

# DISCUSSION *Paper*

14/99

DOES FEDERALISM SAFEGUARD  
INDIGENOUS RIGHTS?

*Christine Fletcher*

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Christine Fletcher

North Australia Research Unit

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# DOES FEDERALISM SAFEGUARD INDIGENOUS RIGHTS?

Christine Fletcher

## Introduction and Overview<sup>1</sup>

The topic of this paper was selected by the Canadian Committee for a Forum of Federations, Quebec. The aim of the paper is to provide a background for challenging relationships between indigenous peoples and governments in different federations. Federal systems operate on the principle that authority is shared and that federal constitutions, at least those in democratic federations, represent the interests of communities in sub-national jurisdictions as well as those at a national level. Yet, despite emphasising the virtues of federal democracies, federal constitutions in western democratic systems do not easily represent the interests, or satisfy the needs, of their indigenous populations.

Understanding the relationship between the quality of life of indigenous peoples and the federal framework of systems governing them requires bringing several political, cultural and constitutional strands together. These strands include how political beliefs might affect government institutions, particularly structures designed by western societies, belief systems of indigenous peoples and the close relationship between federal principles and the principles of self-determination.

Questions concerning the dominance of civil society in some of our democratic federations form part of the discussion on federal reform because they provide insight into how western social developments have influenced the organisation of authority – constitutions, justice systems, political processes, financial systems, territorial jurisdictions, and so on. The different ways in which jurisdictions share authority varies between federations – some jurisdictions discourage certain

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<sup>1</sup> The topic of this paper was commissioned by the Canadian Committee for a Forum of Federations for the International Conference on Federalism, Mont-Treblant, October 1999. This paper is based on a revised version of the original which will be e-published by the *Canadian Committee for a Forum of Federations* on the Internet, in English, French and Spanish.

freedoms, and some do not. Few, if any, governmental functions can be carried out by any one level of government solely independent of the functions of another.

The opportunity to address the special needs of indigenous peoples is likely to be advanced far more in a democratic federal system than in one where freedoms are constrained. If people are not free then federalism will be unlikely to be of much help for indigenous people. But, if governments do not recognise the principles of self-determination, or if governments are inflexible how can these principles be turned into practice?

History illustrates that many of the problems now facing indigenous peoples can be linked first, to their dispossession and second, to their exclusion from citizenship. Until relatively recently, aboriginal populations had no way of influencing federal institutions – they had little affect on constitutional design or the allocation of authority. Their lack of input into the way systems operate raises points about the possible role of civil society in the processes of dispossession.

There have been concerns also over the years that federal arrangements may have actually multiplied the organisations that hastened aboriginal dispossession, or that federalism at a regional level can discourage freedom for minorities – the argument that federalism was a racist form of government was made famous by William Riker in the early 1980s.<sup>2</sup> He later reversed his conclusions. But there is no apparent evidence in other federations, for example Australia, to say unambiguously how federalism, *per se*, impacts on indigenous peoples.

For sure, federalism complicates the process through which indigenous people can progress their rights. Alternatively, federalism may increase the opportunity for indigenous people to turn to another level of government for support. Either way, federalism is a system with a vast array of administrative architecture which, in most cases, is promoted for its flexibility. In theory, its strengths lie in its political responsiveness and its potential to accommodate relationships between different peoples.

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<sup>2</sup> Riker, William, 1964, *Federalism: Origins, Operation, Significance*, Little Brown Boston.

Riker, William, 1982, *Liberalism Against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice*, Freeman, San Francisco.



Federal systems have the instruments for practicing positive reform. In view of the need for reform, the value of adding new dimensions to our federal arrangements should be vigorously pursued.

## Does Federalism Enhance Quality of Life?

Because of the formal way that authority is shared – the breadth of government and the extent to which some jurisdictions act as a break on the activities of other governments – federalism offers potential options for peoples to pressure governments, at any level they choose, to have their quality of life improved.<sup>3</sup>

For indigenous peoples, that can be as a result of empowerment through gaining access to their ancestral lands. But, there is much to be concerned about in a federal system that is undemocratic and controlled through force rather than by consent and abuses the basic human rights of its indigenous people.

No doubt there are arguments that will find favour with federalism even in the worst system of government. The problem then becomes how to avoid down-playing the destruction of societies simply to favour the 'virtues' of federalism. For example, Nigeria is a federal system but it has a history of military rule and, until its recent transition to democratic rule, a poor record of human rights abuses against ethnic populations, particularly the Ogoni. Regime changes of this nature are likely to be deeply rooted in complex problems of government and cannot be simply explained as problems of federalism. Problems of a systemic nature highlight the need for careful consideration when generalising about the virtues of federal institutions.

If a system is classed as democratic and federal but recognised as corrupt how can it be capable of generosity towards its indigenous populations?

There are problems also with democratic federal systems. As we have already seen, conditions experienced by indigenous people in what some writers refer to as 'mature' federations are often compared to those one would expect to find in a

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<sup>3</sup> United Nations Working Group on Indigenous Peoples, *The Australian Contribution*, 10<sup>th</sup> Session 20–31 July 1992, Geneva, Aboriginal and Torres Strait Islander Commission, Canberra, December 1992. See also, Fletcher, C, 1998, 'Equity and Institutional Reform in Aboriginal Australia and Zimbabwe: A Framework for Analysis', *Journal of Developing Societies*, vol. XIV No. 2, pp271–291.

developing country. Mature federations are western and have a long record of stable federal governance. But they have failed their indigenous populations. Although, again, variations can be found across different systems and where some conditions are more favorable than others, there are likely to be inconsistencies in the standard of services available and in quality of life experiences.

## Belief Systems, Democracy and Federalism

Every country is conditioned by the combined affect of its political history, immigration trends, its cultural and social landscape, and the belief systems of its peoples. With some exceptions, social, political and economic institutions that dominate the lives of the indigenous people across most federal countries generally don't incorporate indigenous beliefs. The initial exclusion of indigenous societies from the institution of citizenship and from representing their own interests within national, state, provincial and local structures that support the general population, can be argued to be a key factor that influences the poor quality of governance that Indigenous peoples experience, worldwide.

In settler federations, particularly those where selective immigration policies placed limits on exposure to new cultures – in the case of Australia, pre World War II immigrants were almost all from the British Isles<sup>4</sup> – beliefs about government institutions in Australia were based solely on British parliamentary traditions.<sup>5</sup> Australian federal democracy was probably the most uninspiring because it moved through the first phase of the 20<sup>th</sup> century within a framework of monocultural traditions the roots of which some observers have traced back to its anglo-celtic inheritance. During the most formative years of government institution building, the only aspects of civil society that most people were likely to have experienced in that country (Australia) were shaped by the values of the dominant groups. In the case of Australia, the dominant groups were originally British.

Western liberal federal systems generally encourage their regional or state communities to share in the decision-making process. Indeed, that is the crux of multiple power sharing arrangements in a federal (liberal) Constitution. How

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<sup>4</sup> Aitkin, Don and Francis G. Castles, 1989, 'Democracy Untrammelled: The Australian Political Experience Since Federation', in K Hancock (ed) *Australian Society*, Cambridge University Press, Cambridge.

<sup>5</sup> For an illustration of the colonisation of ideas, see Edward W. Said, 1993. *Culture and Imperialism*, Vintage Books, Random House, New York.

federal systems that are not democratic can meet community expectations in the absence of being responsive is a difficult question.

There are problems also in western democratic systems: if the groups are indigenous, the standard of their quality of life is likely to resemble standards commonly found in third world countries rather than those experienced in a democratic federal system. Statistics on health and welfare, and community developments, in countries such as Australia, Canada, and the United States, for example, illustrate that indigenous peoples often experience widespread community deprivation commonly found in developing countries.<sup>6</sup>

In a federal system, relationships between indigenous peoples and governments are determined, in part, by the constitutional allocation of powers between state/provinces and federal governments. Most lands tend to fall under state/provincial jurisdiction, rather than under the jurisdiction of federal governments – although, federal governments have the authority to determine the administration of their own land.

Also, in post-colonial federal systems, early European settlers gravitated towards the most arable and accessible lands which then led to the dispossession of the traditional indigenous landowners.<sup>7</sup> In most cases, following the period of transition from colonial governance to a system of states or provinces, territorial and social dispossession and also general deprivation, worsened. Aboriginal peoples turned to the federal government for assistance – the constitutional protection of rights, intervention in state/provincial exploitation of traditional lands, funding for essential services, treaty processes, reconciliation and so on.

Whether the behaviour of state and provincial governments means that federalism, as a system, has worked *against* the interest of indigenous peoples or, whether, without federalism, aborigines would be trapped in a unitary system of bad governments without the opportunity to appeal to government at another level is a moot point. Whatever the speculation, hostility over land at the sub-national level has historically generated adversarial relations between indigenous peoples and governments. As a consequence, aborigines have appealed to federal governments

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<sup>6</sup> Australian Bureau of Statistics and The Australian Institute of Health and Welfare, 1999, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Canberra, ACT.

<sup>7</sup> Reynolds, Henry, 1996, *Aboriginal Sovereignty: Three Nations, One Australia*, Allen and Unwin, Sydney.

at a national level for constitutional protection and as a buffer against policies of sub-national governments.<sup>8</sup>

In some federations, state constitutions predate those of the central government and for that reason, some scholars, most notably Daniel J. Elazar, argue that the concept of a 'central' government at the national level of a federation is misleading. This argument arises in literature on the American Federation.<sup>9</sup> In the American scenario it would be virtually impossible for a national government to decentralise itself into state jurisdictions without consensus. Also, not all indigenous communities want to distance themselves indiscriminately from lower level government. The Australian aboriginal people are constantly demanding that the states take responsibility for delivering goods and services to indigenous communities of the same standard as those delivered to non-indigenous communities.

## Recognition of Self-determination

There is universal agreement by indigenous people that self-determination is their best chance for survival – self-determination, put into practice, is their bottom line. Indigenous gains have been made – territorial and self-governing institutions in Canada, sub-national economic sovereignty in some states in the United States, land rights and a limited form of recognised indigenous title (native title) in Australia, attempts to alleviate poverty and protect the peoples of Latin America and Mexico, and limited recognition for hill tribes in India and Pakistan.<sup>10</sup>

The prime aim of indigenous peoples is to achieve political recognition and retrieve their lands. Their claims are often illustrative of the destruction of their ancestral

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<sup>8</sup> There is a dearth of literature on this by Aboriginal peoples, – see, for example, Michael Dodson, *Fifth Report, 1997*, Office of the Aboriginal and Torres Strait Islander Commission, Sydney. Paul Chartrand, 1999, 'Aboriginal Peoples in Canada: Aspirations for Distributive Justice as Distinct Peoples', in Paul Havemann (ed), *Indigenous Peoples' Rights in Australia, Canada and New Zealand*, Oxford University Press; see also Beatriz Perrone-Moises, 'The Indians of Brazil: A Fragile Constitutional Recognition – The Constitutional Struggle of 1988', in Marie Leger (ed), *Aboriginal People: Towards Self-Government*, Black Rose Books, Montreal.

<sup>9</sup> Elazar, Daniel J, 1987, *Exploring Federalism*, University of Alabama Press, Tuscaloosa.

<sup>10</sup> See BK Roy Burman & BG Verghese (eds), *Aspring to Be – Tribal/Indigenous Condition*, published jointly by the Commonwealth Human Rights Initiative and Minority Rights Group, London, Konark Publishers, Delhi.

territories and their economic impoverishment. This certainly has been the case in Brazil, in Mexico and in other regions of the world – the countries of Latin America are home to some 30 million indigenous peoples and public interest groups are mindful of environmental issues in that part of the world. Environmental issues provide an international platform for indigenous people.<sup>11</sup>

However, in the collective mind of the protective nation state, the types of self-determination that indigenous groups pursue through the United Nations, and other international forums, appear to compete with various levels of sovereignty. Although, in practice there is plenty of room for compromise. Compromise notwithstanding, the fact that the federal principle embodies elements of self-determination means that there is bound to be a degree of competition within the framework relationship of these two strong principles. Also, governments in federal systems often see indigenous self-determination and self-government as potentially destabilising to their existing processes for policy control. The control factor is generally articulated as putting accountability at risk.<sup>12</sup>

Consensus over what actually constitutes self-determination differs between countries, and between the declarations resonating from the United Nations Indigenous Peoples Working Group and the governments whose jurisdiction might be effected by decisions taken elsewhere. In principle, self-determination provides the base for reform – in practice, self-determination ranges from limited recognition as first peoples in some countries, special institutional responses in other countries, constitutional recognition, through to control of revenue and expenditure, and self-government.<sup>13</sup>

The federal principle promotes guaranteed levels of authority at sub-national level whereas the principle of self-determination leads governments and societies to a point where the foundations for claims to self-government, sovereignty, and autonomy can be negotiated. It is at the juncture of these two principles where the

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<sup>11</sup> The European Union has recently approved a policy to recognise the rights of indigenous peoples in relation to the environment. The fact that the European Commission is directly involved in developing programs in the Asia Pacific region gives this policy some respectability within the international community (see *The Courier – Africa, Caribbean, Pacific, European Union*, No.173, January–February 1999, published by the European Commission in Brussels).

<sup>12</sup> Dodson, M, *Fifth Report, 1997*, Office of the Aboriginal and Torres Strait Islander Commission, Sydney.

<sup>13</sup> Fletcher, Christine, 1996, 'Trapped in Civil Society: Aborigines and Federalism in Australia', *Discussion Paper No.4/1996*, North Australia Research Unit, Australian National University, Canberra.

territorial jurisdiction, claimed by sub-national governments, becomes the cornerstone of land disputes between indigenous peoples and governments. State/provincial governments are reluctant to share their self-determination with indigenous peoples and it is left to national governments to either carve indigenous self-determination out of national jurisdiction, compensate the states/provinces, or use the boundaries of former native or aboriginal reserves and missions as the foundations for indigenous territorial autonomy.<sup>14</sup>

## Indigenous Unity

At the international level, political unity among indigenous peoples has been based primarily on their status as 'first peoples', rather than through the structure of the domestic power sharing arrangements in their respective countries. However, it is clear from the United Nations Working Group that forms of indigenous sovereignty are critically important.<sup>15</sup>

Indigenous peoples from developing countries, both unitary and federal – Indonesia, the Philippines, Laos, parts of Africa, the Pacific Island countries and the Americas – incorporate their interests into the international forum under the same principle of self-determination.

For aboriginal peoples generally, unity across borders has given them a global identity. Also, historically, 'the State' is not an indigenous concept. It is something that indigenous people unwillingly inherited – the formation of the State led to their dispossession.

The general effect of their united action at an international level has heightened public awareness, added to the strength of aboriginal organisations, increased the political status, and given leverage to demands for land control. It means too that quality of life factors for indigenous people are now under greater scrutiny than ever before.

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<sup>14</sup> A key reading for exploring specific issues related to federalism and minority cultures is Will Kymlicka and Jean-Robert Raviot, 'Living Together: International Aspects of Federal Systems', in *Canadian Foreign Policy*, Vol.5 (3), Fall 1997 pp1-50. For a collection of different approaches, see Kymlicka, W (ed), 1995, *The Rights of Minority Cultures*, Oxford University Press, New York.

<sup>15</sup> United Nations, Working Group on Indigenous Populations, Report, UN Doc. E/CN.4/Sub.2/AC.4/1996/2.

## Self-determination – International Trends and Responses

The United Nations Working Group has met every year since 1983 following its endorsement by the United Nations Commission on Human Rights in 1982.<sup>16</sup> The Group provided the blueprint, the principles, and basis, on which issues of self-determination and sovereignty became malleable and thereby defined by indigenous peoples from some federations, particularly Canada, Australia, the United States, India, Latin American countries, and Pakistan.

The Working Group's two main objectives are aimed at ensuring the protection of rights and freedoms and the monitoring of international standards. However, without support from national governments, the influence of the United Nations on member states is limited. The reality is, in most cases involving indigenous rights, national sovereignty - the way power is shared between national and sub-national governments - and the reality of domestic politics, tends to be much more telling on how government policy is made than United Nations declarations. In other words, the preparedness of governments to formally recognise self-determination has a long way to go, particularly in Australia.

Does this mean that there are such things as 'home truths'? Progress in advancing the interests of indigenous populations depends also on political and cultural traditions. India is the world's largest federal democracy but that country's complex social, tribal and ethnic realities make life difficult for hill tribes who claim special treatment. Self-determination for hill tribes in India, and also in regions of Pakistan, has to be compatible with the traditions and religious practices of other groups and also with the practices of local, state and national governments.

There is little evidence also that indigenous peoples from Pakistan or Bangladesh have benefited from their system of government. On the other hand, the indigenous *hillpeople* from the Chittagong district have been successful in mobilising support at the UN and within the International Labour Organisation (ILO).

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<sup>16</sup> United Nations, Working Group on Indigenous Populations, *The Australian Contribution*, 10<sup>th</sup> Session 20-31 July 1992, Geneva, Aboriginal and Torres Strait Islander Commission, Canberra, December 1992.

By comparison, the Inuit of North Canada have established very successful territorial jurisdictions and intergovernmental connections with national and sub-national governments in Canada. The overall trend towards measuring success has been to implement land based solutions by making provisions for indigenous communities to share the policy jurisdictions of other governments, or to work within new jurisdictions.

The next section illustrates that the principles of self-determination and federalism are not so far apart.

## Federalism and Self-determination

Shared government is the practical outcome of what is often referred to as the federal principle – a principle that promotes unity by encouraging consensus between diverse states, provinces and territories. It does this because it promises, through federal constitutions, to place limits on central authority. The principle is marked by its ability to marry different levels of constitutional authority with different types of regional autonomy and for the various sub-national and national governments to unite under a constitutional system.

The principle of self-determination also has multiple applications: the most general form of self-determination can be found in the domestic context. It arises when people and governments consent to share a formal framework with other regional communities. If agreement can be reached, it enables communities to control decisions for meeting their direct needs.

For most aboriginal peoples, self-determination can range from constitutional reform through to policy agreements between different parties. On the other hand, to guarantee that regional policy agreements will be sustained there must be constitutional protection, backed up by political will. The spectrum of self-determination ranges from the creation of new territories (Nunavut), through to forms of American Indian self-government programs, and legislation that establishes



provisions for inalienable freehold land rights (some Australian states and the Northern Territory).<sup>17</sup>

Canadians have been engaged in constitutional referenda, renewed treaty processes and territorial reforms for two decades. In the United States also, revenue and expenditure policies became part of Native American self-government processes some time ago. Treaty processes date back to the 19<sup>th</sup> century in both the United States and Canada. Most agreements are framed with national, rather than state, governments, with the exception of Australia. In Australia, the national government is generally excluded from regional agreements with indigenous groups because it has no administrative powers over state lands. In that country, with the exception of commonwealth (national government) administered territories, agreements with aboriginal groups are made with the states and other interested parties for various purposes, including commercial purposes, and to accelerate services and protect sites, and so on.

Indian self-government programs in the United States are supported by congressional provisions for sovereignty. That is a sub-national form of sovereignty compatible with federalism and takes a form that can be revised or revoked by Congress. On the other hand, within the system of intergovernmental relations that supports Indian affairs in the United States, Indian tribal governments have status along with state and local governments. The intergovernmental system now operating was endorsed by the Clinton Administration and is formally recognised by the federal legislature – a position envied by aboriginal peoples in Australia.

Australian Aborigines have only recently been recognised as the original owners (but not necessarily the custodians) of their country – that recognition followed a process that began with a national referendum in 1967. In 1993, Native Title was acknowledged in legislation in Australia – the *Mabo* decision – but governments in that country are so committed to electoral politics that the political will necessary for self-determination or self-government generally doesn't survive to the stage of reconciling differences.

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<sup>17</sup> More radical constitutional provisions allow for secessionist movements – for example, the Ethiopian federal constitution established a process to allow Eritrea to secede. In the Ethiopian case, the secessionist clause was seen as a condition for unity. Canada also confronts the issue of secession, but under different circumstances – see Allen Buchanan, in the Kymlicka (1995) reference for this paper.

Governments in many non-federal systems also recognise the significance of land for indigenous peoples – New Zealand is an example and, more recently, the Philippines. The Philippines government recently passed an *Indigenous Rights Act 1998* designed to protect indigenous peoples from exploitation and, up to now, governments and the international mining industry have made serious effort to understand the reforms that will take place under that *Act*. The *Act* has brought governments and indigenous communities from Australia and the Philippines together to discuss the Australian experience of similar legislation.

In practice, self-determination in federations has been a governmental concept. How self-determination is actually put into practice depends on realistic responses from governments, availability of resources, bureaucracy and, levels of political tolerance in the wider communities.

In federal systems, self-determination implies levels of regional autonomy, either in a limited sense through having institutional access to the design or the resourcing of policies, or by having the power to interact with other governments over various policy issues. For states and provinces, self-determination is formally guaranteed through constitutional systems that, in the older established federations, were initiated by the regions. In other words, sub-national governments often claim greater constitution responsibility than 'national' governments, notwithstanding the fact that sub-national governments are sometimes denied access to adequate financial resources – this is the case in Australia.<sup>18</sup> Federalism only works effectively when policy functions shared amongst different jurisdictions strikes a political balance.

## Consensus

Federalism and self-determination require an appreciation of cultural differences in order to coexist. In the literature on federalism, particularly that by Daniel J. Elazar, this appreciation is usually expressed in a form of consent. The Canadian experience has shown the effectiveness of achieving consensus. This is not to say that all federations can or should mimic Canada but it simply highlights the

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<sup>18</sup> States in the American Federal system are, according to Daniel J. Elazar's classic evaluation of federalism, rather politically and economically independent – 1987, *Exploring Federalism*, the University of Alabama Press, Tuscaloosa.

closeness of the two principles. Coexistence through consensus is not necessarily always smooth, but it works.

Probably the most difficult barrier to putting self-determination into practice is politics. Demands for self-determination are often questioned by sections of the non-indigenous community, particularly the question of why governments should assist to create conditions that 'favour' aborigines exclusively. For some casual observers, there are ideological questions to overcome: for some economists, there are simple rational reasons to be excluded. But for people whose very survival depends on reform, there are underlying cultural reasons why indigenous peoples must have access to rights and control factors, that distinguish them from the general population.

The answer itself is conditioned by different cultural perspectives and belief systems – an acceptance by governments that indigenous peoples were dispossessed of their land, and their societies almost wiped out. The reality is, Aboriginal belief systems are significantly different to those of non-indigenous societies, notably, western systems. This in itself justifies special governmental recognition.

## Why Indigenous Peoples Need Special Institutions in their Respective Federations

The traditional belief systems of Aboriginal societies are not able to be qualified by the same standards used by Europeans to measure their own standards. Nor are indigenous beliefs incorporated into the histories of western thought. Western governments generally accept that the values and beliefs of indigenous communities are 'different' but that does not necessarily translate into improvements in the quality of life of indigenous peoples.<sup>19</sup>

Before we dismiss the relevance of traditional beliefs, it bears remembering that the modern democratic principles of governance found in western political thought influence interpretations of the constitutional frameworks of today.

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<sup>19</sup> In Australia, this is made clear in dozens of reports by governments at all levels.

Agents of the State – government, the judiciary, the bureaucracy, and so on – consistently recall and interpret constitutional principles to guide practice. Why would indigenous societies pursue the interpretation of their own history any less vigorously?

Indigenous institutions are supported by land-based philosophies. Recent experience by ethnic communities in parts of former eastern Europe illustrate that when people are denied citizenship, forced to leave their families, removed from their lands, or forcibly controlled by the State, they no longer receive fundamental citizen protection – they are made totally vulnerable to exploitation and injury. As Walzer and others have argued, only when the shackles of repressive government are lifted, associations between peoples and governments positively advance.<sup>20</sup>

For civil society to exist, there must be freedom of association. During the formative years of constitution-building in Australia indigenous people were not free.

To ignore this feature of institution building in our federations would be to put the aboriginal peoples at further risk – deciding the shape of policies and of governing institutions without incorporating the indigenous peoples into the process.

## Conclusion

This paper has attempted to identify the main elements of government and society considered to be crucial in the process towards reconciling differences between indigenous peoples and governments in federal systems.

Indigenous peoples are among the world's most poor. By contrast, in many western federal systems mainstream societies are relatively wealthy and can increase the practical opportunities for aboriginal people to engage in governance. In federal democracies, the possibilities are only as limited as governments and societies choose. In federal systems where governments are unable to identify with the federal principle – where regional self-determination is denied, where democracy is

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<sup>20</sup> See Walzer, Michael, 1995, 'The Civil Society Argument', in R. Beiner (ed), *Theorizing Citizenship*, State University of New York Press, Albany, USA.

in trouble or where human dignity is compromised – federalism is likely to bring little joy. To generalise about the virtues of federalism and how well it responds to diversity we first need to make sure that a federal system is more than just the single sum of its dominant parts.

Based on the principles enunciated by the UN, self-determination has become the standard used by the indigenous people to measure their limited share of justice. Federalism already incorporates a domestic version of self-determination into its framework through the origins of its evolution as a system of government. Not only is it associated with different forms of community autonomy and regional self-government but it also supports different constitutional levels of authority and power-sharing among the 'special' regions and territories of our respective federations.<sup>21</sup> Constitutionally, federalism offers an ideal set of structures for the purpose of incorporating indigenous interests into the framework of government. Politically, indigenous self-determination relies for its survival on reaching a balance between the international and domestic interpretation of the principle.

For the aboriginal peoples, the effectiveness of federal institutions will be measured by how well the system responds to their demands.

Ultimately, reform turns on the line that if governments are to understand the significance of indigenous institutions, they need also to understand their own.

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<sup>21</sup> At a formal level, these differences, and similarities, are often used by scholars to classify federal systems as asymmetrical, or symmetrical.

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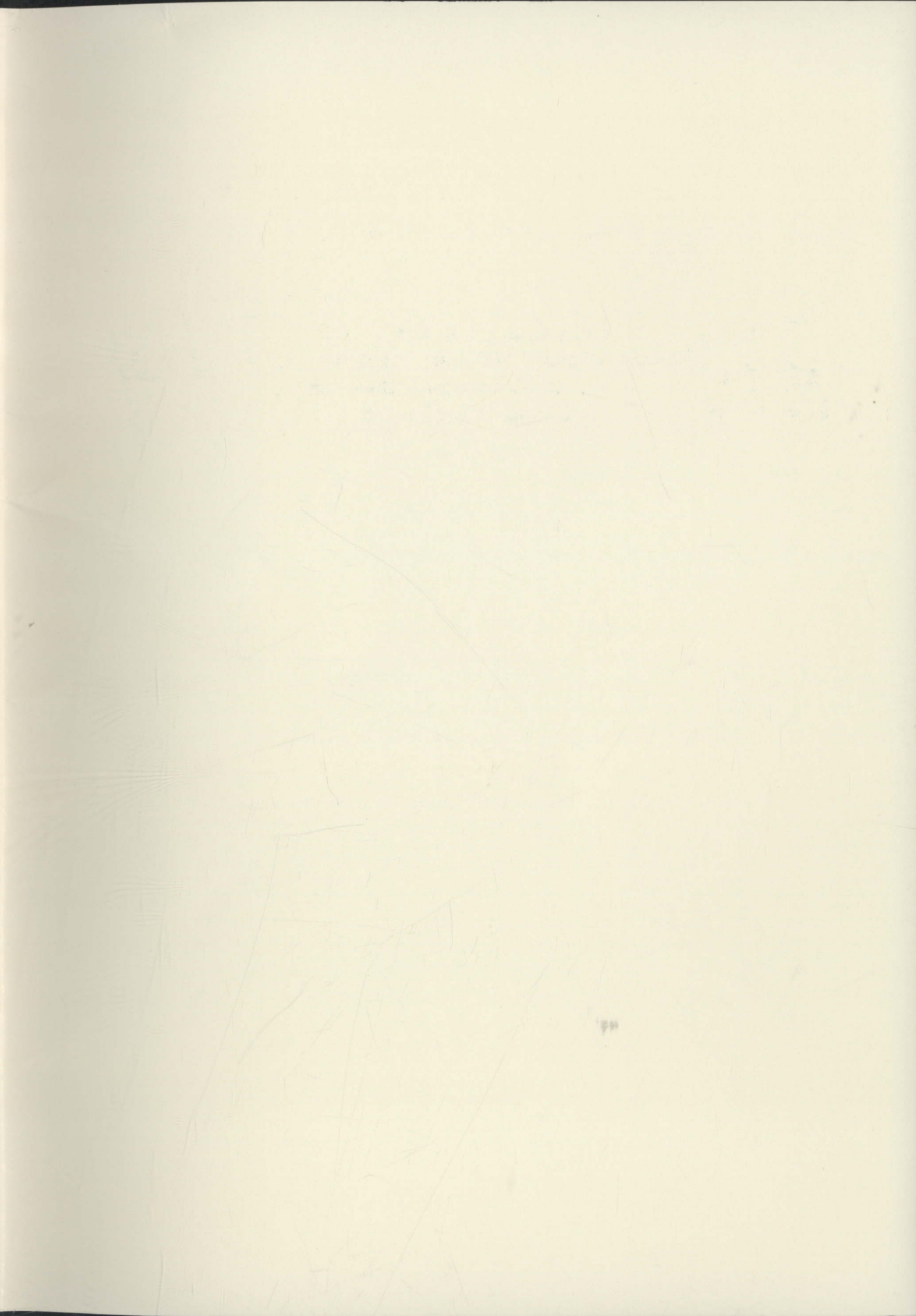
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