

# Conclusion

The Declaration does not guarantee justice. Instead, it is an instrument of significant moral standing that indigenous peoples use to assert their claim to self-determination. It is a codification of rights that follow from prior occupancy. Its point of greatest political significance is that it prevents an exclusive neo-colonial state sovereignty by ensuring substantive indigenous capacity to make decisions over their own affairs and to share in the decision-making of the state itself. It thus requires reimagining where power lies and how it is dispersed—a reimagination of the liberal state's normative structure and underlying political values.

The Declaration supports the argument that liberal democracy should work for indigenous peoples as effectively as it works for anybody else. It shows how and why this might occur through political frameworks that are attentive to the presumption that self-determination belongs to all and not just some citizens. In doing so, it helps to create an indigenous affairs policy discourse of human dignity and equality that functions as a claim to culture and to meaningful political authority.

The presumption that human rights belong to indigenous people is inherently and necessarily anticolonial. However, the further presumption that these rights belong to indigenous peoples collectively as well as individually gives the Declaration potentially transformative significance, reframing debates about the meaning of liberal freedom and placing liberal freedom into a collective context. The rights that the Declaration enunciates demonstrate relationships between culture and personal freedom and show why indigenous claims to the autonomy and agency that liberal political theory promises cannot be realised unless and until the colonial context is also recognised.

The liberal concepts of citizenship, democracy, self-determination and sovereignty are not routinely available to indigenous peoples. Indeed, liberalism's exclusive capacity is as powerful as its inclusive and transformative potential, which explains why indigenous people may not instinctively turn to Western liberal democratic theories of justice to support their own claims to self-determination. However, the critiques that indigenous scholars and political actors have reasonably laid against liberal democracy are not inherent to the theory itself. They are the product of human choices and subjective theoretical interpretations. The Declaration helps us to understand how and why. As a liberal instrument of different and potentially transformative potential, its political value is the theoretical possibilities it develops for expressing indigenous claims in the liberal language that frames the politics of Australia, Canada, New Zealand and the US, and in the liberal language that the international community seeks to impose on all states. The Declaration's intent is to help democracy to work better.

Indigenous self-determination requires reconciliation based on trust and political inclusivity. Reconciliation is a significant moral and political challenge to the prevailing order of Australia, Canada, New Zealand and the US—four states that were initially opposed to the Declaration but came to support it when they realised that it could be interpreted as aspirational and did not threaten their territorial integrity or democratic presumptions. Yet as an instrument of reconciliation, the Declaration is not a politically benign statement of symbolic principle.

Reconciliation requires reparation or restitution. It also requires a strong and obvious connection between the state's sorrow for its transgressions of justice and policy outcomes that show a public commitment to correcting the consequences of injustice and ensuring that unjust policy measures do not recur. Reconciliation is an essential precursor to just terms of political association that, in turn, serve as a precursor to a postcolonial politics of self-determination.

The purpose of reconciliation is to improve people's lives. For reconciliation to occur, indigenous peoples must be able to identify good reasons for setting aside their mistrust of the state. Ensuring that indigenous peoples may claim a distinctive share in public sovereignty is therefore important. Constructing a state that is not the colonial entity that once usurped indigenous self-determination is difficult. It is, perhaps, an unlikely aspiration; yet it remains a morally defensible goal that is worth pursuing using the supporting principles set out in the Declaration.

Parties in a political relationship can only accept each other's legitimacy on the strength of trust. For indigenous peoples, this may mean the right to presence; to participatory parity in public affairs; to an equal say in setting out what constitutes just terms of association; and to having a substantive voice in the development of the society that has emerged over their lands, often without their consent.

However, mistrust runs deeply into the indigenous experience of the colonial state. Schools, hospitals, police forces and welfare agencies have been used consciously and systematically to undermine indigenous societies. They continue to obstruct the creation of a politics of trust. Yet they are all potentially important sites of the right to self-determination, and their transformation into institutions that work for indigenous peoples and not against them is important. A reconciled state is one in which indigenous peoples may influence what schools do and why, and shape them to support, not impede, self-determination. A reconciled state is one in which indigenous people have the political and professional capacity to ensure that hospitals recognise relationships between culture and wellbeing, and police forces and welfare agencies fulfil their protective functions equally well for all people.

Canada's initial objection to the Declaration was grounded in the argument that it was a noncolonial state and that its prevailing political institutions, values and cultures gave indigenous people equal capacity for citizenship. New Zealand took this argument further, suggesting that the Declaration was inconsistent with universal citizenship and with the Treaty of Waitangi. There was a fear that the Declaration would raise new and more far-reaching rights that would disturb the negotiated political settlement of claims for breaches of the treaty.

The idea that the Declaration provided indigenous peoples with veto powers over resource development was especially worrisome for the four dissenting states, which responded by trying to position indigenous peoples beyond the national public. A 'them' and 'us' binary politics was promoted that excluded or denied the proposition that indigenous people might be part of the national politics as equal liberal citizens. However, all four states eventually 'read down' the Declaration's significance and agreed that it should be given aspirational value. Their initial opposition reflected colonialism's continuing presence and highlighted the importance of the claim to more inclusive liberal democratic politics. In doing so, it showed the value of pluralism in public affairs, for the alternative to pluralism is exclusion.

When state-based arguments against the Declaration are set alongside indigenous arguments that universal human rights are incompatible with self-determination because they privilege the individual over the collective, one finds an intellectual conflict resolvable with reference to a liberal theory of indigeneity. The argument against extending universal human rights to indigenous people shows the value of bringing liberal political theories into debates over the nature and purpose of the indigenous right to self-determination. There is considerable political value in the liberal argument that all people's freedoms are inherent to their humanity, that all people are fundamentally equal and that one person's humanity is not inferior to another's simply because they are the physically weaker party in a contest over collective cultural values. Self-determination is enhanced by a liberal theory of indigeneity grounded in the view that equal human worth belongs to all, not just some, indigenous people, just as it belongs equally to indigenous people vis-a-vis all others.

Indigeneity is a theory of fundamental human equality. This means that, while self-government may be an important constituent of self-determination, it cannot express the concept's full potential. Self-government over a defined territory is not a substitute for the claim to shared national sovereignty. In Canada, the constitutional right to self-government is conditional. It is not the inherent right that the Declaration promises nor is it a right that, on its own, can protect indigenous peoples against an all-powerful and constraining state. That right is partly protected by the right to exist and to deliberate, as indigenous, inside the state. This is politically important because the state is not a neutral construct that instinctively or naturally represents all citizens equally. It is only through having a substantive presence in its deliberations that all may share in the formation of collective values and political priorities.

Self-determination is the outcome of a wider capacity to share sovereignty. Working out how sovereignty should be shared is a complex, complicated and contested matter. However, the underlying principle of human equality is a simple one. It is a matter of justice that indigenous people have the political capacity to exercise that equality in whichever spheres are required to allow people to lead lives that they have reason to value. Therefore, self-determination is as much a political capacity as it is a political right. However, the capacities that it embodies come from the wider political values and institutional structures that determine where power resides. The capacity for self-determination is facilitated or constrained according to sovereignty's prevailing character, shape and form.

The New Zealand Waitangi Tribunal's finding that the Treaty of Waitangi was not a cession of sovereignty to the British Crown as successive New Zealand governments have insisted is a finding that creates new theoretical possibilities for inclusive understandings of political power. However, the right to equal liberal citizenship is compromised by the bicultural 'them' and 'us' binary that confuses the sovereign for the Pakeha polity.

Biculturalism positions Maori as the political 'other' distinct from the *kāwanatanga* of the New Zealand state. Although there are many important examples of Maori participation in the state—most significantly as members of the executive—there remain alternative strands in Maori political thought that privilege bicultural distinction and separation. For example, Matike Mai Aotearoa's (2016) position paper, *He whakairo here whakaumu*, claimed independent indigenous authority (as justified by the Declaration and Treaty of Waitangi) but surrendered any claim to national citizenship. The paper, discussed in Chapter 9, helps to illuminate the merits of a liberal theory of indigeneity realised through differentiated citizenship as an alternative of more far-reaching potential.

The Declaration not only proposes ways in which differentiated liberal citizenship might be realised but also has the capacity to support self-determination's translation from political right to political capacity. Political arrangements do not arise from an intellectual void. Their capacity to support or constrain indigenous self-determination arises from prevailing theories of the state: what it is, to whom it belongs, and by whom and by what means decisions should be made in its name. Indigeneity is, then, a liberal theory of the state. Its contribution to indigenous political aspirations is a presumption that there is a political gap to be closed between conditional accounts of indigenous citizenship and citizenship as the expression of fundamental political equality. It provides a theoretical justification for culturally meaningful inclusion, self-determination and just terms of association. Further, it is a theory that allows indigenous politics to transcend colonial victimhood. As a politics of potential, it presumes procedural fairness in the ways that public decisions are made. It presumes that indigenous voice is procedurally fair. It is not a guarantee of justice. However, by allowing independent indigenous political authority, it rationalises a liberal citizenship capable of helping people to live lives that they have reason to value. A liberal theory of indigeneity uses the Declaration to help democracy work better because of the simple fact that 'we are all here to stay' (*Delgamuukw*, 1997, para. 186).

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