>----------------------------------------------------------</td>
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<tr>
<td>1979</td>
<td><strong>Civil war in El Salvador.</strong> Shah of Iran deposed by Khomeini. <strong>Iran hostage crisis. USSR invades Afghanistan. Pol Pot deposed in Cambodia. European Parliament direct elections.</strong></td>
<td></td>
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## Year | The Global Dialogue Within Institutions and Agencies | International, Civil, NGO and Australian Events and Dialogue | Dominant Discourse and Emerging Concepts
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<td></td>
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<td>Australia: Royal Commission into Black Deaths in Custody report and recommendations made public.</td>
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<td>Australia: The Council for Aboriginal Reconciliation established by Parliament.</td>
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<td>1992</td>
<td>RIO Conference, also known as UNCED, or the Earth Summit, Brazil. Outcomes include: Agenda 21. UN Framework Convention on Climate Change (UNFCCC), adopted, the Convention on Biological Diversity, (CBD), also adopted and opened for signature. Rio Declaration on Environment and Development, and the Statement of Forest Principals.</td>
<td>UN processes opened up to participation by social movement groups.</td>
<td>Term ‘biodiversity’ gains world currency.</td>
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<td>Convention on Biological Diversity sets out centrality of indigenous knowledge to the Convention and processes of compliance.</td>
<td>Indigenous peoples and cultures as sui generis system integral to biodiversity accepted.</td>
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<td>UN establishes Commission for Sustainable Development (CSD).</td>
<td>‘Odious Debts’ by Patricia Adams, on failure of World Bank.</td>
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<td>Indigenous peoples’ Earth Charter and Kari-Oca Declaration.</td>
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<td>Australia: High Court rejects ‘terra nullius’ in Mabo No 2. decision.</td>
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<td>Year</td>
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| 1993 | UN’s International Year of the World’s Indigenous Peoples.  
VIENNA Human Rights Conference. Declaration and a Programme of Action.  
UN General Assembly establishes the post of the High Commissioner for Human Rights as the UN Official with principal responsibility for promoting and protecting all civil, cultural, political, economic and social rights. Mandate to be carried out through the Office of the High Commissioner of the Human Rights (OHCHR). | Global Initiative for Traditional Systems of Health (GIFTS of Health), WCIP, WHO and PAHO Conference, Winnipeg, Canada.  
VIENNA Human Rights Conference. Declaration and a Programme of Action.  
UN General Assembly establishes the post of the High Commissioner for Human Rights as the UN Official with principal responsibility for promoting and protecting all civil, cultural, political, economic and social rights. Mandate to be carried out through the Office of the High Commissioner of the Human Rights (OHCHR).  
2nd Workshop on Indigenous Peoples Development Washington DC.  
South Africa’s Traditional Constitution enacted paving the way for elections the following year.  
Czechoslovakia’s velvet revolution, country divides into Slovakia and Czech Republic.  
Australia: Commonwealth commences work on Native Title legislation in light of Mabo No. 2 findings the previous year.  
Australia: Aboriginal peoples Eva Valley Accord.  
Australia: Prime Minister Keating’s Redfern Address acknowledges failure of white Australia to confront its own history and atrocities committed against Aboriginal peoples. | Global Ecology by Wolfgang Sachs  
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<td>1995</td>
<td>Universal Declaration on Linguistic Rights, Barcelona, Spain.</td>
<td>GIFTS of Health, Asian Symposium.</td>
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<td></td>
<td>International Conference on Human Rights and Indigenous Peoples, Arequipa, Peru.</td>
<td>Death of Ken Saro Wiwa, international author and leader of the Movement for the Survival of Ogoni Peoples, peacefully resisting the contamination of their land by the giant British/Dutch oil company Shell. Saro Wiwa is falsely charged and sentenced to death with 8 other colleagues by the Nigerian government. Shell is directly implicated in these events and Nigeria is subsequently expelled for a period from the Commonwealth of Nations.</td>
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<td>World Trade Organization (WTO) established replacing GATT.</td>
<td>First Conference of the parties to the UNFCCC - negotiation commences on KYOTO Protocol.</td>
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<td>UN Commission on Human Rights adopts resolution to establish open-ended inter-sessional Working Group on Draft Declaration of Indigenous Peoples (WGDD). Requirement that Indigenous peoples have ECOSOC status hinders Indigenous participation, particularly third world Indigenous.</td>
<td>BEIJING, World Conference on Women.</td>
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<td></td>
<td>World Trade Organization (WTO) established replacing GATT.</td>
<td>COPENHAGEN World Summit for Social Development (WSSD), places a priority on creating an ‘enabling economic and social environment for people-centered development’.</td>
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### Year | The Global Dialogue Within Institutions and Agencies. | International, Civil, NGO and Australian Events and Dialogue. | Dominant Discourse and Emerging Concepts
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<td>1999</td>
<td>Kofi Annan launches the 'Global Compact' outlining 9 principles in the areas of 'human rights', 'labor' and 'the environment' which would advance responsible corporate citizenship, enabling private sector in partnership with other social actors to be part of solution.</td>
<td>World Economic Forum, Seattle. Civil Society groups demonstrate against systemic injustice benefiting G7 who control and manage global mechanisms. Forum is halted.</td>
<td>'Whose World is it Anyway? Civil Society the United Nations and the multilateral future', published by United Nations Association in Canada.</td>
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### APPENDIX A

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<tr>
<th>Year</th>
<th>Event</th>
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<td></td>
<td>Libya calls for a redefinition of 'Terrorism' at Millennium Summit</td>
<td>suggesting it be broadened to include all perpetrators of aggression, threats of violence and or use of sanctions, use of nuclear or other weapons of mass destruction and the conditions which cause terror, such as those imposed by the WB, IMF and WTO. Sri-Lanka pleads for the integrity of sovereign states.</td>
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<td>World Economic Forum held in Melbourne, Civil Society demonstrate</td>
<td>police act violently.</td>
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<td>G-8 Renewable Energy Taskforce set up to identify actions to promote</td>
<td>a change in the supply, distribution and use of renewable energy in developing countries.</td>
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<td></td>
<td>Australia: Council for Aboriginal Reconciliation finds an apology</td>
<td>is central to reconciliation for Indigenous people. Final Report and Recommendations submitted to government, a Declaration of Reconciliation (nationally canvassed) presented to Australian Government at Corroboree 2000. Half a million Australians walk across Sydney Harbor Bridge to show support for Aboriginal Reconciliation, despite Prime Minister’s refusal to say ‘sorry’ for past injustices. Similar events subsequently held in Brisbane and Melbourne.</td>
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<td>UNEP Publishes Global Environment Outlook 2000, concludes special</td>
<td>attention should be paid to unsustainable patterns of production and consumption within richer segments of all countries. New discourse of indigeneity emerges from within English speaking academic circles.</td>
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<td>World Community recognizes that central to UN reforms engendering</td>
<td>peace and stability is the need for a democratization of inter-relationships between member states.</td>
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<td>United Nations Forum on Forests (UNFF) established by the UN</td>
<td>Economic and Social Council (ECOSOC).</td>
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<td>2001</td>
<td>UN General Assembly proclaims 2nd International Decade for the Eradication of Colonialism</td>
<td>George W. Bush inaugurated as President of the USA after Supreme Court decides contested election outcome in his favor.</td>
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<td>UN World Conference against Racism, Racial Discrimination, Xenophobia and related intolerance, Durban. Israeli delegation walks out of Conference.</td>
<td>Australian Bicentennial of Federation.</td>
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<td>ISTANBUL +5 UNGASS Overall Review and Appraisal of the implementation of the Habitat Agenda, New York.</td>
<td>Howard Government re-elected in Australia.</td>
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<td>UN, WTO, IMF Meeting to address sustainability and new economic models and accounting methods.</td>
<td>US Government repudiates Kyoto agreement. Australia demands special consideration and refuses to sign. World Community continues to elaborate newer elements to strengthen FCCC regardless of US/Australian stance.</td>
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<td>UNESCO Universal Declaration on Cultural Diversity adopted. Affirms ‘cultural diversity’ as source of exchange, innovation and creativity, and as necessary for humankind as ‘biodiversity’ is for nature.</td>
<td>G8’s Renewable Energy Task Force concludes, recommending 10 year implementation.</td>
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<td>3rd UN Conference on the Least Developed Countries, Brussels.</td>
<td>September 11, New York. USA announces ‘War on Terror’, described as a ‘war to save civilization itself’. Bush tells world there is no neutral position, ‘either you are with us or you are with the terrorists’.</td>
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<td>26th Special Session of the General Assembly on HIV/AIDS, New York.</td>
<td>Australian Prime Minister, Mr. Howard (in Washington on Sept. 11) commits Australia to support USA.</td>
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<td>USA is voted off the UN Commission on Human Rights.</td>
<td>USA and supporters invade Afghanistan.</td>
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<td>Australia ratifies Rome Statue of ICC, declares supremacy of Australian court, and provision that no person shall be surrendered to the ICC unless the Australian Attorney General issues a ‘Certificate of Surrender’.</td>
<td>ENRON scandal and collapse. Anderson admits irregularities in Audit.</td>
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<td>HIH scandal and collapse.</td>
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<td>Beginning of a series of events which will ultimately identify fraudulent and criminal behavior in capital markets, securities exchange, financial investment/audit groups and corporations in USA, Australia and Transatlantic circles.</td>
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<td>2002</td>
<td>World Summit on Sustainable Development, (WSSD) Johannesburg. World Community outlines practical steps towards achieving a peaceful and sustainable future. MONTAREY Mexico, International Conference on Financing for Development (ICFD). 1st Session of the Permanent Forum on Indigenous Issues, New York. World Food Summit, ‘Five years later’, FAO, Rome. 2nd World Assembly on Ageing, Madrid. 27th special session of General Assembly on Children, New York. Agenda includes child soldiers and HIV/Aids. International Timber Trade Council meeting, Bali. International Criminal Court (ICC) enters into force, currently 139 signatories and 94 parties to the Treaty. USA and Israeli Governments both advise they do not intend to become party to ICC Treaty and have no obligation arising from their previous signature in Dec. 2000. UN is now comprised of 191 member States. 16 Non-Self-Governing Territories are listed.</td>
<td>Timor Leste gains independence and becomes a member of the UN. Switzerland joins the UN. Bush delivers ‘Axis of Evil’ State of the Union Address. Describes going to war as a crusade. Bali Bombings. Local, and overseas civilians comprised mainly of Australians killed in nightclub explosions. USA and Coalition declare Iraq has links to Al Qaeda and is developing weapons of mass destruction (WMD). World Community maintains UN weapons inspectors be allowed to complete their work and report on WMD before alternative approaches are considered and decided upon. USA seeks bi-lateral impunity agreements in which governments pledge to neither surrender nor transfer US citizens to the International Criminal Court. Worldcom scandal involving fraud, false accounting and bankruptcy. Last flight and collapse of Ansett, airline Australia.</td>
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<td>2003</td>
<td>UN Follow up Process to the International Conference on Finance and Development (ICFD). World Summit on the Information Society, Geneva. UN 5th International Conference on New and Restored Democracies. Heads of government recognize a need for and the existence of variation in Democratic models.</td>
<td>USA and ‘Coalition of the Willing’ invade Iraq. International community regards action as an illegal invasion of a sovereign country and maintain that the Israeli/USA /UK/Australian politic of ‘pre-emption’ is both dangerous and illegal. BAGHDAD, UN Headquarters bombed killing Sergio di Meillo, appointed to facilitate elections and assist Iraqi transition to democracy.</td>
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| 2004 | Global Compact Leaders Summit, New York. Kofi Annan announces addition of a 10th principle against corruption. Business to work against all forms of corruption, including extortion and bribery. 4th World Social Forum, Mumbai, India. ECOSOC High-level meeting on Follow up Processes to the International Conference on Financing for Development (ICFD). New York. UN Conference on Renewable Energies produces and adopts three outcome documents: a Political Declaration, Policy Recommendations, and an International Action Programme. United Nations Forum on Forests (UNFF4), Geneva. International Timber Trade Organizations’ Council (ITTC) Meeting, Switzerland 36th Session. ITTO Membership now 59 countries, comprised of 33 producer countries and, 26 consumer countries. Membership accounts for 90% of world trade, and | USA appoints new Interim Government in Iraq. Separate and official inquiries into Intelligence Agencies in USA, UK and Australia absolve governments of any wrong doing in committing to invasion of Iraq despite absence of WMD and faulty intelligence. USA Supreme Court finds so called ‘combatants’, or non-US nationals held by US military in private/military instillations and or in a second country are not outside the jurisdiction of the law and have rights. International Court of Justice, decides Israel’s wall partitioning sectors of Palestinian territory is illegal. UN General Assembly. International community pass resolution demanding Israeli wall be dismantled (Australia is one of 6 countries, including USA to vote against the resolution). Australia: Howard Government dismantles peak indigenous organization the Aboriginal and Torres Strait Islander Commission (ATSIC). | }
| 2004 cont. | controls 80% of all tropical forests. International Decade of the Worlds Indigenous Peoples concludes. International Declaration of Indigenous Peoples Rights still not agreed on within WGDD. UNGASS N.Y. Sept. Annan calls for compliance with ‘rule of law’ and points out US invasion of Iraq was illegal. Germany, Japan, India and Brazil all seek permanent chair on Security Council. Germany suggests that Africa should also be represented. | US sets out their UN reform priorities, that members who contribute more towards the funding and implementation of decisions should have a greater say in those decisions. singled out for special consideration are the Human Rights Commission of which the US is critical, and the General Assembly which provides all member states a democratic vote on resolutions and agenda items. Also suggested is a requirement that only those who support international peace and stability serve on the Security Council; while ‘terrorist-sponsoring’ states do not. USA seeks removal of Sudan from UN’s Human Rights Committee. President Chirac states US foreign policy and invasion of Iraq is responsible for opening Pandora’s box. UN Secretary General affirms view that USA is acting contrary to the intent of the UN Charter, and affirms that the invasion of Iraq was illegal. Australia: Howard Liberal government returned in Federal election. USA : President Bush re-elected for another term. Indian ocean countries devastated by Tsunami. |
| 2005 | UN World Summit on the Information Society, Tunis. UN Summit on Development (to be advised) | |

ILO C169 Indigenous and Tribal Peoples Convention, 1989

Convention concerning Indigenous and Tribal Peoples in Independent Countries (Note: Date of coming into force: 05:09:1991.)
Convention:C169
Place:Geneva
Session of the Conference:76
Date of adoption:27:06:1989
Subject classification: Indigenous and Tribal Peoples
Subject: Indigenous and Tribal Peoples
Status: Up-to-date instrument This Convention was adopted after 1985 and is considered up to date.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;

PART I. GENERAL POLICY

Article 1

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.
APPENDIX B

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

Article 5

In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

(c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 6

1. In applying the provisions of this Convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) establish means for the full development of these peoples’ own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.
3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.
APPENDIX B

PART II. LAND

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their...
present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) the provision of the means required to promote the development of the lands which these peoples already possess.

PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) equal remuneration for work of equal value;

(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;
(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

(a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

PART IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.
2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

PART V. SOCIAL SECURITY AND HEALTH

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

PART VI. EDUCATION AND MEANS OF COMMUNICATION

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.
APPENDIX B

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

PART VII. CONTACTS AND CO-OPERATION ACROSS BORDERS

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

PART VIII. ADMINISTRATION

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.
2. These programmes shall include:

(a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

(b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

PART IX. GENERAL PROVISIONS

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

PART X. FINAL PROVISIONS

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
APPENDIX B

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

   (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

   (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 44

The English and French versions of the text of this Convention are equally authoritative.

Cross references

Conventions: C107 Indigenous and Tribal Populations Convention, 1957
Recommendations: R104 Indigenous and Tribal Populations Recommendation, 1957
Revised: C107 This Convention revises the Indigenous and Tribal Populations Convention, 1957

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The Sub-Commission on Prevention of Discrimination and
Protection of Minorities,


Taking into account, in particular, paragraph 3 of its
resolution 1993/46, in which it decided to postpone until its forty-sixth session consideration of the draft United Nations declaration on the rights of indigenous peoples agreed upon by the members of the Working Group on Indigenous Populations, to request the Secretary-General to submit the draft declaration to the appropriate services in the Centre for Human Rights for its technical revision, and to submit, if possible, the draft declaration to the Commission on Human Rights with the recommendation that the Commission adopt it at its fifty-first session,

Recalling Commission on Human Rights resolution 1994/29 of 4 March 1994, in which the Sub-Commission was urged to complete its consideration of the draft United Nations declaration at its forty-sixth session and to submit it to the Commission at its fifty-first session together with any recommendations thereon,

Having considered the report of the Working Group on Indigenous Populations on its twelfth session (E/CN.4/Sub.2/1994/30 and Corr.1), in particular the general comments on the draft declaration and the recommendations contained in chapters II and IX respectively of the report,

Taking into account the technical review of the draft declaration prepared by the Centre for Human Rights (E/CN.4/Sub.2/1994/2 and Add.1),

1. Expresses its satisfaction at the conclusion of the deliberations on the draft United Nations declaration on the rights of indigenous peoples by the Working Group on Indigenous Populations and the general views of the participants as reflected in the report of the Working Group on its twelfth session;

2. Expresses its appreciation to the Chairperson-Rapporteur of the Working Group, Ms. Erica-Irene Daes, and to the present and former members of the Working Group for their contributions to the process of elaboration of the draft declaration;

3. Expresses its appreciation to the Centre for Human Rights for its technical revision of the draft declaration;

4. Decides:

   (a) To adopt the draft United Nations declaration on the rights of indigenous peoples agreed upon by members of the Working Group as contained in the annex to the present resolution;

   (b) To submit the draft declaration to the Commission on Human Rights at its fifty-first session with the request that it consider the draft as expeditiously as possible;

   (c) To request the Secretary-General to transmit the text of the draft declaration to indigenous peoples and organizations, Governments and intergovernmental organizations and to include in the note of transmittal the information that the draft declaration is to be submitted to the Commission on Human Rights at its fifty-first session;

5. Recommends that the Commission on Human Rights and the Economic and Social Council take effective measures to ensure that representatives of indigenous peoples are able to participate in the consideration of the draft declaration by these two bodies, regardless of their consultative status with the Economic and Social Council.

36th meeting
26 August 1994

[Adopted without a vote. See chap. XVI.]
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Annex

DRAFT UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Affirming that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, inter alia, in their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing also that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,
Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children,

Recognizing also that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

Considering that treaties, agreements and other arrangements between States and indigenous peoples are properly matters of international concern and responsibility,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination,

Encouraging States to comply with and effectively implement all international instruments, in particular those related to human rights, as they apply to indigenous peoples, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples:

**PART I**

**Article 1**

Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.
Article 2

Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 5

Every indigenous individual has the right to a nationality.

PART II

Article 6

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext. In addition, they have the individual rights to life, physical and mental integrity, liberty and security of person.

Article 7

Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;

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(d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda directed against them.

Article 8

Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

Indigenous peoples have the right to special protection and security in periods of armed conflict. States shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

(a) Recruit indigenous individuals against their will into the armed forces and, in particular, for use against other indigenous peoples;

(b) Recruit indigenous children into the armed forces under any circumstances;

(c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;

(d) Force indigenous individuals to work for military purposes under any discriminatory conditions.
PART III

Article 12
Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

Article 13
Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains.

States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected.

Article 14
Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

PART IV

Article 15
Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.
States shall take effective measures to provide appropriate resources for these purposes.

**Article 16**

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.

States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

**Article 17**

Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all forms of non-indigenous media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.

**Article 18**

Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

**PART V**

**Article 19**

Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Article 20**

Indigenous peoples have the right to participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them.

States shall obtain the free and informed consent of the peoples concerned before adopting and implementing such measures.
APPENDIX C

Article 21
Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

Article 22
Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security.

Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and disabled persons.

Article 23
Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24
Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals.

They also have the right to access, without any discrimination, to all medical institutions, health services and medical care.

PART VI

Article 25
Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

Article 26
Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the

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right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

Article 27
Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

Article 28
Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples.

States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 29
Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property.

They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.

Article 30
Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

PART VII

Article 31

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

Article 32

Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 33

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards.

Article 34

Indigenous peoples have the collective right to determine the responsibilities of individuals to their communities.

Article 35

Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other peoples across borders.

States shall take effective measures to ensure the exercise and implementation of this right.
Article 36
Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.

PART VIII

Article 37
States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights recognized herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice.

Article 38
Indigenous peoples have the right to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights and freedoms recognized in this Declaration.

Article 39
Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned.

Article 40
The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

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APPENDIX C

Article 41
The United Nations shall take the necessary steps to ensure the implementation of this Declaration including the creation of a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. All United Nations bodies shall promote respect for and full application of the provisions of this Declaration.

PART IX

Article 42
The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 43
All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 44
Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire.

Article 45
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.
Convention on Biological Diversity

Edited version containing the key articles pertaining to Indigenous peoples.

In particular, Articles 8j, 10c, 17.2, and 18.4. and Articles 12, 16, 17 and 19 which are also relevant.

Article 8. In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

(a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;

(c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;

(d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

(e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;

(f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies;

(g) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;
(h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;

(i) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

(k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;

(l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities; and

(m) Cooperate in providing financial and other support for in-situ conservation outlined in subparagraphs (a) to (l) above, particularly to developing countries.

**Article 10. Sustainable Use of Components of Biological Diversity**

Each Contracting Party shall, as far as possible and as appropriate:

(a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;

(b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

(d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and

(e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.
APPENDIX D

**Article 12. Research and Training**

The Contracting Parties, taking into account the special needs of developing countries, shall:

(a) Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training for the specific needs of developing countries;

(b) Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, inter alia, in accordance with decisions of the Conference of the Parties taken in consequence of recommendations of the Subsidiary Body on Scientific, Technical and Technological Advice; and

(c) In keeping with the provisions of Articles 16, 18 and 20, promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.

**Article 16. Access to and Transfer of technology**

1. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment.

2. Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided and/or facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed, and, where necessary, in accordance with the financial mechanism established by Articles 20 and 21. In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights. The application of this paragraph shall be consistent with paragraphs 3, 4 and 5 below.

3. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that Contracting Parties, in particular those that are developing countries, which provide genetic resources are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, including technology protected by patents and other intellectual property rights, where necessary, through the provisions of Articles 20 and 21 and in accordance with international law and consistent with paragraphs 4 and 5 below.
4. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology referred to in paragraph 1 above for the benefit of both governmental institutions and the private sector of developing countries and in this regard shall abide by the obligations included in paragraphs 1, 2 and 3 above.

5. The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives.

**Article 17. Exchange of Information**

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

**Article 18. Technical and Scientific Cooperation**

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary, through the appropriate international and national institutions.

2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, inter alia, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities, by means of human resources development and institution building.

3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.

4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.
5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.

Article 19. Handling of Biotechnology and Distribution of its Benefits

1. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities by those Contracting Parties, especially developing countries, which provide the genetic resources for such research, and where feasible in such Contracting Parties.

2. Each Contracting Party shall take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.

3. The Parties shall consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.

4. Each Contracting Party shall, directly or by requiring any natural or legal person under its jurisdiction providing the organisms referred to in paragraph 3 above, provide any available information about the use and safety regulations required by that Contracting Party in handling such organisms, as well as any available information on the potential adverse impact of the specific organisms concerned to the Contracting Party into which those organisms are to be introduced.

The above document is an edited copy of the key articles pertaining to Indigenous peoples within the Convention on Biological Diversity.

The full text version of the Convention is available ‘on-line’ at <www.biodiv.org>
GENERAL CONFERENCE ADOPTS UNIVERSAL DECLARATION ON CULTURAL DIVERSITY

Paris, November 2 – UNESCO's governing body – the General Conference – today adopted the UNESCO Universal Declaration on Cultural Diversity, a text about which Director-General Koïchiro Matsuura expressed hope that it can "one day acquire as much force as the Universal Declaration of Human Rights".

Mr Matsuura declared: "At a time when some might see a clash of cultures in the current international situation, UNESCO's Member States, convening for the Organization's 31st General Conference, adopted by acclamation today the Universal Declaration on Cultural Diversity, reaffirming their conviction that intercultural dialogue is the best guarantee of peace, thus categorically rejecting the idea that conflicts between cultures and civilisations are inevitable.

"This is the first time the international community has endowed itself with such a comprehensive standard-setting instrument, elevating cultural diversity to the rank of 'common heritage of humanity - as necessary for the human race as bio-diversity in the natural realm' – and makes its protection an ethical imperative, inseparable from respect for human dignity.

"UNESCO's Universal Declaration on Cultural Diversity, along with the main lines of an Action Plan, is a determining instrument to humanise globalisation. UNESCO is honoured to be at the forefront of a movement that involves all of humanity.

"This Declaration now counts among the basic texts of new ethics UNESCO is advocating at the beginning of the 21st century. I hope that it will one day acquire as much force as the Universal Declaration of Human Rights."

Below is the full text of the UNESCO Universal Declaration on Cultural Diversity:

"The General Conference,

Committet to the full implementation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized legal instruments, such as the two International Covenants of 1966 relating respectively to civil and political rights and to economic, social and cultural rights,

Recalling that the Preamble to the Constitution of UNESCO affirms "that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern",

Indigenous Peoples: Towards an Interconnective and Conscientising Dialogue.
Further recalling Article I of the Constitution, which assigns to UNESCO among other purposes that of recommending "such international agreements as may be necessary to promote the free flow of ideas by word and image",

Referring to the provisions relating to cultural diversity and the exercise of cultural rights in the international instruments enacted by UNESCO,\(^1\)

Reaffirming that culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs,\(^2\)

Noting that culture is at the heart of contemporary debates about identity, social cohesion, and the development of a knowledge-based economy,

Affirming that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security,

Aspiring to greater solidarity on the basis of recognition of cultural diversity, of awareness of the unity of humankind, and of the development of intercultural exchanges,

Considering that the process of globalization, facilitated by the rapid development of new information and communication technologies, though representing a challenge for cultural diversity, creates the conditions for renewed dialogue among cultures and civilizations,

Aware of the specific mandate which has been entrusted to UNESCO, within the United Nations system, to ensure the preservation and promotion of the fruitful diversity of cultures,

Proclaims the following principles and adopts the present Declaration:

IDENTITY, DIVERSITY AND PLURALISM

Article 1 – Cultural diversity: the common heritage of humanity

Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.

Article 2 – From cultural diversity to cultural pluralism

In our increasingly diverse societies, it is essential to ensure harmonious interaction among people and groups with plural, varied and dynamic cultural identities as well as their willingness to live together. Policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace.
Thus defined, cultural pluralism gives policy expression to the reality of cultural diversity. Indissociable from a democratic framework, cultural pluralism is conducive to cultural exchange and to the flourishing of creative capacities that sustain public life.

Article 3 – Cultural diversity as a factor in development

Cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence.

Cultural diversity and human rights

Article 4 – Human rights as guarantees of cultural diversity

The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

Article 5 – Cultural rights as an enabling environment for cultural diversity

Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

Article 6 – Towards access for all to cultural diversity

While ensuring the free flow of ideas by word and image care should be exercised that all cultures can express themselves and make themselves known. Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity.

Cultural diversity and creativity

Article 7 – Cultural heritage as the wellspring of creativity

Creation draws on the roots of cultural tradition, but flourishes in contact with other cultures. For this reason, heritage in all its forms must be preserved, enhanced and
APPENDIX E

handed on to future generations as a record of human experience and aspirations, so as to foster creativity in all its diversity and to inspire genuine dialogue among cultures.

Article 8 – Cultural goods and services: commodities of a unique kind

In the face of present-day economic and technological change, opening up vast prospects for creation and innovation, particular attention must be paid to the diversity of the supply of creative work, to due recognition of the rights of authors and artists and to the specificity of cultural goods and services which, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods.

Article 9 – Cultural policies as catalysts of creativity

While ensuring the free circulation of ideas and works, cultural policies must create conditions conducive to the production and dissemination of diversified cultural goods and services through cultural industries that have the means to assert themselves at the local and global level. It is for each State, with due regard to its international obligations, to define its cultural policy and to implement it through the means it considers fit, whether by operational support or appropriate regulations.

CULTURAL DIVERSITY AND INTERNATIONAL SOLIDARITY

Article 10 – Strengthening capacities for creation and dissemination worldwide

In the face of current imbalances in flows and exchanges of cultural goods and services at the global level, it is necessary to reinforce international cooperation and solidarity aimed at enabling all countries, especially developing countries and countries in transition, to establish cultural industries that are viable and competitive at national and international level.

Article 11 – Building partnerships between the public sector, the private sector and civil society

Market forces alone cannot guarantee the preservation and promotion of cultural diversity, which is the key to sustainable human development. From this perspective, the pre-eminence of public policy, in partnership with the private sector and civil society, must be reaffirmed.

Article 12 – The role of UNESCO

UNESCO, by virtue of its mandate and functions, has the responsibility to:

(a) Promote the incorporation of the principles set out in the present Declaration into the development strategies drawn up within the various intergovernmental bodies;

(b) Serve as a reference point and a forum where States, international governmental and non-governmental organizations, civil society and the
private sector may join together in elaborating concepts, objectives and policies in favour of cultural diversity;

(c) Pursue its activities in standard-setting, awareness-raising and capacity-building in the areas related to the present Declaration within its fields of competence;

(d) Facilitate the implementation of the Action Plan, the main lines of which are appended to the present Declaration.

MAIN LINES OF AN ACTION PLAN FOR THE IMPLEMENTATION OF THE UNESCO UNIVERSAL DECLARATION ON CULTURAL DIVERSITY

The Member States commit themselves to taking appropriate steps to disseminate widely the "UNESCO Universal Declaration on Cultural Diversity", in particular by cooperating with a view to achieving the following objectives:

1. Deepening the international debate on questions relating to cultural diversity, particularly in respect of its links with development and its impact on policy-making, at both national and international level; taking forward notably consideration of the opportunity of an international legal instrument on cultural diversity.

2. Advancing in the definition of principles, standards and practices, on both the national and the international levels, as well as of awareness-raising modalities and patterns of cooperation, that are most conducive to the safeguarding and promotion of cultural diversity.

3. Fostering the exchange of knowledge and best practices in regard to cultural pluralism with a view to facilitating, in diversified societies, the inclusion and participation of persons and groups from varied cultural backgrounds.

4. Making further headway in understanding and clarifying the content of cultural rights as an integral part of human rights.

5. Safeguarding the linguistic heritage of humanity and giving support to expression, creation and dissemination in the greatest possible number of languages.

6. Encouraging linguistic diversity – while respecting the mother tongue – at all levels of education, wherever possible, and fostering the learning of several languages from the youngest age.

7. Promoting through education an awareness of the positive value of cultural diversity and improving to this end both curriculum design and teacher education.

8. Incorporating, where appropriate, traditional pedagogies into the education process with a view to preserving and making full use of culturally appropriate methods of communication and transmission of knowledge.
9. Encouraging “digital literacy” and ensuring greater mastery of the new information and communication technologies, which should be seen both as educational discipline and as pedagogical tools capable of enhancing the effectiveness of educational services.

10. Promoting linguistic diversity in cyberspace and encouraging universal access through the global network to all information in the public domain.

11. Countering the digital divide, in close cooperation in relevant United Nations system organizations, by fostering access by the developing countries to the new technologies, by helping them to master information technologies and by facilitating the digital dissemination of endogenous cultural products and access by those countries to the educational, cultural and scientific digital resources available worldwide.

12. Encouraging the production, safeguarding and dissemination of diversified contents in the media and global information networks and, to that end, promoting the role of public radio and television services in the development of audiovisual productions of good quality, in particular by fostering the establishment of cooperative mechanisms to facilitate their distribution.

13. Formulating policies and strategies for the preservation and enhancement of the cultural and natural heritage, notably the oral and intangible cultural heritage, and combating illicit traffic in cultural goods and services.

14. Respecting and protecting traditional knowledge, in particular that of indigenous peoples; recognizing the contribution of traditional knowledge, particularly with regard to environmental protection and the management of natural resources, and fostering synergies between modern science and local knowledge.

15. Fostering the mobility of creators, artists, researchers, scientists and intellectuals and the development of international research programmes and partnerships, while striving to preserve and enhance the creative capacity of developing countries and countries in transition.

16. Ensuring protection of copyright and related rights in the interest of the development of contemporary creativity and fair remuneration for creative work, while at the same time upholding a public right of access to culture, in accordance with Article 27 of the Universal Declaration of Human Rights.

17. Assisting in the emergence or consolidation of cultural industries in the developing countries and countries in transition and, to this end, cooperating in the development of the necessary infrastructures and skills, fostering the emergence of viable local markets, and facilitating access for the cultural products of those countries to the global market and international distribution networks.

18. Developing cultural policies, including operational support arrangements and/or appropriate regulatory frameworks, designed to promote the principles enshrined in this Declaration, in accordance with the international obligations incumbent upon each State.
19. Involving civil society closely in framing of public policies aimed at safeguarding and promoting cultural diversity.

20. Recognizing and encouraging the contribution that the private sector can make to enhancing cultural diversity and facilitating to that end the establishment of forums for dialogue between the public sector and the private sector.

_The Member States recommend that the Director-General take the objectives set forth in this Action Plan into account in the implementation of UNESCO's programmes and communicate the latter to institutions of the United Nations system and to other intergovernmental and non-governmental organizations concerned with a view to enhancing the synergy of actions in favour of cultural diversity._


2. This definition is in line with the conclusions of the World Conference on Cultural Policies (MONDIACULT, Mexico City, 1982), of the World Commission on Culture and Development (Our Creative Diversity, 1995), and of the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998).

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1. EDITORIAL
In anticipation of the first session of the Permanent Forum on Indigenous Issues (13-24 May 2002), this Update is devoted to the follow-up of the activities carried out by several intergovernmental organizations on these issues. Indeed, many of them have initiated various processes in accordance with their own structures, within the framework of the International Decade of the World’s Indigenous Peoples. The most recent outcome of these processes is published in this issue.

Since 1996, the International Labour Organization (ILO) has been developing a project to promote awareness of its work among the indigenous peoples, to encourage the application of its standards, especially ILO Convention No. 169, and to enhance the capacity of indigenous and tribal peoples to participate in development processes affecting them. Information missions, seminars, dialogues, conferences and workshops are currently being promoted in Asia (India, Philippines, Malaysia, Thailand and Cambodia), Africa (Tanzania, Kenya, South Africa, Central and Western Africa), as well as in South America (Argentina). Lastly, a fellowship programme will begin in 2002.

In 1999, the World Health Organization (WHO) had convened an international consultation on indigenous peoples’ health. On this occasion, the Geneva Declaration on the Health and Survival of Indigenous Peoples and the Declaration of Indigenous Delegates from Central and South America had been published in Update 32/33. In 2001, the 54th World Health Assembly passed a resolution, which is published in this issue together with the Recommendations relating to partnership mechanisms...
included in the Report of the International Consultation on the Health of Indigenous Peoples. Let’s recall that, generally and despite the lack of accurate information, indigenous peoples’ life expectancy and health status are inferior to those of other population groups. On the other hand, the lack of data and in-depth research in this area, as well as great differences between official and independent statistics significantly hinder the development of regional and world health plans for indigenous peoples.

In 1999 as well, UNESCO had convened a workshop entitled Cultural Challenges of the International Decade of the World’s Indigenous People, where indigenous delegates had drawn up recommendations published in Update 32/33). In 2001, UNESCO convened an international symposium entitled Indigenous Identities: Oral, Written Expressions and New Technologies, which also produced specific resolutions by indigenous participants (see Update 39/40). Today, it seems appropriate to publish the text of the Universal Declaration on Cultural Diversity in which the term “indigenous peoples” has finally been accepted. Furthermore, it seems useful to draw attention on the work carried out by this intergovernmental organization on bioethics and intellectual property, even though it should be noted that no indigenous delegation participates in the process.

The second session of the Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore convened by the World Intellectual Property Organization (WIPO) did include some indigenous organizations. Of particular interest was the reading of a statement by Indian shamans of Brazil stressing the collective and non-commercial nature of their traditional knowledge, which, as such, should not be subject to patenting. Further, following a proposal by the European Union, WIPO announced that some indigenous and local community representatives could be funded in order to ensure their participation in the third session of the Committee scheduled to take place from 17 to 21 June 2002.

The second session of the Working Group on Article 8(j) of the Convention on Biological Diversity (CBD) passed a number of resolutions, including one calling for coordination among the intergovernmental organizations dealing with the recognition and protection of traditional knowledge. It is indeed striking to note that many of these agencies work in the same area without exchanging information, and sometimes even ignore the existence of the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous People developed in the UN Commission on Human Rights. This demonstrates how relevant the mandate of the Permanent Forum is, since this new body will coordinate the programmes aimed at indigenous peoples within the United Nations system, have an advisory function and carry out awareness-raising activities.

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2. INTERNATIONAL LABOUR ORGANIZATION

2.1. Policy on Indigenous and Tribal Peoples

The Project to Promote ILO Policy on Indigenous and Tribal Peoples is financed by Danish Development Assistance (DANIDA). It commenced in 1996, and a new phase of activities began in 2000. The main objectives of the Project are: (i) to promote awareness of the ILO’s work on indigenous and tribal peoples; (ii) to encourage the application of relevant standards in this respect, especially the Indigenous and Tribal Peoples’ Convention (No. 169); and (iii) to enhance the capacity of indigenous and tribal peoples to participate in development processes affecting them. The principal focus of the project is on Africa, and South and South-East Asia, whereas work in South and Central America complements the activities of the ILO offices in the region. The following is a summary of the Project’s activities during the past nine months.
Individual country activities

ASIA

India
In India, two missions have been undertaken by Project staff: the first aimed at informing indigenous and tribal peoples’ organizations about the Project; the second involving a meeting with the Ministry of Tribal Affairs (MoTA) and the Ministry of Labour. Possible openings for dialogue have been reached between the ILO, the government and indigenous and tribal peoples’ organizations here, and modalities for furthering this process are currently being developed. There is also a pending proposal for a national seminar and a study to compare the relevant national and state legislation in India with ILO Conventions Nos. 107 and 169.

Philippines
The current Project partner in the Philippines is PANLIPI-Cordillera – with whom the Project has agreed to implement a one-year research project aimed at analysing the current state of legal protection for indigenous peoples’ rights in the Philippines and how it can be implemented more effectively or strengthened. An important component of this study is also a comparison of existing legislation with the principles contained in Convention No. 169. The process will involve extensive consultations with indigenous people’ organizations, and relevant government bodies and officials, as well as other legislative research. The study will develop recommendations as regards furthering the legal protection of indigenous peoples within the Philippine framework, and ameliorating the implementation of existing standards. It is anticipated that these recommendations will serve as the basis for a national workshop once the study is completed. In parallel with this process, there is an ongoing dialogue between the Project and the NCIP (National Commission on Indigenous Peoples – the governmental body with the mandate to implement the Indigenous Peoples Rights Act of 1997), which has shown willingness to work with the Project.

Aside from the above, which constitutes the Project’s principal undertaking in the Philippines, the Project has supported an independent media outfit (NORDIS) that collates and distributes relevant information to indigenous organizations. The organizing of a forthcoming international indigenous youth conference has also been supported.

Malaysia
An initial mission to Malaysia during 2001 provided the Project with the opportunity to discuss with various actors and institutions of relevance to its work. These included indigenous and tribal peoples’ organizations, NGOs, government and international agencies. The government has indicated its willingness to start a process of dialogue. An indigenous NGO (Borneo Resources Institute Malaysia, or BRIMAS) has submitted a proposal for a national seminar on the rights of indigenous peoples. This seminar will be held during the first quarter of 2002 with government participation, and in collaboration with the Office of the Chief Minister of Sarawak.

Thailand
Two missions were conducted in Chiang-Mai to follow-up previous discussions on the possibility of holding a national seminar on Convention No. 169. However, the government agency tasked to work on the issue (Tribal Research Institute) has been undergoing considerable structural changes and there is no clear indication on the possible outcome of such changes. The situation in Thailand is rather unique in that many resources are being channelled into income generating activities for indigenous and tribal peoples, but there is very little being done in terms of policy advocacy. This issue has been repeatedly addressed to the various indigenous organizations and NGOs. Despite these gaps, there remains considerable scope in Thailand for engaging in capacity-building activities for indigenous and tribal peoples’ organizations, which will be the primary focus of the Project’s activities here over the coming months.
Cambodia
Partly due to the Project’s previous engagement in capacity-building for government agencies in Cambodia on issues pertaining to indigenous peoples and development issues in general (during 1998-1999), and partly due to the recent passage of an Asian Development Bank Policy Paper on indigenous peoples, there is an increasing interest among government agencies in dialogue on these issues. There is also a strongly evident wish to learn from the experiences of the other Asian countries in dealing with issues pertaining to indigenous and tribal peoples. A national seminar to inform government officials/agencies about the different policies and programmes by the various international agencies is being planned for the first quarter of 2002. It is hoped that such a seminar will result in a more concerted effort to have the Highland Peoples' Development Policy (currently in draft form and awaiting approval from the Council of Ministers) adopted as part of Cambodia’s laws. The seminar will also result in a more systematic programme of action to address the different concerns of indigenous and tribal peoples in Cambodia.

Africa

Tanzania
With the support of the ILO Area Office in Dar es Salaam, the Project has been introduced to various social partners, and has established contacts with the Ministry of Labour and with NGOs dealing with hunter-gatherers and pastoralists. In addition, a partnership has been established with Oxfam (GB). The objective of this partnership is to support pastoralists and hunter-gatherers in their efforts to raise their voice and engage in a dialogue with the government with regards to the new Draft Rural Development Strategy. In this respect a pastoralist and hunter-gatherers preparatory workshop has taken place. A national workshop, including government representatives will take place in 2002. The activities are coordinated by the pastoralists indigenous NGOs (PINGOs).

Complementary to the above-mentioned, in partnership with ILO-INDISCO, the Project supported the policy study: ‘Decent Work for Pastoralists: Needs and Opportunity Assessment to Strengthen the Policy Environment for the Creation of Sustainable Livelihoods and Decent Employment for Pastoralists in Tanzania’, which was later disseminated in a workshop. The Project has also assisted coordination and backstopping of INDISCO activities in Tanzania.

Kenya
Several missions to Kenya have been carried out in order to identify pastoralists’ and hunter-gatherers’ priorities and needs and define strategies for intervention. Meetings with government representatives have also taken place. The support of the Project is to be seen in the light of the current Constitutional Review Process in Kenya. The government has presented to the population possibilities of participation in this process. Welcoming this opportunity to play an active role in the Constitutional Review Process, indigenous and tribal peoples’ organizations in Kenya have requested the assistance of the Project.

In this respect, a National workshop –supported by the Project and hosted by CEMIRIDE (Centre for Minority Rights Development)– took place from 28 to 30 November 2001. The primary aim of this workshop was to facilitate the coordination of an effective strategy for the collection and elaboration of a position paper for pastoralists and hunter-gatherers in Kenya to be presented to the Constitutional Review Commission, and for the effective participation of these peoples in this process. As an initial outcome of the workshop, a working group of pastoralists and hunter gatherers, representative of all the main groups in Kenya, was formed in order to co-ordinate efforts in this regard. It is anticipated that a common position paper be presented and discussed in a national workshop mid 2002, including participation from the government in Kenya. Convention No. 169 was presented during the above-mentioned workshop, a report of which will be available shortly.

South Africa
For various reasons, follow-up on contacts established with South Africa during the previous phase of the Project have been delayed. However, the initiation and re-establishment of contacts has been undertaken, and the Project is now in a position to initiate more concrete activities here.
One mission has been undertaken to Kimberley, Upington and Pretoria, where the Project met with the Department of Foreign Affairs, the Department of Provincial and Local Government, the Department of Constitutional Development, indigenous and tribal peoples’ organizations and the South African Human Rights Commission. Further initiatives to strengthen the dialogue on indigenous issues to be implemented from 2002 are under consideration, and proposals from Indigenous organizations are being awaited.

Central and West Africa (the Batwa)
The Ministry of Labour in the Central African Republic has by letter requested the assistance of the Project on “pygmy” issues. Recognizing the existence of similar problems in neighbouring countries, contacts have been sought and to some extent established with the ILO offices in Cameroon and Central African Republic, and Indigenous Peoples’ organizations in Cameroon, Rwanda, Burundi and the Congo’s. Concrete activities to follow-up on the request will have a high priority in 2002, if possible coordinated with activities in other countries with “pygmy” populations.

LATIN AMERICA

Argentina
Argentina ratified ILO Convention No. 169 in July 2000. In addition to co-operation with Argentina from the ILO Office in Buenos Aires, the Project is supporting an initiative aimed at the promotion and diffusion of Convention No. 169, in collaboration with the ILO’s Area Office here, and the University of Buenos Aires (Permanent University Programme of Extension, Research and Development in Argentine Indigenous Communities) and ACCESOS. The main objective of the project is to increase awareness of Convention No. 169 among the indigenous peoples of the country, and in general it will serve as a capacity-building initiative for the indigenous organizations when dealing with the ILO’s supervisory mechanisms and Convention No. 169.

Regional activities

In Asia, a trainers’ training is due to take place in March 2002. This will be a five-day training for ten indigenous professionals (two from each of five countries in South and South-east Asia) on the contents and principles of Convention No. 169, the ILO’s overall organization, structure and mandate, implications of ratification on governments and indigenous and tribal peoples’ organizations, and other relevant international standards pertaining to indigenous and tribal peoples. The training is envisioned for indigenous lawyers or para-legals who have had experience in community education work and are committed to echoing the results of the training in their respective countries. The participants will be asked to facilitate training of indigenous organizations and government agencies on the contents of Convention No. 169, when requested, and as such, will be asked to develop a module that reflects and responds to the specific conditions and needs of indigenous peoples in their countries.

Inter-agency collaboration

The ILO has been involved in ongoing inter-agency discussions regarding the forthcoming Permanent Forum on Indigenous Issues. In this respect, a number of meetings have been held, including most recently a two-day workshop, in which 15 United Nations agencies discussed and developed a proposal for providing support and guidance to the Forum according to the specializations and individual mandates within the United Nations system. The Support Group will also:

- coordinate the UN System contributions to the Forum sessions;
- analyse recommendations of ECOSOC and examine the most effective responses on the basis of mandates, resources and capacity of each organisation;
provide advice to the secretariat of the Forum on issues relevant to indigenous peoples as they relate to the UN System;

- develop relationships with donors, civil society organizations, indigenous peoples organisations, and others to consider cooperative ways of supporting the Forum; and

- interact with the Forum and provide advice and guidance as appropriate.

Other elements of inter-agency collaboration aside from that within the context of individual country activities, which is outlined above, include the Project’s participation as in the forthcoming workshop on *Multiculturalism in Africa: Peaceful and constructive group accommodation in situations involving minorities and indigenous people*, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR). In this regard, the Project will provide training for participants on the contents and principles of Convention No. 169. It is also funding the participation of two indigenous persons to the workshop. The Project also funded the participation of two indigenous people from Kenya and the Philippines in the recent workshop organized by the OHCHR on *Indigenous peoples, private natural resource, energy and mining companies and human rights*.

**Fellowship Programme**

As of 2002, the ILO will be initiating an Indigenous and Tribal Peoples Fellowship Programme. The objective of the Programme is to equip the fellows with some of the skills and knowledge necessary (in particular ILO Convention No. 169) for the promotion and protection of the rights of their peoples/communities. This will contribute to the strengthening of the capacity of indigenous and tribal peoples to engage in meaningful and informed participation, to be consulted at all levels of development and policy processes affecting them, and to articulate their concerns within the context of these processes.

The ILO’s Indigenous and Tribal Peoples Fellowship Programme also hopes to facilitate effective inter-agency co-operation, and is one component of an inter-agency effort, within the context of the International Decade of the World’s Indigenous People, to ameliorate the living and working conditions of these peoples. Despite initiating its own programme, the ILO will continue to contribute to the OHCHR’s annual Indigenous Fellowship Programme, and collaborate to the fullest extent possible on ensuring the complementarity of the two programmes in their common goals.

The fellows’ participation in the Programme will constitute a full-time engagement for four fellows for four months. For 2002, the programme will begin in June. The deadline for applications for this year’s programme is 15 April. During this time, they will be briefed, trained, and will have the opportunity to work directly with the Project to Promote ILO Policy on Indigenous and Tribal Peoples. It is intended that the knowledge and skills gained during this period will be out into practice within the context of the fellows’ own work in promoting and protecting the rights of indigenous and tribal peoples in their own countries, communities or at the international level. The Programme will be implemented as three main components:

1. General training and briefings on relevant ILO and other UN human rights instruments, processes and activities;
2. Practical experience with the Project to Promote ILO Policy on Indigenous and Tribal Peoples - both at ILO headquarters in Geneva, and in one of the Project’s regional posts in Africa or Asia (mainly in terms of policy development, establishment and strengthening of dialogue); and
3. Work assignments and research based on what the fellows have learned through their briefings and practical experience.

**Contacts**

For general information, please contact:
Marianne Jensen
Chief Technical Adviser,
2.2. Committee of Experts on the Application of Conventions and Recommendations

Summary of comments made in respect of the Indigenous and Tribal Populations Convention, 1957 (No. 107), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Article 22 of the ILO Constitution requires Member States to submit periodic reports to the Office on the measures taken to give effect to the provisions of ratified Conventions. The Committee of Experts on the Application of Conventions and Recommendations, a body of 20 independent experts, examines the application of ILO Conventions –including Conventions Nos. 107 and 169– on a regular basis. Its comments take the form of observations or direct requests. The Committee’s observations are published in an annual report. Direct requests are sent directly to the government in question and are made public later.

The following is a summary of the observations made by the Committee at its 90th session (November 2001).
Convention No. 107
In addition to its observation concerning Bangladesh (below), requests regarding certain points were addressed directly to Angola and Malawi.

BANGLADESH
Recalling that for many years an armed conflict had taken place in the Chittagong Hill Tracts (CHT) region of the country, between government forces and the armed wing of the Parbattya Chattagram Jana Sanghati Samity (PCJSS), and that a Peace Agreement had been signed between the government and PCJSS on 2 December 1997, the Committee noted the detailed information it had received on the implementation of the Agreement. While the Committee welcomed the Peace Agreement, it was aware that controversy remains over the slow progress of its implementation, as indicated in the Concluding Observations of the United Nations Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.118, 23 April 2001).

Administration. The Committee noted the establishment of a number of bodies concerned with the implementation of the Peace Agreement. It requested the government to keep it informed of the progressive transfer of responsibility to the tribal leaders in the CHT. It also noted that development allocations for the CHT had been increased under the Peace Agreement, but that the line Ministries had taken up their own development programmes. It requested the government to provide more information on the practical implications of this development, with particular attention to the involvement of tribal leadership in the planning and implementation of development activities.

Return of tribal refugees. Noting the agreement signed within the framework of the Peace Agreement concerning the return of tribal refugees from India, and the information provided by the government on the return of these refugees, the Committee requested the government to indicate in its next report whether all the refugees concerned have been settled, and whether this has taken place in their former homes or elsewhere. The Committee also requested further information on the Task Force established for this purpose.

Land. The Committee noted the constitution of a Land Commission with a mandate to resolve land disputes within the CHT. It noted with regret that the Commission had not yet begun functioning, and requested further information in this regard, taking into consideration the importance of resolving these conflicts. The Committee also referred to the situation regarding the cancellation of the lease agreements of non-tribals who had failed to use lands for the purpose for which they had been allotted to them, and that some such leases had been cancelled. In this regard, the Committee asked for further information on how much land was concerned, and how much had been allotted to landless tribal families. In this respect, it also noted that a situation involving the rehabilitation of 3,000 landless tribal families had not been resolved, and hoped that the government would be able to indicate in its next report that the situation of these families and others has been resolved.

Noting its previous concern as regards the government’s attitude towards the shifting/swidden or “jhum” agriculture methods of the tribal peoples in the CHT, the Committee noted with interest the remark in the government’s report concerning the encouragement of a kind of “Jhum” which, the government indicates, is less environmentally damaging. The Committee requested further information on discussions and policies in this regard.

The Committee also noted that the government had not provided a reply to a question in its previous observation concerning the power of the district councils to allocate land rights, and requested it to do so.

Convention No. 169.
In addition to its observations concerning Denmark, Guatemala and Mexico (below), requests regarding certain points were also addressed directly to these three states.

DENMARK
The Committee noted that the government’s second report on the Convention had not been received. It therefore repeated its previous observation, noting with interest the agreements in effect in Denmark giving a large degree of autonomy to the indigenous people of Greenland. The previous observation of the Committee also asked for additional information on a number of points in a request addressed directly to the government.
GUATEMALA
The Committee noted with interest the second report of the government of Guatemala following ratification of the Convention, which had arrived too late to be considered at its previous session. The Committee noted that the government had offered little additional information, since a referendum on Constitutional reforms was rejected by popular vote in May 1999, on the measures that have been taken since then to implement the Convention and the Peace Agreement.
The Committee also noted a communication from the Central Organization for Rural and Urban Workers (CTC), on which the government had made no comments. This report is characterized as the Second Alternative Report on the application of the Convention. The Committee also expressed its regret that it had received no reply concerning the First Alternative Report, submitted by the Federation of Rural Workers (FEDECAMPO). The Committee also drew attention to additional sources of information available regarding the implementation of the Peace Agreements, including various reports of the United Nations Verification Mission in Guatemala (MINUGUA), established in 1997 to verify compliance with the Peace Agreements. Taken together, these sources indicate that considerable problems remain in the implementation of the Peace Agreements as concerns the indigenous peoples of Guatemala, as well as in the implementation of the Convention.
While recognizing the complexity of the situation, the Committee recalled that the ratification of Convention No. 169 was one element in the settlement of the internal conflict in the country. It therefore urged the government to renew efforts to overcome difficulties in the application of both the Peace Agreement, and the Convention, and to continue to provide information to the Committee on how it is accomplishing this. It also expressed the firm hope that the government would comment on the observations made by workers’ organizations in the country, and that the Committee would be able to note in the near future that concrete measures have been taken to apply the Convention.

MEXICO
The Committee noted the detailed report provided by the government. It also noted that at its 282nd session (November 2001), the Governing Body had declared receivable two representations under article 24 of the ILO Constitution, alleging non-observance of the Convention by Mexico. The tripartite committee to examine these representations will not be established until March 2002, therefore the Committee was able to examine the government’s report.
The Committee also noted various communications from trade unions, received under article 23 of the ILO Constitution concerning the application of the Convention by Mexico. Noting that the government has not yet had sufficient time to comment on these observations, the Committee will defer their examination to its next session.
The Committee referred to various legislative initiatives adopted during the period covered by the report, particularly the Constitutional reforms on indigenous questions, published in the Official Bulletin of the Federation on 14 August 2001. These reforms cover a large number of the subjects covered by the Convention, and have also generated much controversy, and some sections of Mexican society, including indigenous and workers’ organizations, have expressed concern that they will have a negative impact on the social, economic, and legal situation of the indigenous peoples of Mexico. The Committee has examined the Constitutional reforms in more detail in a direct request to the government, which raises a number of questions concerning: definition and self-identification (how the provisions of the Convention are being applied in a coherent and uniform manner); lands (including protection of the rights to natural resources and other land rights); administrative questions (how development of “co-ordinated and systematic action” for the protection of the integrity of indigenous peoples is assured, in the light of the devolution to the constituent states of the power to legislate on a certain number of questions); and on the process of adoption of the constitutional reforms (particularly as regards the participation of indigenous peoples).
A direct request is also being sent to the government to follow up on two representations made in respect of the Convention for which the final reports have been adopted by the Governing Body in documents GB.272/7/2, and GB.276/16/3, as well as on comments submitted by the Authentic Labour Front (FAT) under article 23 of the ILO Constitution, and the government’s reply to them.

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3. THE HEALTH OF INDIGENOUS PEOPLES AND THE WORLD HEALTH ORGANIZATION

Since 1995, the World Health Assembly has approved seven resolutions requesting that regional or global action plans truly take into account the poor health status of the indigenous peoples. Despite significant differences between official and independent health statistics, we know that indigenous peoples’ life expectancy and health status are inferior to those of other population groups. But the lack of accurate data and in-depth research hinder the development of an efficient and useful policy in this area. This dreadful situation can therefore not be seriously addressed, in partnership with the indigenous peoples.

Introduction

By Dr. D. Roy Laifungbam
co-Chairperson, Committee on Indigenous Health

Along with the growing international concern on the question of discrimination against the world's indigenous peoples, the elaboration of its nature and consequences has also developed extensively over the past two decades or so. One of the central issues that affront the international community today is that of the survival of indigenous peoples. Considerable understanding of this complex issue emerged with the continuing dialogue at the United Nations Working Group on Indigenous Populations, which began its work in 1982. Understandably but belatedly, since 1996, the Working Group has had a consistent thematic focus on the health of indigenous peoples, which it recognised as indivisibly linked to indigenous peoples' survival.

Indigenous peoples recognise that the significant developments around the mid 90s, with the proclamations of the International Year of the World's Indigenous Peoples (1993), the International Decade of the World's Indigenous People (1994-2004) along with the General Assembly's recommendation, and the adoption of the draft Declaration on the Rights of Indigenous Peoples by the Sub-Commission, have been a very mixed bag of fortunes. In spite of the early start made by the ILO, progress in other spheres of international standard setting activities has been tardy mainly due to some amount of polarisation among the member States of the United Nations on the "indigenous" problematic. As a consequence, the response from international inter-governmental organisations, which have the same constituency, has been variable, ranging from progressive initiatives to cautious and inconsistent efforts.

The World Health Assembly, which governs the World Health Organisation, was quick to respond positively to the global objectives of the International Decade. Its annual resolutions re-affirm its continuing commitment. Last year, the fifty-fourth World Health Assembly made its seventh consecutive annual resolution since 1995 urging its Member States and requesting its regional bodies and the Director-General of WHO for a number of appropriate actions to address the deplorable health situation of indigenous peoples. Significantly, resolution WHA54.16 of 2001 mentioned the recommendations of the "International Consultation on the Health of Indigenous Peoples" (Geneva, November 1999) conducted by WHO with the close cooperation of the Committee on Indigenous Health, as a point of departure, where appropriate, for the development of regional plans of action.

The progress made by WHO, a technical advisory body, has been important though it is also characterised by caution, hurdles of institutional arrangements and fixing of responsibilities. While WHO's contribution to the Decadal efforts, and particularly in the Region of the Americas, is commendable, one crucial element needs to be kept in the fore as further steps are contemplated and anticipated –establishment of partnership mechanisms with consistent and close consultation with indigenous peoples' representative organisations. It is encouraging that the WHO Secretariat, in its last report (WHA 54/33), acknowledges the advisory mandate of the Permanent Forum on Indigenous Issues to the bodies of the UN system.
3.1. International Decade of the World’s Indigenous People: Resolution WHA54.16

The fifty-fourth World Health Assembly,

Recalling resolutions WHA47.27, WHA48.24, WHA49.26, WHA50.31, WHA51.24 and WHA53.10 on WHO’s contribution to achieving the objectives of the International Decade of the World’s Indigenous People (1994-2003);

Further recalling United Nations General Assembly resolution 50/157, which adopted the programme of activities for the International Decade, in which it is recommended that “specialized agencies of the United Nations system and other international and national agencies, as well as communities and private enterprises, should devote special attention to development activities of benefit to indigenous communities”; that focal points for matters concerning indigenous people should be established in all appropriate organizations of the United Nations system; and that the governing bodies of the specialized agencies of the United Nations system should adopt programmes of action for the Decade in their own field of competence, “in close cooperation with indigenous people”;

Welcoming the decision by the United Nations Economic and Social Council in its resolution 2000/22 of 28 July 2000 to establish a Permanent Forum on Indigenous Issues as an advisory body to the Council with a mandate to discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights, thereby fulfilling an important objective of the Decade;

Commending the progress made in the Region of the Americas on the Initiative on the Health of Indigenous People of the Americas;

Deeply concerned about the disparities in health conditions of indigenous people in comparison to the overall population,

1. Urges Member States:
   (1) to recognize and protect the right of indigenous people to enjoyment of the highest attainable standard of health, as mentioned in the WHO Constitution, within overall national development policies;
   (2) to make adequate provisions for indigenous health needs in their national health systems, including through improved collection and reporting of statistics and health data;
   (3) to respect, preserve and maintain traditional healing practices and remedies, consistent with nationally and internationally accepted standards, and to seek to ensure that indigenous people retain this traditional knowledge and its benefits;

2. Requests WHO’s regional committees to give urgent attention to the adoption of regional plans of action on indigenous health that take into account, as appropriate, the health conclusions and recommendations of the “International Consultation on the Health of Indigenous Peoples” (Geneva, November 1999);

3. Requests the Director-General:
   (1) to strengthen the partnership with indigenous people in all appropriate WHO activities;
   (2) to collaborate with partners in health and development for protection and promotion of the right of the world’s indigenous people to enjoyment of the highest attainable standard of health, as mentioned in the WHO Constitution, including through the use of accurate and up-to-date information on indigenous health status;
   (3) to complete, in close consultation with national governments and organizations of indigenous people, a framework for a global plan of action to improve the health of indigenous people, with particular emphasis on an approach geared to the needs of those in developing countries and the determinants of health, for submission to the Fifty-fifth World Health Assembly with the aim of finalizing the global plan of action by the end of the Decade;
   (4) to cooperate with and to support the Secretary-General of the United Nations and the Office of the High Commissioner for Human Rights, in its role as lead agency for the establishment of the Permanent Forum on Indigenous Issues, and with other specialized agencies and Member States,
preparation for the Forum’s inaugural meeting in 2002, including by submission of information on indigenous health issues.

*Ninth plenary meeting, 22 May 2001*

3.2. Recommendations relating to partnership mechanisms

Report of the International Consultation on the Health of Indigenous Peoples


WHO should:

- In recognition of the need for partnership based upon equity, trust, and mutual respect, provide support as required to establish an informal Indigenous Peoples Health Advisory Group (IPHAG) as the counterpart to work with WHO. The IPHAG would consist of at least 13 members (1 North America, 1 Central America, 1 South America, 1 East Africa, 1 Southern Africa, 1 Sahel, 1 South Asia, South-East Asia, Far Eastern Asia, 1 Pacific, 1 Australia/New Zealand, and 1 Arctic and 1 Russian), representing indigenous peoples from the different regions of the world.

- In accordance with WHO resolution WHA 48.24 (1995), remind Member States of their commitment to the establishment of focal points on indigenous peoples’ health at the national level. The focal points in collaboration with indigenous peoples and other relevant stakeholders (e.g. UNDP, ILO, UNFPA and UNEP) should elaborate regional health plans and establish, develop, and implement specific health strategies.

- Have annual meetings with the IPHAG. WHO should make financial provisions for these meetings.

- Ensure that indigenous peoples’ health issues are presented to the WHA by an indigenous peoples’ spokesperson (supported by WHO) as was the case in 1993.

- Ensure that Regional Offices hold regular consultations with indigenous peoples to ensure that they have an input in all issues relevant to the health of indigenous peoples.

- Seek to work together with WIPO, WTO, and other key agencies in ensuring the protection of indigenous peoples’ intellectual property as it relates to health (e.g. traditional medicine), and identify best practices at the country level to protect indigenous peoples’ intellectual property as it relates to health.

- Include, at all levels (headquarters, regional offices, and country offices) in relevant programmes components specifically addressing indigenous peoples’ health issues. These programmes should be reviewed and the impact on indigenous peoples evaluated. The review process should include input from indigenous peoples health experts.

- Work with key international, regional, and national organisations (e.g. WTO, MERCOSUR, ASEAN, UN agencies and programmes) to promote policies and strategies that are compatible with indigenous peoples’ health development.

- Develop, with the IPHAG, a global plan of action for indigenous peoples’ health following regional consultations with indigenous peoples. An International Conference on Indigenous Peoples’ Health should be held by the end of 2001 to endorse this plan and to provide a forum for developing new strategies and engaging in constructive dialogue aimed at improving indigenous peoples’ health globally.

- Following the International Conference, hold International Consultations on the health of indigenous peoples every two years to assess the health situation of indigenous peoples and then seek support from Member States and other stakeholders.

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4. UNESCO UNIVERSAL DECLARATION ON CULTURAL DIVERSITY

At its thirtieth session—which took place from 15 October to 3 November 2001—UNESCO General Conference adopted the Universal Declaration on Cultural Diversity. Despite much hesitation by some States, the term "indigenous peoples" was used in Article 4 of the Declaration and paragraph 14 of the Action Plan.

Below is the full text of the UNESCO Universal Declaration on Cultural Diversity (source: www.unesco.org/confgen/press_rel/021101_clt_diversity.shtml)

The General Conference,

Committed to the full implementation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized legal instruments, such as the two International Covenants of 1966 relating respectively to civil and political rights and to economic, social and cultural rights,

Recalling that the Preamble to the Constitution of UNESCO affirms "that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern",

Further recalling Article I of the Constitution, which assigns to UNESCO among other purposes that of recommending "such international agreements as may be necessary to promote the free flow of ideas by word and image",

Referring to the provisions relating to cultural diversity and the exercise of cultural rights in the international instruments enacted by UNESCO,¹

Reaffirming that culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs,²

Noting that culture is at the heart of contemporary debates about identity, social cohesion, and the development of a knowledge-based economy,

Affirming that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security,

Aspiring to greater solidarity on the basis of recognition of cultural diversity, of awareness of the unity of humankind, and of the development of intercultural exchanges,

Considering that the process of globalization, facilitated by the rapid development of new information and communication technologies, though representing a challenge for cultural diversity, creates the conditions for renewed dialogue among cultures and civilizations,

Aware of the specific mandate which has been entrusted to UNESCO, within the United Nations system, to ensure the preservation and promotion of the fruitful diversity of cultures,

Proclaims the following principles and adopts the present Declaration:

Identity, diversity and pluralism

Article 1 – Cultural diversity: the common heritage of humanity


² This definition is in line with the conclusions of the World Conference on Cultural Policies (MONDIACULT, Mexico City, 1982), of the World Commission on Culture and Development (Our Creative Diversity, 1995), and of the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998).
Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.

Article 2 – From cultural diversity to cultural pluralism
In our increasingly diverse societies, it is essential to ensure harmonious interaction among people and groups with plural, varied and dynamic cultural identities as well as their willingness to live together. Policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace. Thus defined, cultural pluralism gives policy expression to the reality of cultural diversity. Indissociable from a democratic framework, cultural pluralism is conducive to cultural exchange and to the flourishing of creative capacities that sustain public life.

Article 3 – Cultural diversity as a factor in development
Cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence.

Cultural diversity and human rights

Article 4 – Human rights as guarantees of cultural diversity
The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

Article 5 – Cultural rights as an enabling environment for cultural diversity
Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

Article 6 – Towards access for all to cultural diversity
While ensuring the free flow of ideas by word and image care should be exercised that all cultures can express themselves and make themselves known. Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity.

Cultural diversity and creativity

Article 7 – Cultural heritage as the wellspring of creativity
Creation draws on the roots of cultural tradition, but flourishes in contact with other cultures. For this reason, heritage in all its forms must be preserved, enhanced and handed on to future generations as a record of human experience and aspirations, so as to foster creativity in all its diversity and to inspire genuine dialogue among cultures.

Article 8 – Cultural goods and services: commodities of a unique kind
In the face of present-day economic and technological change, opening up vast prospects for creation and innovation, particular attention must be paid to the diversity of the supply of creative work, to due recognition of the rights of authors and artists and to the specificity of cultural goods and services which, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods.

Article 9 – Cultural policies as catalysts of creativity
While ensuring the free circulation of ideas and works, cultural policies must create conditions conducive to the production and dissemination of diversified cultural goods and services through cultural industries that have the means to assert themselves at the local and global level. It is for each State, with due regard to its international obligations, to define its cultural policy and to implement it through the means it considers fit, whether by operational support or appropriate regulations.

**Cultural diversity and international solidarity**

Article 10 – Strengthening capacities for creation and dissemination worldwide
In the face of current imbalances in flows and exchanges of cultural goods and services at the global level, it is necessary to reinforce international cooperation and solidarity aimed at enabling all countries, especially developing countries and countries in transition, to establish cultural industries that are viable and competitive at national and international level.

Article 11 – Building partnerships between the public sector, the private sector and civil society
Market forces alone cannot guarantee the preservation and promotion of cultural diversity, which is the key to sustainable human development. From this perspective, the pre-eminence of public policy, in partnership with the private sector and civil society, must be reaffirmed.

Article 12 – The role of UNESCO
UNESCO, by virtue of its mandate and functions, has the responsibility to:
(a) Promote the incorporation of the principles set out in the present Declaration into the development strategies drawn up within the various intergovernmental bodies;
(b) Serve as a reference point and a forum where States, international governmental and non-governmental organizations, civil society and the private sector may join together in elaborating concepts, objectives and policies in favour of cultural diversity;
(c) Pursue its activities in standard-setting, awareness-raising and capacity-building in the areas related to the present Declaration within its fields of competence;
(d) Facilitate the implementation of the Action Plan, the main lines of which are appended to the present Declaration.

**Main lines of an action plan for the implementation of the UNESCO Universal Declaration on Cultural Diversity**
The Member States commit themselves to taking appropriate steps to disseminate widely the "UNESCO Universal Declaration on Cultural Diversity", in particular by cooperating with a view to achieving the following objectives:

1. Deepening the international debate on questions relating to cultural diversity, particularly in respect of its links with development and its impact on policy-making, at both national and international level; taking forward notably consideration of the opportunity of an international legal instrument on cultural diversity.

2. Advancing in the definition of principles, standards and practices, on both the national and the international levels, as well as of awareness-raising modalities and patterns of cooperation, that are most conducive to the safeguarding and promotion of cultural diversity.
3. Fostering the exchange of knowledge and best practices in regard to cultural pluralism with a view to facilitating, in diversified societies, the inclusion and participation of persons and groups from varied cultural backgrounds.

4. Making further headway in understanding and clarifying the content of cultural rights as an integral part of human rights.

5. Safeguarding the linguistic heritage of humanity and giving support to expression, creation and dissemination in the greatest possible number of languages.

6. Encouraging linguistic diversity – while respecting the mother tongue – at all levels of education, wherever possible, and fostering the learning of several languages from the youngest age.

7. Promoting through education an awareness of the positive value of cultural diversity and improving to this end both curriculum design and teacher education.

8. Incorporating, where appropriate, traditional pedagogies into the education process with a view to preserving and making full use of culturally appropriate methods of communication and transmission of knowledge.

9. Encouraging "digital literacy" and ensuring greater mastery of the new information and communication technologies, which should be seen both as educational discipline and as pedagogical tools capable of enhancing the effectiveness of educational services.

10. Promoting linguistic diversity in cyberspace and encouraging universal access through the global network to all information in the public domain.

11. Countering the digital divide, in close cooperation in relevant United Nations system organizations, by fostering access by the developing countries to the new technologies, by helping them to master information technologies and by facilitating the digital dissemination of endogenous cultural products and access by those countries to the educational, cultural and scientific digital resources available worldwide.

12. Encouraging the production, safeguarding and dissemination of diversified contents in the media and global information networks and, to that end, promoting the role of public radio and television services in the development of audiovisual productions of good quality, in particular by fostering the establishment of cooperative mechanisms to facilitate their distribution.

13. Formulating policies and strategies for the preservation and enhancement of the cultural and natural heritage, notably the oral and intangible cultural heritage, and combating illicit traffic in cultural goods and services.

14. Respecting and protecting traditional knowledge, in particular that of indigenous peoples; recognizing the contribution of traditional knowledge, particularly with regard to environmental protection and the management of natural resources, and fostering synergies between modern science and local knowledge.

15. Fostering the mobility of creators, artists, researchers, scientists and intellectuals and the development of international research programmes and partnerships, while striving to preserve and enhance the creative capacity of developing countries and countries in transition.

16. Ensuring protection of copyright and related rights in the interest of the development of contemporary creativity and fair remuneration for creative work, while at the same time upholding a public right of access to culture, in accordance with Article 27 of the Universal Declaration of Human Rights.

17. Assisting in the emergence or consolidation of cultural industries in the developing countries and countries in transition and, to this end, cooperating in the development of the necessary infrastructures and skills, fostering the emergence of viable local markets, and facilitating access for the cultural products of those countries to the global market and international distribution networks.

18. Developing cultural policies, including operational support arrangements and/or appropriate regulatory frameworks, designed to promote the principles enshrined in this Declaration, in accordance with the international obligations incumbent upon each State.
19. Involving civil society closely in framing of public policies aimed at safeguarding and promoting cultural diversity.

20. Recognizing and encouraging the contribution that the private sector can make to enhancing cultural diversity and facilitating to that end the establishment of forums for dialogue between the public sector and the private sector.

The Member States recommend that the Director-General take the objectives set forth in this Action Plan into account in the implementation of UNESCO’s programmes and communicate the latter to institutions of the United Nations system and to other intergovernmental and non-governmental organizations concerned with a view to enhancing the synergy of actions in favour of cultural diversity.

- According to a UNESCO press release, “this is the first time the international community has endowed itself with such a comprehensive standard-setting instrument, elevating cultural diversity to the rank of ‘common heritage of humanity - as necessary for the human race as bio-diversity in the natural realm’ – and makes its protection an ethical imperative, inseparable from respect for human dignity.”

- 2965 participants, including 2522 representatives from 185 out of 188 Member States attended the UNESCO General Conference. According to the provisional list of participants, no indigenous organization participated (www.unesco.org/confgen/participants/pages).

- UNESCO, ETHICS, INTELLECTUAL PROPERTY AND THE HUMAN GENOME:
  At its thirtieth session in 1999, UNESCO General Conference adopted the “Guidelines for the Implementation of the Universal Declaration on the Human Genome and Human”, which was drawn up by the IBC and approved by the Intergovernmental Bioethics Committee (IGBC), following the 1997 Universal Declaration on the Human Genome and Human Rights. The implementation of the Universal Declaration on the Human Genome and Human Rights will be subject to an evaluation in 2002. This evaluation will be considered at a joint session of the IBC and the IGBC and in 2003, together with the relevant recommendations, will be presented by the Director-General to the Organization’s governing bodies.

  On the web site three reports are of interest to the indigenous peoples (www.unesco.org/ibc/en/reports/). These are:
  3. Report of the IBC on Solidarity and International Co-operation between Developed and Developing Countries concerning the Human Genome of 6 April 2001, in which indigenous populations are mentioned on page 4.

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5. WORLD INTELLECTUAL PROPERTY ORGANIZATION COMMITTEE MEETS TO DISCUSS INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE

The second session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore took place in Geneva, Switzerland, from December 10 to 14, 2001. Representatives from WIPO member governments and observer institutions (intergovernmental bodies, Conventions’ secretariats, international NGOs, indigenous peoples’ organizations, business chambers, and others) attended the meeting, which was chaired by Mr. Henry Olsen from Sweden.
The Intergovernmental Committee was established by the WIPO General Assembly in October 2000, to deal with “intellectual property issues that arise in the context of (i) access to genetic resources and benefit sharing; (ii) protection of traditional knowledge, whether or not associated with those resources; and (iii) the protection of expressions of folklore”. The first session of the Committee was held in May 2001 in Geneva. There will be three more sessions of the Committee in the next twenty months.

The agenda of the second session focused on the following issues: (i) Operational Principles for Contractual Agreements Concerning Access to Genetic Resources and Benefit-Sharing; (ii): Review of Existing Intellectual Property Protection for Traditional Knowledge; (iii) Traditional Knowledge as Prior Art; (iv) National Experiences with the Legal Protection of Expressions of Folklore; and (v) Future work of the Committee.

The Secretariat of the Convention on Biological Diversity (CBD) reported that in October 2001 the CBD Working Group on Access to Genetic Resources and Benefit Sharing had developed draft guidelines on these matters, which, once approved by the Conference of the Parties (COP) in April 2002, would provide guidance on legislative, administrative, and policy measures supporting contractual arrangements to access genetic resources. In this sense, the remit of the CBD Working Group is highly relevant for the mandate of the Committee, and concerns were expressed that both may overlap or even conflict. Officially, however, the relationship between WIPO and CBD was described as multifaceted and mutually informative.

The representative from the UN Food and Agriculture Organization (FAO) informed in turn that the International Treaty on Plant Genetic Resources for Food and Agriculture had been finally agreed on, as a legally binding instrument that will enter into force expectedly later this year, upon signature by 40 countries. The Treaty contains provisions where recognition is made of the contributions of farmers in conserving and developing plant genetic resources. Farmers’ rights within the Treaty are directly related to the protection of traditional knowledge, as well as to several other issues relevant to the discussions of the WIPO Committee.

The aforementioned statements clearly indicate that the work of the WIPO Committee should be pursued under close collaboration with other international processes where related issues are debated. In this sense, developing country representatives, especially from the Latin America and Caribbean Group (GRULAC) stressed the need for such collaboration, so as to ensure consistency and mutually reinforcing work, instead of duplication or even undermining of one process by the others.

The Delegation of Venezuela, supported by GRULAC members and several other countries, made a statement on the need to initiate work on a sui generis form of protection for traditional knowledge, and requested the Secretariat to prepare a document for the next session of the Committee with elements for a possible sui generis system. This is a very important matter to look by indigenous and local communities.

Participation from indigenous peoples' organizations and NGOs at the second session of the Committee was limited, as in the previous session of the Committee, but appeared slightly more numerous and active. Of particular interest was a presentation by Marcos Terena, representing indigenous peoples from Brazil, who read a statement issued by a meeting of shamans of that country, convened under the auspices of the Intellectual Property Institute. Shamans stressed that for their peoples knowledge is a collective heritage and should not be traded, as it is a fundamental part of their identity and their own life as distinct peoples. They requested an international alternative system to protect their knowledge from biopiracy, and refused patenting of products based on their knowledge. Terena stressed that WIPO should be the forum for indigenous peoples to express their positions on these issues, on a basis of mutual respect and a common objective of improving everybody’s quality of life, and welcomed statements made by several countries on the need for respecting the prior informed consent of indigenous peoples and local communities, and on the importance of their participation in WIPO discussions.

The Delegation of Belgium, speaking on behalf of the European Union, raised also the issue of the active participation of indigenous and local communities, and suggested WIPO should provide funding for this purpose. Several governments supported such a proposal, following which WIPO has announced it will be able to finance participation of some indigenous and community representatives at the third session of the Committee, scheduled to take place in Geneva from June 17 to 21, 2002.
6. CONVENTION ON BIOLOGICAL DIVERSITY WORKING GROUP ON TRADITIONAL KNOWLEDGE MEETS TO DISCUSS ITS PROGRAMME OF WORK

The second session of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (CBD) took place in Montreal, Canada, from 4-8 February 2002, to discuss matters concerning the implementation of the CBD Programme of Work on Article 8(j) and Related Provisions. The meeting was attended by approximately 300 participants from 79 countries, indigenous and local communities, and international and non-governmental organizations.

The agenda of the session focused on the following issues: (i) Report of progress on integration of tasks of the programme of work on Article 8(j) and related provisions in the CBD thematic programmes; (ii) Review of progress in the implementation of the priority tasks of the programme of work; (iii) Outline of composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities; (iv) Draft guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on sacred sites and on lands and waters occupied or used by indigenous and local communities; (v) Participatory mechanisms for indigenous and local communities; (vi) Assessment of the effectiveness of existing subnational, national and international instruments, particularly intellectual property rights instruments, that may have implication on the protection for the knowledge, innovations and practices of indigenous and local communities.

The meeting adopted six recommendations on the indicated items, which will be forwarded to the CBD Sixth Conference of the Parties (COP 6) in The Hague, the Netherlands, in April 2002. The recommendations go essentially as follows:

1. The COP is requested to urge Parties to sign and ratify the International Treaty on Plant Genetic Resources. Further work to ensure integration of traditional knowledge issues in the CBD thematic programmes is recommended, and Parties are requested to include in their national reports information on implementation of Article 8(j) and related provisions, integration of these in thematic programmes, and support to capacity building and participation of indigenous and local communities.

2. The CBD Parties are urged to ensure that indigenous and local communities are included in the consultative process of preparing their national reports, particularly those sections addressing Article 8(j) and related provisions.

3. A draft outline of the composite report on status and trends regarding traditional knowledge is recommended for adoption. The COP is asked to request the Executive Secretary to undertake the first phase of the composite report, submit it to the next meeting of the Working Group on Article 8(j), and ensure the full and effective participation of indigenous and local communities in its preparation.

4. Recommendations are provided for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. The ongoing work on environmental impact assessment and strategic environmental assessment undertaken by the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) is acknowledged, as well as other sources of information and guidance, such as those of the World Bank and the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous People of the UN Commission on Human Rights.

5. The COP is requested to invite Parties and others to submit information on national experiences, case studies and best practices regarding participatory mechanisms, to be synthesized into a report for use as a basis to establish national and local mechanisms to promote indigenous participation in decision-making processes regarding traditional knowledge.

6. CBD Parties are advised to note the nature, collective or otherwise, of traditional knowledge, and the possible inadequacy of conventional systems of intellectual property protection to address the needs of protecting traditional knowledge. The recommendation recognizes that the CBD is the primary international instrument to address issues regarding the respect, preservation and maintenance of traditional knowledge; that indigenous and local communities have their own
systems for the protection and transmission of traditional knowledge as part of their customary law; that national laws and policies need to be strengthened and synergies developed; and that the work programmes of the CBD and WIPO need to be mutually supportive.

The recommendations of the Working Group were assessed in different manners by attendees at the meeting. For some, they do not represent substantial progress and crucial issues remain unsolved. For others, progress – solid although not dramatic, is evidently reflected in the recommendations, as time has come to move from political statements to the search for specific implementation measures. Along this line, the International Indigenous Biodiversity Forum discussed also internal capacity and organizational matters, as more specialized and in-depth action is required to inform the CBD process in this new phase of implementation of the Programme of Work on traditional knowledge.

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Third edition

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