

Introduction

The United Nations (UN) Declaration on the Rights of Indigenous Peoples ('the Declaration', which is introduced in detail in Chapter 1) is a comprehensive codification of indigenous human rights. It was adopted in 2007 by the UN General Assembly by a vote of 144 to four. Australia, Canada, New Zealand and the United States (US) dissented. There were 11 abstentions: Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, the Russian Federation, Samoa and Ukraine (UN, 2007c). Over time, the four dissenting states, which are this book's principal focus, withdrew their objections and, in each of these, as well as in other jurisdictions, the Declaration has come to provide political, legal and moral frameworks for thinking about what it means not only for both indigenous and non-indigenous peoples to say that 'we are all here to stay' (*Delgamuukw v British Columbia*, 1997, para. 186), as Canada's Chief Justice Lamer put it in 1997, but also for thinking beyond justice as the simple reconciliation of indigenous presence with the sovereignty of the Crown. Indigenous and non-indigenous populations ought to recognise the other's presence in more substantive terms, which, from the Declaration's perspective, means that the rights and capacities of self-determination are accepted as belonging to indigenous peoples as much as they belong to anybody else.

This book provides a comprehensive critical analysis of what it means in political practice for both indigenous and settler populations to recognise the other's presence and, in particular for indigenous peoples, what it means to enjoy the rights and capacities of self-determination. The book makes its arguments with reference to each of the Declaration's 46 articles. Each is referred to in a specific jurisdictional and policy context so that both the theoretical and practical policy significance of the Declaration's component parts may be examined. This analysis begins with a description of the Declaration's development through the UN system before introducing self-determination as the overarching principle that the Declaration enunciates.

The book then explains that it is their shared British colonial heritage and development into liberal democratic states (the meaning of this term is explained later in this introduction) that allows and rationalises this book's focus on Australia, Canada, New Zealand and the US. These common experiences help to explain the four states' initial objections as well as their subsequent reading down of the Declaration's potential impact, leading to their positions being reversed in 2009 (Australia), 2010 (New Zealand), 2011 (the US) and 2016 (Canada).

The principal theoretical concepts used to inform this book's analysis and develop its arguments are introduced following the discussion of the book's jurisdictional focus. The introduction of these liberal concepts—sovereignty, citizenship and democracy—and their interpretation to form a liberal theory of indigeneity (O'Sullivan, 2014, 2017) are discussed. Their meanings for political relationships in societies like those that dissented are explained. Their interpretations, to reframe debates about the workings of the state to support political relationships grounded in trust, are discussed as the basis for reconciliation (explained later in this introduction)—a political objective often stated but not consistently pursued in the dissenting states. A further and related condition for reconciliation is the operation of public institutions according to values that neither assimilate nor alienate indigenous peoples.

The introduction of the political concepts that this book uses to analyse the Declaration is followed by a description of its structure, which explains how these concepts are systematically applied throughout the text. This description also shows how sovereignty, citizenship and democracy inform the book's ultimate purpose: to examine and propose what the Declaration may mean in both political theory and political practice.

Background to the Declaration on the Rights of Indigenous Peoples

More than 25 years of indigenous advocacy and global cooperation preceded the Declaration's adoption. It is the most comprehensive body of collective indigenous political thought ever and makes it clear that domestic indigenous 'aspirations ... are not out of step with international expectations' (p. 9). It provides a reference point beyond the state for the

assertion of indigenous rights and, as this book also shows, the Declaration legitimises and gives international authority to an overarching indigenous claim to self-determination.

The Declaration's genesis in the UN system was a report published in 1981 by the Special Rapporteur to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The report of the rapporteur, José Martínez Cobo, on the problem of discrimination against indigenous populations was commissioned by the UN Economic and Social Council in 1971. The report began the UN's systematic interest in indigenous peoples as distinct peoples (Nakata, 2001). Earlier UN human rights instruments, such as the Universal Declaration of Human Rights, adopted in 1948, enunciated principles of human equality—rights to equal protection against discrimination, to collective property ownership and to participate in the affairs of the state (UN, 1948, arts. 7, 17 and 21). However, the 2007 Declaration is more significant still because it foreshadows the interpretation and application of these principles in specific indigenous contexts.

As Martínez Cobo (1981) observed, 'the principles proclaimed in existing international instruments concerning human rights and fundamental freedoms [were] not fully applied in all countries' (p. 79) and not equally applied to all peoples. Therefore, he recommended that 'specific principles should be formulated for use as guidelines by governments of all states in their activities concerning indigenous populations' (p. 79) and that:

Such principles must necessarily contain any additional and specific provisions which, following careful study, may be deemed necessary for the full recognition and protection of the indispensable rights and freedoms of indigenous populations. (p. 79)

Martínez Cobo presumed that all societies, including states such as Australia, Canada, New Zealand and the US, were morally obliged to accept and defend those 'indispensable' rights and freedoms. The obligation was to ensure that a state's prevailing political systems could attend to those rights and freedoms by recognising the right to self-determination as a right belonging to *all* and not just to *some* peoples.

The right to self-determination and its implications are discussed throughout the book. In particular, it is discussed as a theoretical concept with a potentially transformative impact on how indigenous nations and the states that have emerged over their territories think about the practices

of sovereignty and citizenship, and what these considerations mean for the form that democracy takes. This book is a study of the theoretical and practical interrelationships among these concepts and a study of what these relationships mean for the indigenous person's right to live as a member of an indigenous nation and simultaneously, if they wish, as a member of the state with the right to participate in its affairs with substantive and distinctive equality. This idea, that indigenous peoples are entitled to enjoy membership of their own nations and make decisions through their own institutions according to their preferred processes, while also enjoying equal *and* culturally contextualised membership of the state, is introduced below and developed through the book as 'differentiated citizenship'.

In response to Martinez Cobo's (1981) study, the UN Economic and Social Council established the Working Group on Indigenous Populations. The group's mandate was:

- to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples
- to give attention to the evolution of international standards concerning indigenous rights. (UN, 2001, para. 2)

The group consisted of five experts, appointed by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights), from Japan, Cuba, Nigeria, Hungary and the United Kingdom. Its meetings were open to indigenous representatives and, in 1985, the UN established the Voluntary Fund for Indigenous Populations to give financial support to their participation. UN member states and nongovernment organisations also participated in the group's deliberations, establishing it 'as a focal point of international action on indigenous issues' (UN, 2001, para. 3) and making it one of the largest UN human rights forums.

During the 1980s and 1990s, the group's annual meetings attracted more than 700 indigenous people 'from the forests of Amazonia to the north of Alaska and Greenland; from the Sami people in Northern Russia to the Masai in Kenya to Australia's aborigines' (UN, 1997, para. 2). The working group released its Draft Declaration on the Rights of Indigenous Peoples in 1993. The draft was approved the following year by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

The draft declaration's working definition of the indigenous right to self-determination was significant:

By virtue of [the right of self-determination, [indigenous peoples] freely determine their political status and freely pursue their economic, social and cultural development. (Iorns, 1993, 'Draft declaration', pt. I art. 3)

The subcommission referred the draft declaration to the Commission on Human Rights, which referred it to a further working group of member states and indigenous organisations. Alongside the negotiations that followed, the UN created a Permanent Forum on Indigenous Issues. Established in 2002, the forum comprised indigenous policy experts nominated in equal number by UN member states and indigenous nongovernment organisations. The forum's annual meetings, which were open to representatives of all indigenous peoples, provided an environment for further indigenous advocacy in favour of what was still a draft declaration.

While the working group found that member states and indigenous organisations agreed that the draft provided a sound starting point for negotiation, several states had reservations, especially concerning the scope of the right to self-determination. Some believed that this right could be interpreted to disrupt the territorial integrity of the nation-state by allowing indigenous groups to secede (UN, 1996).

This major point of contention was ultimately resolved for most member states, though within the context of the indigenous organisations' argument that self-determination is a right that belongs to all peoples and that it was already well established. It had, for example, been expressed as a universal right in the International Covenant on Civil and Political Rights (UN, 1966a) and in the International Covenant on Economic, Social and Cultural Rights (UN, 1966b). Indigenous organisations resisted the possibility that the right to self-determination would be limited or qualified only for indigenous populations (UN, 1996). They also resisted the view that what the draft contained were social or political aspirations, but not rights. As a declaration, the instrument would not be legally binding; however, from other state and indigenous perspectives, it would still be politically and morally binding (UN, 1996), which as this book shows, gives the Declaration political value and significance.

Some states were also concerned that the proposed requirement of indigenous consent to resource extraction, and other commercial activities on their lands, would compromise state authority to regulate land use. Some argued that the Declaration needed to define indigenous people and some questioned the propriety of distinctive peoplehood as a right of indigenous populations.

However, indigenous organisations argued that a universal definition would prevent indigenous groups from defining themselves according to their own value systems and would, as such, constrain the right to self-determination. Several governments agreed that retaining this flexibility was essential if, overall, the Declaration was to be universally relevant (UN, 1996). However, there was still a concern among member states that the term 'peoples' may privilege collective rights over the rights of individuals and make indigenous groups subjects of international law with consequent rights over natural resources, for example. Indigenous counterarguments claimed that collective rights are the sum of individual rights so that the two bodies of rights could not conflict (UN, 1996).

For the indigenous organisations, collective rights were central to identity and being. However, some states argued, for example, that the draft framed the collective right to education and to separate indigenous political, legal, economic and social systems in ways that could give rise to discrimination against other citizens (UN, 1996).

The working group tried to resolve these points of contention by negotiation and exhaustive deliberation. However, it was ultimately only the UN member states who would vote when the draft was submitted to the General Assembly, and it was a compromise text adopted by the Human Rights Council in 2006 and referred to the assembly for what was expected to be a final vote in January 2007.¹

At this point, Namibia, supported by other members of the African Union, successfully moved to have the vote delayed. Their reservation was that most African peoples were indigenous to the African continent and that self-determination only applied to peoples seeking freedom from colonial subjugation (Engle, 2011). To ensure that this argument was not compromised, the African Union wanted further work on the

1 For a full summary of the differences between the draft text and the text submitted to the Human Rights Council for referral to the General Assembly see UN (2006b, Annex I).

definition of indigenous peoples. It also wanted further consideration of self-determination, land and resource ownership and the status of distinctive indigenous political and economic institutions. It particularly wanted further consideration of the implications of self-determination for the territorial integrity of the state (Engle, 2011). Further negotiations took place, and among the outcomes was a clause specifically precluding the secession of an indigenous people from an existing state. The final declaration, adopted in September 2007, affirmed a more tightly defined indigenous right to self-determination, though kept it as an essential principle of international law.

The right to self-determination is also of sufficient scope to have significant theoretical implications for sovereignty, citizenship and democracy—concepts that are introduced in this chapter's following section. The various perspectives of states, indigenous nations, scholars and political actors may then be assessed against the optimistic expectations of the Indigenous Australian legal scholar Megan Davis (2007), who argued that the Declaration's adoption:

was a momentous occasion for Indigenous peoples. It is an important document of developing standards that Aboriginal and Torres Strait Islanders in Australia can use in their day-to-day relationships with all levels of government. It was a long struggle to draft the document and to have it move through the UN hierarchy to adoption by the General Assembly. The UN human rights system confirmed that it is indeed capable of faithfully facilitating substantive standard setting activities for the collective rights of indigenous peoples. [It] symbolises goodwill on the part of states in acknowledging the historical injustice toward indigenous peoples. The Declaration will also go some way to delivering justice to those first peoples whose deprivation of human rights is the very cornerstone of the sovereignty, wealth and power of the most obstructive and argumentative states who voted against the declaration in the General Assembly. (Conclusion section, para. 1)

This book will show how and why Davis's optimism is contested from some indigenous and state perspectives and shared from others, and it will show what these contrasting perspectives mean in both theoretical and practical policy terms.

Self-determination

The Declaration affirms self-determination as a right that belongs to indigenous peoples as much as it belongs to anybody else. It does not introduce new rights. It codifies and contextualises existing ones, and its purpose is to provide a framework for applying them to distinctive indigenous circumstances. As the Declaration codifies it, self-determination is more politically significant than reconciling 'the pre-existence of aboriginal societies with the sovereignty of the Crown' (*Haida Nation v British Columbia (Minister of Forests)*, 2004, para. 17). This is because the Declaration makes assumptions not just about 'who rules, but [also about] how rule is accomplished' (Corrigan, 1990, p. 264, emphasis in original). When self-determination is applied in response, indigenous rights are neither what Cornthassel (2012) calls 're-gifted rhetoric' (p. 92) nor restricted by what Carroll (2012) argues is an indigenous-state relationship that must always and everywhere allow states to 'maintain their hegemony as the only true sovereigns' (p. 147).

This book's alternative perspective is that self-determination is an argument for the greatest possible indigenous political autonomy while pragmatically accepting the state's right to govern. However, the right to government is not hegemonic and, if they wish, indigenous persons may actively participate in state affairs to ensure that their perspectives are heard in day-to-day policymaking and to ensure that they are always placed to influence the operation of public institutions. This influence is, in turn, a determinant of the extent to which the right to self-determination is either present or curtailed.

As an intellectual framework, the Declaration allows new ways of thinking about the political capacities that indigenous peoples may (and may not) claim both within their own nations and within the states that have emerged over their territories. Specifically, the Declaration:

sets out the individual and collective rights of the world's 370 million native peoples, calls for the maintenance and strengthening of their cultural identities, and emphasises the right to pursue development in keeping with their own needs and aspirations. (UN, 2007a, para. 2)

It sets standards and frameworks in relation to indigenous peoples' political expectations by:

affirm[ing] that indigenous peoples especially have the right to self-determination, recognis[ing] that they have been denied enjoyment of the right, and mark[ing] the parameters for processes that will remedy that denial. (Anaya, 2009, p. 189)

The Declaration's standards and frameworks maintain that 'Indigenous peoples are equal to all other peoples ... [and there is a] right of all peoples to be different, to consider themselves different, and to be respected as such' (UN, 2007b, annex). They also reflect principles of the Universal Declaration of Human Rights (UN, 1948) that 'All are equal before the law ... All are entitled to equal protection against any discrimination' (art. 7); 'Everyone has the right to own property alone as well as in association with others' (art. 17[1]); and 'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives' (art. 21[1]).

Self-determination's potential—or ultimate objective—is, then, to contribute to the development of states that do not intrude on indigenous lives or appropriate indigenous lands and resources. It protects rights to political authority, cultural integrity and economic security. It asserts political agency and reflects international acceptance of minimum standards for the expression of that agency. For the Australian Human Rights Commission (2013), for example, the Declaration 'enshrines [the] right to be different as Peoples and affirms the minimum standards for the survival, dignity, security and well-being of Indigenous peoples worldwide' (p. 4). Self-determination is concerned with the political spaces that indigenous peoples may choose to occupy as peoples entitled to independent political authority through maintaining and developing their own political institutions *and* as citizens of the state.

Australia, Canada, New Zealand and the United States: Dissenting Liberal Democracies

Indigenous peoples may seek recourse to the Declaration to support their right to self-determination anywhere in the world. However, this book's expansive consideration of what it means, both theoretically and practically, to say that 'we are all here to stay' is focused on the dissenting

states. Although comparative reference is made to other jurisdictions (in Chapter 6 especially), the focus on Australia, Canada, New Zealand and the US is made because the liberal democratic values that underlie each of their systems of government helps to explain their initial opposition to the Declaration. It also helps to explain why they subsequently reversed their positions and why the Declaration's implications are potentially transformative in those jurisdictions.

Liberal democracy is a form of political organisation based on the primacy of the individual and the protection of personal freedoms. Protecting these freedoms is a principal function of the state. From a liberal democratic perspective, freedom requires that each person is fundamentally equal: that each is equal before the law and has the same rights and responsibilities to contribute to the government of the state. However, the Declaration posed a philosophical challenge to states whose political systems operate on the assumption that each person's liberty establishes an individual right to participate in public affairs through, for example, voting at regular elections and enjoying the same rights, privileges and obligations before the law, but where neither collective rights nor individual rights grounded in culture are routinely admitted. It was from these perspectives (introduced in Chapter 3) that the four states' objections highlighted an ongoing tension over the terms of indigenous political status within, and in relation to, the state. A tension over what it means to be equal and what it means to be an indigenous citizen, especially in relation to the further presumption that the government of the liberal state occurs by the people's consent. A condition that, as this book shows, is rarely, if ever, met in respect of indigenous peoples. As this book explains, this condition is elusive because the presumption of freedom through equality has been interpreted by states and dominant populations as sameness, meaning that political arrangements may proceed without regard to culture, colonialism or the group memberships in which, and through which, freedom is experienced. The Declaration's presumption that states and indigenous peoples ought to work out what, in practice, it means for indigenous peoples to enjoy political freedom makes it a liberal instrument especially suited to the analysis of indigenous rights in the dissenting states.

These states, with their variously assertive indigenous minority populations and shared British colonial heritage, feared that the Declaration would disrupt their territorial integrity and enhance, rather than simply contextualise, the rights of indigenous citizens vis-a-vis all others. These fears, and the reasons that they receded over time, are discussed in detail in Chapter 1.

In short, the Declaration shows how and why there is, in fact, scope within liberal democratic practice for indigenous persons to enjoy both equal and distinctive liberal rights; where equality and difference are compatible, fair and reasonable. In particular, the Declaration illuminates the idea that individual liberty may depend on the recognition of group rights and may only be meaningful with reference to cultural context and colonial experience. In respect of these states, it is instructive to examine the Declaration in relation to liberal ideas of sovereignty and citizenship and for what the Declaration proposes as their practical application—in particular, the presumption that restrictions on liberty must be justified according to some coherent political principle. For example, that one person’s freedom does not impinge on the freedoms of another, or that individual freedom may be subject to a wider and broadly accepted public good—but not, as Locke (1887) argued, on the presumption that there are racial hierarchies of human worth that give some groups greater influence than others over the arrangement of public affairs.

The Declaration’s liberal character is what makes it a valuable instrument in indigenous claims to self-determination, for it allows such claims to be expressed in the prevailing language of the liberal state in ways that make sense in terms of the values that underlie the national political community and its public institutions. If self-determination is a liberal right, then its claims are more likely to be heard simply because liberalism is either the state’s prevailing political order or the political order that the international community wishes to impose.

The dissenting states made liberal political arguments against the Declaration (see Chapter 3 for the systemic development of this point). However, liberalism is not a singular nor absolute political philosophy. There are many interpretations of its essential presumption that ‘a liberal is a man who believes in liberty’ (Cranston, 1967, p. 459). The ways in which political systems give effect to that objective are also widely interpreted. For the politics of indigenous self-determination, the most important and highly contested point concerns whether each person’s liberty must be recognised and expressed in the *same* way or whether they may be *differently* understood and exercised. In particular, whether relationships between group rights and personal liberty may be admitted, and whether there are rights of culture and prior occupancy to be brought into account.

This book's recurrent themes therefore include the Declaration's capacity to contribute significantly to making citizenship a more meaningful political status than many indigenous people have experienced by rethinking democracy's capacity to ensure substantive indigenous voice in public affairs alongside the indigenous right to use their own institutions and political processes to manage their affairs independently of the state.

Sovereignty

The colonial process began in each of the dissenting states in different ways and at different times during the eighteenth and nineteenth centuries. However, in each case, it was rationalised by the assumption of sovereignty's (see Chapter 7) transfer from indigenous nations to the British Crown. From the British perspective, sovereignty was an absolute political authority that allowed its permanent settlement and government of indigenous territories. This book introduces alternative indigenous conceptions of sovereignty and contests the idea that sovereignty is an absolute and indivisible authority vested in a single entity, such as the Crown-in-Parliament. It also argues that sovereignty is not an authority once held exclusively by indigenous peoples, taken and exercised exclusively by the settler state and reclaimable by indigenous people as an absolute power. The authority of sovereignty is more complex, and the Declaration helps to make sense of these complexities by proposing new spaces of political authority—spaces of inclusion in which a new kind of liberal politics can be worked out.

Each of this book's chapters shows how the Declaration may help contemporary societies contest the idea of state sovereignty as colonial hegemony, with its intellectual origins in the writings of the seventeenth-century English political philosopher John Locke.

Locke viewed the liberal values of freedom and authority over one's own affairs as essential political rights. However, he did not believe that these rights applied to everybody. There were exceptions that served to justify the colonial demand for sovereignty over other peoples and territories. For example, the British acquisition of Australia in 1788 was justified with reference to Locke's theory of property, which excluded hunter-gatherer peoples from land ownership. One had to work the land, in an agricultural sense, to claim ownership of it. Unowned land could simply be taken by others, as Locke (1887) explained:

God, when He gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth—i.e. improve it for the benefit of life and therein lay out something upon it that was his own, his labour. He that, in obedience to this command of God, subdued, tilled, and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him. (p. 207)

In 1838, the *Sydney Herald* drew on Locke's argument to justify the British claim to sovereignty in Australia, arguing that, to the Indigenous people:

This vast country was to them a common—they bestowed no labour upon the land—their ownership, their rights, was nothing more than that of the emu or the kangaroo. They bestowed no labour upon the land and that—and that only—it is which gives a right of property to it. ('Sworn to no master', 1838, p. 2)

According to Reynolds (1996), such depictions of precontact Indigenous Australia, which amounted to a view of the land as unoccupied or 'terra nullius', were not grounded in fact, but were instead examples of a 'self-serving Eurocentric jurisprudence of convenience' (p. xii).

In contrast to Locke, eighteenth-century Enlightenment philosophers, such as Immanuel Kant (1970), argued against suppressing the liberty of others. Kant's writings can be seen as contesting settler colonialism's attempts to assimilate indigenous peoples into settler cultures to create ethnically homogenous political communities. For example:

Men have different views on the empirical end of happiness, and what it consists of, so that as far as happiness is concerned, their will cannot be brought under any common principle, nor thus under an external law harmonizing with the freedom of everyone. (Kant, 1970, pp. 73–74)

Settler colonialism is an ongoing process that the Declaration aims to circumvent. It is a process involving the gradual and continuing phenomenon of settler populations increasing their relative power vis-a-vis indigenous populations. To be clear, this process did not end when the four states gained political independence from the British Crown. By that time, settler populations were in the majority, had acquired control over large tracts of indigenous land and had established new states according to their own political arrangements and norms of government.

The assimilation of indigenous people into the cultures of the settlers was supposed to ensure that there was no resistance to the development of these new societies. Assimilation is the process through which indigenous cultures were expected to become one with that of the settler population. In Australia, for example, it was pursued through the removal of indigenous children from their families, as official policy, in all states from the early 1900s until the mid-1970s. The Western Australian Protector of Aborigines, AO Neville, described the policy as one of breeding out aboriginality (Neville, 1947). In New Zealand, the policy was more subtle and implemented through Native Schools, which existed between 1867 and 1969 and provided Maori with a lesser curriculum focused on what, in the 1930s, the Director-General of Education explained as 'lead[ing] the lad to be a good farmer and the girl to be a good farmer's wife' so that the Maori mode of living would copy 'the nuclear family of the pakeha social order' (as cited in Hill, 2004, p. 182). Indigenous peoples, across jurisdictions, have seen assimilation as the antithesis of self-determination and of a nondominant, noncolonial or postcolonial political order, where the state does not exercise a controlling authority over indigenous peoples.

Instead, such a political order would mean that indigenous peoples are free to live according to their own cultural values, manage their own affairs and enjoy the land and resource rights that the Declaration promises and which are noted throughout this book in specific jurisdictional and policy contexts. Indigenous peoples would also be free to participate in the affairs of the state *as* indigenous. They would then be positioned to develop just terms of association with the state. Terms of association where, for example, the state accepts that exercising powers of domination over indigenous peoples is unjust and that serious attempts must be made at restitution for the deprivation of indigenous peoples' lands, cultures and political authority, which among other considerations would include seeking agreement on what it could mean to live together differently (Maaka & Fleras, 2005). Just terms of association mean that states act unreasonably if they accord indigenous peoples lesser legal or political status by virtue of their indigeneity; it means working out the terms of a fundamentally equal, even though distinctive, indigenous citizenship.

The terms of association between indigenous peoples and the state may be just when both independent indigenous institutions and state institutions support indigenous people's capacities to make decisions over their own affairs without interference from the state, and when state institutions, like schools, hospitals and policymaking agencies, accept indigenous people's

participation in these institutions *as* indigenous. An alternative is to deny that the right to self-determination is inherently bound in culture and to assume that when people go to school or seek help in a hospital that they do so as ‘cultureless’ beings and to assume that these institutions operate from positions of cultural neutrality. Another alternative is that culture is relevant, but that it is the culture of the postsettler population that properly determines the values under which public institutions operate. In this way, the indigenous person’s access to equal schooling or equal health care depends on their willingness and ability to assimilate into the settler culture: to think and understand the world only in terms that make sense in a culture that is not their own.

Colonialism cannot be undone; however, the Declaration’s assumption is that its consequences may be mitigated so that, as this book argues, noncolonial political relationships may be imagined. This is because the Declaration raises questions about whether a political order—where the state is the single site of sovereign authority—is a just model for political relationships.

Sovereignty is widely understood as referring to ‘supreme authority within a territory’ (Philpott, 2016, para. 1). In practice, sovereignty is the authority of governments to govern and to make laws and public policies to regulate the lives of those living in their territories. However, there are limits on a government’s capacity to make laws and public policies, including constraints that arise from Locke’s (1887) argument that legitimate government occurs by the people’s consent; for while Locke’s was an exclusive people, the Declaration’s is not. This issue is brought into sharp focus by the New Zealand Waitangi Tribunal’s finding in 2014 that the Treaty of Waitangi did not involve Maori ceding sovereignty to Britain when the instrument was signed in 1840 (Waitangi Tribunal, ‘He Whakaputanga me te Tiriti’, 2014). This raises the question: under what circumstances might a society develop in which Maori feel sufficient ownership to consent to New Zealand’s overall system of government? This theme of what, from indigenous perspectives, might justify consent for the liberal state recurs throughout this book and is especially important in Australia where there is a well-established possibility that treaties between some states and Indigenous nations may be negotiated in coming years (see Chapters 2 and 3).

Treaties require indigenous nations to consider the terms of their consent to the state. Under what circumstances might consent be given? Withholding consent cannot disrupt state systems of government. However, a treaty's foundational presumption is that it is reasonable for societies to think about the distribution of political authority because, as this book shows, treaties cannot admit absolute, indivisible and incontestable state authority over and above indigenous peoples. The book's purposes therefore include consideration of what possibilities exist, with reference to the Declaration, for the exercise of multiple and sometimes shared sovereignties. It attends to this purpose by establishing the independent indigenous authority that the Declaration rationalises and by examining the capacities that exist and might be developed for indigenous peoples to influence, share and help lead the state and its institutions. The book is thus a systematic examination of how liberal political theory might rationalise and give effect to such objectives and in ways that do not diminish the rights of other citizens.

It is important to ask whether the Declaration supports the development of a politics and liberal theory of indigeneity and whether it can help to substantively improve the lives of indigenous peoples. Might the Declaration help citizenship, in a liberal state, to achieve what Ivison (2002) suggests is among its essential purposes—to give people reasons to believe that the state is theirs because:

to be at home in the world is to be able to identify with those institutions and practices [of the state], to see the norms and ends as expressed in the public life of the community as ones that are connected to her flourishing. And it is not just about feelings. These institutions and practices should actually help her life go better. (p. 6)

Might the Declaration then support an indigenous right to deliberate in public affairs as equal citizens in ways that indigenous peoples find worthwhile? Is there a form of deliberation not confined to what Watson and Venne (2012) call aboriginal management of 'white political space' (p. 88)? Might indigenous deliberation involve 'white political space' making way for a national political space in which indigenous peoples participate *as indigenous*, setting aside an 'us' and 'them' binary and claim in Australia, for example, 'a bit of blackness in this country's white document [i.e. the Constitution]' (Axelby & Wanganeen, 2017, para. 8)? Is there such a thing as a liberal theory of indigeneity (O'Sullivan,

2014, 2017) that might set aside that binary in favour of more inclusive political arrangements than those possible under New Zealand's bicultural political philosophy, for example?

Biculturalism was the dominant philosophy informing Maori public policy during the 1980s and 1990s. It advocated greater respect for Maori culture in public organisations and facilitated greater Maori involvement in public decision-making. Its presumption was that the Treaty of Waitangi, signed in 1840, was a partnership between Maori and the British Crown—or Maori and Pakeha (New Zealanders of Anglo-Celtic heritage)—as signatories to the treaty. The bicultural presumption was that this partnership ought to guide national social and political relationships. However, in positioning Maori and Pakeha as always and everywhere distinct, biculturalism understated the significance of social, cultural, political and economic relationships between Maori and other New Zealanders. Instead it created an 'us' and 'them' binary, and the terms Crown and Pakeha came to be used interchangeably to describe the non-Maori treaty partner. The interchangeable use of these terms gave the Crown an exclusive ethnic character to mean that, while biculturalism allowed independent Maori authority and supported the development of tribal political institutions, it did not admit space for meaningful Maori influence within the state. The Declaration provides a more expansive framework for thinking about political relationships and self-determination's practical possibilities.

A Liberal Theory of Indigeneity

This book considers the Declaration with reference to a politics of indigeneity involving both political theory and political strategy. When the politics of indigeneity claim spaces of indigenous agency, authority and autonomy, they are concerned with indigenous peoples defining their own terms of belonging to the state—a distinctive belonging as First Peoples and shareholders in the collective sovereignty that the state ought to safeguard on behalf of *all* and not just *some* people. When this occurs, the political and legal precepts that facilitated Britain's colonisation of the dissenting states must be reconsidered. Likewise, the workings of the public institutions and political systems that undermined indigenous forms of government and land tenure, while simultaneously limiting their influence over those systems, must also be reconsidered.

This book's liberal theory of indigeneity rests on the assumption of an extant indigenous political authority, which asks what scope exists for a more expansive politics of inclusion. Consistent with the Declaration, it presumes that the liberty of the indigenous person is not simply an individual right, but one that only makes sense in relation to the cultural and other political rights that the indigenous nation retains. Thus, liberty is culturally contextualised. However, it is also contextualised by a colonial politics whose very logic is liberty's deprivation.

Liberty is attainable only with reference to a political theory that recognises how and why freedom might be constrained; that is, a theory that recognises that liberty can only derive meaning in the cultural context of the persons claiming it. A liberal theory of indigeneity aims, then, 'to create political space for substantive and sustainable reconciliation through self-determination and a particular indigenous share in the sovereign authority of the modern state itself' (O'Sullivan, 2017, p. 35). Such a theory requires a fundamental reappraisal of colonial thought and the displacement of the colonial state by one that is consciously and sustainably postcolonial. The Declaration is not a panacea for this kind of political relationship, but it does legitimise the aspiration and provides supporting principles. It does so by facilitating the juxtaposition of traditional indigenous conceptions of political authority with Western liberal democratic theory. Its potential is to allow 'cultural theorists [to] demand a degree of differentiation not present in almost any developed democracy' (Fleras, 2000, p. 373). This juxtaposition of ideas tests liberalism's inclusive potential, not only of people but also of perspectives on what the state is for and what it ought to achieve in terms of *all* people's rights as distinct from *some* people's interests.

A liberal theory of indigeneity seeks just terms of association between indigenous nations and the state and for indigenous peoples within the state. Its focus on circumventing colonialism's exploitative logic means that its interest in protecting group rights is not the same as a general liberal interest in the rights of ethnic minorities. Prior occupancy means that indigenous people's claim to distinctive status is fundamentally different. Theirs is a claim to exercise political rights through culture and, explicitly, through geopolitical relationships with the colonised land. The usurpation of land, linguistic and cultural rights are transgressions of justice occasioned against indigenous peoples solely because they are indigenous. It is only because of one's membership of an indigenous group that one has experienced the injustice, so it follows that restitution

is owed to the group. Personal liberty cannot, then, occur in isolation from the group. If liberalism is concerned with the liberty of all and not just some citizens, it must be attentive to group rights. This is also because culture and prior occupancy provide distinctive terms for indigenous belonging as equal citizens. Consequently, the rights of indigeneity do not arise from a ‘conjunction between “culture” and “disadvantage”’ (Scott, 2003, p. 94). A liberal theory of indigeneity is not a theory of egalitarian justice; nor is it a theory concerned with the rights of poor people. This is because the rights to language, culture and a distinctive political voice belong to all indigenous people. These rights embody a special moral significance because they are rights that colonialism has usurped. They have not been freely surrendered, so remain as expressions of the right to self-determination.

As a theory, indigeneity is concerned with protecting the right to self-determination (O’Sullivan, 2017). It demonstrates this concern by contesting ‘the exclusive sovereignty of the State to pass and enforce laws, define agendas, establish priorities, articulate patterns of entitlement, or demand compliance by decree if not by consent’ (Tully, 1999, p. 223). Therefore, an inclusive and meaningful sovereignty that is available to indigenous peoples in cultural and sociopolitical contexts, as much as it is available to anybody else, is presumed. This presumption of the right to participate freely in the political, social and economic affairs of the state carries substantive rights of citizenship. Indigenous peoples’ prior deprivation is the foundational cause of their political marginalisation and material poverty. The Declaration’s focus is justified, as political domination or denial of the right to self-determination occurs only because indigenous human rights, and sometimes indigenous humanity, have been denied. Thus, indigeneity may have implications for the nature of one’s belonging to the state.

Differentiated Citizenship

The ways in which one belongs, or does not belong, to a political community can be understood as an expression of citizenship; likewise, the ways in which one is part of, or excluded from, the sovereign can also be viewed this way. As the embodiment of political capacities, citizenship ‘is an ideological and power laden concept [that] can exacerbate, exaggerate or mediate tensions over the distribution of power

and authority' (O'Sullivan, 2017, p. 51). Citizenship reflects the ways in which people are positioned in the political community and in relation to its institutions of power. For indigenous peoples, it determines whether they are willing to see the state as 'ours' (i.e. as an inclusive institution) or as 'their' exclusive settler-colonial construct.

The right to conceptualise and exercise one's citizenship of the indigenous nation, and also of the liberal state, in culturally meaningful terms is important. Personal liberty cannot occur in isolation from these relationships. Just terms of association require that indigenous peoples may claim their liberty, as citizens, in ways that are personally meaningful, such as through the right to a culturally meaningful political voice and to representation in public affairs, or through speaking in parliament or judicial proceedings in one's own language. The Declaration affirms these rights and provides guidance on how they might be realised. They are justified in liberal terms because inclusivity 'is compatible with a form of universalism that counts the culture and cultural context valued by individuals as among their basic interests' (Gutmann, 1994, p. 5).

However, settler colonialism means that, in practice, indigenous peoples may not routinely (or ever) experience citizenship as the substantive and important political concept that Aristotle once described. For Aristotle, the citizen was 'he who has power to take part in the deliberative or judicial and administrative power of the state' (Hindess, 2002, p. 94). In this construct, citizenship means that each member of a society has the same opportunity for meaningful influence on public affairs as any other. Equal capacity, as a citizen, requires attention to culture and to sociopolitical contexts. This is reflected in the Declaration's proposal that citizenship and its capacities belong to indigenous people as to any people—that is, inherently: they are not granted by the state's benevolence.

Citizenship's strength is measured by the extent to which people are inclined to use its capacities and their 'desire to participate in the political process ... to promote the public good and hold political authorities accountable' (Kymlicka & Norman, 1994, p. 335). Therefore, it is democratically important for indigenous people to see the state as belonging to them, and membership of the state as something worthwhile and capable of contributing to their capacity for self-determination. However, this is not a common indigenous experience. Unless contrary perceptions and realities can develop, self-determination will remain unattainable.

At the same time, ensuring the political capacity of indigenous institutions to manage their own affairs and develop their own societies in ways that are collectively meaningful is important. Indigenous peoples must be able to claim the authority to determine what they want of their own societies and to determine the spheres of influence that they want their societies to enjoy. In some instances, colonialism has diminished that capacity; in others, the sense of indigenous purpose remains strong. In both cases, there is liberal justification for the public recognition of indigenous decision-making systems and for indigenous people's capacities to:

develop the right to difference in cultural expression, but sameness in political opportunities; difference in forms of land tenure, but sameness in capacity to make decisions about how land will be used; difference in the way one is taught at school, but sameness in terms of educational quality. (O'Sullivan, 2017, pp. 51–52)

These are among the conditions for what Maaka and Fleras (2005) call 'belonging together differently'. Belonging together differently is possible when the terms of association between indigenous people and other citizens, and between indigenous peoples and the state, are grounded in a politics of participatory parity (Fraser & Honneth, 2003).

This concept of participatory parity means that indigenous people may contribute to public affairs with reference to the specific contexts and experiences of colonised peoples and from their own cultural perspectives. They need not express their arguments through the language and epistemologies of the majority population, for to insist on this approach to political participation would be to make indigenous culture a democratic disability—an obstacle to equal and meaningful participation. Measures like guaranteed indigenous seats in parliaments and the proposed voice to parliament in Australia, which are discussed later in this book, are examples of participatory parity, a form of democratic politics that assumes necessarily inclusive processes of public reason will inform public decision-making.

Public reason is the assumption that, to deliberate properly, people must give reasons for their views and expose them to informed scrutiny. Poorly thought out opinions or a refusal to entertain that another may have a reasoned (even if different) view, does not allow democracy to work to its potential. It does not allow indigenous people to defend their priorities and aspirations to an audience that is attentive, respectful and open to the possibility of modifying its own positions. It also means, for example,

that indigenous people are not able to scrutinise the opinions of others or argue for the unreasonableness of discriminatory positions. Public reason means that people must deal with disagreement with serious and well-informed argument. Rash opinions are unreasonable because they disregard another's right to be heard and considered.

The processes that are used to make decisions are variables that influence people's capacity to participate and thus influence the moral acceptability of the decision itself. Political values play an important role in policy formation, as they ensure that jurisdictions cannot function in a culturally neutral or acultural fashion. Consequently, liberals cannot argue that cultural preferences are private matters. Culture cannot be kept from public life because political values themselves are deeply rooted in human culture.

As liberal states, the dissenting states' underlying political values are, to varying degrees, compatible with the Declaration's view of the right to self-determination as a right 'based on principles of justice, democracy, respect for human rights, non-discrimination and good faith' (UN, 2007b, annex). However, liberalism is a broad and contested political philosophy. These differences are borne out in the ways that states and indigenous nations, as well as individual political actors, think about concepts such as sovereignty and citizenship.

Differentiated citizenship both lays the foundation for and is a reflection of reconciliation, which is itself preliminary to self-determination. Reconciliation is a process of the state acknowledging colonialism's harm, expressing sorrow and resolving to correct the consequences of injustice and ensure that fairness and respect prevail in future relationships.

The Truth and Reconciliation Commission of Canada (TRC) and New Zealand's treaty settlement process are state attempts at reconciliation. As well as these, the book assesses attempts at reconciliation in Canada and the US and discusses, especially, the TRC's view that the Declaration is an important instrument of reconciliation and essential to the forging of just political relationships between indigenous nations and states and, for indigenous people, relationships within the state itself. Just political relationships require trust and an important measure of the Declaration's value is whether it can be used to promote such relationships. Trust is also preliminary to the conclusion of meaningful treaties between indigenous nations and the state—as indigenous nations in Australia are pursuing.

This book shows the significance of relationships among reconciliation, treaties and trust as preliminary to self-determination. Conversely, when Australia, Canada, New Zealand and the US voted against the Declaration, they reinforced indigenous peoples' mistrust of the state, and it is not yet evident that withdrawing their opposition to the Declaration has made a substantive difference. The relationship between trust and substantive improvement in people's lives is an important one and ultimately the most significant measure of the substance of the right to self-determination and of the Declaration's practical value. Therefore, this book examines why mistrust occurs and the Declaration's potential responses in helping to create societies where indigenous people may exercise meaningful self-determination through differentiated citizenship. The book shows how and why this is an ambitious aspiration that many indigenous peoples do not expect to succeed, but it also shows how and why it is an important goal in relation to the objectives and possibilities of self-determination.

Structure

Chapter 1 shows that the Declaration works against exclusive state sovereignty. This is because political agency should belong to indigenous peoples as much as it belongs to anyone else. There are rights of prior occupancy that indigenous peoples are entitled to retain and which distinguish indigenous claims from those of ethnic minorities as well as from the claims of the materially poor. The Declaration sets out the ways in which these claims can be admitted within the liberal democratic presumptions of the state. Chapter 1 is not an apology for the Declaration; rather, its purpose is to show how, according to the Declaration, liberal democracy can work better. Subsequent chapters critique that capacity.

The Declaration rationalises a liberal theory of indigeneity by proposing a reconsideration of citizenship, democracy, self-determination and sovereignty. It shows that, while these are often conceptualised in ways that exclude indigenous people and perspectives, exclusivity is a political choice rather than an inevitable outcome of the prevailing liberal order. Chapter 2 shows that integrating the Declaration's principles into a liberal theory of indigeneity creates political space for noncolonial political relationships for indigenous people both within the state as substantively equal citizens *and* beyond the state as members of self-determining indigenous communities.

Self-determination is a goal that ultimately presupposes reconciliation between indigenous peoples and the noncolonial state. It is a goal that is not yet realised in the liberal jurisdictions of Australia, Canada, New Zealand and the US, but one that is actively pursued through the Declaration setting out how self-determination might work in practice according to the liberal principles and presumptions that prevail in those jurisdictions. Consequently, while the Declaration does not restore indigenous political authority, it nevertheless demonstrates how the aspiration of self-determination is a reasonable, if contested, liberal claim. Chapter 3 shows how and why self-determination was contested by the four states who voted against the Declaration before 'reading down' its significance and giving it qualified support. It responds to these objections and introduces examples of liberal democratic inclusion.

As an example of the practical tension between the politics of inclusion and exclusion, Chapter 4 considers the Declaration's requirement that indigenous peoples' 'free, prior and informed consent' must be obtained before indigenous lands can be used by others for any kind of development, including resource extraction. This was one of the principal reasons for the four states voting against the Declaration. Their stance was justified with reference to an 'us' and 'them' binary in which mining was presented as always and everywhere in the national interest, and always and everywhere opposed by indigenous landowners. Chapter 4 shows that this simplistic yet powerful misrepresentation was used to position indigenous peoples beyond the nation-state and as unconcerned with the national interest. It is against this backdrop that the scepticism that some indigenous people hold about the Declaration's political value is discussed, especially the argument that imposing liberal human rights presumptions on nonliberal societies is itself a form of neo-colonial assimilation. While acknowledging the logic of some indigenous people's great suspicion of the liberal state, this book does not accept their arguments, and asks under which circumstances an indigenous person would accept a human right as injurious to their own cultural values.

The chapter argues that indigenous arguments against human rights are often arguments of convenience argued by the more powerful in an indigenous nation to cement their personal status over weaker members of the nation, most commonly women and children. The chapter's contrasting position is to accept the idea that self-determination belongs equally to *all* indigenous persons.

Chapter 5 argues that self-determination cannot occur to its fullest potential without indigenous people claiming the dual and differentiated citizenship of both the state *and* the indigenous nation. It introduces the idea of self-determination requiring substantive indigenous participation in a shared public sovereignty. The Declaration provides a framework for identifying the institutional arrangements that need to be made for this kind of substantive self-determination to occur. Chapter 5 considers self-determination's character and purpose. It considers the ways in which the claim to self-determination supports policy aspirations and possibilities across jurisdictions and policy domains and shows how and why self-determination may be thought about not simply as a body of rights but as a body of transformative political capacities.

Chapter 6 examines how the Declaration is understood in other states and considers its interpretation by jurisdictions as diverse as Belize, Bolivia, China, Finland, Denmark, Ecuador, Fiji, Norway, Malaysia and Sweden, all of which voted for its adoption. The Russian Federation, which abstained from the vote, is also considered. The chapter shows that, while cultural rights are generally accepted, the principle of free, prior and informed consent to outsiders' commercial activity on indigenous lands is not. The tension between state and indigenous perspectives supports the rethinking of sovereignty, citizenship and democracy that this book provides.

The comparative focus of Chapter 6 highlights the existence of a range of interpretations of self-determination and definitions of what it means to be indigenous. For substantive and meaningful self-determination, the concept must be acknowledged as a right that allows indigenous people to determine their own affairs and allows their participation in public affairs as distinctively indigenous citizens. Like the role of sustained cultural relationships to land, such considerations are essential to defining indigeneity and creating meaningful political relationships. The chapter shows why defining indigenous peoples as 'dominated' or 'minority' populations privileges politics and demography over culture as the principal determinant of what it means to be indigenous. Making domination a condition of indigeneity excludes the indigenous peoples of Fiji, for example, from the Declaration's protections. This is significant because, although their majority population status is restored, colonial legacy remains an influence on contemporary politics, and indigenous

claims to language, culture, land and to economic rights remain insecure. In this case, majority population status is not, from their own perspectives, the indigenous peoples' principal defining characteristic.

Chapter 7 considers the relationship between self-determination and sovereignty. It argues that self-determination requires a kind of liberal public sovereignty that is different from that often assumed in New Zealand, where the domain of the 'Crown-in-Parliament' is always in conflict with *rangatiratanga*, the Maori chiefly authority claimed as an extant right of prior occupancy.

The chapter introduces what it means for the Waitangi Tribunal, a judicial body concerned with the Treaty of Waitangi, to find that in signing the treaty, Maori did not cede their sovereignty to the British Crown. This is an important point, for if sovereignty remains with indigenous peoples, its contemporary character, and whether and how the authority it embodies is relative and relational to other sites of public power, can be explored.

Sovereignty is more complex than an absolute political authority once held by indigenous peoples, taken by the colonial state and reclaimed as the subject of contemporary indigenous politics. Examples from Australia and the US are also used to illustrate these complexities and to show that the Declaration makes presumptions about the nature and location of political power and provides ways of bringing distinctive indigenous authority into the national body politic. Sovereignty can then be understood as an authority *of* the people—not *over* the people. Indigenous peoples must logically and justly be part of that public sovereignty. Therefore, this book develops the idea of dual spaces of citizenship into a theory and practice of differentiated liberal citizenship, which is both consistent with the liberal democratic political organisation of the dissenting states and a defensible framework for giving effect to the Declaration.

Differentiated liberal citizenship, supported by the Declaration, proceeds from shared sovereignty and provides inclusive answers to the question of who belongs to the postsettler liberal state and on whose terms. Differentiated liberal citizenship allows indigenous peoples to reject colonial victimhood and exercise political authority in ways that are distinctive but equal to that reasonably claimed by other citizens. It presumes participatory parity in public affairs; that is, the idea that all people have the right to make important contributions to public debate and to deliberate and share in the formation of public values.

Chapter 8 shows that liberal democracy's capacity for assimilation does not reflect the ways that this system of political organisation must necessarily or logically function. Instead, liberal democracy has the capacity to allow indigenous people to participate equally and distinctively in the affairs of the states that have emerged over their territories. The chapter examines this capacity through theories of participatory parity and public reason that, ideally, allow all citizens to see that their ability to influence public decision making is fair and reasonable because it is equivalent to the capacity for influence that all citizens enjoy. For indigenous peoples, it is equivalent because, among other considerations, capacity is accepted as occurring with reference to cultural priorities and in response to aspirations for noncolonial political practices and relationships. Although the Declaration is not a panacea for the full restoration of indigenous nationhood, it raises liberal possibilities that are worth pursuing for their potential to make self-determination an aspiration of substantive value through differentiated citizenship. At the same time, as Chapter 9 explains, there are well-developed indigenous objections to differentiated citizenship.

Chapter 9 uses a report commissioned by the New Zealand Iwi (Tribal) Chairs Forum to demonstrate how much is given away when a politics of self-determination through separation from the state is proposed. The report, *He whakairo here whakaumu mō Aotearoa*, recommended a constitutional order that maintained rigid distinctions between Maori and Crown authority which are referred to, with reference to the Treaty of Waitangi, as *rangatiratanga* and *kāwanatanga*, respectively. In the report, *rangatiratanga* was depicted as belonging to Maori (i.e. 'us') and *kāwanatanga* to the Crown (i.e. 'them'). Conflated with New Zealanders of Anglo-Celtic descent (i.e. Pakeha citizens) the Crown was thus given an ethnic character that made it the site of only some citizens' political authority.

Rangatiratanga's purpose, among others, is to constrain sovereignty. However, if sovereignty is understood as the people's political authority exercised by, but not belonging inherently to, the 'Crown-in-Parliament', then *rangatiratanga* is part of the sovereign. Thus, rather than constraining sovereignty, it helps to shape it. Understood in these terms, *rangatiratanga* becomes an example of a collective indigenous voice influencing public authority, reflecting the argument that everybody has the right to help determine the political values of the state. At the same time, indigenous people retain the capacity to govern their distinctive affairs in their own

ways through their own institutions. Further, they have an inclusive citizenship in which indigenous political authority is independent in one sphere and shared in another; sovereignty is a collective power, and self-determination is a meaningful concept belonging simultaneously to individual citizens and to indigenous nations as an extant power of prior occupancy. The Declaration's ultimate value is that it supports these aspirations as liberal politics. The chapter uses examples from Australia, Canada and New Zealand to examine contemporary attempts at inclusive liberal politics and discusses, theoretically and practically, what these attempts mean and why they are more likely than isolationist approaches to self-determination to contribute to greater indigenous political authority and capacities of citizenship.

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