

Land Tenure and Housing:
A Policy Framework for Meeting the Needs of Indigenous Australians
Living in Remote Communities

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

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Declaration

I certify that, except where due acknowledgement has been made, the work is that of the author alone; the work has not been submitted previously, in whole or in part, to qualify for any other academic award; the content of this thesis is the result of work that has been carried out since the official commencement date of the approved research program and, any editorial work, paid or unpaid, carried out by a third party is acknowledged.

A handwritten signature in blue ink, appearing to read 'D. Trainham', is written in a cursive style.

D. Trainham

August 2012

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Note: Aboriginal and Torres Strait Islander people should be aware that this document contains images and names of people who have since passed away.

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Summary

This thesis presents a policy framework for improving outcomes for remote Indigenous land tenure and housing policy in Australia. The framework is developed from an analysis of related policies and programs in several pioneer settler societies with similar historical characteristics to Australia. The number of pioneer settler societies in the world is small. Originating in the 16th through 18th centuries, these societies grew out of European colonization practices that displaced indigenous societies, and made indigenous people a minority in their own land. The four societies examined in this thesis are Australia, Canada, New Zealand, and The United States of America.

This thesis is presented in three parts. Part 1 (Chapters 1-3) scopes the problem being addressed in this thesis: the gap(s) in well being between Indigenous and Non-Indigenous people as measured by indicators of wellbeing such as housing, health, education, and employment. These quality of life gaps can be seen as the result of two inadvertent and compounding impacts on indigenous people from colonial dispossession: 1) removal of livelihoods through a lack of access to land-based resources, and 2) loss of cultural identity caused by being separated from the land. All pioneer settler societies have used policies related to land tenure and housing to address the disparities in quality of life between Indigenous and non-Indigenous people. However, some have had more success than others. In this context, the situation in Australia is particularly notable in that there has been far less success in closing the gap in Indigenous land tenure and housing than the other similar societies. Elements of successes in different pioneer settler societies are later used to formulate a framework for improved land tenure and housing policy outcomes for remote Indigenous Australia. Part 1 also presents an overview of the research design used in the case studies of the four pioneer settler societies.

Part 2 (Chapters 4-7) presents the case studies of indigenous housing and land tenure in the four pioneer settler societies. The policy factors that are analyzed illustrate the various methods used by governments in an attempt improve Indigenous quality of life.

- 1) ***Australia:*** There have been numerous policy attempts in Australia to improve the quality of life in remote Indigenous communities. These policies range from forced acculturation practices to social welfare and health programs. The main policy factors that will be examined concern programs to foster improved policy outcomes through housing and land tenure. The Native Title Act of 1993 and the *Mabo v. Queensland* case have addressed some land tenure/title issues, while recent policy programs, including the Community Housing Infrastructure Program (CHIP), and the National Partnership Agreement on Remote Indigenous Housing (NPAIH), have sought to improve the quality of housing for Indigenous people in Australia. This investigation of housing programs argues that

this succession of programs is an indicator of a problematic policy design and policy implementation.

- 2) **Canada:** Land tenure and housing policies in Canada, especially since the Second World War, have focused on improving Indigenous livelihoods through tenure and related policies. Several policy lessons for improving the quality of life of Indigenous people can be derived from Canada. The investigation firstly focuses on an analysis of the ongoing treaty process in the province of British Columbia, which concerns the utilization of resources on Indigenous held land and the implications of policy changes to Indigenous quality of life. Secondly, the implication of the 'hands off' approach through the creation of an Indigenous homeland in the forming of a self-governing territory is examined. Lastly, an example of a negotiated agreement, over the management of natural resources, at the provincial level is reviewed. These examples of policy in Canada present lessons largely centered on Indigenous livelihoods relating to land.
- 3) **New Zealand:** This case study concentrates on the history of policy initiatives and the factors that have driven Indigenous policy in New Zealand. These include the Waitangi Treaty on the ownership and management of land and the use of Indigenous specific language and cultural practices. Conflict over the interpretation of the meaning of terminology used in the Waitangi Treaty has led to several legal challenges involving customary rights as well as the questioning of land and offshore management rights. The investigation of the Waitangi Treaty and its influence on New Zealand Indigenous policy suggests that perspective and semantics in the creation of treaties plays an important role in legal document interpretation. Due to differences in perspective wrought through interpretation of the Waitangi Treaty, conflict arose concerning land tenure and housing rights. This conflict turned to open hostility due to increasing non-Indigenous settlement and the need for access to land, which left the Maori dispossessed. These semantical differences continue to plague Maori peoples causing a low quality of life. Though some strides have been made in the areas of housing, fishing/seabed rights, and the joint management of land/natural resources.
- 4) **United States of America:** The dispossession of land and the subjugation of traditional practices in the United States have resulted in a long history of eroding Indigenous culture. In recent decades these 'wrongs' have been addressed through evolving policy means, ranging from assimilation and termination policies (e.g. the surrendering of Indigenous rights) to the recent promotion of Indigenous self-reliance. The latter has resulted in the implementation of Indian 'gaming' as a means of achieving self-reliance and providing compensation for the loss of land.

Part 3 (Chapters 8-10) draws upon the data in the four case studies to develop a policy framework for use in Australia. Chapter 8 presents a meta-analysis of the four case studies, which identifies a wide range of lessons potentially relevant to Australian context from the other three nations. Similarities and differences in policy approaches and outcomes for pioneer settler societies are identified, compared, and contrasted. A synthesis of the lessons from the meta-analysis is used to identify two themes and eight ‘building blocks’ to frame policymaking. These themes are: ‘Experiencing the Land and People’, and ‘The Policy Process’. Additionally, the building blocks are supported by principles that establish an action to incorporate the building block into the policymaking framework. The building blocks and supporting principles associated with each theme are:

Experiencing the Land and People

Building Block 1: Understand the policy audience.

Principle: Prioritize engagement with all policy stakeholders

Building Block 2: Understand the context in which policy is being developed.

Principle: Prioritize policymaking efforts that ensure mutual understanding of concepts from and respect for community stakeholders

Building Block 3: Understand the cross-cultural effects of policy.

Principle: Encourage the incorporation of multiple stakeholder perspectives to effectively measure the social impact of policy decisions across different cultures

Building Block 4: Understand the multiple perspectives (knowledge systems) of different stakeholder interests and their effect on policy development.

Principle: Prioritize the incorporation of one’s own perspective to make informed policy decisions rather than anticipating unanimity of stakeholder groups

The Policy Process

Building Block 5: Policy management (how to best administer policy, by whom, and using what model)

Principle: Promote efficiency in policy management through appropriate mechanisms

Building Block 6: Policy environment (understand the geographic setting and varied stakeholder interests)

Principle: Prioritize the development of policy based upon cultural and geographic appropriateness

Building Block 7: Understand the short term and long term effects of policy decisions.

Principle: Promote the development of policy through greater awareness of intended outcomes and the development of policy that extends beyond political cycles

Building Block 8: Develop consistency in policy implementation.

Principle: Apply policy in an objective manner

These ‘building blocks’ and principles can make sure that the actors, activities and practices used in the policymaking process facilitate the exchange of relevant information, redress potential conflict and maximize opportunities for collaboration among stakeholders in policymaking. The framework for policymaking is an insightful tool for making sense of the complexities associated with particular policy decisions, thus expediting improved policy outcomes on land tenure and housing issues. As such, the policy ‘building blocks’ and supporting principles provide a road map for developing a policy framework that can bridge ‘the gap’ in well being between Indigenous and Non-Indigenous people.

Part 1



1

Introduction

1.1 The Key Issue

Many in the western world often seem to give little thought to housing or one's homeland beyond the associated economic values. The home is a commodity, a key asset in a family's wealth creation strategy (Rohe, Van Zandt, & McCarthy, 2002). Yet, the oft-heard expression that 'a person's home is his/her castle' implies that housing and land play central roles in how people define their position in society. Having secure tenure in land and housing leads to positive community and social wellbeing in the areas of health, education, and employment (Carter & Polevychok, 2004; UN-Habitat).

A failure to address major housing problems and the closely related subject of land tenure can cause a sense of powerlessness within disadvantaged groups (Beckley, 2003). This is especially apparent within indigenous societies that exist within nations settled by Europeans during colonisation such as Australia, Canada, New Zealand, and the United States. Housing and land tenure are endemic problems for Indigenous societies within such nations (Mercer, 1993). Whether deliberate or not, the non-Indigenous populations of these nations seem to possess a naïve complacency about the problems faced by Indigenous peoples in their nations (Alfred & Cornassel, 2005; Kuper, 2003). This has led to a cycle of repeated policy failures (failed government statutes and procedures), which has resulted in the low standard of living experienced by Indigenous people despite the goal of 'closing the gap' between Indigenous communities and their non-Indigenous counterparts (Altman, 2009a; Cheadle, 1994; Kingsley, Spencer, & Simonson, 1995; OxfamAustralia, 2007; Smylie & Adomako, 2009; Weaver, 1993). Thus, a question of whether policy has let down Indigenous people needs to be asked. The answer is a complex one and serves as the basis for this research. Understanding this complexity are factors such as the differences in Indigenous and non-indigenous perceptions of 'land' and 'home' and the lack of a strong Indigenous voice in policymaking (Fleras & Maaka, 2010).

There are deeply fundamental differences in the settler society view of land and home as possessions and the view of Indigenous societies who see land and home as extensions of the self, spirituality, and cultural identity (Pratt, 1992; Tuan, 1974, 1977). To put it simply, settler

societies prefer rigid definitions of land and home by marking boundaries around property (Gibson, 1999; Schwieterman & Caspall, 2006). This has strong significance for the policy making process as it tends to ignore broader issues of context, culture, and values in policy making (Davis, 1993; Dror, 1986). Constructing policy concerning land and home in such a manner detaches policy makers from place, a situation that often leads to negative outcomes because of a lack of appreciation of the meaning of places (Dror, 1986; Garling & Evans, 1991; Relph, 1976).

Detachment from the land is evident in a work of fiction by Leo Tolstoy (1886 (1907)) titled, *How Much Land Does a Man Need?* In this story, the main character becomes so ensconced in his personal beliefs about how to value land that he follows them to his personal folly. Though a work of fiction, this tale suggests that being too detached from the subject at hand (in this case, the non-economic meanings of land) can cause a party to lose perspective. Subsequently, a detachment from place in policy making can lead to the neglect of basic policy elements such as negative impacts on stakeholders, experienced if their voices are not being heard. In such circumstance, a policy maker can become distanced from the problem and left dealing with a hyper-reality or simulacra of a simulacra rather than the actual situation (Baudrillard, 1981, 2005). This thesis seeks to break out of this approach to indigenous policymaking by exploring how Western and Indigenous perspective on land and housing can be integrated. At the crux of this is the need for local knowledge and experience in policy construction. When these are missing, policy will fall short.

1.2 Defining the Problem

The failure to act upon an appreciation of the different perspectives on land and housing held by various groups and societies helps explain why policy efforts in these areas often result in poor outcomes. This is especially the case in pioneer settler societies. The term pioneer settler societies¹ is used to define modern nations that possess specific characteristics in their language and laws brought from Europe that shaped their evolution into modern nation states. The genealogy of these societies lay in Western Europe during the height of naval power in Britain, France, Portugal, Spain, and The Nederland's. Some examples of pioneer settler societies and their progenitors are:

- ***Britain*** - Australia, Canada, New Zealand, Republic of South Africa, and The United States
- ***France*** - Canada, Mauritius, and The United States
- ***Portugal*** - Brazil
- ***Spain*** - Argentina, Chile, Mexico, and The United States

¹ Other terms commonly used are: colonial societies and settler societies

From the list of modern pioneer societies shown previously another defining characteristic can be recognised: with the exception of the Republic of South Africa all pioneer settler societies reached a point in their history in, which settlers of European origin displaced the lands original inhabitants to become the dominant society in both a cultural and demographic sense. Even with this common characteristic there remain inherit differences between pioneer societies of different European progenitors making a comparison between places such as Brazil and Mexico difficult. Therefore, it was decided to keep within the sphere of British influence in order to draw a relevant comparison between the culture and traditions of pioneer settler societies. From the five British descended pioneer settler societies four were chosen for study: Australia, Canada, New Zealand, and The United States. The Republic of South Africa was omitted from the study due to the vastly divergent historical path it followed in terms of minority oppression by the European population of the majority African population (Belich, 2009).

The four pioneer settler societies will be used as case studies to examine how policy regarding land tenure and housing has shaped well being outcomes for Indigenous people in these nations. Where these societies differ is central area of study in this thesis as vastly different policy outcomes have resonated for the respective Indigenous people. These differences can be identified in a brief description of each nation:

Australia – There are two distinct Indigenous groups in Australia. These are the *Aborigines* and *Torres Strait Islanders*. The federal government is responsible for most policy decisions concerning Indigenous Australians. Australian states (e.g. Queensland and South Australia) do have some autonomy in conducting Indigenous policy. However, in the Northern Territory where a large Aboriginal population is located, federal policy is paramount due to the ‘territory’ status, which limits its autonomy. This difference between the administration of policy between the territory and the states has produced varied outcomes for Indigenous people.

Canada – Three main indigenous groups are recognised by the Canadian government: the *First Nations*, *Inuit*, and *Metis*. Each of these groups possesses unique characteristics such as customs, utilisation of resources and locations within Canada. These Indigenous groups are additionally recognised constitutionally, which endows them with a specific list of rights. Many of the First Nations in western Canada present a unique line of inquiry, as their original land rights were never negotiated through a treaty process. Combined with the federal government’s delegation of policy concerning the provision of some Indigenous services to the provinces, this has created mixed outcomes for the three separate groups of Indigenous Canadians.

New Zealand – The *Maori* people are the only indigenous group in New Zealand; however, regional cultural variations exist especially between the North and South islands of the country. The *Maori* are a visible minority of the national population (approximately 20% of total). This gives them strong influence in policies directed at improving their well being. New Zealand is also the only society to conduct a treaty with indigenous people from its founding. Unfortunately, the semantics of this treaty have been contentious, creating uncertainty and policy missteps in New Zealand concerning Maori housing and land issues.

United States – Indigenous people in United States have had the longest experience of government policymaking. Policy governing Indigenous Americans can be divided into three categories pertaining to the three Indigenous subgroups according to the United States Census Bureau. These are: *Native Americans* (who live in the contiguous 48 states), *Alaska Natives* and *Native Hawaiians*. Each of these Indigenous groups has a different historical experience with policy, creating an uneven level of well being between groups. The outcome of policy dealings between the US government, state governments, and Indigenous peoples has created a range lessons for what should and should not be done to improve land and housing issues faced by Indigenous Americans.

1.3 Land and Housing Issues in Australia Today

In contrast to other countries, Australia is often referred to as ‘the lucky country.’ This is often taken to infer that much of its success happened by chance and the sheer force of will by those who chose to make the country ‘great.’ However, this is a misconception. When Donald Horne coined the term in the 1960’s, he did so as a form of dramatic irony evoking the nation’s blandness and depiction as part of a larger British realm at the time (Horne, 1964). In more recent years ‘the lucky country’ has come to mean an open society that embraces a rich multicultural atmosphere where everyone has an opportunity to live healthy and prosperous lives. However, a large gap in well being exists between Indigenous and non-indigenous Australians (Altman, Biddle, & Hunter, 2008).

For the purposes of this research *Indigenous well being* will be framed as *a measurement of the socio-cultural, economic, and environmental vitality of an Indigenous population*. This framing was generated from several sources that are concerned with the wellbeing of Indigenous peoples including the National Aboriginal Community Controlled Health Organisation (NACCHO), who with support from the National Aboriginal Health Strategy of 1989 and its 1994 evaluation define Aboriginal health as *means not just the physical well being of an individual, but also the social, emotional, and cultural wellbeing of the whole community* (NACCHO, 2011; OATSIH, 1989, 1994). Additionally the World

Health Organization, UN-Habitat, and the United Nations Declaration of the Rights of Indigenous People add protections for the environment to ensure that Indigenous land tenure and a right to adequate housing are included as a component of well being (Shelton, 2002; Taylor, 2008; UN, 2007; UN-Habitat).

In framing Indigenous well being a method for its measurement is needed. The best method for measurement is the Human Development Index (HDI). The HDI is a composite index developed by the United Nations to compare a nation’s relative development in terms of health, education, and literacy levels relative to other nations. Nations with high and very high HDI scores have high literacy rates, educational attainment, life expectancy, and low infant mortality. Australia, Canada, New Zealand, and The United States have consistently received very high HDI scores since the creation of the index prompting promising prospects when domestic well being policy is being considered. Further explanation on the HDI as well as how the score are calculated is provided at the end of this thesis in Appendix A. However a nation’s HDI score is reflective of the entire population of the nation. This implies the omission of the well being of minority groups, such as Indigenous people, who by comparison may experience significantly lower wellbeing. Table 1.1 provides data on the HDI gap between Indigenous and non-Indigenous people in Australia.

Table 1.1 - Development Disparities in Australia after ((Cooke, Mitrou, Lawrence, Guimond, & Beavon) and updated by the author using the same methodology

Year of Data	Non-Aboriginal	Aboriginal and Torres Strait Islander	Aboriginal-Non-Aboriginal Gap
1990/1	0.835	0.675	0.160
1995/6	0.850	0.677	0.173
2000/1	0.858	0.674	0.184
2005/6	0.968	Inferred 0.782	Inferred 0.186
2010/1 ²	0.928	Inferred 0.750	Inferred 0.178

A large cause of this gap is the way government policy concerning Indigenous Australians is administered. This issue is visible in the problems associated with the delivery of health services to remote communities (Ring & Brown, 2003; Zhao & Dempsey, 2006). As the outcomes of Indigenous health services are closely connected to tenure and housing, these related fields also play a crucial role in the overall well being of Indigenous communities. When tenure is uncertain the location where a dwelling can be built is additionally uncertain causing day-to-day stresses hindering community well being and social cohesion. As a result of these related problems efforts have been focused on closing the gap between Indigenous and non-indigenous Australians. Australians are not alone in this effort as evidenced by efforts in other pioneer settler societies.

² Note the lower HDI score for this year is a result of a change in tabulation methodology (See Appendix A)

Similar disparities are evident in well being between Indigenous and non-Indigenous people in the three other pioneer settler societies. However policies in these societies have caused the gap in the HDI to close over time (Table 1.2).

Table 1.2 - The Closing Human Development Gap in Three Other Nations after ((Cooke et al.) and updated by the author using the same methodology

Canada

Year of Data	Non-Aboriginal	Aboriginal	Aboriginal-Non-Aboriginal Gap
1990/1	0.889	0.786	0.103
1995/6	0.889	0.794	0.095
2000/1	0.900	0.815	0.085
2005/6	0.965	Inferred 0.895	Inferred 0.075
2010/1	0.908	Inferred 0.836	Inferred 0.072

New Zealand³

Year of Data	Non-Aboriginal	Maori	Aboriginal-Non-Aboriginal Gap
1990/1	0.808	0.650	0.158
1995/6	0.835	0.689	0.146
2000/1	0.867	0.727	0.139
2005/6	0.948	Inferred 0.815	Inferred 0.133
2010/1	0.908	Inferred 0.778	Inferred 0.130

United States⁴

Year of Data	Non-Aboriginal	American Indian and Alaska Native	Aboriginal-Non-Aboriginal Gap
1990/1	0.859	0.785	0.074
2000/1	0.872	0.811	0.061
2010/1	0.909	Inferred 0.859	Inferred 0.050

The gap in well being of Indigenous peoples in Canada, New Zealand, and the United States compared to their counterparts in Australia, has begun to close in many aspects such as life expectancy, educational attainment, and literacy (Cooke et al., 2007; Rudd, 2009). These positive changes have been the result of government as well as locally oriented programs with clear goals establishing benchmarks for reducing Indigenous disadvantage (G. Banks, 2005). In one society the level of Indigenous disadvantage increased during the period between 1991 and 2001(Cooke et al., 2007). This society as shown in Table 1.1 is Australia.

1.4 Research Objectives and Questions

This thesis explores the role of policies in the areas of land tenure and housing in addressing gaps in well being between Indigenous and non-Indigenous peoples. Each of pioneer settler society (Canada, New Zealand, and The United States) bear similar troubled histories as Australia in the search to improve well being gaps as seen in Table 1.2. However, unlike Australia, these other

³ Due to the earthquakes on the South Island of New Zealand near the time of the census the 2010/2011 census has been delayed. The HDI figure for this interval is from the 2011 United Nations Human Development Report.

⁴ The United States conducts a census on a decennial basis rather than on five year intervals as is practice in Australia, Canada, and New Zealand.

nations have made some progress in closing the disparity gap. This thesis analyzes the history of land tenure and housing policies for Indigenous people living in remote Australia in order to highlight their importance in closing the gap. The decision to focus on remote Australia and not Indigenous populations living within urban centers was made as the policies which govern these areas are fairly uniform whereas policies in urban centers are set by state government. It also studies three other countries in order to identify policy lessons in the areas of Indigenous land tenure and housing that are relevant to Australia.

Therefore, the aim of this thesis is to:

**To develop a policy framework to improve desired land tenure
and housing outcomes for remote Indigenous Australia**

Four objectives were developed to achieve this aim:

1. To identify Indigenous v. non-indigenous perceptions of land tenure and housing in four pioneer settler societies.
2. To examine the evolution of contemporary policy approaches to Indigenous housing and land tenure in four pioneer settler societies.
3. To identify and examine Indigenous land tenure and housing policy reforms in Canada, New Zealand, and the United States, which have led to successful outcomes and contextualize the lessons for an Indigenous policy framework in remote Australia.
4. To develop a policy framework for integrating Indigenous and Western perspectives on land tenure and housing in Australia.

Each objective is supported by a series of research questions that guide the research in this thesis.

The research questions thesis are:

1. To identify Indigenous v. non-indigenous perceptions of land tenure and housing in four pioneer settler societies.
 - 1.1 *What are the similarities and differences in Indigenous v. non-indigenous perspectives and practices relating to land tenure in Canada, New Zealand, the United States and Australia?* This question seeks to identify different perspectives that Indigenous peoples and their pioneer settler counterparts have toward the landscape.
 - 1.2 *What are the similarities and differences in the meaning of housing to Indigenous and non-indigenous people in Canada, New Zealand, the United States and Australia?* The question seeks to define the meaning of housing to Indigenous and non-indigenous societies with a focus on the policy implications caused by differences in meaning.
 - 1.3 *What were the law and policy responses by European colonists in four pioneer settler societies to indigenous land tenure and housing practices?* This question seeks to codify the relationship between the colonists and views of land tenure and housing as expressed in law and policy.

- 1.4 *What influenced the generally negative response by European colonists to the land tenure and housing practices of Indigenous peoples?* This question seeks to identify political, socio-cultural, economic, and environmental factors that influence law and policy making, which had a negative effect upon Indigenous peoples.

2. To examine the evolution of contemporary policy approaches to Indigenous housing and land tenure in four pioneer settler societies.
 - 2.1 *What are the similarities and differences in responses taken by Canada, New Zealand, the United States and Australia to redress negative outcomes of government created Indigenous policy on land tenure and housing in recent decades?* This question seeks to identify paradigm shifts in policy in past decades regarding Indigenous land tenure and housing.
 - 2.2 *How effective are recent policy approaches to land tenure and housing to improving the societal well being of Indigenous people in their respective nations to their non-indigenous counterparts?* This question seeks to measure the effectiveness of changes to land tenure and housing policy that resulted in changes to Indigenous well being.

3. To identify and examine Indigenous land tenure and housing policy reforms in Canada, New Zealand, and the United States, which have led to successful outcomes and to contextualize the lessons for an Indigenous policy framework in remote Australia.
 - 3.1 *What policy reforms have been enacted in Canada, New Zealand, and the United States that have led to positive changes in Indigenous land tenure and housing outcomes?* This question seeks to identify the policy changes that have created a positive effect on Indigenous land tenure and housing policy.
 - 3.2 *What are the key factors that lead to successful land tenure and housing policy outcomes in Canada, New Zealand, and the United States?* This question intends to identify the relationship between policy reform and positive policy outcomes.

4. To develop a policy framework for integrating Indigenous and Western perspectives on land tenure and housing in Australia.
 - 4.1 *What perspectives on land tenure and housing policy in Australia are essential to producing an inclusive and lasting policy framework?* This question seeks to frame the socio-cultural elements needed for developing a policy framework.
 - 4.2 *What policy elements are essential to developing an Indigenous land tenure and housing policy framework?* This question seeks to synthesize the policy governance elements necessary to developing a policy framework.

1.5 Approach to the Study and Structure of the Thesis

This study adopts a quasi-historical approach through the illustration and analysis of relevant historical and legal documents on land tenure and housing policies in each of the four pioneer settler societies. The resultant case of the policies in Australia is used to contextualize the study and provide lessons for policymaking and recontextualizing the process based upon the successes

identified in the case studies of Canada, New Zealand, and The United States. The lessons from these three case studies was then synthesized through a meta-analysis and used to construct the elements of and relationships in a framework for Indigenous land tenure and housing policy for remote Australia. The research was conducted in three phases.

Phase 1 involved the collection of data needed to answer the research aim, objectives, and questions. After initial data collection, inquiry upon the history of Indigenous land tenure and housing policy in the four pioneer settler societies took place. The inquiry entailed the compiling of historical literature, legal doctrine, and policy examples from Australia and three other pioneer settler societies (Canada, New Zealand, and the United States) with large Indigenous populations. The assembled material was then used to frame the policymaking practices for land tenure and housing for each pioneer settler society. Drawing from these practices a connection was made to the direct and indirect influence of values on policymaking about Indigenous land tenure and housing.

Chapter 2 provides a conceptual background for understanding the relevant historical writings and legal documents on land tenure and housing policies in pioneer settler societies. The research held that landscape values are often in conflict between Indigenous and Non-Indigenous groups. The subsequent influence these values exert upon policy in the related fields of land tenure and housing can be significant. The literature on land tenure, housing, and well being is also discussed. Additionally this chapter discusses several examples of policy frameworks that illustrate the influence values have upon policy aims, objectives, and outcomes.

Chapter 3 outlines the research design in detail as well as the locations of data sources and the methods used to access them. A comprehensive list of all paper-based data sources consulted in research libraries and archives can also be found in the Appendix B. It provides details of Boolean logic, meta-analysis, and the step-by-step processes that were taken to collect and examine the data to construct a body of evidence to illustrate the case study. This process ensured the validity of the data used to construct the framework through a scientific approach.

Phase 2 presents the findings of the examination of Indigenous land tenure and housing policy in the four pioneer settler societies. Chapter 4 reviews the path taken by Indigenous policy in Australia using political, historical, and legal records that detail the different methodologies used to address inequality between Indigenous and Non-Indigenous groups. In many of these methodologies there is a demonstrated failure to take into account Indigenous knowledge. This left the constructed policy incomplete and, often, paternalistic (B. Hunter, 2009; Rowse, 1988; Thompson & Wadley, 2007). The review of land tenure and housing policy in Indigenous

Australia suggests that high value has been placed upon European knowledge and understanding over that of indigenous knowledge. This has caused policy to fall short of its objectives, e.g. a decrease in the well being of Indigenous compared to Non-Indigenous peoples when their human development index is calculated separately (Cooke et al., 2007). Failed and incomplete policy demonstrates a clear need for greater involvement of Indigenous knowledge as a mitigation strategy.

In response, the need for examples of greater incorporation of Indigenous knowledge, values, and experience into policies can be found in Chapters 5, 6, and 7. These chapters present the results of investigation of the three other case study nations i.e. the United States, Canada, and New Zealand. The methodologies used in these nations policy approaches has produced different outcomes for Indigenous people in the areas of land tenure and housing from those in Australia. This allows for lessons to be learned that can inform this research after appropriate recontextualization (Guevara, 2006, 2007).

Phase 3 focussed in integrating the lessons learned from the case studies into a policy framework. The technique of meta-analysis is used in Chapter 8 to synthesise the key findings on Indigenous land tenure and housing policy from each country (Borenstein, Hedges, Higgins, & Rothstein, 2009). The findings of the meta-analysis resulted in eleven key lessons that form a body of evidence to support policy improvement in eight Indigenous policy areas in Australia. These are: Policy Audience, Policy Context, Cross-cultural Understanding of Policy, Multiple Perspectives on Policy, Policy Management, Policy Environment, Short and Long Term Effects of Policy decisions, and Consistency in Policy Implementation. These policy areas served as the basis for an assessment tool that was used to rank each case study nation based upon its effectiveness in improving the wellbeing of Indigenous peoples. Each nation showed indications of where policy changes were needed and hinted at appropriate policy routes that could be followed in Australia. While no one study nation provides the complete solution to policy reform in Australia, the act of combining them through meta analysis provides a near complete set of policy reforms for drafting a new framework for addressing land tenure and housing issues in Indigenous Australia. This is presented in Chapter 9.

Chapter 9 focuses on the composition of a framework for improving indigenous tenure and housing policy in Australia. This was based upon the most positive policy outcomes from the other 3 case study nations. The positive outcomes were based upon measurable improvement in the indicators of well being in Canada, New Zealand, and the United States. Using these outcomes and the eight 'building blocks' that supported improved policy, a framework was

developed to direct Indigenous policy in Australia by suggesting changes, which would improve on the ground outcomes.

Chapter 10 is the conclusion of this study. It reviews the aim and objectives of the study and the research used to achieve them. The policy framework is also reviewed. The chapter concludes with a discussion of the implementation of Indigenous policy reform resulting from this research and recommends areas for further study. The major work now needed is to engage with the policymaking process and all stakeholders to validate the policy framework and then seek ways of implementing it or, at least aspects of it. As a consequence of said implementation, further revisions may be required to make the policy framework applicable to the needs of each level of government (state and territory) where it will be used. This situation demonstrates that work in the field of improving Indigenous policy is an ongoing process and arriving at the included policy framework is one approach to addressing Indigenous land tenure and housing in remote Australia.

2

Towards a Conceptual Foundation for Indigenous Land Tenure and Housing Policy

A creature who has spent his life creating one particular representation of his selfdom will die rather than become the antithesis of that representation.

-Frank Herbert

2.1 Introduction

The previous chapter introduced this thesis by suggesting that outstanding problems in Indigenous land tenure and housing policy can be seen as the result of axiological and historical misunderstandings. The chapter also identified a set of objectives and questions used to guide the research. The aim of this chapter is to establish a corresponding conceptual foundation upon which the issues of land tenure and housing can be fully explored through bodies of historical, political, and legal evidence from four pioneer settler societies. This foundation provides the background to the study with a particular focus on the ascribed meanings and values placed upon landscape that subsequently influence values associated with connections between land, culture, housing, and well being.

Contrasting values emerge from a split in understanding the meaning of place based upon cultural influences (Kempton, Boster, & Hartley, 1995). Place or specifically 'sense of place' can be difficult to differentiate between groups or cultures as the inputs that influence sense of place also change. Firstly, physical aspects can influence place, such as the composition of the land, boundaries demarcating possession/ownership, as well as any structures that are present upon the land (Giuliani, 2003; Sauer, 1925; Tuan, 1977). Secondly, social and environmental aspects can strongly influence place. These include: the location of significant events, traditions, spiritual places, and important seasonal flora and fauna present within the landscape (Ball, 2002; Tuan, 1974). While these are just a few factors that influence sense of place, they exhibit many of the qualities that cultures use to establish value and attachment to a place. There is also a variability in the strength of attachment to a place based upon a hierarchy of values put on the physical, socio-cultural, and environmental aspects present (Ball, 2002; R. Hay, 1998; H. M. Proshansky, Fabian, & Kaminoff, 1983; Sauer, 1925; Tuan, 1980). This emphasis on particular place values over others greatly influences perceptions of land tenure and housing amongst different cultures.

These differing values have a direct impact on remote Indigenous places where Eurocentric perceptions of place tend to dominate over Indigenous perceptions.

Many Indigenous communities are located in remote areas of developed nations. This is often a product of expansion pressures during the period that nations were colonized by Europeans (Strang, 1996). Indigenous groups migrated, most often under duress; to regions of the countries that had little perceived value by European settlers. As such, these regions were remote in both a physical and cultural sense. Many communities were located a long distance from major urban centers making them difficult to access. This isolation did however allow some traditional cultural practices to survive especially when traditional land use practices and spirituality are concerned. This connection to the land through practices and spirituality are factors that are absent from a Non-Indigenous perspective.

Thus, current land tenure and housing policy in pioneer settler societies was constructed as a result of unfamiliarity with frontier landscapes and has created disadvantage for Indigenous people (Cooke et al., 2007). This is seen as a lack of life opportunity when compared to the general population (Altman, 2004; Whiteside, Tsey, McCalman, Cadet-James, & Wilson, 2007). For example, health, education, and employment effect overcrowding. This occurs at a higher rate in indigenous communities which compounds other issues detrimental to quality of life (Smylie & Adomako, 2009; Taylor, 1998). There are historically embedded reasons for disadvantage and poor quality of life stemming from land tenure (Getches, 1993; McNeil, 1989). The most prominent of these that caused tenure related disadvantage was dispossession (Crowley, 2003). Hence, the act of making Indigenous populations landless makes it difficult to deliver and administer services under European models. This seminal act continues to affect the problem of addressing disadvantage in remote Australia.

The search for solutions to disadvantage has proven difficult. Simply addressing tenure is not a viable solution as it avoids other related areas of Indigenous disadvantage. Many ideas have been proposed ranging from improved healthcare practices to the reform of service delivery (Chrétien, 1969). These solutions; however, are the result of siloed thinking. While a singular approach to addressing Indigenous disadvantage can produce positive results a more encompassing approach is needed to ensure a long-term positive impact (Bailie, McDonald, Stevens, Guthridge, & Brewster, 2011). One area that encompasses many of these solutions and gets to the source of the problem is housing. Housing is an appropriate starting point to address disadvantage as it relates to many aspects of the economic, social, and the physical environment (e.g. creating employment through construction/maintenance and community health by creating stable living conditions for families).

Efforts by successive Australian governments to rectify the disadvantage in housing and related fields domestically have intensified in recent years. The Northern Territory Emergency Response is the most recent iteration by the government to enact policy and action to fix the disadvantage inherent in Remote Aboriginal Australia. This has included a reconsideration of community housing management and associated home ownership practices, many of which are closely connected to the status of the land. However when combined with efforts such as income management⁵ any action involving reform is seen as demeaning and paternalistic according to Malcolm Fraser and Alistair Nicolson (Carbonell, 2011). The difficulty of resolving these issues is exacerbated by uneven application of national level policies due to the different relationship the states and territories have with the commonwealth government (Scholtz, 2006).

Other pioneer settler societies such as Canada, New Zealand, and the United States have had more success in resolving issues of land tenure and housing. The solution to this issue was the integration of indigenous concepts of land tenure and their voice into policy ensuring was not based solely upon common law and ensuring special entitlements⁶ for indigenous people in their respective countries (Nettheim, Meyers, & Craig, 2002). Countries such as Canada, New Zealand, and the United States share a similar pedigree concerning land tenure and housing issues (Scholtz, 2006). These three countries provide examples to draw upon as they possess a common history of colonialism and divestiture of land from its original inhabitants (McNeil, 1989). Supplementary to this, characteristics are present in the national political and legal systems of pioneer settler societies that provide several points at which they can be compared (Nettheim et al., 2002). Where these societies diverge is through the approach taken to reduce indigenous disadvantage as a national priority. Through a comparison of different approaches taken to addressing an issue held in common between pioneer settler societies lessons learned can be adapted and applied to Australia to create positive improvements in land tenure and housing policies for remote Indigenous Australia.

The four case studies analyzed in this thesis are all concerned with the common theme of Indigenous land tenure and housing policy. The four cases studies are: Australia, Canada, New Zealand and the United States. Policy concerning land tenure and housing is often fraught by difficulty due to divergent values and views held by Indigenous and non-indigenous people (Hart, 1971; Houston, Kurasawa, & Watson, 1998; Tuan, 1974). The processes of colonization, the consequences of white settlement and Indigenous dispossession have resulted in the patterns of

⁵ Income Management – The prohibition of spending on prohibited items such as alcohol and gambling which are deemed vices that exacerbate disadvantage (B. Hunter, 2009).

⁶ Special Entitlements –Laws or policies that pertain only to Indigenous groups that afford them certain benefits such as fishing or mineral rights not afforded to non-indigenous people.

unequal well being and opportunity discussed in Chapter 1. Different approaches to closing the resultant ‘gap(s)’ have been attempted across four pioneer settler societies. These attempts provide valuable lessons about the role of land tenure and housing policy may be identified. Unfortunately, there is no ‘magic bullet’ for Indigenous policy making. Related to this issue, is that no country has continually sought to prioritize and apply positive policy lessons. Additionally where some policy lessons have been successful in one country, they have not been met with similar success when tried in another due to inadequate considerations of the local context. A further complication is that all land policy is developed in relation to broader political and ideological mindsets. Over a century and a half of policy attempts have been initiated to redress Indigenous inequality and have seen many changes in social and political ideologies. Thus, policies for Indigenous people have been subject to change and, often, reversal with each successive government (Rudd, 2008). This has had the effect of disenfranchising Indigenous people from the policy process and dispossessing them of their rights to land and housing (Rudd, 2008, 2009). Many of the negative effects caused by this disenfranchisement have been officially apologized for in Australia in 2008. Even so policies supporting this apology have been slow to develop.

Conceptual foundation to land tenure and housing policy

This thesis draws upon the literature from four diverse themes to establish the conceptual foundation to address issues of land tenure and housing policy. The discussion in each of these themes leads to identification of meanings and values that influence Indigenous and Non-Indigenous connections between land, culture, and well being. These four themes are: 1) Land values, culture, and well being; 2) Housing and socio-economic well being; 3) Changing paradigms in Indigenous policymaking; and 4) Policy frameworks. First a focused, review of literature on land valuation, culture, and well being is analyzed. This includes the conceptualization of land in Indigenous cultures and the role it plays in spirituality, cultural identity, and the sense of self. The contrasting interpretation of the concept of ‘land ownership’ and ‘property’ between Indigenous and European societies is also explored. Due to the differences in perspective on land between Indigenous and non-Indigenous peoples as well as differences present within each culture, policymaking often becomes a demand driven process. This benefits those groups who are best equipped or in a position of power to dictate policy.

Secondly, the integration of housing and socio-economic well being is analyzed. Indigenous peoples have different concepts of ‘home’ from non-Indigenous people and vary based upon climate and culture (Queensland, 2011). The general observation in this thesis is that internal and external spaces are allocated and used differently based upon patterns in the landscape and the

cultures that exist within a setting (Alexander et al., 1977). Thus, culturally determined patterns are key issues in the conceptualization of Indigenous housing policy, and management. However, no culture is static and the impact of interaction with other cultures (especially more dominant ones), has resulted in inequality of Indigenous peoples living in any country where their culture is no longer dominant. These differences in space are compounded by numerous political ideologies and approaches to Indigenous policy over time.

The variation in policy outcomes generated from numerous policy ideologies suggests the need for an analysis of the effect caused by changing paradigms in Indigenous policy making (i.e., the third body a focused literature review). When decisions are made by government to manage Indigenous affairs, this sets in motion a particular policy paradigm. A variety of potential effects upon Indigenous well being originated from the paradigms embodied in paternalism, protectionism, the right to self-determination, and the promotion of self-reliance. It is from these paradigms, that most Indigenous policy has originated, both past and present (Billings, 2009; Tomlinson, 2005). Thus, while it is not possible to predict the future shape of Indigenous policy, analysis of the previous and current paradigms provide insight into the means to improve well being and the framing of future policy development.

The fourth area that will be studied in this chapter is the policy making process itself (i.e. policy frameworks), specifically how policy can be framed. Most policy is framed using a particular perspective with a specific set of outcomes in mind. In the case of this research policymaking using Indigenous, housing, and land tenure perspective will be highlighted to demonstrate how they shape policy outcomes. From the varied resultant outcomes, it is demonstrated that a more integrated approach to policy making is needed in order to produce consistent outcomes.

2.2 Land Values, Culture and Well Being

The landscape values of Indigenous and non-Indigenous cultures are expressed through their respective impacts upon the land. That is instances of how it may be managed and what activities may take place upon it (Nettheim et al., 2002). It is the contrasting and conflicting cultural values, which influence Indigenous and Non-Indigenous landscape interpretation and conceptions of land tenure. These need to first be thoroughly understood for effective policymaking. Development of a policy framework (i.e. the aim of this thesis) can then use this understanding as a basis to promote positive outcomes based upon appropriate forms of Indigenous land tenure (Wines & Napier, 1992).

Pre-modern and post-modern views on land (an illustrative to initiate discussion)

On the human imagination events produce the effects of time. Thus, he who has travelled far and seen much is apt to fancy that he has lived long; and the history that most abounds in important incidents soonest assumes the aspect of antiquity...When the mind reverts to the earliest days of colonial history, the period seems remote and obscure, the thousand changes that thicken along the links of recollections, throwing back the origin of the nation to a day so distant as seemingly to reach the mists of time; and yet four lives of ordinary duration would suffice to transmit, from mouth to mouth, in the form of tradition, all that civilized man has achieved within the limits of the republic. Although New York alone possesses a population materially exceeding that of either of the four smallest kingdoms of Europe, or materially exceeding that of the entire Swiss Confederation, it is little more than two centuries since the Dutch commenced their settlement, rescuing the region from the savage state. Thus, what seems venerable by an accumulation of changes is reduced to familiarity when we seriously to consider it solely in connection with time.

—James Fennimore Cooper (*The Deerslayer* 1841).

In the lines that open one of the great works of fiction from early American literature, the writer gives a highly Eurocentric view of the history of the landscape. The perception illustrated above is common amongst writings of this time. This is also true of the Hudson River School artists movement; which tended to romantically illustrate the landscape rather than take a realistic tone (Ringe, 1954). What remains unseen in this material of the time is the influence of “the other” in terms of an Indigenous voice (Helen, 1988). In *The Deerslayer* and the four subsequent books which comprise the leather stocking novels, Cooper (1963(1841)); however, does attempt to present a fictionalised portrait of the Colonial landscape through the eyes of a trapper’s son who was brought up in an Indigenous culture. While Cooper does try to recreate an authentic indigenous voice, it is still limited as the narrator in the novels and or course the writer bend the indigenous perspective to position it within a European tradition (Hausladen, 2003; Sayre, 1997). What we are left with is an emerging colonial master narrative using a European interpretation of history to shape the colonial landscape by omitting Indigenous (pre-colonial) views (Doxtater, 2004). Tenure of land in this context was something distinctively European and operates with a vastly different perception than how many Indigenous societies understood and managed land. From the spatial and spiritual disconnect embedded in Indigenous and European traditions around land, and emerging conflict can be observed. Whereby as pioneer settler societies developed into modern nations, Non-Indigenous views as well as embodied values around land began to permeate the national psyche forcing out and obfuscating traditional Indigenous views. This trend had a high cost to the culture and well being of Indigenous people that continues to weigh heavily upon conceptions land tenure and related housing policy.

In pioneer settler societies such as Australia, Canada, New Zealand, and the United States the term ‘landscape’ has become synonymous with natural or scenic beauty (Daniel & Boster, 1976). Other landscape values such a cultural and spiritual values are absent from this interpretation and render the land as an object separate from the humans and societies that inhabit it. Caught up in

the views of landscape, contemporary pioneer settler societies thus tend to make judgements about landscape values in accord with other purposes such as: resource extraction, the production of wealth from the land, scientific research, and recreation (Hardin, 1968; Muir, 1894; Pinchot, 1947).

Furthermore, the values that cultures hold for landscapes serve as a fixed image of what matters most in the eyes of the beholder (Meitner, 2004; H. Proshansky, Fabian, A., & Kaminoff, R. , 1983; Zerubavel, 2003). These values; however, can shift over time as the landscape is altered (Farina, 2006). For example, people within a culture may begin to supplant ideas of landscape as something that has intrinsic or aesthetic value for one that looks at the productivity of the natural resources present in the environment (Meinig, 1979). Conflicting values such as these form the basis for the schism in landscape interpretation that can be categorized into three major perspectives: the economic perspective, under which land is viewed as commodity that can be traded and resources extracted from; the social perspective, in which land has a spiritual significance for a culture; and the ecological perspective, which examines the complex systems present in the land and how they interact (Lowenthal, 1975; Tuan, 1977; Valsiner, 2007; Wu, 2006) When considered in conjunction to one another, these views influence the way Indigenous and Non-Indigenous societies think or do not think about land.

These views about land can be illustrated in the popular culture, which sometimes takes a light-hearted and cynical view of economic, sociological, and ecological perspectives on land:

Maverick (A Gunfighter): Oh, you sure do pick the spots. (*Referencing the Yosemite Valley*)

Joseph (A Native American): Yeah, I know. You know next time you people come and drive us off our land I'm gonna find a nice piece of swamp that's so God-awful, maybe then you'll leave us the hell alone (Huggins & Goldman, 1994).

While depictions of landscape in this way do afford us the chance to smile about the issue, they also detract from its complexity. If it was possible to take solace from this quotation it would be that tenure can be addressed by finding a semblance of land which has so little value from a European perspective that the only viable option would be to pass over it. This conclusion would not be reached in a practical sense, due to the deeply embedded values about land present in both Indigenous and European cultures.

Pre-colonial views on land

The pre-colonial landscapes of Australia, Canada, New Zealand, and the United States were vastly different from those of today (Cronon, 1995; Cronon, Miles, & Gitlin, 1992; Flannery, 1994, 2001; Gammage, 2011; Garden, 2005; Josephy Jr., 1992; Rolls, 1981). When European settlers encountered these new frontiers of ‘civilization,’ their European based beliefs surfaced and were used to subjugate the landscape according to their ‘contemporary’ paradigm (Bauman, 2001; Foucault, 1969).⁷ Over time these beliefs would inspire great numbers of pioneers to search out these special places. For example:

John Dunbar (A Cavalryman from the East): I’ve always wanted to see the frontier.

Major Fambrough (The Frontier Post Commander): Do you want to see the frontier?

John Dunbar: Yes sir, before it's gone (M. Blake, 1990).

The quest to search out these special places has led to many interpretations of what is valued in landscape (Lowenthal, 1975). Whether it was a search for wealth such as the seven cities of Cibola by Coronado, or a landscape that evoked spiritual power akin to Yosemite or Uluru, landscape is at the source of how cultures construct value (Beckley, Stedman, Wallace, & Ambard, 2007; King, 1871; Meinig, 1979). Some of the first European accounts of places such as Yosemite (Figure 2.1) and Uluru (Figure 2.2) demonstrate this sense of wonder:

During the winter of 1850-51, I was attached to an expedition that made the first discovery of what is now known as the Yosemite Valley. While entering it, I saw at a glance that the reality of my sublime vision at Ridley's ferry, forty miles away, was before me. The locality of the mysterious cliff was there revealed--its proportions enlarged and perfected.(Bunnell, 1892)



Figure 2.1 - Yosemite Valley in Early Winter – Photo By Author

⁷ As Bauman has identified three paradigms of thinking: Pre-Modern, Modern, and Post-Modern

Mount Olga, as I said, bore nearly due east; its appearance from here, which we always called the farthest east, was most wonderful and grotesque. It seemed like five or six enormous pink hay-stacks, leaning for support against one another, with open cracks or fissures between, which came only about half-way down its face. I am sure this is one of the most extraordinary geographical features on the face of the earth, for, as I have said, it is composed of several enormous rounded stone shapes, like the backs of several monstrous kneeling pink elephants.

At sixty miles to the west its outline is astonishing. The highest point of all, which is 1500 feet above the surrounding country, looked at from here, presents the appearance of a gigantic pink damper, or Chinese gong viewed edgewise, and slightly out of the perpendicular. (Giles, 2010)



Figure 2.2 - Uluru with Kata Tjuta (Mount Olga) in Background – Photo Leonard G. (Public Domain)

These passages demonstrate the European constructed view of the natural landscape. In their sense of wonder these Europeans appear to express a natural aesthetic or spiritual reverence for the landscape. This marks a departure from the previously discussed modern to a pre-modern interpretation of landscape where the pre-modern or pre-colonial view is held by some of the first European explorers that is not unlike those Indigenous interpretations of the same landscape prior to European contact. However, what is lacking is the pre contact view, the ‘Indigenous voice’ and a perspective of these places in the modern, pre-modern, or pre-colonial periods of settlement.

Indigenous perspective and a modernist view of land and well being

The notion that a locally informed Indigenous perspective can be used in understanding a landscape is not new, it is simply omitted from discussions as other perspectives less divergent from European tradition are easier to implement policy under (Sillitoe, 1998). There are two possible explanations as to why this is the case: First the history and culture of most Indigenous people that inhabited these places was not written down, instead it was passed on through oral tradition (Dei, 2000). While standing in contrast to the European written tradition, an oral passing of knowledge is by no means a less significant view of the landscape. In fact it can

provide an informed and highly detailed understanding of the local area. The second explanation for not incorporating the Indigenous perspective is the European society's view that native people of the area were primitive or, at best, least developed (i.e. pre-modern). This settler belief was used as a facilitator to impose their 'modern' doctoring of the landscape (Ryan, 2005). Contributing to the settler's beliefs in this was the overwhelming numbers with which they arrived in Australia, Canada, New Zealand and the United States from European origins: which in a matter of decades made indigenous populations and their views a minority in their own land (Beteille, 1998).

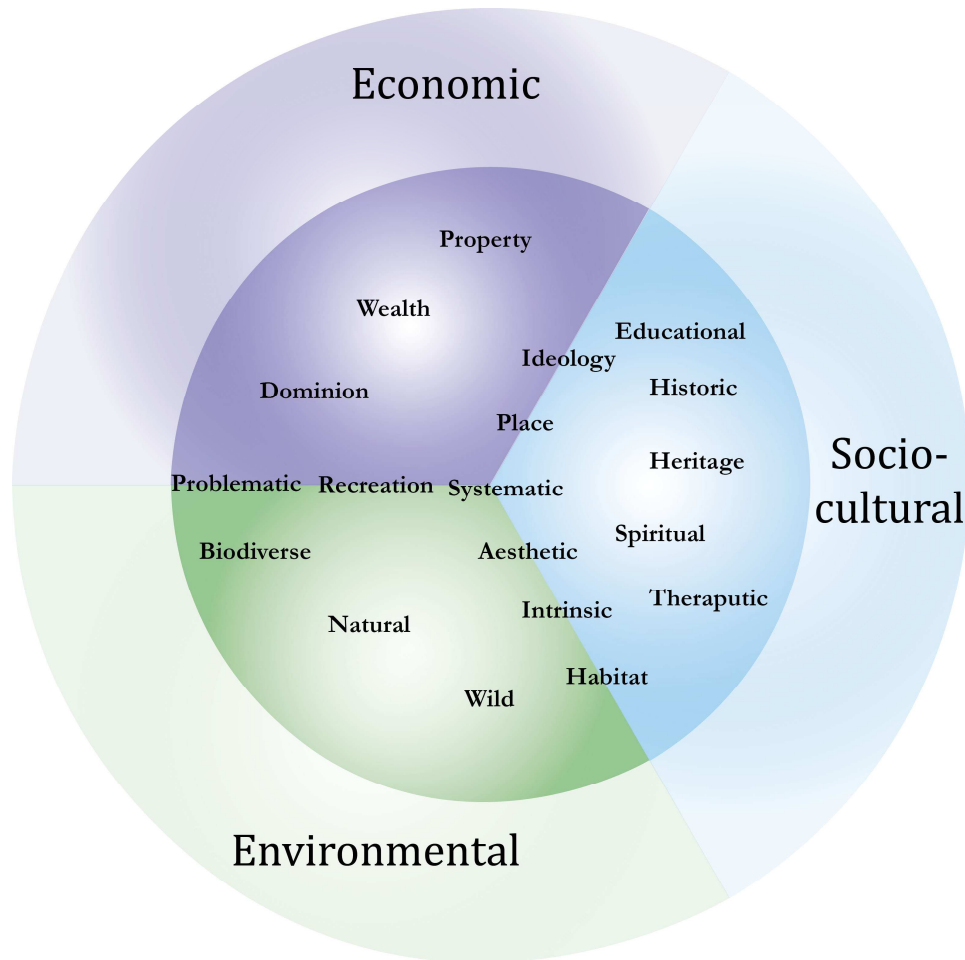
Importantly, the Indigenous view that land is not owned is a significant consideration in the lack of understanding between European settlers and Indigenous peoples' perception of land. While certain Indigenous groups may own land it should not be framed in the traditional European definition of ownership (Small & Sheehan, 2008). This is due partly to the way in which Indigenous groups are organized. The levels of organization commonly found in Indigenous culture is structured at the clan and tribe level (Malinowski, 1963; E. O. Wilson, 1978).

Organizational structure of this size do not allow for a sedentary lifestyle i.e. Indigenous groups must follow the seasonal cycles, they can not afford to put down stakes in one particular location throughout the year. This is not true for all groups as evidenced by the highly sophisticated societies encountered by Spanish, Dutch, and British explorers (Calloway, 1997). Yet, by not owning land, in the traditional European sense caused Indigenous people to be dispossessed upon the arrival of settlers from overseas. In fact a precedent was set through the use of European land claim mechanisms such as Discovery Doctrine and Terra Nullius (Bourke, 1835; "Johnson v. M'Intosh," 1823; Mercer, 1993; Robertson, 2005).

With the arrival of Europeans and their settlement of Indigenous dominated lands came the foundation for the modern values that are placed upon landscapes of significance such as Yosemite and Uluru as well as everyday landscapes (Bandarin, 2002; Meinig, 1979; Stilgoe, 1982). Modern values about landscape have evolved from the purely aesthetic (sense of wonder) to a strong emphasis on co-modification (what can be used to the advantage of humans) detaching place from its ecological, sociological, and spiritual values (Roberts, 1998). Additionally, the modernist view of land contrasts with those of pre-modern and post-modern views where, in the previous section, this transition discussion was first introduced. In the modern view the pendulum has swung so far towards an economic direction that those places of aesthetic significance to Non-Indigenous people have begun to lose the aesthetic qualities for which they were valued in the first place (Goin, 1992; Hardin, 1968). What this illuminates is that while both Europeans and Indigenous people have embedded values about landscape, they are by no means

fixed as both societies in the modernist view appear to be associated more with the individual and not cultural needs (Zhu, Pfueller, Whitelaw, & Winter, 2010; Zube, 1987). While there is not a fixed set of land values amongst any cultural or social group, landscape values can still be identified around a range of general environmental, economic and socio-cultural themes. Figure 2.3 identifies the range of values associated with each of these themes. It is paramount to understand that the interpretation of themes and associated landscape values is not definitive and some values cross between themes and are therefore placed where the overlap occurs.

One value that overlaps between themes is **systematic**. If a landscape has an embodied systematic value it is considering various systems. These systems such as environmental systems as well as economic, and socio-cultural ones all contain embedded values that determine how systems interact and influence one another. Another value that rests solely under the environmental theme is **wild**. Unlike systematic values that are intangible, **wild** is embedded in the physical landscape giving it thematic qualities associated with the environment.



2-3 - Thematically embedded landscape values (developed from: (Fairweather & Swaffield, 2001; Meinig, 1979; Meitner, 2004; Tuan, 1974, 1980; Zhu et al., 2010; Zube, 1987)

This thesis focuses on the embedded values illustrated above and their influence in shaping conceptions around land. They have been drawn from the pre-modern, modern, and post-modern view of land. Influence, resulting from these views can be felt especially in areas of British colonization in Anglo-America and the Oceanic regions, specifically the modern nation states of Australia, Canada, New Zealand, and The United States. In each of these nations a similar trend of encounter with indigenous inhabitants sharing non-European conceptions of land occurred. This trend, which is explained shortly, is an example of mass action in which the actors (working independently) produce a similar outcome (Oliver, Marwell, & Teixeira, 1985). European powers were operating under the auspices that they were bringing enlightenment and civilization to pre-modern peoples and in effect justified their dispossession policies and actions (Bauman, 1987). Through the paradigm of modernism, indigenous peoples being pre-modern were considered incapable using land in a just manner. In each of the aforementioned countries this led to the dispossession and cession of land to pioneer settler societies through policies such as *Terra Nullius*, *Discovery Doctrine*, and *Conquest* (Gilbert, 2007). These three actions as well as other similar ones demonstrate a Eurocentric approach to thinking about land and show a blatant disregard for any Indigenous originated concept. Made landless as a result of Europeans applying the previous policies, Indigenous culture and well being was negatively impacted (Kennedy, 2003). Having lost their most important asset for negotiating a better deal, a landless Indigenous population is at the mercy of the pioneer settler society within which they reside. The sharp difference between Indigenous well being and their Non-Indigenous counterparts as a result of being landless can be positioned in tangible terms of today. That is benchmark indicators can be employed to illustrate the difference between well being of Indigenous and Non-Indigenous people as the HDI was used in Chapter 1 of this research. Another example used to illustrate the difference between the two groups is highlighted in the five indicators shown below:

- *Health*: Indigenous people experience higher rates of preventable disease due to poor diet and infrequent healthcare access (Carrin, 2009; Nettleton, Napolitano, & Stephens, 2007). One contributing factor to poor health is landlessness
- *Education*: Completion of high school, tertiary and/or other forms of further education by Indigenous groups occurs at far lower rates than non-indigenous peoples. A lack of education leads to poorer health decisions later in life and fewer prospects for gainful employment (Anderson, Kayseas, Dana, & Hindle, 2004; B. Hunter & Schwab, 1998; Pink & Allbon, 2008; Tsey, 1997).

- *Environment* (rural settings): The location of many Indigenous communities is often remote causing the provision of services to be difficult and expensive to provide. Additionally the land in remote areas can rarely support the agricultural needs of the community and uncertainty of title to the land creates a sense of communal uncertainty, which discourages investment and long-term habitation (Eversole, McNeish, & Cimadamore, 2005; Mercer, 1997; Pink & Allbon, 2008). A remedy to this uncertainty is greater local empowerment through self-determination and self-reliance (Dahl, Hicks, & Jull, 2000).
- *Management*: In areas where Indigenous land management practices conflict with European tradition control over the land can be assumed by non-indigenous people (e.g. national government organizations) in the form of as caretakers or trustees. Even where Indigenous people experience some level of self governance, their decisions may still be overridden at a sub national or federal level (Behrendt, 2003; Davis, 1993; M. B. Lane, 2002; Susskind & Anguelovski, 2008; Wirth & Wickstrom, 2002). Interestingly this issue of management calls into question the long-term viability of remote Indigenous communities. The concept will be discussed in greater detail later in this thesis.
- *Housing*: Indigenous people are twice as likely to experience housing stress or homelessness as their non-indigenous counterparts. This is related to both uncertainty about land title as well as an inability to take into account the different housing and social needs in Indigenous communities (Bathgate, 1987; Davey & Kearns, 1994; HUD & Treasury, 2000; R. E. Mitchell, 1976; Smylie & Adomako, 2009).

In this section the connection between the value of land, cultural, and well being was discussed. Through this discussion it was demonstrated to be complex subject matter with many possible interpretations of land. To reduce this complexity thematically embedded values of land were categorised into three themes. These theme were identified from the views held by Indigenous and Non-Indigenous people. However, as Non-Indigenous views were often written down they had a habit of superseding Indigenous values and interpretation of the land. This led to the eventual dispossession of land by growing pioneer settler societies decreasing the well being of Indigenous people that were observed in the areas of health, education, environment, management, and housing. The later of which will be discussed in greater detail in the section of this chapter immediately following

2.3 Housing and Socio-Economic Well Being

Housing plays a significant role in the well being of Indigenous people as well as pioneer settler societies. This role is exemplified in the seminal Australian film, *The Castle*:

Darryl Kerrigan (The head of household): A house is more than a home. Its a place where families live together and build memories together. (Cilauro, Gleisner, Kennedy, & Sitch, 1997).

The above statement is powerful. It evokes the sense of attachment that European society has placed upon a home. With this strong European based attachment to the dwelling it can be argued that to take away ones home creates the same sense of loss as the loss of one's land (i.e. the dispossession of Indigenous people from their land). Compensation for the loss of housing through eminent domain or compulsory acquisition is usually provided in the form of economic and on rare occasions new accommodation. This form of compensation only supports monetary valuation of housing; Which negates Mr. Kerrigan's memories statement above. This overriding of memories creates a paradox in the sense that a pioneer settler society continues to ignore the social and cultural values a house, home, or dwelling might possess. It is remarkable that this paradox continues to perpetuate itself, as moving house is considered one of the most stressful events one can experience in their lifetime (Bromberger & Costello, 1992): Which infers some relationship with the house and moves beyond the simple stress of packing and unpacking ones belongings. This then begs the question: Are other factors other than purely economic ones at play in creating a stressful and unpleasant environment when one 'values' a home and could the stress associated with a home be mitigated? The answer to this question is a resounding yes. A preponderance of evidence in the fields of public health and social work attest to the fact that housing has a symbiotic relationship to both individual and social well being. To put this into context for this thesis research a stable housing situation can:

- Reduce the occurrence of domestic violence, alcohol, and substance abuse: which are arguments in support of the *Castle Doctrine*⁸ (Cassells, McNamara, Wicks, & Vidyattama, 2008; C. P. Ewing, 1990; Trocme, Knoke, & Blackstock, 2004);
- Build household wealth by providing a stable environment where one can study (i.e. improve one's educational situation) and improve employment prospects (i.e. a fixed address to use on applications for employment) (Altman, Biddle, & Hunter, 2005; Bloxham & Betts, 2009);
- Facilitate community wide stability making investment in the local economy a lucrative proposition (Berry, 2000; Crabtree et al., 2012).

The above three items are in effect benchmarks to strive for by suggesting that an improved housing situation can go a great distance to improving the well being of an individual, community, and society. This is provided that there is a willingness to create increased social equity (UN-DESA, 2009). It could be argued that this willingness does exist in many pioneer settler societies; however, when presented with Indigenous populations that live within these

⁸ **Castle Doctrine** – Also known as 'Stand Your Ground' is a legally enshrined right in many parts of the United States to defend ones home (Castle) and the privately owned contents therein.

societies, attitudes on the part of government demonstrate a lack of understanding as to the link between housing and well being within Indigenous society. In addition it is a nonstarter for government policymakers to attempt an accommodation of Indigenous views on housing. The reason being is related to cost, as findings may be contrary or incongruent to the views held by Non-Indigenous people and to understand that these differences may present additional costs/efforts to adequately address (Milligan, Phillips, Eastope, Liu, & Memmott, 2011; Phillips, Milligan, & Jones, 2009; Strelein, 2005). This can be seen as one of the main issues concerning housing in Indigenous Australia and elsewhere.

Other issues concerning housing in remote Australia are cost of, for example, construction, maintenance, and appropriateness (Fien et al., 2008; Torzillo et al., 2008). Appropriateness of the housing provided to Indigenous communities is the most commonly ignored issue. Often times housing provided to remote communities resemble homes normally seen in suburban areas in major Australian cities. Additionally these housing designs do not take into account the climatic differences in the physical environment they are being built in (McKenzie, 2007). It is for this reason alone that housing has been identified by Deane & Smoke (2010), as one of the areas requiring an Indigenous voice to be heard in the design process. As a result of this voice not being heard, housing provision policies for Indigenous populations that are linked to the design process, provide few prospects for eliciting positive change to Indigenous well being (Calma, 2005). To investigate housing further, an understanding of its relation to land tenure should be sought.

Relationship of Land Tenure to Housing

Due to the strong spiritual connection with the land as previously discussed, Indigenous people have an attachment to place. Housing is viewed as a part of the land rather than a separate structure placed upon it giving it the same spiritual significance as land (Rapoport, 1969). Indigenous perspective therefore relies upon, the connection to the land, which governs where settlement and ceremony may take place and is the main consideration in their planning of a home. To this effect it is the relationship between use and spiritual connectivity of the land that requires Indigenous people to place guidelines on settlements and the siting of housing (Alexander et al., 1977; Small & Sheehan, 2008). In this way housing and land tenure are connected, as they are part of the spiritual connectivity to a place. The two cannot be considered separate; however, when the spiritual connection to a place is broken or not considered (in terms of a European settler's consideration), tenure is no longer held by an Indigenous population and the house is separated from its connection to the land. Hence, when European settlers dispossess Indigenous populations from the land to locate elsewhere, the spiritual connection with the

environment is also broken. The effect of dispossession upon Indigenous land tenure and housing will be further explored in chapters four, five, six, and seven where the Indigenous populations of four pioneer settler societies reacted in different ways to Indigenous beliefs. In short, dispossession negatively impacted Indigenous peoples through the breaking of spiritual connections to land and made it difficult to continue traditional practices. Thus, their relationship with the land was broken, which made it difficult to establish settlements that could be called home by Indigenous people.

As a product of dispossession and colonization, many Australian Indigenous groups are forced through policy, to live upon land that they have historically and spiritually had no connection to. This and other policy shortcomings make housing policy difficult if not impossible to achieve desired outcomes: Which is supported in Bailie et al. (2011), when they argue policies created around the construction, provision, and administration of housing for remote Indigenous communities is highly stratified. There is a need for new policy approaches to be explored (which is the aim of this thesis).

Housing and Well Being

As previously mentioned in Section 1.3, Indigenous well being is defined as *A measurement of the socio-cultural, economic, and environmental vitality of an Indigenous population*. Well being in housing can be quantified by a similar definition to mean: *A measurement of the socio-cultural, economic, and environmental vitality of a family or individual as a result of their current domicile*. In the context of housing, well being is therefore linked the physical form as well as the psychological condition of the occupants based upon how they relate to their surroundings.

Housing outcomes have been linked to well being on several grounds. A stable housing situation primarily leads to improved quality of life over a community whose housing status is tenuous. This is supported by studies concerning disadvantaged populations, where older people tended to outlive their neighbours when their housing status was not in doubt (Shaw, 2004). Corollary to longevity, stable housing also generated improved health outcomes. Those outcomes are supported by comparative research from Canada that looked at two neighbourhoods in the city of Vancouver (Dunn & Hayes, 2000). Both Neighbourhoods had a contrasting community dynamic leading to polarized housing outcomes. As a result overall well being in the first neighbourhood was considerably higher due to stable housing. Additionally observed were lower instances of crime and community dysfunction. From this example, it is possible to support the claim that stable housing provides improved outcomes in health and well being; while community wide well being is created through stable neighbourhoods.

In addition to the relationship of well being to stable housing, there are other factors that can play a role in how high ones well being is while living in a particular housing situation. These are factors such as overcrowding (real or imagined), renting versus owning, condition of the home, and ones emotional attachment (Bratt, 2002; Felce & Perry, 1995; Fuller, Edwards, Sermsri, & Vorakitphokatorn, 1993; Rapoport, 1969). These factors will each be discussed to further clarify how they relate to well being in housing.

- *Overcrowding*: with overcrowding in housing conditions, there is an observed effect upon psychological well being of occupants. If an individual moves into overcrowded accommodation from a place where they had much more space, they may not adjust to having little to no personal space (Kearns & Smith, 1993). This can take a toll upon their mental health making them increasingly irritable or worse prone to violence. Overcrowded housing also contributes to physical well being in that living in close quarter makes populations more susceptible to disease and creates a malaise about the community (Fuller et al., 1993). Writers such as Jack London and George Orwell; and photographers such as Jacob Riis have attempted to highlight to negative effect on well being caused by overcrowded housing historically (London, 1903; Orwell, 1933; Riis, 1890). Partially as a result of their documentation, overcrowding was recognised and properly addressed in many future dwellings.
- *Rental versus owning*: the legal tenure of housing plays a significant role upon the well being of occupants. For example, if a family is under mortgage stress it can cause a breakdown in the social dynamic as either one of both adults in a nuclear household must work to make payment upon the home (Kearns & Smith, 1993). While this stress is lessened in a rental situation it may also cause the residents to have a lower duty of care when it pertains to maintenance of housing as it is not their own (Dunn & Hayes, 2000). Such behaviour can lead to nihilistic attitudes that influence personal and community well being (Nelson, Hall, & Walsh-Bowers, 1998).
- *Housing Condition*: the condition of housing has two impacts one is the condition of the structure itself, which causes inhabitants to have malaise due to a lack of maintenance. Secondly is the impact that such lack of care has upon the surrounding community or neighbourhood (Dunn & Hayes, 2000; Nelson et al., 1998). If the condition of housing is not improved within due course, it can create

unhealthy and unsafe conditions over much larger area. In other words, the condition of housing is a strong indicator of the overall well being of an area where poor conditions equate to a carcinoma on the surrounding community.

- *Emotional Attachment*: akin to attachment to land and place, people can also experience attachment to their home, and the fictitious Mr. Kerigan does at the opening of this section. The emotion experienced by a homes inhabitants dramatically impacts well being and can have long term psychological effects when for example one is dispossessed of their home. This is evidenced by communities that have been emptied due to subprime mortgages (Saegert, Fields, & Libman, 2011).

The next section analyzes policy approaches with a focus upon Indigenous issues. Within the theme of Indigenous policy lay perception of landscape and ways of thinking. An understanding or awareness of these different perceptions can lead to better approaches to framing policy: which will then be exhibited in section 2.5.

2.4 Changing paradigms in Indigenous policymaking

In the case of most Indigenous policies, there is a tendency to focus on goal-oriented objectives: which implies that policy is dependent upon quantifiable phenomena (UN-DESA, 2009). Yet, the spiritual connection Indigenous people have with the land, which is different to that of European settlers, makes it extremely difficult to focus on goal orientation. Unfortunately, goal orientation as illustrated in the UN-DESA (2009) document creates a culture of micro-management at the cost of the macro. Importantly what guides the micro-management approach is economic and sociological priorities of National governments. They contribute to the creation of complex policy problems: Which in Australia can be illustrated by not closing the ‘gap’ between the Indigenous and Non-Indigenous population of country. The most common manifestation of the negative effects inherent in many indigenous policy frameworks is the lack of suitability of policy. An example of unsuitable policy would be to ignore the subtle differences between Indigenous cultural groups when many similarities exist (e.g. the assumption is Indigenous groups speak a common language and therefore only one policy is required) (Altman, 2009a). This completely discounts differing geographies as well as socio-cultural practices (nomadic v. agriculture lifestyles). Policy frameworks containing these views can be cheaper economically; however, they come with greater social and economic cost. This brings to light a paradox in that the value of Indigenous knowledge is difficult to quantify. Even when Indigenous knowledge is taken into account credit for the knowledge is not paid to the Indigenous population (L. L. Lee, 2008). For

example, Woolcock, (1998) argues that many of the policies and customs of Indigenous people have their equivalent in almost every culture worldwide; however, it is the execution of Indigenous based policy that can be confronting to Non-Indigenous populations. Thus, policy concerning Indigenous peoples needs to take into account the reception of and the application of traditional practices by a Non-Indigenous audience.

While Indigenous policies originally created by settler nations do have many, shortcomings, some contemporary policies contain strengths through their:

- Incorporation of Indigenous voice in policy discussion;
- Understanding that the needs of Indigenous people are different from those of Non-Indigenous people

These strengths bode well for a discussion on Indigenous policy frameworks by demonstrating that there is in fact more than one perspective on policy and social issues being exhibited from political and academic sources. This increases the chances of initiating change from within the current policymaking framework rather than working against it. One constructive means of working within the current framework would be to begin by valuing Indigenous knowledge and for policymakers to understand that it can create appropriate Indigenous centered policies (Mauro & Hardison, 2000).

Indigenous Policy as an Integrated System

An example of the way Indigenous policy currently operates in most pioneer settler societies would be that it resembles *siloed thinking*⁹ (Figure 2.4); where policy is subdivided into specific fields of knowledge delineated by colour with no exchange of information occurs between silos. This type of policy thinking can lead to viable solutions for Indigenous policy; however, they fail in the sense that they serve as only a partial solution to the creation of improved land tenure and housing policy.

⁹ **Siloed thinking** – The act of thinking within ones own discipline or ‘silo’ of knowledge for solutions to a complex issue without considering other possible solutions from outside ones discipline.

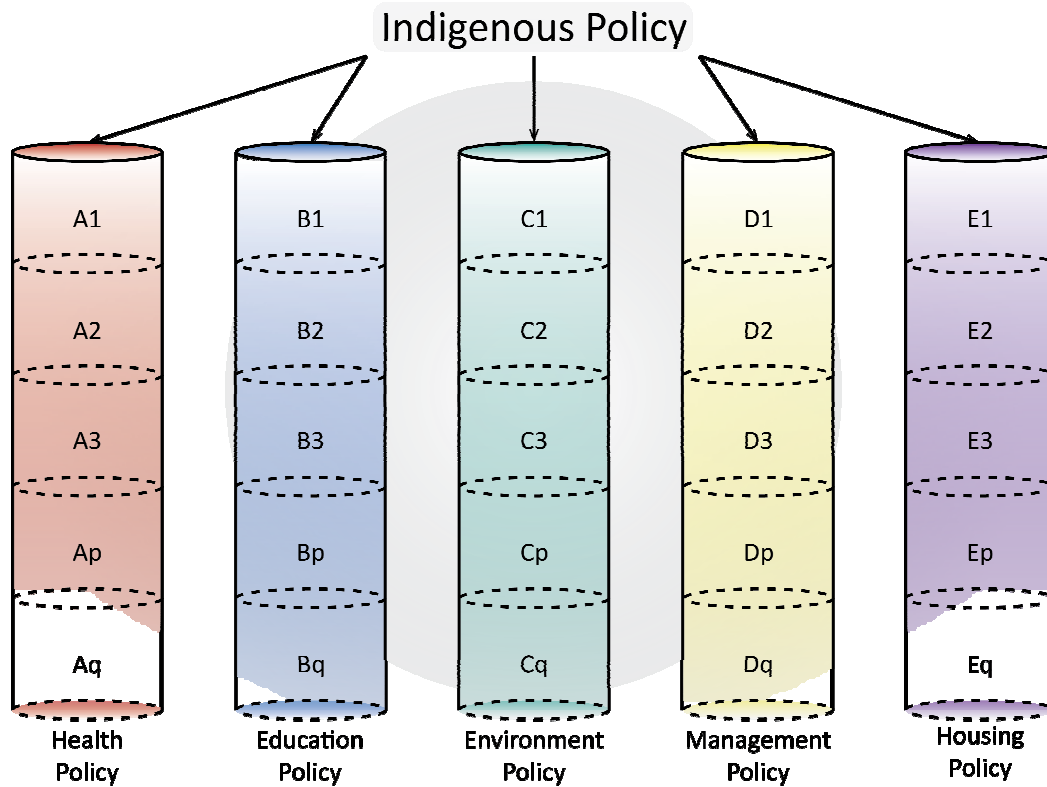


Figure 2.4 - The Current Approach to Indigenous Policy

The solution is partial due to its focus on one deliverable objective such as health policy not incorporating the need to improve education or housing policy at the same time. To overcome a siloed type of approach to policy creation the solution can be shared or spread across the silos; thus, turning Indigenous policymaking into a cooperative exercise amongst stakeholders. Such an exercise may resemble Figure 2.5, in which the cross-pollination of policy ideas between silos may afford a greater understanding of Indigenous issues amongst policymakers. This is demonstrated by the distribution of knowledge from figure 2.4 across silos of thinking shown in figure 2.5 where arrows between silos represent an exchange of information while the distribution of colours and letters represent a distinct component of knowledge being shared.

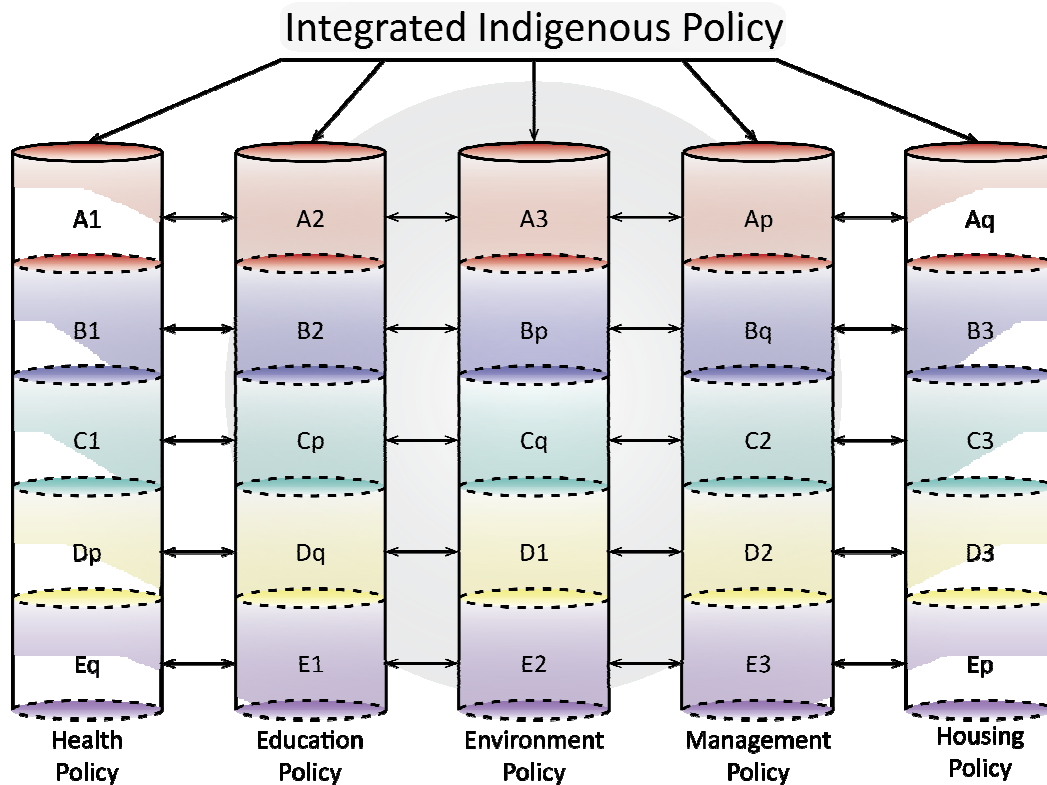


Figure 2.5 - An Example of an Integrated Approach to Indigenous Policy

This integrated approach to Indigenous policy shown in figure 2.5, was based upon work in the field of computer science: Which was designed to specifically address the storage of information. For example, in most cases an electronic device will store information on a single memory chip or hard drive. This simple method to store information would resemble one of the policy silos in Figure 2.4. When an error occurs in storing information it creates an inability for the entire device to properly store information. To combat this problem especially if it has a high likelihood of occurring over the lifetime of the device (or the duration of the policy as is the case in this research), redundancy must be built into the device. Redundancy will allow the device to continue to operate (sometimes at a reduced capacity) and perform most of the tasks it is assigned by the device user. An often-used system of redundancy is a Redundant Array of Inexpensive Disks (RAID). This system integrates a series of disks together and distributing copies of stored information across multiple disks so that when a disk fails there is still a retrievable copy of the information (Patterson, Chen, Gibson, & Katz, 1989). Modeling a policy system off of the RAID example would resemble the integrated Indigenous policy approach shown in Figure 2.5. The use of RAID additionally demonstrates that in policymaking innovative ideas and solutions abound provided there is willingness to search beyond a narrow focus where most policy work currently rests. This willingness to think outside the square will also lead to new methods for framing policymaking practice.

2.5 Policymaking Frameworks

There are numerous examples of policy frameworks that have been developed to support a variety of needs and allow one to think outside the square. For example Altman, (2009b) proposes a framework to support social justice and Indigenous rights in Australia. None; however, have been developed which support improved Indigenous social outcomes in a holistic manner as well as targeting improvements in land tenure and housing. Keeping this in mind, frameworks with a focus on housing policy and land policy were examined. Their investigation and inclusion in this research proved invaluable.

Existing frameworks for policymaking efforts offer a starting point from which the development of a holistic framework can begin. In this sense a framework in this thesis is considered to be a body of previous work and supporting literature that stipulates what activities and procedures that should be included in policy to foster positive improvement. Furthermore, in terms of this research, inclusion of additional thinking from an Indigenous perspective is also required for the most holistic means to develop policy. This maximises the chance that policymaking efforts will achieve intended outcomes. Of concern in policymaking (and in the case of this thesis) is that the development of a new framework is susceptible to 'scope creep' by overpromising and under delivering (Kwak & Dewam, 2001). One method used to mitigate against scope creep in policymaking is to focus on key areas that most influence related policy elements. For this research these are land tenure and housing upon which Indigenous health, education, and employment are argued in this work to be influenced by these significant policy areas. The following subsections will discuss some of the positive and negative outcomes of using a focus on land tenure and housing to frame policy.

Land policy frameworks

In earlier sections of this chapter discussion demonstrated that there are many conflicting ontologies held concerning land. The authorities that have legal power to create national level land policy. This authority has in effect negated any policy that may have come from an Indigenous perspective, as their perspective does not fit within a European paradigm (as was previously discussed). As most federal authorities are guided by principles from European tradition, the prevailing view of land was one of economics: Which translates land into a commodity. This view is often seen in land management policies such as those in the Bureau of Land Management (BLM, 2005) or the United State Forest Service (USFS, 2002). This commodified view of land is in direct conflict with Indigenous beliefs (i.e. that land is not an entity unto itself). To prevent conflict and other problems associated with the development of a framework for Indigenous land policy this thesis has established the following guidelines:

- Require that management and administration of policy be localised (i.e. adapted to reflect a local community and environment) so as to have the capability to respond to changes in Indigenous community needs and the local environment;
- Afford a holistic understanding of land to appreciate the different beliefs held about its use, meaning, and subsequent effects on policy due these beliefs.

Adapting these preceding guidelines would greatly assist in the creation of good policy in regards to land tenure where remote Indigenous Australia is concerned. This is due to the presence of both statutory land rights (in the form of Crown Land) and customary land rights (in the form of Indigenous Land Corporations) that vividly remind one of the differences between the two systems present in Australia (Altman, 2001). In this sense a holistic framing begins with an understanding of the subtleties that are present in each land tenure system. From this understanding it may be possible to create a set of best practices to frame land tenure policy in such a way that both Indigenous and Non-Indigenous peoples can benefit from the land (Williamson, 2001; Williamson & Ting, 2001).

Perhaps the greatest hindrance to properly framing land policy has been alluded to in Section 2.3, which is that most land use decisions are economically driven and as a direct result of this the valuation of land tends to prioritize economics over social, cultural, or ecological value present on the land (Cousins, 2007; Sabatier, 1988). Therefore, an active dialogue between parties on land policy needs to take place so that a best practice alternative can be found. Yet, this best practice approach must take into account the social, cultural, and ecological value of land as Indigenous and Non-Indigenous peoples perceive it as prosperity is mutual and entwined (W. Fisher, Ury, & Patton, 1999; Thayer Jr., 2003; Ury, 1991). Since this has been brought to light, some success has resulted when land tenure has been administered through the co-management of land and its resources (Quebec, 2002, 2012). A detailed example of this success will be discussed in *Chapter Six* demonstrating that it is possible to frame land policy in a mutually beneficial way. Unfortunately, though this success has been at a cost of excluding other related policy elements such as housing from the discussion.

Housing policy frameworks

Housing policy unlike Land policy follows a complex spending formula of distributing equity across communities based upon demographics and geography (Blank, 2005). When dealing with remote Indigenous communities this can incur a heavy economic cost on the part of government and a high social cost on the part of an Indigenous community. Meaning that government is prone to finding the most cost effective solution for framing housing policy regardless of its

appropriateness (or lack thereof) to the Indigenous community. From this behavior on the part of government, a need to link positive outcomes from land tenure to housing is needed to facilitate an improvement in Indigenous well being. When the two are separated as policy currently is framed uneven outcomes are created. Another factor that keeps these two realms of policy work separate is that land policy tends to be highly outcome oriented (as previously discussed) whereas housing policy is procedure oriented. This procedure orientation is demonstrated in how housing policy programs divide funding for a given year. A specific formula is used to establish, a fixed financial amount that must be spent in each of the following areas:

- Constructing new housing stock
- Repairing/improving existing stock
- Allocating space in housing stock based on changing community needs

derived from: (Malpass, 1990; Memmott, 1988)

The above steps closely resemble a policy for public housing seen throughout the urbanised western world. For example Victoria has investigated mean to improve social housing stock (DHS & KPMG, 2012) and San Francisco has included a detailed approach to housing policy and reform in their general plan (SFPD, 2012). These policy approaches have a strong tendency to focus upon the physical aspects of what makes housing while leaving out many of the social dimensions that make housing home (Hays, 1985). For example, public housing commissions in the United States, Canada, and parts of Europe follow this pattern of building housing stock, maintaining, repairing, and allocating space in the community as needed (Angel, 2000). Rapoport (1969), suggests four objectives in order for housing policy to be effective:

- It needs to be socially and culturally valid (traditional housing such as longhouses of the Pacific Northwest, teepees, and yurts facilitate this appropriateness and the later provide mobility of the community)
- It should be sufficiently economical to ensure that the greatest number of people can afford it .
- It should ensure the maintenance and health of the occupants (e.g. in relation to local climate).
- There should be a minimum requirement for maintenance of the housing unit over its life cycle.

Policymakers should strongly consider the objectives that Rapoport offers up as they facilitate an appropriate foundation from which to frame housing policy. Additionally Rapoport (1969), suggests that there is a link between one's perception and behavior and if policy objectives are framed in a positive manner, they will be seen by government policymakers as good codes of

conduct. Unfortunately, the difference in the application of these objectives is that in remote Australia these same methodologies are inappropriate as they were developed for use in centralized urban areas. In remote Indigenous communities their situation, environment and social norms are vastly diverse and need to be treated differently than urban populations. For example, as discussed previously, dwellings are being designed and constructed that are not culturally appropriate homes (i.e. they are designed for Non-Indigenous people and their patterns of residence) are sited and built on land that has high cultural/spiritual significance (i.e. places which are only visited on special occasions), or constructed in areas that are only to be used seasonally. In *Chapter 4*, these issues will be further discussed. An alternative to Rapoport's (1969) objectives and resulting application, policy framework developed by Sabatier (1988), argues that policy itself contains numerous sub-systems that interact with one another to facilitate the process. From these interrelated systems, he suggested, that the best way to alter policy to facilitate positive change is to advocate working within the current process. The subsystems are represented in the vertical rectangular box on the right side of Figure 2.6:

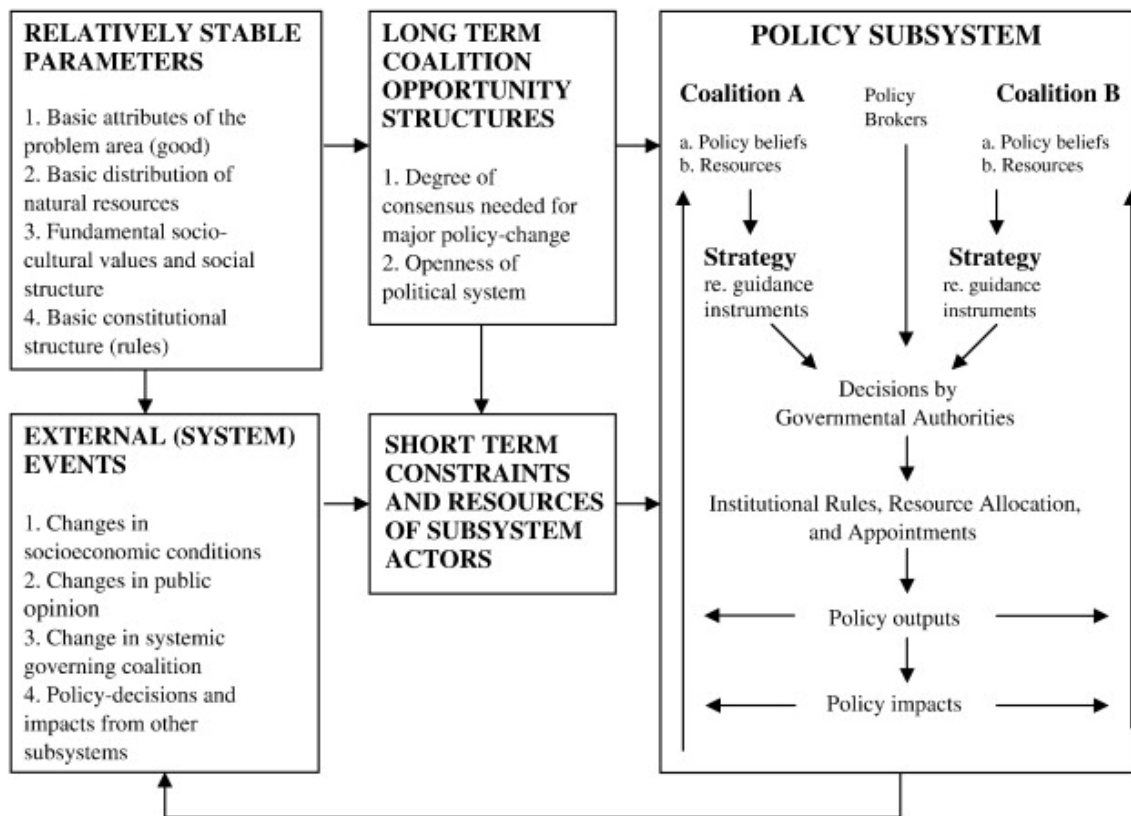


Figure 2.6 – General model for policy change using coalitions of advocacy within the current framework (from Sabatier, 1988)

Another point made by Sabatier (1988) is the policy subsystems control the exchange of information between policymakers and stakeholders. This implies that policy has a highly controlled structure. Due to the regimented way in which housing policy is currently framed, the best solution may be to work within the current Australian Indigenous policy framework and to

alter its subsystems as needed in order to achieve desired outcomes. As an addendum to this thinking, new ideas can be gradually introduced to Rapoport's (1969) earlier framework to elicit change from within opening the possibility to achieve improvements in existing policy and its outcomes over a given amount of time (Howlett & Ramesh, 2002). Such an approach may work well with government efforts to streamline housing policy procedures. An example of this streamlining will be detailed in the United States case study section of this thesis (Chapter 5).

What Rapoport (1969), Sabatier (1988) and the examples of their applications suggest is that a housing policy framework for remote Indigenous communities cannot be simply taken off the shelf. A policy framework must be suitable to the needs of the community where it will be implemented. This new approach in application starts with the inclusion of Indigenous people in the design process and that housing policy, be amended and developed to reflect the particular Indigenous people it is being designed for (Altman, 2001). This two point approach begins to structure and present a foundation for a new policy framework that can be used to achieve the aim of this thesis.

2.6 Participatory Decision Making¹⁰

The participation of all stakeholders in the decision making process is an intrinsic part of developing policy. Stakeholder participation in policymaking is addressed through incorporation of their thoughts and ideas in order to foster outcomes that are appropriate for the group around which policy is being developed. In this research participation will be accomplished by incorporating 'Indigenous voice' into policymaking efforts. The need for Indigenous participation is important for two reasons. First, Indigenous people need to have buy in for the policy to have popular support. Secondly, a need for greater engagement with Indigenous people helps to reassure policymaking efforts are culturally sensitive. In most cases the policymaking process is legally required to have input from Indigenous stakeholders. This is not done and in most cases completely ignored as it may be argued by government that it can drastically impede both the policymaking process as well as implementation. Furthermore without the participation of Indigenous stakeholders, there is little likelihood that a proposed policy will have popular support from the community where it is to be implemented.

It is necessary to have popular support in order for policy efforts to have a chance of being successful. Policy efforts can still be achieved without active participation and support of

¹⁰ Several works on participatory decision making were published during the writing of this thesis 2010-2012 that can provide additional information of the subject. These new works were not included as this chapter had already been written prior to publication.

Indigenous people; however, it will be far more susceptible to falling short of its original objectives or systematic failure. To mitigate against the risk of failed policy, policymakers in government need to put considerable time and effort into actively engaging stakeholders (Holmes, 2011). Active engagement can take place in a variety of forms including round table discussions and community meeting; however, looking at these two examples it is apparent that the means of engagement are still occurring on European terms. While some Indigenous groups have highly stratified governance structures from European influence (such as the Creek and Cherokee in The United States), many groups do not. This includes most of Indigenous Australians who are organized into small bands and sometimes clans but rarely ever at a tribal level (Malinowski, 1963; E. O. Wilson, 1978). Therefore, different forms of organization should allude to relevant approaches to encourage participation and engagement in the policy development process. It would be difficult to engage small groups of Indigenous people in their community if their community is spread over a large geographical area as well as only being seasonally used and accessible. In a related policy push is the notion that services should be consolidated into outstations for Indigenous Australians. While it may facilitate government service delivery, it does not facilitate access for Indigenous people to these services increasing preventable health issues and crime. This is another example of disengagement from the policy process where participation or consultation with Indigenous people could have produced a workable solution that would not decrease well being (Altman, 2006). Success of any policy requires the ability to work and engage with stakeholders. Therefore, their participation is crucial to the facilitation of workable outcomes (S. Fisher et al., 2011). One possible way to facilitate participation in decision making is to meet in the middle with a negotiated agreement achieved through consultation (W. Fisher et al., 1999). This may not be possible on cultural or management terms, but where there is overlap between Indigenous and Non-Indigenous methodological approaches to well being. As Taylor (2008), shows in Figure 2.7, there is some overlap between Indigenous values and well being with those of government in what is expressed in the meeting in the middle of the figure.

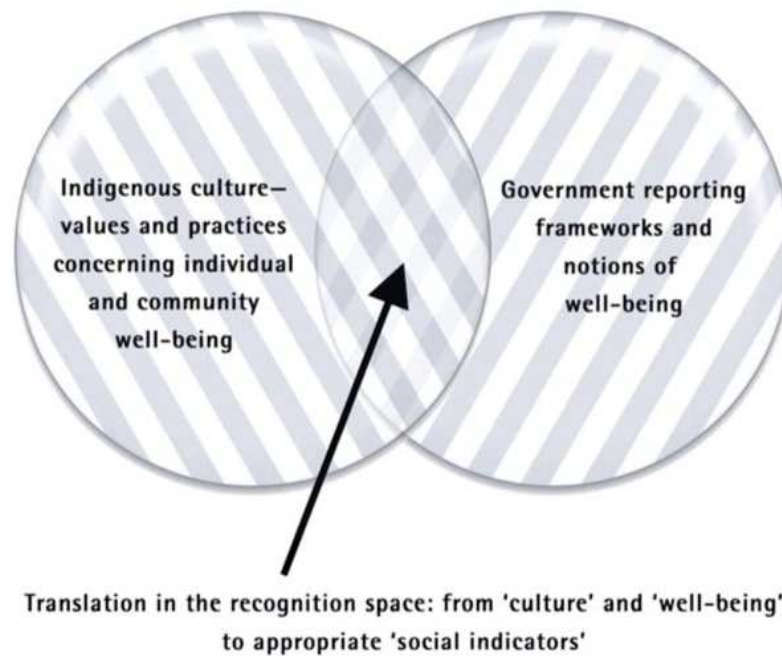


Figure 2.7 – Overlaps in notions of well being

Additionally, Hall (1993), notes that the outputs of the policy process that can drive policy change manifest themselves in three different forms:

- Occurrences where one policy paradigm replaces another are more likely to be sociological rather than scientific
- Issues of authority are central to the policy process (i.e. when faced with conflicting expert opinions government policy makers have to make a choice)
- Instances of policy implementation and subsequent failure are likely to play a role in the development of future policy paradigms

The example of the factors that drive the policy process in Hall's work lead to good sign for participatory decision making as it is capable of mitigating many policy development process issues. By incorporating Indigenous voice into the decisions making process first hand experiences of past policies can demonstrate why a continuance of policy is not warranted. Additionally, Indigenous knowledge can also be seen as expert opinion since most Indigenous groups have continuously inhabited many parts of the land in pioneer settler societies and therefore have a direct connection to it. While Indigenous knowledge may not have the scientific backing an expert opinion has, it strongly influences policy outcomes and should not have its importance relegated during the policy development process. The best suggestion that can be made to government policymakers is to require the participation of Indigenous people in the decision making process as there is some overlap in values from which policy work can initiate from.

2.7 Conclusion

The socio-cultural, physical, and political landscape of remote Indigenous Australia is highly complicated by issues of policy concerning land tenure and housing. This is presented through a simplified view of culture by Non-Indigenous people who have imposed their values upon Indigenous society in the legal and political frameworks they have used to govern policy in remote Australia. It is from this imposition that a lack of appreciation of the knowledge embodied in Indigenous culture appears lost or ignored by Non-Indigenous people when applying meaning to concepts of land and housing. Unfortunately, by failing to take alternative meanings and concepts into account during the policymaking process, it can stagnate thereby failing to achieve the intended objectives. The most recent policymaking difficulties in remote Australia are being faced for this exact reason. This is not only bad for the government, but for many sectors of the economy due to their ties to accessing Indigenous lands. As a result of being bad for the economy, policy relating to the tenure of and housing upon Indigenous lands has been created in haste under the auspices of growth and prosperity that comes at a high cost to Indigenous groups. The mere existence of Indigenous policy seldom creates positive attitudes among its intended audience, as they are seldom involved in the development process in a meaningful way.

Thus, this chapter suggested different approaches to framing Indigenous policy that was more targeted in their objective with the idea that this would be a positive step to improving Indigenous well being. Additionally it was suggested that alternative policy solutions could be generated through the inclusion of Indigenous voice to help mitigate against certain risks and missteps in current policymaking. The dividend created through the mitigation of risk can then be directed into better policymaking in the areas of land tenure and housing setting the stage for a cycle of continuous improvement in policymaking efforts. Additionally exploring these concepts through discussion using four themes to guide thinking demonstrated the interrelatedness of tenure, housing, policymaking, and well being in Australia.

3

Research Design

3.1 Introduction

This chapter will provide an overview of the research design approach used to engender policy improvements in housing and land tenure in remote Australia. In the previous chapter, different aspects of policy and valuation were identified as being in conflict and needing revision in order to improve on the ground outcomes. The information learned from these policy and valuation aspects will be used to support the aim of the thesis research: to create a policy framework that can be used as a basis for improving outcomes in land tenure and housing in remote Indigenous Australia. To achieve this aim the following research design has been developed it involves three phases and four supporting research objectives:

Phase 1: Case Study Inquiry

Objective One: Identify Indigenous v. non-indigenous perceptions of land tenure and housing in four pioneer settler societies.

Objective Two: Examine the evolution of contemporary policy approaches to Indigenous housing and land tenure in four pioneer settler societies.

Phase 2: Analysis

Objective Three: Identify and examine Indigenous land tenure and housing policy reforms in Canada, New Zealand, and the United States, which have led to successful outcomes and contextualize the lessons for an Indigenous policy framework in remote Australia.

Phase 3: Integration

Objective Four: Develop a policy framework for integrating Indigenous and Western perspectives on land tenure and housing in Australia.

Thus, Each phase corresponds with an objective of the thesis and is supported by a series of research questions as depicted in Figure 3.1.

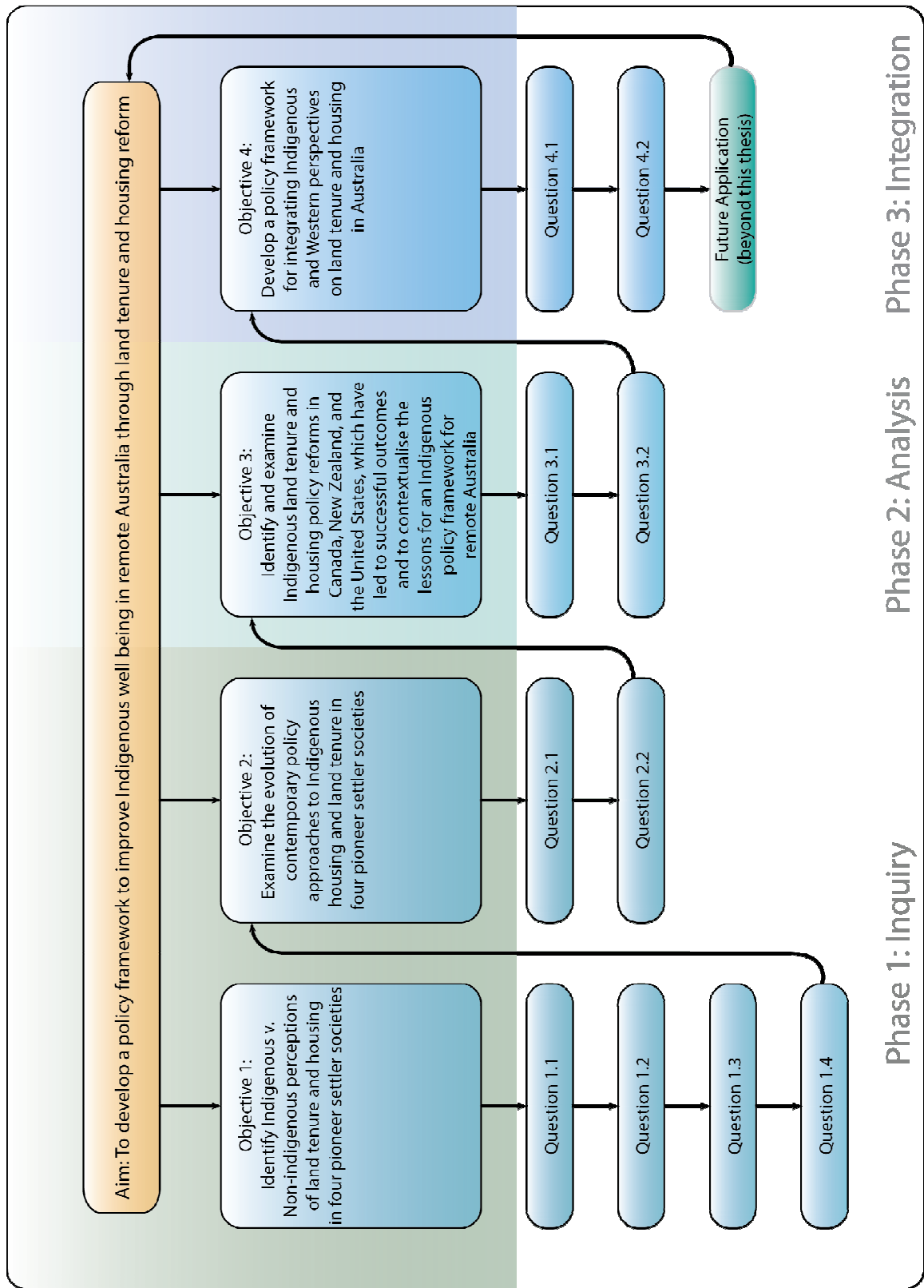


Figure 3.1 - The Design of the Thesis

3.2 Case Study Inquiry

This section outlines the initial data collection to commence addressing of the research aim of this thesis. It details the approach and methods used to gather and analyze data on Indigenous land tenure and home ownership from four nations (Australia, Canada, New Zealand, and The United States) used in comparison of policy in later phases of the thesis. This approach involved the analysis of an extensive body of historical literature, legal doctrine, and policy documents sourced from both government and scholarly material. To assist in the selection of material relevant to the aim of the thesis, Boolean logic was used to reduce the number of documents required for analysis and the time needed to complete the data collection.

3.2.1 Boolean Logic and Content Analysis

Boolean logic is widely used in many scientific fields such as biology, computer science, and sociology for its ability to target relevant data from a larger dataset. This ability has kept Boolean Logic in continuous use in research since its conception in the 1850's (Boole, 1854; Brooks & Stein, 1994; Franklin, 1995; Halpern et al., 2001; Klarlund, 1998; McBratney & Odeh, 1997; Treadwell, 1995). It was used in this thesis for these same data refining capabilities. These capabilities allowed the researcher to pinpoint relevant data sources with precision and accuracy. As Indigenous policy is a subject of extensive research, finding relevant articles on land tenure and housing can be a cumbersome task. Therefore a method for refining/reducing available data was needed. The researcher postulated that Boolean Logic would be an appropriate method to achieve this task. The next section of this chapter will explain how the use of Boolean Logic in this thesis effected data collection.

Boolean Logic is a method for extracting a set of key variables containing common characteristics from a much larger (sometimes infinite) set (Cox, 2005). This technique used in algebra, has since found its way into other fields such as demographics, biology and most notably computer science where it is central to the operation of internet search engines (Jansen, Spink, & Saracevic, 2000). Boolean Logic is heavily engrained in many academic and professional disciplines so much so that it used unknowingly. For example, in legal decisions key statutes or previous court opinions are cited to provide a rationale for the opinion of the court (Heiner, 1986); Boolean Logic is employed to point to these opinions and statutes based upon their content relevant to the case being litigated (Moens, 2001; Salton & Buckley, 1990).

To understand how Boolean Logic works, one must examine it in two steps: 1) As Boolean Logic originates in algebra it is specifically concerned with sets¹¹, 2) these sets relate to one another

¹¹ Set – A grouping of terms or numerical values that share common characteristics, which are components of a larger named term or principle

based upon the characteristics of the sets. Therefore, Boolean Logic defines the relationship of members of a set based upon their common characteristics. Compiling a list of source material using Boolean Logic requires a basic understanding of set theory (Jaynes, 2003). Set Theory is the study of datasets and how components of a set relate to one another. Boolean Logic examines this data relation through linkages between multiple sets. When terms are searched for without the aid of Boolean Logic in a database the results produced are far too numerous and all but a few have relevance to the research topic. Precision and accuracy are greatly increased using Boolean Logic with its built in property of Bivalence (two possible values); meaning a document must contain a list of search terms otherwise it is not a part of the dataset (Cox, 2005; Rihoux & Ragin, 2009). These terms are derived from the literature used to discuss a subject. The terms are agreed upon by a classification scheme that is used internationally (ISO, 2009, 2011). Such an agreed upon list of terms means that performing a search of data using Boolean Logic has a clear starting point. In the event that terminology is not standardized a search using Boolean Logic is cumbersome if it is even possible (Buchan, 1993). Combined with an assigned list of terms for data relevant to the subject being examined and the rules of Boolean Logic being entirely inclusive or exclusive, it is a methodology of high precision and accuracy. A closely related methodology, Fuzzy Logic by comparison operates upon the uncertainty of incomplete information.

While this thesis will only be using Boolean Logic, the concept of Fuzzy Logic needs to be mentioned as both inform data searches and can effect what search results are returned from a query (Zadeh, 1965). Fuzzy Logic is just that, a logic based upon uncertainty (Zadeh, 1975, 1989). It has an innate ability to express partial or ill-defined relationship between data providing a valuable tool for research in data deficient scenarios. As Indigenous policy is a data rich environment, Boolean Logic proves to be the better methodology for use in this research.

For effectiveness in data collection, Boolean Logic aided the course of research in two ways:

- The reduction of the number of sources required for research on a specific topic
- The elimination of sources that have little relevance to the topic under inquiry

These factors assure source material is adequately covered as well as manageable for a small group, or in the case of this thesis a single researcher.

Indigenous issues are widely written about and catalogued. Finding a suitable starting point determines what types of qualitative data on indigenous subjects is needed. The most relevant data on Indigenous policy issues are contained within historical literature (historical texts and documents relating to Indigenous issues), legal doctrine (national and state level laws and cases used to justify a course of action involving Indigenous people), and government policy (formal

government statutes and policies directly effecting Indigenous peoples). Boolean Logic was applied to refine these three sources into a list of documents that warranted further examination based on their relevance to the objectives of this thesis. The list of documents concerning Indigenous land tenure and housing results was then compared to what is available on the topic using a search without Boolean Logic. It was found that through the use of Boolean Logic search, it was possible to target relevant sources with greater precision reducing days of inquiry down to a few hours. Thus Boolean logic was validated to be the appropriate technique to use for the data gathering stage of this thesis.

Selection of Terms

To conduct an effective search for relevant data sources, a list of terms, which would be used to target the themes of data effectively, was compiled. As mentioned in the previous section, there are agreed upon standard terms for classifying data resources on subjects. The terms selected for this research were based upon their use in academic writing and international standards for terminology and classification: ISO 704:2009¹² and ISO 10241-1:2011¹³. General thematic terms such as *housing, land tenure, home ownership*, generated an excessively large number of sources so these terms had to be made more specific. By adding quantifying words such as *Indigenous, Aboriginal, Native American, Maori, First Nations, Australia, Canada, New Zealand, United States*, only data with these terms in conjunction with the thematic terms resulted. Due to the property of bivalence in Boolean Logic, the addition of these quantifying words to the terms housing and land tenure effectively instructed a search to exclude results that contained only the first terms and include results that contained both the first and second terms. The term 'produce' will be used as an example to illustrate how the incorporation of additional terms can assist in refining data collection. Just using 'produce' as a set makes the list of results so excessively large that it could be infinite. **Produce** = (∞) Therefore, if research is concerned with properties of fruit, a more appropriate starting point might be a set of 'fruit'. **Fruit** = (Apple, Banana, Grapefruit, Lemon, Lime, Nectarine, Orange, Peach, Pear, Quince). As the set now has a finite number of members, it is possible to make further reductions in set membership through the application of Boolean Logic. Running a search on this set will generate a subset based upon the properties of members of the larger set (e.g. **Citrus** = (Grapefruit, Lemon, Lime, Orange). 'Citrus' is a subset of the set 'Fruit' as it excludes fruits which are not considered citrus. This new subset can be further refined using additional terms: **Yellow Citrus** = (Grapefruit, Lemon). In this simple example Boolean Logic refined the search by reducing the number of relevant results. This example illustrates that the more information provided to refine the search terms, the greater

¹² ISO 704:2009 Terminology work - Principles and Methods

¹³ ISO 10241-1:2011 Terminological entries in standards - Part 1: General requirements and examples of presentation

relevance the generated results will have. In relation to this thesis, the terms in Table 3.1 were selected to aid the search for information relevant to the topics of Indigenous land tenure and housing:

Table 3.1 - Search Terms

Indigenous
Indigenous Housing ¹⁴
Indigenous Land Tenure
Indigenous Housing Australia
Indigenous Land Tenure Australia
Indigenous Housing Canada
Indigenous Land Tenure Canada
Indigenous Housing New Zealand
Indigenous Land Tenure New Zealand
Indigenous Housing United States
Indigenous Land Tenure United States

In some cases these terms did not generate many results. Thus, terms based upon the proper names for Indigenous people in their respective nations were used. These are shown in Table 3.2.

Table 3.2 - Search Terms For Respective Nations

Aboriginal Housing
Aboriginal Land Tenure
Torres Strait Islander Housing
Torres Strait Islander Land Tenure
First Nations Housing
First Nations Land Tenure
Métis Housing
Métis Land Tenure
Inuit Housing
Inuit Land Tenure
Maori Housing
Maori Land Tenure
Native American Housing
Native American Land Tenure
Alaska Native Housing
Alaska Native Land Tenure
Native Hawaiian Housing
Native Hawaiian Land Tenure

An initial trial search of data resources using the terms in Table 3.2 was conducted to assess the effectiveness of using Boolean Logic. This initial search of resources was conducted at the main library of the Royal Melbourne Institute of Technology. The results are shown in Table 3.3.

¹⁴ Indigenous Home Ownership was not used as it was proven to produce very few useful results

Table 3.3 - Results of RMIT Library Search

RMIT - Main Library (Swanston)		
Search Term(s) from Table 3.1	Regular Search	"Boolean Search"
Indigenous	823	0
Indigenous Housing	48	9
Indigenous Land Tenure	55	0
Indigenous Housing Australia	29	9
Indigenous Land Tenure Australia	32	0
Indigenous Housing Canada	1	9
Indigenous Land Tenure Canada	7	0
Indigenous Housing New Zealand	0	0
Indigenous Land Tenure New Zealand	8	0
Indigenous Housing United States	2	0
Indigenous Land Tenure United States	4	0
Search Term(s) from Table 3.2	Regular Search	"Boolean Search"
Aboriginal Housing	41	3
Aboriginal Land Tenure	196	1
Torres Strait Islander Housing	10	310
Torres Strait Islander Land Tenure	24	24
First Nations Housing	3	45
First Nations Land Tenure	2	2
Métis Housing	0	0
Métis Land Tenure	0	0
Inuit Housing	0	0
Inuit Land Tenure	2	0
Maori Housing	0	0
Maori Land Tenure	4	0
Native American Housing	6	212
Native American Land Tenure	3	2
Alaska Native Housing	1	15
Alaska Native Land Tenure	1	0
Native Hawaiian Housing	0	4
Native Hawaiian Land Tenure	0	0

Table 3.3 demonstrates the positive influence Boolean Logic has on the results of a data base search. As in the top of the table there are far too many results, when terms such as ‘Indigenous’ are used on their own. Many of these results are of little relevance to the research being conducted. Therefore, by applying specific terminology in conjunction with a search using Boolean Logic (bottom half of Table 3.3) the irrelevant sources fall away and the result is a select number of sources with very high relevance to the research being conducted. The results in Table 3.3 additionally reinforce the need for an understanding of national level terminology for Indigenous issues otherwise potentially valuable sources can be overlooked. Note the high number of results from substituting the word indigenous with the name of indigenous peoples for the corresponding study nation (*Aboriginal of Torres Strait Islander (Australia), First Nations or Métis (Canada), Maori (New Zealand), and Native American (United States)*), no results were generated when this was done for several terms: *Métis Housing, Métis Land Tenure, and Maori Housing* suggesting a potential shortcoming if a single data source is to be relied upon. Caution should be taken when using Boolean Logic as a result; however, no one library will be

comprehensive on a specific subject unless it is constructed around that subject (Law Libraries and Plant Libraries are good examples of specialty libraries). In spite of the potential limitations using Boolean Logic, poor results while applying the methodology to a search of library resources should not discount its application, but provide the researcher with a sense of the comprehensiveness of data that the library has in its holdings on the subject being researched. This aids in the selection of libraries and other data resources relevant to the subject while discounting those sources that were potentially valuable, but found based upon the application of Boolean Logic to be lacking. This technique of applying Boolean Logic to a search has been used previously by researchers when dealing with large amounts of data (Foulonneau, Cole, Habing, & Shreeves, 2005).

Results of conducting a Boolean search (Table 3.1) suggest that the terms used are critical to producing a list of sources for use in a qualitative datasets. This list of terms was standardised to function across national boundaries where terminology varied. An expanded list of searches using Boolean Logic in library and archival sources utilized during the research of this thesis is presented in Appendix: B – Tables B.1-B.4.

After conducting the trial test of a Boolean Logic search in the RMIT library proved to be effective in targeting sources relevant to the thesis of this research, a period of data cleansing took place before the search for data was expanded beyond the Swanston library. Data cleansing is the examination of data sources to determine their usefulness to Indigenous policy research. While the results generated during the Boolean Logic search in this research were now of a manageable size, they were still not all relevant. Some only mentioned the subject matter in a few paragraphs or were news magazines. As such sources would not be useful for academic analysis they needed to be cleansed from the dataset. This data cleansing was achieved through two steps:

- Examining the titles of sources generated eliminating duplicates of the same source discounting ones that would contain only anecdotes such as: newspaper clippings and travel guidebooks
- Content Analysis, of the remaining sources comprehensively by observing how the keywords being used in the context of the source: in depth discussion, implementing policy, and proof of concept

At the conclusion of the data cleansing process, the previously vast number of potentially relevant sources was reduced to a few dozen that represented the initial core source material. As it is not possible to create a body of research using only a few dozen sources, the need to expand the search for data beyond the home university arose. As previously mentioned the three

categories of data were historical literature, legal doctrine, and policy (See sub section: *Boolean Logic and Content Analysis*). Materials are kept in both academic and government institutions and necessitated some travel when these resources were not accessible in electronic form. The search for additional data took the research to nine research libraries and archival centres. These institutions selected based upon their proximity and size of their document holdings relating to Indigenous issues in Australia, Canada, New Zealand, and The United States. Table 3.4 presents the institutions whose resources were utilised during the data collection:

Table 3.4 - Location and Name of Utilized Resources

University of Melbourne – Baillieu Library (Main Library) (BL)
University of Melbourne – Law Library (ML)
University of British Columbia – Koener Library (Main Library) (KL)
University of British Columbia – Law Library (LL)
University of California Berkeley – Pacific and Indigenous Studies Library (PI)
University of California Los Angeles – Charles E. Young Research Library (YR)
Autry National Center – Braun Research Library (BR)
New Zealand National Library (NL)
New Zealand National Archives (NA)

Using Content Analysis

A Boolean Logic search and the first step of the data cleansing process (elimination of duplicate sources and anecdotal materials) were conducted before visiting each of the libraries listed previously. This process allowed for a highly targeted approach to the content analysis of the remaining sources, on site examination/analysis, and movement between resource locations every few days. The on site examination represents the third step in the data gathering process after the initial Boolean Logic Search and the elimination of duplicate and poor sources. This onsite process consisted of content analysis which in itself contains several steps according to government and academic sources (Delfico, 1996; Krippendorff, 2004; Sommer & Sommer, 2002):

- 1) Defining the variables (The terms selected in the Boolean Logic and the resulting sources)
- 2) Selecting the material for analysis (The sources remaining after the first step of data cleansing)
- 3) Developing an analysis plan (Mapping out and allocating appropriate time with the material)
- 4) Analysing the data (Examination of the material on site)
- 5) Coding the data (Abbreviating segments of textual data based upon positive /negative / neutral perspectives on land tenure and housing policy issues)¹⁵

¹⁵ *Steps for Conducting Content Analysis Adapted from:* (Delfico, 1996; Krippendorff, 2004; Sommer & Sommer, 2002)

Content analysis is a methodological approach to research employing a systematic analysis of text and the inferences that can be made from it (Chambliss & Schutt, 2010; Sommer & Sommer, 2002; Weber, 1985). The content analysis in this research helped to demonstrate the frequency of occurrence of keywords previously used during the initial Boolean search for information on Indigenous housing and land tenure issues. This gave additional depth to the data search by identifying where research on these issues was light or difficult to obtain. This technique was applied to the remaining sources after data cleansing using the Boolean Logic term search results (Table 3.3) and the database software Microsoft Access to organise and classify the sources (Krippendorff, 2004).

The first three steps of the content analysis were explained previously; however, steps four and five require further explanation. Inclusive within the analysis of the data in step four was the physical pulling of the sources from shelves and archival boxes. These sources were moved to a central location at the site (usually a large table) where they could be laid out and examined in detail. This examination included note taking, photocopying, and taking digital photographs when photocopying was prohibited or the source was too fragile to be handled. These notes, photocopies, and photographs were then collated and coded on site so that they could be easily accessed at a later date. As a result, visits of several days to each archive were needed to conduct the data collection.

The final step of the content analysis involved coding the data using *Microsoft Access*¹⁶ to keep track of the data and its corresponding origins. As in the Vehicle Identification Number (VIN) on a motor vehicle the sources were coded based upon nation of origin: Australia (**AU**), Canada (**CA**), New Zealand (**NZ**), or United States (**US**); library or archival source: BL, M, KL, LL, PI, YR, BR, NL, or NA (Table 3.4); relevant issue: Indigenous Housing (**IH**), Indigenous Land Tenure (**IT**), Indigenous Policy (**IP**); and order of access (001, 002 etc.). Thus a code of: **CALLIH008** would mean a source from Canada (**CA**) at the Law Library (**LL**) at the University of British Columbia, concerning Indigenous Housing (**IH**) that was the 8th source accessed (008) at that location. The researcher developed this coding system to be easy to use consistently. As it was being used solely by the researcher as well as containing classification categories that were both geographic and content specific the occurrence of coding error was negated (Delfico, 1996). Additionally if this coding system were to be used by another researcher the geographic and content indexing identifiers would provide inter-reliability checks for the data (Chambliss & Schutt, 2010; Delfico, 1996; Sommer & Sommer, 2002). Thus, if the data were to be miscoded based upon content, it would become apparent.

¹⁶ Now called: *Microsoft Office Access*

In conclusion, the use of Boolean Logic supported by data cleansing and content analysis created a strong focus on relevant quality research data that could be collected in a restricted amount of time promoting a prompt completion of the data collection.

3.2.2 Preparing the Case Studies

The next stage of Phase 1 was to interrogate the collected data to seek answers to Objectives 1 and 2 and the associated research questions detailed in Chapter 1.2.

The term, perspective refers to an individual's or society's point of view upon subjects or issues relating to their well being. Chapter 1 and 2 established that landscape has a strong influence upon perspective and visa versa. This is due to the deeply rooted connection that culture has to the land. From this connection or lack thereof, perspective emerges as a way to inform culture and ideas about socio-political issues. In the case of this research those issues are land tenure and housing.

Perspective is the driving influence behind conceptions of land tenure. In *The Beholding Eye*, (Meinig, (1979) presents ten variations on interpreting the same scene which he uses to demonstrate the bias inherent within individual perspective. This inherit bias within the perspective of individuals can also influence the perspectives of others. Whilst it is true that bias may exist at the individual level, this is not true at the societal level where even in parts of North America, there existed indigenous groups which had clearly defined boundaries for hunting, fishing, and dwelling which were respected by the groups adjacent (*Before The Indian Claims Commission*, 1959). There was even an understanding among some members of government in the 19th century as to what was Indian land (Benton, 1849).

The examples in the preceding paragraph show that there is an understanding of what Indigenous perspective is on land tenure amongst both Indigenous and non-indigenous groups. Additionally this demonstrates that there is groundwork in place to create policy across socio-cultural boundaries. This groundwork will be used to in the methodology to address Objective 1 and its supporting questions. The first objective is:

Objective 1: To identify Indigenous v. non-indigenous perceptions of land tenure and housing in four pioneer settler societies.

Question 1.1 *What are the similarities and differences in Indigenous v. non-indigenous perspectives and practices relating to land tenure in Canada, New Zealand, the United States and Australia?*

The first question was concerned the similarities and differences relating to Indigenous land tenure. Answering this question necessitated an understanding of perspective on land tenure derived from the sources found during the search of libraries and government databases (Beckley

et al., 2007; Daniel & Boster, 1976; Dyck & Waldram, 1993; Gadamer, 1960; Meinig, 1979; Meitner, 2004; Pratt, 1992; H. M. Proshansky et al., 1983; Rapoport, 1972; Sauer, 1925; Vecsey & Venables, 1980). From these sources an expanded context of perspective emerged and is used in this thesis to guide the development of the research approach: *perspective is a person or societies emotive response to seeing a particular landscape or habitat. This is expressed through the qualitative value they place upon the landscape or habitat. It is historic, it is sacred, it is problematic, and it is pristine are several examples of how perspective might be expressed.*

This definition was then used to demonstrate the influence of perspective on landscape valuation and subsequently policy relating to the habitation and disposal of a defined landscape.

Perspective on land tenure in Question 1.1 was not answered in a single section, instead a case based reasoning approach was used that compared and contrasted perspective across four case study nations. Each study nation produced a partial answer to Question 1.1, which was synthesised and completed in Chapter 8 during the composition of the meta-analysis.

The definition of perspective was compiled with intent to include both European, and Non-European values on the subject, sources especially helpful in creating this definition were used below to identify properties of perspective:

- *Subjectivity of Perspective* - through the use of subjectivity in aesthetics of land and place it is postulated that values based upon perspective are not universal principles (Gadamer, 1960);
- *Non-holistic Nature of Perspective* – The full meaning of a place cannot be understood due to ones perspective (H. M. Proshansky et al., 1983);
- *Embodied Value of Perspective* – Different perspectives of the same landscape from different points of view demonstrate the implicit value or lack thereof placed upon land and place (Meinig, 1979);
- *Gradient of Perspective* - Using different interpretations of viewings of the Grand Canyon from various points along its course create a perspective gradient for defining the aesthetic value of a landscape (Meitner, 2004);
- *Culture of Perspective* - Constructing a clear Indigenous specific perspective on land and the environment is not straightforward as perspective is influenced by culture and local geography (Vecsey & Venables, 1980);
- *Burden of Perspective* - creating policy for Indigenous specific issues when heavily influenced by perspective and can force certain objectives to be met and social dynamics to be maintained (Dyck & Waldram, 1993). Example: paternalism and the Aboriginal station worker in Chapter 4, Section 4.2.4.

Perspective is a useful starting point for inquiry in many disciplines such as: Anthropology, Sociology, Architecture, Law, and Geography as it sets the approach one will use to guide their research. In the case of this section, perspective was used to demonstrate that there is no universally held belief amongst indigenous groups, which can be used to define land tenure. The next section will explore if the same can be said for perceptions of housing.

Question 1.2 *What are the similarities and differences in the meaning of housing to Indigenous and Non-Indigenous people in Canada, New Zealand, the United States, and Australia?*

Following the determination of the influence of perspective upon interpretations of land tenure, the second research question involved comparing and contrasting Indigenous perspectives on housing with their non-indigenous counterparts. To achieve this, the method of content analysis as defined in (Krippendorff, 2004) was used:

Systematic reading of a body of texts, images, and symbolic matter not necessarily from the perspective of the writer.

To produce a list of perspectives around home ownership, the list of literature and government documents produced during phase one (Boolean logic) of this thesis was consulted (See section 2.1). What is shown is that home ownership amongst indigenous cultures is inherently tied to perceptions of land. While one group lived on the land, they may not have actually been the owners as the land could be held in common amongst the larger tribe or owned by the tribal chief (Parker, 1989). However, this is not the perspective within which home ownership is viewed in European custom where it is something inherently private. The modern form of which is defined under Torrens Title where land and the dwellings which rest upon it are few simple and taxable private possessions (Moore, 2009).

With the similar and contrasting views of land and home ownership in the sections above, begins to emerge a sense that there is no uniform European or Indigenous perspective on either of these issues. With that said, Indigenous people and European come from distinctive backgrounds: Indigenous life and society revolving around land and what it provides (Burnham, 2000; Cronon, 1983), and European wealth being tied to the valuation of land and its contents (Barr, 2006; Freyfogle, 1996).

Question 1.3 *What were the law and policy responses by European colonists in four pioneer settler societies to Indigenous land tenure and housing practices?*

While the two previous questions used to address objective one were based heavily on perception, the remaining two will be focussed on the historical reaction to differences in perception. To address the first of these questions (1.3), content analysis through the use of historiography will be used. Historiography can be defined as the method through which a

historical trend (in this case policy) can be traced using past literature and other documentation (Goodman & Kruger, 1988).

Basing non-indigenous reactions to Indigenous land use practices upon historical account and the legal doctrine and policy, which emerged as result. This section will set the scene for why land use practices exist in their current form. While having a great respect for Indigenous peoples, Theodore Roosevelt did not see them as fit land managers as he expressed in his speech, “The Strenuous Life.”¹⁷ This belief was constructed of many years spent in what was then termed “Indian country” in the mid-west of the United States.

To take non-Indigenous responses to indigenous land tenure and home ownership practices a step further, the researcher investigated the data sources generated during the Boolean Search for historical accounts and legal proceedings that put indigenous people at a disadvantage. These sources included numerous laws and government policies from Australia, Canada, and New Zealand which were used to appropriate land from Indigenous people for settlement by non-indigenous people. Guises such as *Terra Nullius*, *Discovery Doctrine*, and civilizing of the savage were used to justify these land appropriations, which will be discussed in further detail in each of the cases study chapters (Chapter 3 – Australia, Chapter 4 – United States, Chapter 5 - Canada, and Chapter 6 – New Zealand).

Question 1.4 *What were the outcomes for Indigenous people from Non-Indigenous government responses to indigenous land tenure and housing practices?*

To answer this question, demographic data from national statistical bureaus¹⁸ in conjunction with policy reports produced by government commissions was consulted through the use of content analysis for classifying sources based upon similarities and differences (Krippendorff, 2004).

After the content analysis was conducted patterns within the data were apparent. These patterns were of both quantitative as well as qualitative in nature and alluded to several key issues:

- Successive policy regimes aimed at increasing social welfare for indigenous people were not as effective as anticipated/promoted by government. This was manifested in;
- High rates of poverty, preventable disease, and unemployment in;
- Areas, which were remotely located, where land tenure was in question, or inappropriate housing existed.

Thus, it was determined that policy was ineffective during the historical periods that statistics were being gathered and reports were being authored. The applicability of these patterns in policy

¹⁷ Several versions of this speech are available. The version cited here is found in (Philip, 1986).

¹⁸ Australian Bureau of Statistics, Statistics Canada, Statistics New Zealand, and the US Census Bureau

shortcomings to the larger body of this thesis is that they represented principle areas where policy needed to be changed in order to achieve the aim this research.

Objective 2: Examine the evolution of contemporary policy approaches to Indigenous And land tenure in four pioneer settler societies.

Question 2.1 What are the similarities and differences in responses taken by Canada, New Zealand, the United States, and Australia to redress negative outcomes of government created Indigenous policy on land tenure and housing in recent decades?

After the previous question that focused on outcomes of government response, this question will examine what policies have been used recently to amend the negative ramifications of previous government responses. Reviewing and summarizing recent government policy on land tenure and housing in each of the case study chapters will answer this question. At the conclusion of this review component the deliverables of the policies will be examined to determine if they fell short, met, or surpassed their intended objectives (Flyvbjerg, 2001). From this examination, effective policy will be identified to create a cycle of continuous improvement. This ensures that policymaking efforts are always proceeding with forward momentum to achieve the desired objectives. For this research, that objective is to redress the negative land tenure and housing policy responses, which will be accomplished through:

- Identification of where policy went awry in recent decades to recommend where improvements can be made to ensure an appropriate response in the future;
- Identification of elements essential to policymaking to properly frame efforts in a clear and concise process.

From these identified positive and negative differences in policy responses by four different nations to similar land tenure and housing issues, it was deduced that while certain nations performed better than others overall, each nation provided valuable insight into policymaking efforts. This further indicated specific lessons that could be taken to inform the overall policymaking process.

Question 2.2 How effective are recent policy approaches to land tenure and housing to improving the societal well being of Indigenous people in their respective nations and to their Non-Indigenous counterparts?

To measure the effectiveness of recent policy approaches, their stated goals and objectives had to be compared to those of policy in recent decades as well as those even older. This was done to demonstrate the ineffectiveness on most recent policies, as they succeeded in repackaging old ideas using small semantical differences. In at least one instance there were no differences in semantics at all and the stated objective did occur during the prescribed timeframe, which drastically increased the chance of the same objective to not be met in the future. Such policy

responses have taken a negative toll on most pioneer settler societies where they have been enacted. This toll was demonstrated by the sluggish pace that ‘the gap’ in well being between Indigenous and Non-Indigenous people was closing in Canada, New Zealand, and the United States (See Table 1.2); while ‘the gap’ in Australia increased over the same time period (See Table 1.1). As the human development index that the aforementioned tables are based upon is a composite index it not only served as an indicator of well being; It also served as measurement of the effectiveness of Indigenous policy efforts relative to those in Non-Indigenous parts of a nation at that given point in time. This result helped to identify both policy strides and missteps by providing quantitative evidence to previously know qualitative account of policy having a negative impact upon Indigenous people.

3.3 Phase 2: Analysis

This section illustrates the research approach in the second phase of this thesis. It relates to the interplay between perception of landscape and policy construction, specifically how different perceptions cause conflict in policy construction, which is the basis for the third objective of this research:

Objective 3: Identify and examine Indigenous land tenure and housing policy reforms in Canada, New Zealand, and the United States, which have led to successful outcomes and to contextualize the lessons for an Indigenous policy framework in remote Australia.

Question 3.1 What policy reforms have been enacted in Canada, New Zealand, and the United States that have led to positive changes in Indigenous land tenure and housing outcomes? This question seeks to identify the policy changes that have created a positive effect on Indigenous land tenure and housing policy.

Question 3.2 What are the key factors that lead to successful land tenure and housing policy outcomes in Canada, New Zealand, and the United States? This question intends to identify the relationship between policy reform and positive policy outcomes.

To determine what is considered contemporary in the concepts of home and land tenure a base year had to be established where physical features and beliefs occurring/constructed before said year were considered historic whereas physical features and beliefs held on/after said year were considered contemporary. The year 1920 was selected for several reasons including that it was just post the conclusion of the first world war during the interwar period where many “nations” containing large numbers of Indigenous peoples were able to development independent polices for the first time representing a paradigm shift in policy development. This contemporary era of policymaking saw many new approaches trialed. The most noticeable result of these new polices was that the land under control of Indigenous people reached its record low. In conjunction with this low level of tenure came change in concepts of home where western ideals were forced upon Indigenous people in an attempt to get them to acculturate.

Using meta-analysis and mixed methods

To determine the success rate of policy reform in land tenure and housing (Question 3.1) a meta-analysis was used generate points of comparison between case studies (Borenstein et al., 2009). These points of comparison were based upon a scale, which provided an illustrated primer of each case study and its effectiveness in addressing principles identified as necessary for producing positive policy outcomes. The scale included seven possible options that were each given a numerical value. This was done to provide a visible map of policy effectiveness thereby demonstrating what the four case studies could learn from each other as well as how this could be used to contextualize what positive policy examples Australia could benefit from. Research such as this is referred to as mixed methods whereby quantitative data and qualitative data are used to produce a richer understanding of the data being analyzed (Creswell, Plano Clark, Gutmann, & Hanson, 2003).

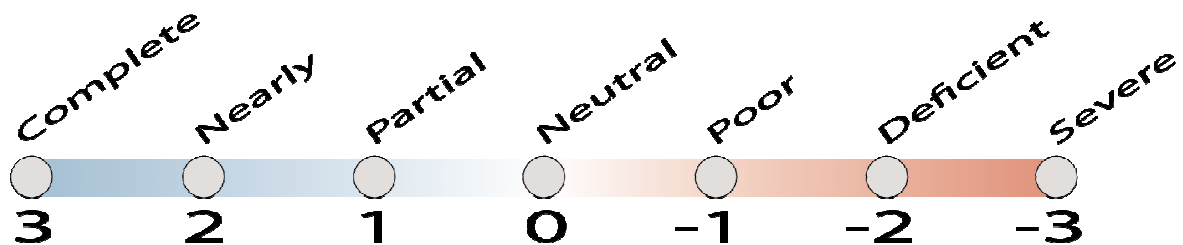


Figure 3.2 – Determinants of Good Policy Scale

The seven options included in the scale were based upon how well each case study addressed each of the eight principles needed as part of creating good policy. A seven-point scale was chosen to provide a higher level of certainty about a policy principles inclusion in discussion as recommended by (Symonds, 1924). A five-point scale could be used; however, this was determined to be too unreliable for mixed methods and scales larger than seven could provide even greater detail were unnecessary (Bendig, 1954; Komorita & Graham, 1965; Symonds, 1924). A rating of **Complete** and a corresponding numerical value of **3**, was given when a principle was fully addressed. The next highest rating given was **Nearly** and a numerical value of **2**, meaning that a principle was well addressed, but incomplete. **Partial** and the numerical **1**, was given in the case of a principle being lightly addressed. **Neutral** and the numerical **0**, was given in the case of a principal being absent from the case study. **Poor** and the numerical **-1**, was given in cases where the method used to address the policy principle created a negative impact on the well being of Indigenous people. **Deficient** and the numerical **-2**, was given in instances when the negative effect was more than an inconvenience. **Severe** and the numerical **-3** was the worst possible rating attainable inferring that addressing a policy principle in this manner caused major harm to the wellbeing of Indigenous people. Using all eight scores based upon the principles a mean

score was compiled, which demonstrated how effective/ineffective the Indigenous policy of each study nation was in comparison to others.

The utility of providing a visual example to meta-analysis through the determinants of good policy helped clearly identify where policy improvements could be made that in turn would have the greatest positive impact. Additionally this caused further inquiry to address the reasons why policy was more effective in certain areas than others (Question 3.2).

Differences between the Indigenous policies in each of the study nations were scrutinized. Based upon the results of the contemporary concepts of land tenure, home ownership, and the use of meta-analysis it was determined that while no case study provided a clear cut solution for addressing shortcomings in Indigenous policy, the combined results showed that it was possible to use principles from each case study as a means of framing good policy. These 'building blocks' provided an answer to Questions 1 and 2 of Objective 3.

3.4 Phase 3: Creating a Land Tenure and Housing Policy Framework

Analysis of framework principles and design (justification)

The research methods in the previous sections allowed for the meta-analysis of the case studies and the identification of key lessons from which a policy framework for Indigenous land tenure and housing policy in Australia can be developed. Thus, research in this final phases of the study sought to address Objective 4 and the following questions

Objective Four: To develop a framework for integrating indigenous and Western perspectives on land tenure and home ownership policies in Australia

Question 4.1 What perspectives on land tenure and housing policy in Australia are essential to producing a lasting framework?

To answer Question 4.1, the data sources used in earlier phases were again consulted, this time to identify factors that impacted – both positively and negatively – on the relative degree of success of various policy initiatives. These sources showed that responses to a new policy framework are generally mixed, and reflect stakeholder interests, e.g.

- Government Responses
- Indigenous Responses
- Non-stakeholder responses

The analysis of these responses followed the same methods used in section 2.2.3. Many of the responses were heavily influence by the politics of the time. Of significance was the shift in

responses in all three categories. Over time government responses became more optimistic with each successive policy using statements such as, “closing the gap”, a shift from previous neutral views. Indigenous responses became less optimistic and more pessimistic overtime signaling a growing sense of unease with government inaction in addressing social issues. Non-stakeholder views shifted to more pessimistic from previous neutral opinions based upon, the media sources used to obtain information of government policy. This examination of responses to policy and the shifting beliefs on the capabilities of policy to improve Indigenous wellbeing helped support the need for legibility in any new policy framework.

References of effective public policy and policy evaluation were also consulted to identify factors essential to successful policy implementation. A synthesis of these ideas and the review of the sources (above) led to the identification of six factors that support effective Indigenous policy:

- **Audience awareness:** In order for a framework to be effective, a specific audience/s must be identified. With the intention of setting a tone for the framework which is appropriate and reduces risks to policy participants identified in the (Council, 2007). It is of note that factions/special interest groups exist within each audience. These must be addressed through negotiated agreements. Participation in these agreements should be voluntary ensuring that outcomes are not achieved through coercion (W. Fisher et al., 1999). Using this focus may act as a suitability test by determining what influences (western and indigenous perceptions) policy outcomes and decision making around them which is further illustrated by how these groups are influenced based upon the policy context (Gregory, 2000; Meitner, 2004).
- **Contextualization:** Any policy framework needs to be contextualized for the nation otherwise it will not be sustainable. Policy examples external to Australia play an important role in domestic policy creation. They are looked to provide possible ideas for what can be done. Unfortunately as was demonstrated in earlier chapters in the case of the discovery doctrine, it is often assumed that a good policy example is easily transferable across national borders. What this does in effect is compound the problems that have plagued policy in many nations, which is, context. A policy needs to be adapted to suit the nation. In this was policy is site-specific requiring input from local stakeholders as well as those doing the policy writing. As stressed in (Dyck & Waldram, 1993), in order for policy efforts to be taken seriously, they cannot be constructed in an office and require dialogue across many offices in government as well as members of the indigenous communities.

Thus, policies cannot simply be taken ‘off the shelf’. A thorough understanding of a society’s relation to the land is needed for successful policy. A multi-tiered understanding is needed, as the views shared by individuals will not necessarily be the same as those held within the larger community (*Gemeinschaft*) or society (*Gesellschaft*). The main level focus for this framework is the community as it can influence social and individual level conceptions of environment. Once the relation to the environment is understood, it is possible to look at the long and short-term effects of the policy being constructed.

- **Status of Stakeholders:** Indigenous groups should be seen as equal partners in policy construction. In order for an Indigenous policy framework to be successful, it needs to be just that, an Indigenous policy framework. This implies that they should be equal partners in policy construction giving them a sense of ownership. When this is not done properly it causes policy to feel paternalistic even if this is not policies intent. Eventually when a partnership is established policy can progress towards the next framework principle.

Indigenous perspectives must be seen as equally valid as others and their inclusion in the development of policy is essential to long-term improvement in Indigenous wellbeing. Getting beyond partnerships with Indigenous groups in the policy construction process requires inclusion of Indigenous perspectives as valid and important data. This goes back to what was discussed in earlier chapters (chapters one, three, and four) about the importance of local knowledge and Indigenous groups having a close connection to the land. From their perspective the land provides them with everything they deem essential to life. This shows that for a policy which effects land tenure and housing for Indigenous people to be exclusive of the Indigenous views is not only a hindrance to policy development, but also insensitive leading many Indigenous groups to have an open distrust of non-Indigenous peoples (James, 2009). This has caused open conflict in the past (chapter 5), and will continue to do so unless Indigenous peoples feel they are part of the policy process. Once this occurs, policy can move forward into the principle of how it should be managed.

- **Policy management:** Proper policy management is needed for an Indigenous framework to be successful: The way a policy is managed can greatly influence its overall effectiveness. The most visible way in which this occurs is through the division of labour amongst those involved in the policy development and implementation. (McKinney & Field, 2008), expressed there has been an increasing interest in local community collaboration for the management of resources on public lands. Closely resembling the stewardship model of land management which has supporters in the Western world as

well (Leopold, 1949; Meyer, 1997). Stewardship involves decision-making and management based on the impact policy has on the land. Elements of stewardship are shared with indigenous views of land management and those of John Muir which stress a close connection with the land (Muir, 1894). In addition much of this policy requires participation from the local community. Using a decentralised management form such as stewardship creates a shared responsibility for the overall outcome of the policy forcing positive collaboration amongst parties with conflicting interests (Flyvbjerg, 2001). This operates contrary to progressive western philosophy resource management where land must be controlled in such a way that economic resources can be extracted (Pinchot, 1947). Having domain (or control) over management implies land co-modification (Leopold, 1949; Locke, 1689). Land is no longer seen as providing a community asset rather as a way to produce wealth. As many management forms exist, it is important to examine which will best suit the given policy project and lead to the desired outcomes further governed by the structure of the framework. In this case a management form that includes components of stewardship and domain may be best suited leading to the how the framework should take into account its social-political environment.

- **Implementation time-frames:** Approach policy from a perspective that looks at the short and long term effects of policy decisions: The potential long and short-term effects of policy decisions should be identified as they can have strong implications for guiding the path policy may take. As policy operates during a fixed period, a understanding the temporal effects of policy gives quantification to how long/short that operational period is. When not properly defined policy has an inability to accurately predict outcomes or be effective long into the future (Royal Australian Institute of Architects, 2007). Heeding this caution a need arises for either re-evaluation method (a feedback loop) or a potential point at which policy is allowed to expire. The indigenous long term approach closely centers on the lasting impact of policy decisions upon the land (Cumming, 1972). This differs drastically from the western approach which is closely tied to politics (Rapoport, 1972). Due to the relation to politics a western base timeframe usually focuses on the most visible impact which can be made during the shortest amount of time (usually a single legislative session). This negates any long-term impacts such short terms policy changes may cause. By investigating and defining the effects of policy decisions the framework can be better equipped to operate in a consistent manner.

- **Consistency:** In the context of this framework revolves around the ability for a society or government to sustain an implemented policy. Using this premise sustainability can be seen in one of two ways, as a measure against mass wasting of capital as a test of policies currently operating to identify potential problems before they are repeated (Denzin, 2008). In this way framework consistency is dependent upon all other principles as it guides policy implementation bringing it from the realm of a theoretical exercise to a practical one.

Question 4.2 *What policy elements are essential to developing an Indigenous land tenure and housing policy framework?*

The application of these criteria of effective Indigenous policy to the results of the meta-analysis of the case studies gave rise to eight principles that inform the final product of this thesis (the policy framework). In the previous section of this chapter (3.4.1), discussion followed six factors that support effective Indigenous policymaking. These factors are present in the four case study chapters (Chapters 4-7), which impress upon these factors unique attributes that further refine elements suited to Indigenous policymaking. It is from these refined elements that eight framework principles have been developed. These principles were further clarified and supported using a meta-analysis of Indigenous policy across the four pioneer settler societies, which featured in Chapter 8. The eight principles will now briefly be listed and summarized with further detail presented in Chapter 9 when the Indigenous policy framework is discussed. The eight principles are divided into two themes. These themes are: ‘Experiencing the Land and People’ which is stakeholder driven, and ‘The Policy Process’ which is focused on policy deliverables. The principles associated with each theme are:

Experiencing the Land and People – In an effort to humanize policymaking the first four policy principles developed were focused upon how stakeholders experience the world. In chapter 2, attachment to place and lived experience focused heavily in order to demonstrate the necessity of looking beyond ones individual or cultural ontology to see the big picture i.e. why policymaking needs to change course. This understanding begins with the first principle needed for effective Indigenous policymaking:

1. **Understand the policy audience** – This principle is supported by a rather simple premise this in order to be effective in policymaking, one must prioritize and understand who they are making policy for. In this case the focus is on better outcomes in land tenure and housing for Indigenous people living in remote Australia. This means that strategies to remedy tenure and housing in urban areas will not work in these areas as the audience is fundamentally different.

2. **Understand the context in which policy is being developed** – Context is dramatic in its ability to shape policy. In policymaking there is a lexicon of terminology commonly used when explaining specific policy concepts. There are both positive and negative aspects of using this unique policymaking language. Building upon the first principle; however, the audience must have the ability to understand the language being used. To their detriment settler societies used these differences in language to dispossess Indigenous peoples of their lands. Therefore to avoid a similar situation in current policymaking efforts, the context of the policy language must be well defined and understood by all parties.

3. **Understand the cross-cultural effects of policy** – The effects brought on by enacted policy are not uniformly experienced throughout a population. This is due more often than not to the life experience of individuals, societies, and cultures containing variation between each other. It from these divergent experiences that policymaking efforts are faced with a significant hurdle. A one sized fits all approach is not effective when faced with numerous cultures across which policy is to be applied.

4. **Understand the multiple perspectives (knowledge systems) of different stakeholder interests and their effect on policy development** – Within stakeholder groups and Indigenous and non-Indigenous culture there is not a uniform perspective. While one perspective might be dominant it needs to be understood that it does not constitute unanimity within a stakeholder group. In Chapter 2, a discussion of perspectives importance plays out in how the landscape influences decision making within policy.

The Policy Process - policymaking is inherently process driven from the influence in the first four policy principles, which demonstrated how cultures experience the world. This experience of the world influences the shape that policy takes leading to varying outcomes for policy stakeholders. As a result the policy process needs to much more clearly defined to those constructing policy. This clear definition is exhibited in the following four principles:

5. **Policy management (how is it administered, by whom, and using what model)** – A policy with any goal oriented towards social reform requires efficient management. In the case of land tenure and housing reform this efficiency is exhibited through clear lines of communication between various stakeholders groups. Additionally implied is that policy should be administered in such a way that the stakeholders affected by the new policy are in charge during implementation. This fosters ideas of self-reliance by encouraging active community and civic engagement as well as creative problem solving. This is a far more lateral model of management than previous top down approaches experienced by Indigenous peoples in Australia and elsewhere, which may lead to some apprehension by government to relinquish some of their authority. As will

be demonstrated later during discussion in chapter 6, this lateral management of policy when given an opportunity does improve Indigenous well being.

6. **Policy environment (the geographic setting and varied stakeholder interests)** – The location of where policy is being implemented has the ability to control the policy development process as well as authority of various stakeholders e.g. the more remote the location the easier it is for government to dictate policy this because outside influences are less liable to be present. Additionally any policy decisions that negatively effect Indigenous people as less liable to be seen and tried in the court of public opinion. Incidences of the importance of the policy environment play out in chapter 4, during the various Indigenous policies implemented in Australia.
7. **Short term v. long term effects of policy decisions** – The positive and negative effects from policy decisions upon Indigenous land tenure and housing are not always apparent soon after implementation Initially newly enacted policy could prove positive; however, given time other negative or unforeseen policy effects become visible. This implies that policy makers need some familiarity with risk and the ability to foresee possible negative risks that can be mitigated against. A rethink of policy making activities will be required as a result; however, if the short term and long term effects are made known, this rethink will not be needed leaving higher potential for the policy process to be done right the first time.
8. **Consistency in policy implementation** – To conduct effective, manageable, affordable, and equitable policymaking it is a essential to be consistent. A glaring problem with policymaking work is its dependence upon the election cycle. Upon the election of a new government there is a high likelihood of Indigenous policy being replaced by a revised one. This is becomes the new government wants to be seen as taking credit for solving the problem of ‘the gap’ between Indigenous and non-Indigenous people. What this breeds is contempt for any old policy even when effective in achieving deliverables. As a result inconsistent policy creates increasing disparity as shown in tables 1.1 and 1.2.

From the previous brief discussion of the policy framework principles the importance of framing policy has been demonstrated. While framing policy will not achieve better outcomes alone. It will elicit a new way of thinking about policymaking increasing potential success for improving well being in remote Indigenous Australia through land tenure and housing reform.

As a framework is also a model it can be visualized in different ways from traditional policy. In the case of this research this different visualization will be through a graphic language. The framework is presented in graphic form as all frameworks are but tools for summarizing detailed thinking, planning and decision-making. A graphic presentation also helps to make a policy

legible and easy to use. Indeed, Tufte explains that if that were not the case then something might be wrong with the principles (Tufte, 2006). What Tufte is saying is that the graphics, in this case the policy framework, needs to demonstrate the work behind it without feeling overly complicated. This policy framework represents a method for “closing the gap” possible based on evidence drawn from the strengths of integrating indigenous and western perspectives on land tenure and homeownership policies from cases in several study countries.

3.5 Conclusion

This chapter has reported upon the research design used to achieve the aim of the thesis and the four phases of investigation. The principles for supporting the policy framework to foster better policy outcomes for Indigenous people in the fields of land tenure and home ownership were developed from all of the previous phases of research. Boolean Logic and content analysis were initially used to locate sources of data (Section 3.1.2), which informed a body of data around which research on policy could commence. Perspective was then used (Section 3.2.1) to inform the relativistic nature of policy through the diverse views held by Indigenous and non-Indigenous people on land tenure and home ownership. This established a basis for looking for areas to improve policy that emerged from the case studies (Section 3.3.1) and their subsequent meta-analysis (Section 2.3.2). Following the format of working with a large dataset and moving towards a set of principles to be used establish a policy framework.

This chapter concludes Part 1 of the thesis. Part 1 introduced the topic of Indigenous land tenure and housing policy in addition to how perspective can govern policy outcomes relating to these two issues. Part 2 presents the four case studies to establish the perspectives on Indigenous land tenure and housing in four nations using events leading to current policy in Australia to demonstrate a need for this research. Discussion of land tenure and housing policy three other pioneer settler nations with similar Indigenous policy histories offering possible ideas for amending policy in Australia to improve Indigenous wellbeing. Following these case study chapters Part 3 will present a meta-analysis of the four cases and a thematic synthesis from which principles will be generated to inform the policy framework presented in Chapter 9.

Part 2



4

Housing and Land Tenure in Australia

4.1 Introduction

Indigenous and European perception and perspective was shown to have a strong influence upon the value of land and how this was expressed through notions of perception (Chapter 2). In addition through the study of perspective and perception, the identification the thesis research objectives and supporting questions could be addressed. These objectives and questions outlined the aim of the thesis to understand the influence of perspectives on Indigenous policy outcomes in Australia. This chapter provides background and critical assessment of land tenure and housing policy in Australia as a point of comparison for the similar and alternative approaches taken in addressing Indigenous issues in other case study countries as will be seen in chapters 5 (United States), 6 (Canada), and 6 (New Zealand). Each case study pays particularly close attention to the nuances between cultural perceptions and their influence upon policy outcomes. These case studies investigate policy in four nations with a common heritage of settlement by persons of European origin. It was important to start in Australia to establish a foundation for this research. Discussion will include; policy issues governing Indigenous housing and land tenure providing ample evidence to support the need for a fresh approach to policy in these areas.

An exploration of government led Indigenous policy and the subsequent disadvantage created in land tenure and housing will lead to recommendations for where and how policy can be improved to deliver positive outcomes for Indigenous Australians living in remote areas. To cover this historical review and subsequent recommendations in detail this chapter is broken into the following sections: current issues in Indigenous Australia leading to the need for this study (4.2); a discussion on the Indigenous people of Australia (4.3); The changing Indigenous policy; (4.4); Means for policy evaluation (4.5); and finally this chapter concludes with a section on ways Indigenous policy can be moved forward in Australia (4.6).

4.2 The Current Issues Leading to the Need for Study

The well being of Indigenous Australia is relatively low compared to the rest of the Australian population (ABS, 2007; Cooke et al., 2007; Maru & Chewings, 2011; Nettleton et al., 2007; Yap & Biddle, 2010). In 2009 the Productivity Commission published a report on Overcoming Indigenous Disadvantage which stated that Indigenous people were much more likely than non-Indigenous people to experience disadvantage in:

- Housing
- Socio-economics
- Health
- Education

Indigenous Australians disadvantage experienced in Housing originates from the policies that are used to administer housing programs. These policies are set up as a one sized fits all approach creating both shortages of housing and substandard living conditions. In state housing alone nearly 40% are paying a portion of their incomes greater than 20% total for renting a dwelling (Australian Institute of Health and Welfare, 2011). A similar percentage (46.6%) of these households are also located in outer regional or remote Australia (Australian Institute of Health and Welfare, 2009). These statistics are therefore indicative of the higher costs associated with the maintenance of dwellings in remote parts of Australia. Due to high costs associated with housing, there is encouragement from government to reduce these costs or shift them to a third party. Other related areas where Indigenous Australians experience disadvantage such as socio-economics (DFCSIA, 2007; Stacey & Fardin, 2011; Torzillo et al., 2008).

Additionally Indigenous people with a non-school qualification were much less likely than Indigenous people without a non-school qualification to live in overcrowded housing (11.4 per cent and 27.2 per cent, respectively) (Smylie & Adomako, 2009). Such data is common, with a number of reports published in recent years that stipulate such (Fien et al., 2008; Pink & Allbon, 2008). These problems of social inequity are caused by, “gaps in health, housing, educational opportunity, and employment,” (Rudd, 2009).

To address the gaps above spending programs have been proposed; however, history has shown that these have had little effect in reducing the inequality (ABS, 2007; Altman & Hunter, 1997). The 2009 Prime Minister’s response to this was, “that unless national level goals could be agreed upon to guide the national effort to close the gap, he and the government could only guarantee one thing: that future programs would achieve virtually nothing,” (Rudd, 2009). This ministerial

foresight is due to the position government has taken on how indigenous welfare programs are conducted.

Various socio-economic data is available that demonstrates Indigenous disadvantage. Many such datasets shows this disadvantage in employment (Maru & Chewings, 2011; Nettleton et al., 2007; Taylor, 2002). On average workforce participation in remote Indigenous Australia was around 60%. This low figure compared to the general Australian population whose workforce participation is 86% highlights disadvantage and lack of employment opportunities for Indigenous Australians living in remote communities. An additional observation can be made based upon the workforce participation figures: the overall health of an Indigenous community in economic terms is tenuous without further investment of resources to improve employment opportunities. What workforce participation figures can also demonstrate is socioeconomic change over time (Gray & Auld, 2000). This paints a visceral example for government agencies when allocating resources for policy change over a large geographic area.

Another component of disadvantage experienced by Indigenous Australians is in health indicators. Indigenous Australians especially those living in remote areas are at greater risk than the non-indigenous population for chronic and preventable diseases such as: heart disease, diabetes, and the aptly termed 'New World Syndrome'¹⁹ (Gracey, 1995; Gracey & King, 2009). The later results in malaise leaving many Indigenous people unfit for work causing them to withdraw further from society and their community. This psychological and physical burden of disease hampers Indigenous Australians ability to live long and productive lives. It can also have an impact upon children as they may have to care for family or extended family when they are ill (ABS, 2010; Dwyer, Silburn, & Wilson, 2004). This similarly occurs in parts of the world where malaria and HIV are prevalent causing many children to receive reduced care or worse can become orphaned (Schellenberg et al., 2003; WHO, 2004).

Educational attainment is an area where Indigenous Australia is at another great disadvantage. The percentage of Indigenous Australians who have not completed high school was nearly 30% higher than non-Indigenous Australians in 1991 (B. Hunter & Schwab, 1998). This is probably the most reported component of what is termed to be 'the gap' by politicians and members of the media for expressing the disadvantage experienced in remote Australia compared to urban or non-indigenous Australia. Areas of disadvantage currently experienced remote Australia

¹⁹ New World Syndrome is a term coined by health researchers to mean the preventable illnesses observed in Indigenous people as a result of exposure to a diet high in fats, salts, and sugars. This is usually an associated product of colonialism in the Americas and Oceania where a western diet was introduced to an area with vastly different diets (Gracey, 1995; Weiss, Ferrell, & Hanis, 1984).

demonstrate the need for research into formulation of policy with a goal to improve the well being of Indigenous Australians.

One area where research into improving indigenous welfare is incomplete is land tenure and housing. These two areas have a trickle down effect for improving gaps in Indigenous wellbeing listed above (Shelter-WA & (ALSWA), 2010). While numerous datasets exist on both land tenure and housing, they are viewed as independent variables. This suggests that a major gap is present in current research and siloed thinking is hindering policy development. To overcome this, new perspectives on policymaking are needed. A new approach where a holistic way of thinking is conducted may then lead to policy that acts to close ‘the gap’ in Indigenous disadvantage.

Land in Australia is a finite resource in that it is seen as a commodity from a non-Indigenous perspective. A legacy of settler societies shared with other nations (Canada, New Zealand, and The United States). For some groups such as Indigenous Australians this commoditised view of land an affront to culture and spirituality as land is a part of being (Horstman & Wightman, 2001). This infers that land is a place of ceremony and a place embedded in culture. If the land on which Indigenous people reside contains value beyond cultural and ceremonial purposes such as precious metals, then the government will use policy to dispossess them of their land. A commonly used method of dispossession was *Terra Nullius*. Since by its definition the land was empty and therefore belonged to no one, Indigenous Australians were viewed as squatters who could be pushed aside (Sissons, 2005). Over the history of European settlement in Australia this issue of dispossession of Indigenous peoples fell by the wayside in the name of “progress” and promotion of the nation as modern society. This would later become a sticking point for Australia as the nation became more prominent in world affairs because of neglect of its Indigenous people. In order to be given a voice on the world stage, Australia had to address in internal issues namely the lack of development and landlessness which most Indigenous Australian communities faced (P. Lee, 2006).

Recommendations for redress over land to achieve and end disadvantage stretching back to the arrival of Captain Cook has led to many tried, failed, and ongoing policy efforts. Some have been quite practical in their approach such as negotiated agreements between indigenous groups and the federal government concerning employment in the production and extraction of minerals on traditional lands (Altman, 2004), others are more arcane such as forced acculturation income sequestration, and what is defined in some countries as martial law (Ford, 2008). The justification for these different approaches rests upon the development gap between Indigenous and non-indigenous Australians.

The remoteness of many Indigenous settlements in Australia can also negatively impact Indigenous well-being. A remote Indigenous place is classified by the Australian Bureau of Statistics as being: a geographic region with an Accessibility/Remoteness Index of Australia (ARIA) score of 5.95 or greater (Trewin, 2001). This is further broken down into Remote and Very Remote Places.

A Remote place - Has an ARIA score between 5.95 and 10.5

A Very Remote place – Has an ARIA score of 10.5 or greater

The ARIA score is calculated based upon the shortest road distance from a community to several levels of service centers (Trewin, 2001). The closer the service center the lower the ARIA score.

Figure 2.1 is a map of Australia depicting these ARIA scores.

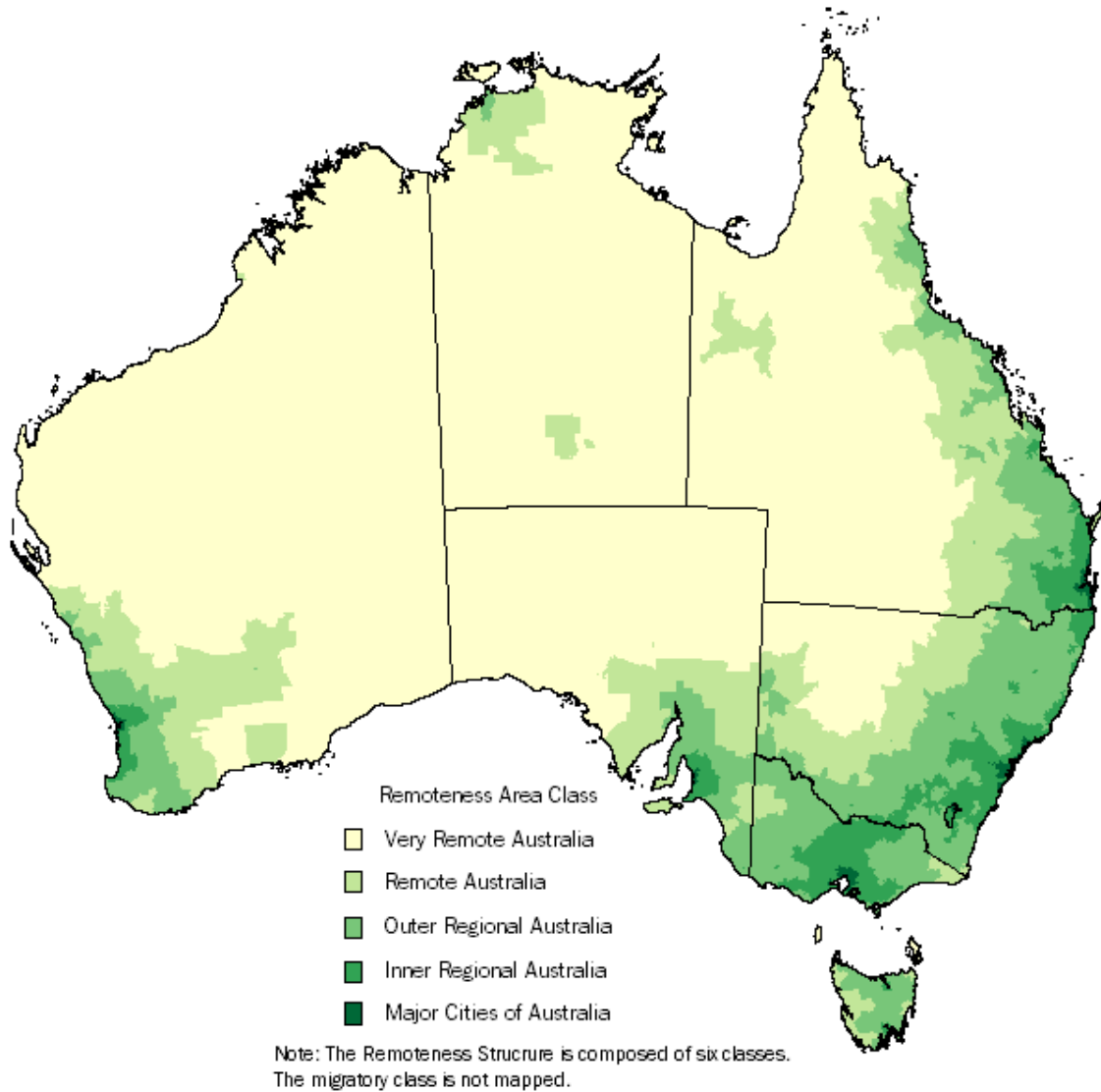


Figure 4.1 - 2006 Map of Remote Australia – Source: Australian Bureau of Statistics

Remote areas of nations are often referenced as being the frontier of civilized (or European) society. Once upon the frontier any semblance of the civilized European society quickly vanished (Cronon, 1995; Reynolds, 1987). Thus, when imagination is allowed to wonder the frontier

becomes a place of adventure, mystery, curiosity, or where 'anything goes'. A very large amount of fiction and non-fiction literature about life on the frontier or the edge of civilization support this mystique, so much so that what information has pervaded the social psyche has distorted reality (Jehlen, 1986). Instead, the frontier is a fanciful ideal becoming something more befitting of mythology, a physical place that society can touch and at the same time tries to distance itself from (Coetzee, 1980; Pratchett, 1983; Turner, 1935). This carries over into the realm of policy and puts Indigenous Australians living in remote areas at a disadvantage compared to their urban counterparts.

4.3 Indigenous People

The previous section of this chapter established cause for why policy reform is needed in Indigenous Australia and some major policy areas where they experience disadvantage. This section will shift discussion to Indigenous peoples themselves. Discussion will include history, land use patterns, and the impact of the arrival of non-indigenous settlers had upon their culture and practices. From discussion on these topics it will be possible to set the scene for the evolution of policy that had begun to take place in Australia by the middle of the 20th century.

4.3.1 History

Indigenous Australians are estimated to have been present on the continent for over 40,000 years (Maynard, 1975). The long presence upon the land alludes to the notion that Indigenous Australians understand their environment. While it is often referenced that Indigenous Australians are homogeneous, they are not as Figure 4.2 demonstrates showing the linguistic diversity of the continent.



Figure 4.2 – Map of Aboriginal Australia showing the various linguistic families: Source Australian Institute of Aboriginal and Torres Strait Islander Studies

From examination of Figure 4.2 is differences in Indigenous Australia are apparent though other differences such as boundaries between cultural groups or geographic features have been omitted. Distinction made between language and culture is necessary as they both inform perspective in different ways that can predicate assumptions made about policy. Diversity within the Indigenous population can also lead to different desires and understandings of land and environment. A good example of this is the transculturation of the word kangaroo. The word itself had little to no meaning for Indigenous groups who lived any distance from where the first Non-Indigenous settlers lived on the central coast of New South Wales; however, because it was inquired of local Indigenous people what was this large two-legged marsupial. The response given was ‘kangaroo’ and translated to mean ‘edible animal’, causing confusion when sheep and cattle were imported. Inquiries were then made by local Indigenous people as to if these animals were also kangaroo (Dixon, 2008).

The example of language reveals the diversity of cultures inherent within Australia that predated Non-Indigenous settlement as well as demonstrate the localized understanding of the land and environment. Indigenous groups adapted to their surroundings as their environment changed, it

gave rise to greater diversity in the subtleties of languages and landscape perception as time progressed. From this diversity in perception arose differences in understanding of value specifically relating to land and what is present within it.

4.3.2 Land valuation in Indigenous Australia

Terra Australis (The Southern Land) existed in Western minds as something of a myth until the 18th Century. This myth was perpetuated until explorers Abel Tasman, James Cook, and Matthew Flinders helped solidify Terra Australia (named Australia by Flinders) as a “real place” in their journals and writings (Cook, 1768-1780; Flinders, 1814). The reality of the “discovery” of Australia was not lost on European explorers. Here existed a massive land sparsely inhabited by natives who were assumed would speedily give up this land to newcomers (J. Banks, 2005; A. Hay, 2002). While this would not be the case, it did not stop Europeans from arriving to claim this southern land for their own purposes and a declaration to that fact was made by a colonial governor in 1835 declaring the land as *Terra Nullius* (land belonging to no one) (Bourke, 1835). The legacy of this declaration is of both blessing and curse depending upon which perspective is held. The impact of *Terra Nullius* is still being felt especially in areas of land tenure, housing, and the well being of Indigenous Australians.

Land and the values associated with it are a product of ones culture (Tuan, 1980). For instance, if one were to look at a desert landscape from a European tradition, it may only possess tangible qualities such as hot, dry, and generally unfit for human habitation; however, given the right knowledge it is possible to find food, water, and shelter to equip oneself to live comfortably in the same environment (Frisancho, 1993). Occasionally this adaptive ability is seen in pioneer settler societies where those who adapt were viewed by their society as eccentric or aloof and now only recently has their adaptation become acknowledged under the guise of sustainable development (Smit & Wandel, 2006). For most Indigenous Australians land was an important part of establishing their ontology as opposed to the Torres Strait Islanders who have a greater connection with the sea (Beckett, 1987; Mark & Turk, 2003; Scott & Mulrennan, 1999). For the purposes of this thesis, the focus on land and its ontological effects on Indigenous Australians revolve around place. Land in Indigenous Australia does not take on the commodity values it has in pioneer settler societies, instead land is valued as ones cultural worth and connection with the land (see Section 2.2). For example, Lovelock’s ‘Gaia hypothesis’ looks at the earth itself as a living entity made fit and comfortable by the presence of life meaning causing harm to the planet is nearly as negative as causing harm to oneself (Buttimer, 1990; Lovelock, 1979). The inference here being that for an Indigenous Australian causing harm to the land is causing harm to oneself. A parallel to this is how place is valued in Indigenous Australia.

Place establishes a deep connection to the land and encompassing environment through ones position in society and ones physical location (Tuan, 1979). Both of these factors that define place are additionally dependant upon scale. According to (Dixon, 2008; Memmott & Long, 2002; E. O. Wilson, 1978), there are four different types of place that are defined in terms of scale:

- Large territorial groups (denoted by changes in language as mentioned previously);
- Clan counties;
- Locally named places and;
- Subunits of locally named places.

These places represent different levels of understanding of ones surroundings from the innately familiar to the generally familiar. In such a value system land can be important at the same time it is mundane. For example, a particular plot of land may have a high ceremonial value such as the location a coming of age ritual or a location for recording tribal history through rock art. Aside from these special uses these land are never utilised for any other use implying they have little importance to most tribal members and are sacred in the same glimpse. This system of land valuation shows the complex ties to the land held by Indigenous Australians and that an act such as separating them from their traditional homeland, would be a forced separation from their culture (Read, 2000a). This establishes precedent for dispossession and subjugation by non-indigenous settlers upon their arrival in Australia.

In 1788, the first fleet of non-indigenous peoples arrived in Australia. Though mainly convicts, this group of outsiders were intended to be settled in this 'new land' creating a new competitor for land and resources that would enact long term damage upon Indigenous society and culture. To paraphrase botanist Joseph Banks who travelled with Captain Cook eight years earlier; Indigenous Australians had now concept of owning land and believed that because of this would speedily abandon land to newcomers (A. Hay, 2002). In reality Indigenous Australians did not abandon their lands. Non-indigenous settlers forced them off them usually through slow encroachment into Indigenous lands as their population grew (Reynolds, 1981). This encroachment continued at an increasing rate throughout the 19th century until Indigenous Australians composed a small minority of the total population.

The changing population from a society of rural remote villages to one dominated by settlers whose land use practices were far different from those of Indigenous Australians. With change in land use practices came other changes such the desire to enlighten Indigenous people. This enlightenment was accomplished through forced acculturation through practices such as the appointment of state level ministers who were to be the chief protectors of the Aborigines. These chief protectors enacted many customs and laws that were discriminatory towards Aboriginal people going as far as taking away children from their parents and putting them into schools run

by various Christian denominations. This effort did nothing but embitter the thoughts of many Indigenous Australians had towards non-indigenous people (Read, 2000b). This period of oppression of indigenous culture through dispossession and forced acculturation led to changing attitudes towards the plight of Indigenous peoples.

4.4 Change

This section will discuss the shift that occurred in policy administration from a traditionally top down approach seen from the colonial period of Australia until recently to one that had greater inclusion of Indigenous cultural practices and beliefs. Starting with the Referendum of 1967 and moving towards policy recently concluded or being administration, this section provides a map of the evolution contemporary Indigenous policy in Australia has seen over several decades.

4.4.1 Referendum

The referendum marks a real shift in policy as it forced the federal government to think differently about how they treated aboriginal people. The 1967 referendum was one of the few times in history that the Australian constitution has been amended. With over 90 percent of votes in favor it was clear that there was public support for better treatment of Aboriginal people (Attwood & Markus, 2007). While there was proven support for better outcomes, the referendum did not achieve this directly (Bennett, 1999). It was instead concerned with restoring rights to Indigenous Australians who had previously been discriminated against in the constitution:

Sections 24-25 - Which stipulated enumeration for the purposes of allocating seats of parliament some races could be disqualified from voting ("Australian Constitution,").

Section 51, subsection 26 – Stating that people of any race, other than aboriginal people in any State, for whom it is necessary to make special laws ("Australian Constitution,"). The underlined text was removed as a result of the yes vote on the referendum.

Section 127 - Stipulating that native peoples not be counted in the census ("Australian Constitution,").

The referendum therefore did not go beyond changing the above sections of the constitution. What this means for policy development is twofold: 1) Aboriginal Australians can no longer be treated unfairly and policy therefore cannot be discriminatory on the basis of race; 2) Policy must be applied equally to both Indigenous and non-indigenous Australians. This implies that policy can be trialed in one place but applied to the whole society or region if it proves to be successful. Reiterating the need for policy realise positive outcomes or have far reaching implications. This gives rise to a discussion about labour policy and the levels of unevenness that existed between Indigenous and non-indigenous Australians on this front.

4.4.2 Equal Pay for Equal Work – How this changed the dynamic

In outer regional and remote Australia, most economic activity is centred on cattle and sheep stations. Aboriginal stockmen²⁰ were a large part of the labour force used on these stations as a paternalistic dynamic still existed throughout much of the Northern Territory and Western Australia. Wages varied considerably between stations partly attributed to the population and number of people involved in the workforce (Stanley, 1976). While some subsidies were paid by the federal government to stabilise wages, few station managers applied for these subsidies. Instead relying on hiring Aboriginal people as labourers who would live on the station during their employment at far lower wages (Rowse, 1988; Stanley, 1976).

In 1968 to remedy the issue of uneven wages, an equal pay scheme was introduced in the Northern Territory (Sandall, 1973). Anticipating that this introduction of equal pay as the cattle industry grew would change the socio-economic dynamic of outer regional and remote parts of the territory, a report was commissioned to study the impacts on Aboriginal stockmen. The Gibb commission report published in 1971; however, showed that demand for cattle had been relatively unchanged in the three years following equal pay (Sandall, 1973). The implications for equal pay was that as a policy it was a sound idea, but it only served as a partial solution to reducing the inequalities the Indigenous Australians had experienced. To use an example: equal pay was a policy of a mentality stuck in the trappings of modernistic thinking. It was an idea that once in place it on its own accord would solve a larger problem it was incapable of addressing (Bauman, 2001). Policy was stuck and required another push to shift thinking into a postmodern mentality, that push came in the form of Wave Hill.

4.4.3 Wave Hill

In an area southwest of the town of Katherine in the Northern Territory is the former location of a large livestock station known then as Wave Hill. This was the location of a walk off of Aboriginal stockmen, which sparked a national debate about aboriginal land rights (Hardy, 1968). What was under question during this case was who had the right to administer the land. The Gurindji people were pitted against prominent landowners in the form of the Vestey family. The Vestey family was based predominately in England and were for the most part absentee landlords leaving the administration of Wave Hill Station to local hands. The walk off caught the family off guard; forcing them use political favor with and aim to get the stockmen back to work.

²⁰ Stockman or Drover are terms ubiquitous with Cowboy, Gaucho, and Huaso used in the Americas

What the walk off managed to accomplish was for government to focus on local issues of title and that conflicting interests were at work in many parts of outer regional Australia. Wave Hill pitted the Gurindji people against the well-healed Vestey family in fight over wages, but also over perception of the land. The land contained within the boundaries of Wave Hill was the homeland of the Gurindji people. Instead of having respect of this fact, the Vestey family along with the managers of most stations treated the Aboriginal stockmen as unskilled labourers who were guests upon their own land. Subsequently the Gurindji people won their claim and were granted leasehold title to their land. This title was ceremoniously given to them by then Prime Minister Whitlam (Figure 4.3).



Figure 4.3 - 26 August 1975 Prime Minister Gough Whitlam hands leasehold title to land at Daguragu (Wattie Creek) near Wave Hill to Vincent Lingiari, representative of the Gurindji people - *National Archives of Australia - Canberra*

Gestures though mostly symbolic, akin to what occurred at wave hill demonstrated that the Australian government was indeed willing to negotiate with Indigenous groups to restore their lands and rights. This provided the catalyst that helped initiate a period of native title reform in most Australian states and territories.

4.4.4 Government Title Reform

This subsection will look at the various methods of title reform trialed by the states and territories in recent decades. The intent is to examine which methods can best provide a road map to improving policy outcomes. Supposition is that some states are more inclusive in their approach than others, leading to mutual respect and understanding between policy makers and stakeholders. Establishing a level of respect and understanding sets the foundation for developing good policy.

In the Northern Territory, the federal government must approve all policy concerning Indigenous persons. Lacking independence over creating policy, the government of the territory serves an administrative role that is not seen in the states. By administering policy, the territory must accept and legislation directed at improving the welfare of Indigenous Australians as the final word i.e. if they do not believe the policy will function or meet its intended aims they are unable to voice complaint. Over the years this has made the Northern Territory the testing ground for many policies. For so many policies passing through remote Australia, it is possible to see the issues this may create within Aboriginal communities. Feelings of distrust and anxiety over what services could change in future years make for some strange bedfellows when the intend is the produce positive outcomes from policy.

South Australia takes a different approach in terms of policy due to the autonomy it has from the federal government. In doing so, policy is not only state centric but regional as well. There is a realisation that policy has a necessary local context that must be examined otherwise it establishes grounds for failure (Chesterman, 2008). Recognition of native title is an important way of reaching a mutual understanding through a passive acknowledgement of local Indigenous knowledge. Native title in the context of South Australia refers to any rights that Indigenous Australians have that are associated with land in particular geographic area ("Native Title (South Australia) Act 1994," 1994). Having native title additionally implies that the land and the rights contained therein are additional to those that are granted under other forms of property law such as 'fee simple' and 'Torrens title'. South Australia has also established a commission to validate or invalidate claims to Native Title. Such a process allows for the time needed to make a thoughtful decision. This proves to Indigenous Australians that the government does indeed share some concern over their well being and are not falling upon deaf ears. Promoting native title in South Australia is leading to constructive dialogue and should be recognised for its efforts.

Native title reform in Queensland is a two-part story. First the Deed of Grant In Trust (DOGIT) system was established. The state government in cooperation with many aboriginal groups in the state initiated a plan of land reform as a result of the Aboriginal Land act of 1991. The land

policy known as DOGIT empowered the state government to act as trustees for aboriginal held land in twelve Aboriginal shire councils (*Leasing Aboriginal Deed Of Grant In Trust Land In Local Government Areas* 2008). While resultant of a legal decision, the example of the DOGIT in Queensland is one early attempt at facilitating land reform. The long term impact of shifting most of these DOGIT grants to freehold land remains to be seen; however, it demonstrates an alternative approach to achieving positive policy outcomes in the areas of land tenure and home ownership (Moran, Memmott, Long, Stacy, & Holt, 2002). The positive aspects of the DOGIT system can additionally be seen in the other land title system used in the Far North Queensland.

Western Australia due to its size contains many issues involving native title. A lot of these issues are related to accessing mineral rights becoming more prominent since the mining boom of the past few decades. Implications for the use of Indigenous knowledge also factor into the administration and management of native title in Western Australia (Horstman & Wightman, 2001). This knowledge has been used extensively in the management of former cattle stations in the Kimberley region of Western Australia that have been returned to the traditional owners of the land under native title legislation (R. Lane & Waitt, 2001). These former cattle stations now function as guesthouses and wilderness retreats attracting the well heeled and ecotourism crowds (Jones, 2010). This provides an alternative source of revenue for local Indigenous groups and helps to promote self reliance. While native title is not always a rosy picture it does have its strong suits if properly planned out. This subsection has shown examples of the positives and negatives associated with native title. The next subsection will discuss one specific legal case that helped to solidify the importance of title and its connections to tenure.

4.4.5 Mabo v Queensland and Contemporary policy

The first half of the 1990's marked great change for the right of Indigenous people in Australia for one primary event and the subsequent result. The event was a case heard by the high court of Australia: *Mabo v. Queensland*. What followed was the Native Title Act of 1993. Both items set into motion much of the policy regarding land tenure and housing Indigenous Australia is currently governed by. The *Mabo* case was most significant in its recognition of the customary rights of Indigenous people to use their lands (and in some instance crown land) for their economic benefit as well as spiritual well being. Parts of the decision were influenced by a court case in Canada on a similar claim (Foster, 2007a) as will be discussed in Chapter 6. The decision also reversed the two-hundred year old policy of *terra nullius* and caused some concern amongst Non-Indigenous Australians that their privately held lands may be at risk of being compulsory acquired through eminent domain so that the land could be returned to its traditional owners. This would not be the case; however, Indigenous Australians were now able to acquire lands

from willing sellers for reserves. After the settlement from *Mabo* and the passing of the native title act, the policy focus made a shift towards social policy. This social policy had two main foci:

1) Housing policy: There have been two recent policy efforts concerning Indigenous housing the first is the Community Housing Infrastructure Program (CHIP), and the ongoing National Partnership Agreement on Remote Indigenous Housing (NPARIH). A review of the CHIP program was published in 2006 outlining how much capital expenditure had taken place since the program commenced (FaCSIA, 2006); however, it was hindered by ignoring some of the social aspects of housing provision focusing instead on the economics. This report would prove little utility into understanding the CHIP program at what could be done to improve it (AIHW, 2006; Long, Memmott, & Seelig, 2007). When the program was eventually replaced by NPARIH (formally SIHIP) it had similar expectations; however, a greater focus was put on the social aspects and a holistic understanding of housing policy, which to date has led to far more tangible outcomes than its predecessor (Larkins, 2012). This suggests that a socially integrated approach to housing policy is a conducive environment to improve Indigenous well being.

2) The Northern Territory Emergency Response (NTER) or commonly referred to as 'the Intervention': was a highly publicized policy intervention in remote areas of the Northern Territory as the result of a report into purported child abuse taking place in Indigenous communities (NT, 2007). This report prompted swift action from government, and in the process caused a significant amount of social policy upheaval. This included the suspension of the Racial Discrimination Act so that certain policy actions were allowed to take place (O'Dowd, 2009). The outfall from the intervention was that the Federal government was permitted to return to a paternalistic policy through the renegotiation of land tenure to create a policy environment favorable to European ideas. Returning to old policy methods could have further implications by causing a widening gap in well being, which goes against many of the justifications for the intervention whose stated goal was to 'close the gap.' A phrase since repeated on numerous occasions. The problems arising from housing and the intervention lead to questions about how policy can be evaluated which will be discussed in the next section of this chapter.

4.5 Methodologies of policy is construction and means for evaluation

In this section the means used to construct policy will be examined. The process of creating policy is one that is highly scrutinized often from a lack of understanding of the requirements for making good policy (Clark, 1992). Good policy can be constructed using one of two means: 1) An inclusive approach where the concerns of all stakeholders are taken into account; 2) A targeted approach where policy outcomes are achieved through meeting predetermined

benchmarks. The latter is usually favored by government led policy creation as it can produce clear and convincing data to support the benchmarks being met.

In the research design chapter (Chapter 3) it was demonstrated that there were several responses to policy that can be evaluated: Responses by Government, Indigenous groups, and Non-stakeholder responses. In the case of Australia, Indigenous responses were the least positively received for a number of factors most significantly the dismissal of Indigenous voice in policy discussions. It was demonstrated by lack of inclusion of Indigenous voice that progress in reforming Indigenous policy was slow in coming at best; however, there were some issues which current policy address namely: *Audience awareness, Contextualization, Status of Stakeholders, Policy management, Implementation time-frames* for policy, and *Consistency*, which are needed to create lasting positive improvement in Indigenous well being. For example, (Altman & Hinkson, 2007) argues that the federal government position on indigenous housing policy can be vague; where a change in policy with each successive cabinet has led to indecision and a lack of leadership on who should bear the costs of improving indigenous well being. One way this can be interpreted is as unwillingness by government to address the question of how indigenous life opportunities can be increased. Since no simple solution is available the issue is deferred to a later date or government all while the situation in Indigenous Australia is thought to be getting worse (Cooke et al., 2007). In response to this, action should be taken to address the shortcomings of Indigenous policy by using a framework inclusive of both Indigenous and non-indigenous perspectives. Given the opportunity and time for suitable dialogue to occur, it is possible to “move forward” with an equitable land tenure and housing policy framework for Indigenous Australia.

4.6 Ways which policy in Australia can move forward

A question that seems to arise during any assessment of Australian Indigenous policy is what the next step is. Over the course of this chapter it has been argued that most logical course of action would be to reform Indigenous policy concerning land tenure and housing. As these two factors of policy reform are not mutually exclusive a spill over effect into other areas of Indigenous wellbeing such as health and education would also be seen. So the issue now is not of what comes next, but how to elicit the change needed for policy reform. Two possible solutions will be posited that are within the current capabilities of domestic policy work to elicit change.

Lesson 1: Holistically Managed Land

Within the Australian federal government is a body called the Indigenous Land Corporation (ILC). Originally created in the mid 1990's and enabled in 2005, the ILC is tasked to: deliver economic, environmental, cultural, and social benefits to Indigenous people through the

acquisitions and management of land (ILC, 2011). This task is accomplished through three priority outcomes related to the administration of native lands:

- (1) Access to and protection of cultural and environmental values;
- (2) Socio-economic development;
- (3) Access to education.

Addressing these priority outcomes is currently funded from the Land Account that was established as a measure to ensure that Indigenous Australians would receive a tangible benefit from possession of or connection to native lands from, which they were dispossessed. This Land Account was the result several court cases concerning Australian Indigenous land administration in the 1990's. What the priority outcomes of the ILC demonstrate is that some of the policy framing needed to induce policy reform in the area of land administration is already in place. When this is combined with the quantitative data that demonstrates where low levels of health, education, and employment are occurring it becomes possible to pinpoint policy areas that would most benefit government investment.

In this manner the ILC could evolve into a holistic governing body with the skills, expertise, and local knowledge to bring about policy change in remote Australia. As an added benefit from the way the ILC is established it would be self funding with little to no additional cost to the government (ILC, 2011). While changes in the ILC would initially mark a shift towards a centralized model of administration it would also give local Indigenous peoples input greater voice as outcomes would be directly related to expenditure i.e. the funding structure of the ILC would force policy to perform in a positive (value adding) manner thus all decisions would necessitate transparency as negative choices would cause harm (financially) to all stakeholders. The only quandary a reforming of the ILC would then require is what amount of finance would be needed in the Land Account to effectively elicit policy change?

Lesson 2: Socially Integrated Housing

There are many models of socially integrated housing that have been used in both rural and urban settings throughout the world from Cohousing, which uses a set of common principles to structure a community of private residences around communal spaces; to local housing authorities that are funded by government and the communities they serve to construct and manage residences to foster improved health and social welfare outcomes (Bailie et al., 2011; Bailie & Runcie, 2001; Fenster, 1999). Research in Australia on locally administered housing has shown a connection between health outcomes and the maintenance of dwellings by tenants; however, the connection is often lost when policy outcomes are not linked to one another. Therefore as similarly discussed as a solution to land administration in Indigenous Australia,

policy outcomes concerning housing should be integrated in an effort to create better outcomes. Indigenous Housing not akin to land is the domain of state government as opposed to federal government. Integrated housing policy would require free exchange of information between states, which would be necessary to ensure a consistent approach to the administration of housing.

The two lessons presented in the previous paragraphs presented means for addressing Indigenous land tenure and housing policy reform within the current administrative systems. They posit policy reform as temporary solutions that have the potential to remedy policy and foster positive change for an indeterminate amount of time. It is the intent of the presentation of these two lessons to generate dialogue about how to best address the shortcomings in Australian Indigenous policy. It is from this dialogue that observation of Indigenous policy reform taking place in jurisdictions extraterritorial of Australia could provide helpful insight turning temporary policy reforms into ideas for ones with the potential to generate long-term positive outcomes.

The following three chapters will give some possible suggestions for eliciting this change through policy reform through examples of Indigenous policy reform trialed in other nations beginning with Chapter 5, indigenous self-reliance will be the key theme of policy reform in the United States. In Chapter 6, Indigenous self-determination will play an important role for reform in Canada. In Chapter 7, New Zealand will showcase how inclusion of Indigenous voice has initiated thoughtful dialogue between Maori and Pakeha²¹ concerning land and resource management.

²¹ Maori term for Non-Indigenous person

5

Indigenous Land Tenure and Housing in The United States

One does not sell the land people walk on.

-Crazy Horse September 23rd, 1875

He (Governor Isaac Stevens) said there were a great many white people in our country, and many more would come; that he wanted the land marked out so that the Indians and the white man could be separated.

-Chief Joseph

5.1 Introduction

In the previous chapter it was suggested that good policy leads to improved outcomes in Indigenous well being. Changes in Indigenous policy have improved well being in The United States as demonstrated by the decreasing gap between Indigenous and Non-Indigenous Americans shown in Figure 1.2 and again below:

Table 5.1 – Human Development of Indigenous and Non-Indigenous Americans

United States			
Year of Data	Non-Aboriginal	American Indian and Alaska Native	Aboriginal-Non-Aboriginal Gap
1990/1	0.859	0.785	0.074
2000/1	0.872	0.811	0.061
2010/1	0.909	Inferred 0.859	Inferred 0.050

This chapter explains the similar historical position of Indigenous people in The United States compared to other pioneer settler societies in terms of policy development. Additionally this chapter will discuss how The United States got Indigenous policy right in terms of improving well being. One of the means through which outcomes were improved was the recognition that Indigenous Americans were not a singular group. Instead there were three groups according to the United States Census Bureau and subsequently 3 separate policies have been developed in The United States in the continental US (48 contiguous states), Alaska, and Hawaii. These differing policies will be discussed using the themes of Indigenous perception, philosophy of land, approaches to habitation, policy review, and suggestions for improving policy in the following pages.

As previously mentioned in Chapter 2, disadvantage exists in many aspects of indigenous society including housing, health, educational attainment, and employment. The area of disadvantage

that is the focus of this chapter is land tenure and its implications upon indigenous housing, which are interrelated with the other aspects of indigenous disadvantage mentioned previously.

Perspective is an essential element in determining how policy regarding land tenure and housing is written within the context of the United States. Indigenous philosophies of land and land tenure contrast sharply from those descended from those originating in European tradition. In the land now known as the United States, as in the lands currently under the domains of Australia, Canada, and New Zealand; indigenous people experience disadvantage compared to their non-indigenous counterparts as a result of misperception (Cooke et al., 2007). This is due at least in part, to the view held by many indigenous groups that land is not seen as a commodity as it is in common law, rather an encompassing system in which humans and their environment are intrinsically linked (Butt, 2010; Marks, 1998; Moore, 2009).

Philosophy of land as well as the notion of cultural superiority of the European settlers over indigenous people was thoroughly expressed in the laws created to put indigenous peoples at disadvantage (Locke, 1689; Pommersheim, 2009; Smith & Wobst, 2005). For example, what later became known as the discovery doctrine, considered indigenous people: unable to properly conceptualise land tenure due to being of non-European mindset and intervention was needed to improve their wellbeing ("Johnson v. M'Intosh," 1823; Parker, 1989). The portrayal of European reaction to Indigenous perspectives on land tenure should not be seen as overtly hostile, more as paternalistic a view that continues to perpetuate itself in media and public perception on issues such as land tenure (Barr, 2006; Surrallés, 2005).

In the United States, land tenure is an umbrella term used to define a group or individual's legal right to control, manage, or occupy a clearly defined land area for economic, residential, or traditional purposes (Wilmsen, 1989). Framed in the European legal tradition, this omits certain aspects concerning indigenous land tenure such as traditional knowledge (Raish, 2000). While it may be mentioned in passing that there were indigenous people who were present upon these lands, it is implied by colonial governments that foreign (European) powers had tenure of these lands through pre-emption and not their native inhabitants (Wolfe, 2006). Governments and academics have argued that perception of Indigenous land use through European eyes has resulted in a lower state of societal well-being compared to their non-indigenous counterparts throughout the nation's history (Brown, 1999; Bureau, 2000; Dorris, 1981). Their debate rests with two camps; the federal government using European tradition claims indigenous disadvantage is a product of failed acculturation; whereas academic sources purport the cause to be failed inclusion of indigenous traditions in policy development (E. Hunter & Harvey, 2002; Trovato, 2001).

This chapter will explore government policy and disadvantage relating to Indigenous land tenure and housing in the United States through a brief overview of the nomenclature of indigenous peoples in the United States (5.1); followed by a discussion of the indigenous perception (5.2); approaches to habitation (5.3); an examination European approaches to tenure and settlement (5.4); Contrasting European settlement with Indigenous habitation (5.5); Attempts to address Indigenous land tenure (5.6); A review of policy regarding land tenure and housing presenting two possible policy alternatives in the states of Alaska and Hawaii (5.7). This chapter will conclude with a summary, which gathers the positive lessons from federal policy that can be incorporated into a policy framework from improving tenure and housing (5.8).

5.2 The Indigenous Perception

The Landscape of North America as it appears today is far different from the one encountered by the first peoples who set foot on it over ten thousand years ago. When European explorers saw the continent for the first time, their accounts such as Cook's journal of his third voyage which explored Hawaii and much of the Pacific Northwest coast there is a sense of mystery as this is a wild land inhabited by what he termed "strangers"(Cook, 1768-1780). With a glimpse of an unfamiliar locale; Cook, Drake, and contemporaries generated literature about an imagined landscape, which due to its otherworldliness left room for elaboration in written accounts. Elaboration which perpetuated beliefs about the untamed lands of the West in turn promoting Eurocentric views of landscape such as manifest destiny and superior mastery over the landscape. Views such as these tend to fail when examined through and indigenous perspective due to observation and interpretation of natural phenomena being a cornerstone of their worldview (Deloria, 1999). Using this as a starting point to demonstrate the contrasting views of landscape, it is possible to peel back the layers of the imagined landscape to reveal one that is grounded in reality. To achieve grounding necessitates a clear comprehension of European as well as the Native American views on land.

When the ancestors of the Inuit, Aleutians, and Athabaskans reached the North America around the beginning of the Holocene (the period after the last ice age 10,000 BC), they would have encountered what could only be described as a foreign environment from what is seen today, a landscape teeming with vast quantities of flora and fauna. A portion of this taxonomy (including some of the largest mega fauna) has since vanished but exemplified by rock art in the Nevada desert below. Figure 5.1 depicts a more lush landscape than what now exists in this semi-arid part of the American West.



Figure 5.1 - Indigenous Rock Art near current day Fallon, NV – Photo by Author.

The cause of this has partially been attributed to the arrival of humans to North America though it remains uncertain as to how significant a role they played in these extinctions (Haynes, 2009). The society of human inhabitants who first settled North America are known as the Clovis People after city in the state of New Mexico where evidence of their existence was first uncovered (Flannery, 2001).

From these early beginnings, cultures of the first human inhabitants of the United States have evolved into complex societies as unique as the different environments, which they inhabit. As a result of this evolution of culture, Indigenous peoples of the United States are not a homogeneous group. In Native American society, there exists tribal level governments encompassing some tens of thousands of members to small bands consisting of only a few dozen members (Bureau, 2000). To shift from demographic numbers to a cultural aspect; according to the most recent American community survey reports, Indigenous peoples can be classified into three groups possessing distinctive socio-cultural and geographic characteristics: American Indians, Alaska Natives, and Native Hawaiian/Pacific Islanders (Bureau, 2007a, 2007b). This classification is done in an effort to separate Indigenous cultures that differ from one another in the extreme case. However even these are broad terms and this division of Indigenous Americans into three groups serves another purpose. Indigenous Americans are subdivided into

these groups in an effort to differentiate the relationship each group has with the federal government. There is also a historical lineage for these differentiations relating to the growth of the United States domain with Alaska (1867) and the Islands of the Pacific (1890s) being more recent additions. As a result there are three different federal policy approaches to land tenure and housing were developed and subsequently different levels of inclusion of Indigenous perspective is seen in the policies applied in each case. For Native Americans who have had the longest time to interact with the federal government, policy affecting them is by far the most developed covering everything from social welfare to protection of ancestral graves. For Alaska Natives, a business policy model was used. For Hawaiians policy decisions are delegated to the state government while other Pacific Islanders who are American Nationals²² (not citizens) are not included in any special policy.

5.3 Indigenous Tenure and Approaches to Habitation

In the first section of this chapter it was discussed that a Eurocentric view of land constructed through accounts vastly differ from the traditional view of land held by indigenous peoples constructed through a close relationship to the land. This section will further explore how indigenous groups have established ties to the land through oral vs written tradition and long-term habitation.

Many Native American cultures hold that land provides all things essential to life such as: shelter, game, forage and most importantly a way of being (LaDuke, 1999). While tribes may have a homeland, this land is understood to be held in common *de facto* with no legal tenure *de jure* by all members of the tribe (if indigenous land tenure were defined using formal European legal terminology) (Banner, 2005). To further illustrate: in most Native American societies, during the early colonial period an individual is not allowed to sell land or be its sole proprietor. Instead land is seen as a resource which is shared collectively amongst the tribe or the larger Indian nation i.e. tribes held customary title due to their traditions which were closely associated with the land (Cronon, 1983).

Indigenous peoples to establish a close relationship to the land use the concept of community title. In both the physical and socio-cultural sense, the land can be given a voice for example:

The American Indian is the soil, whether it be the region of forest, plains, pueblos, or mesas. He fits into the landscape, for the hand that fashioned the continent also fashioned the man for his surroundings. He once grew as naturally as the wild sunflowers; he belongs just as the buffalo belonged.

-Luther Standing Bear (Bear, 1933)

²² American Nationals live in United States controlled territories outside of the fifty states. This includes residents of several Pacific Territories (Guam, Northern Mariana Islands, and American Samoa) as well as residents of Puerto Rico and US Virgin Islands. Nationals are endowed with slightly fewer rights than American Citizens, they are not allowed to vote for president and have only a non-voting member in congress; however, they pay no federal tax only local tax which is subsidized by the federal government.

The sentiment expressed by Luther Standing Bear is one seen throughout indigenous groups in the United States. They are of the land and it is an essential part of their identity as a people/culture. An example of where cultural heritage and customary law show the deep connection many native tribes have to the land is through creation stories; expressed through oral histories about their ancestors being born out of the land, implying a relationship to a specific geographic feature (ex: Shiprock or Kilauea) or geographic area (ex: The Great Smoky Mountains or The Grand Canyon)(Meitner, 2004). To further illustrate this is an excerpt from the origin story of the Diné or Navajo Nation:

They went on to the north and came to the Painted Desert in the springtime, and they were dying for lack of water, for the four canes of the chiefs could not find any. At length they came to a bluff where there was a cave, and the captains tried to find water with their canes, but only found very little. And the Bear Guard went up to the cave and dug, and dug, and made a spring there, and they called the spring Shushbetoh (Bear Spring). It is near Navajo Mountain, Arizona (Klah, 1942).

From the above example, the use of oral tradition can be seen as a method for explaining how specific features in the land came to be and as a way to convey attachment to place (Tuan, 1977). As the nation grew in numbers Bear Spring became an important focal point with which the culture and traditions of the Diné were intrinsically linked. While attachment to place can be clearly shown, the boundaries of said place are not so apparent (Hughes, 1986). This is a result of cultural heritage where native peoples are an essential part of the landscape (Jaskoski, 1996). Thereby demonstrating that place boundaries in Native American societies are not fixed, as native peoples do not suddenly stop being once the edge of the tribal homeland is reached. Their sphere of cultural influence extends over a larger territory as this is tied closely to the land and its fauna.

Cultural heritage is established is through native fauna that inhabit the land also play a role in stories about daily life. Common in many indigenous cultures of the American West, was the coyote (Ellis, 1993; Snyder, 1995). The coyote played a role in many indigenous cultures of the American Southwest as a sort of trickster character who was used to teach a life lesson (Ballinger, 2004). Other fauna such as the raven served a similar role as trickster for many of the tribes of the pacific northwest and in the case of the Tlingit and Haida tribes social moieties (Chowning, 1962; Goldenweiser, 1940). Using these animals Indigenous cultures were able to express their being and presence upon the land in a meaningful way. Where these animals reside so resides the culture of an Indigenous people, alluding to a heritage native tribes have established traditional ownership over a defined area. This was often disputed by American settlers on the grounds that native peoples could not establish actual use and occupancy of such vast spaces (Erickson, 1984; "The United States Of America v. Clyde F. Thompson, et al., and Ernest Risling, et al.," 1962).

Traditional ownership has been legally established and written into the language of several Indian treaties brokered with the federal government most notably the Treaty of Ft Laramie 1868 which granted exclusive use of the Black Hills in South Dakota to members of the Sioux Nation. However, as the philosophy of traditional ownership conflicted with that of European tradition any and all agreements brokered between native tribes and the US Federal Government were not honoured. This is attributed to Bureau of Indian Affairs established to be the sole entity in dealing with Native Americans thereby encouraging a one size fits all approach to land rights and essential services (Cohen, 1953; Merriam, 1928). In more recent times (the later half of the 20th century to the present) many of these treaties were used to establish a legal basis for filing land claim litigation against the government (Deloria, 1974). Support of these land claims also came from the incorporation of customary law into the legal argument under the auspices; that long held traditional practices which occurred upon the land in question reinforce established historical ties to the land (Gilbert, 2007).

While there is established precedent in customary law for land that is traditionally used/or occupied by a tribe to assume title and therefore restrict use / access by non-tribal members, this title is not honored (with the exception of native graves being present) as it conflicts with common law and the principles of Discovery Doctrine as well as the legal standard of establishing “Indian title” where a Native tribe must establish

- (1) exclusive occupancy;
- (2) of a defined or definable area;
- (3) from time immemorial;
- (4) to and including the date of acquisition

(Erickson, 1984; Trope, 1992; "The United States Of America v. Clyde F. Thompson, et al., and Ernest Risling, et al.," 1962). With the legal standard for establishing Indian title set so high, it was nearly impossible to retain land currently under Indian control or reclaim land, which had been lost previously to federal policy and non-indigenous settlement making the legacy of the Discovery Doctrine long lasting.

Commonly associated with the depiction of the native as savages and therefore needing enlightenment, the justification for the use of the Discovery Doctrine can be often overlooked when examining Indigenous tribes which had acculturated into settler society successfully (Wilkins & Lomawaima, 2001). Of the tribes who did acculturate successfully, the most well known were the five civilised tribes (Cherokee, Chickasaw, Choctaw, Creek, and Seminole) of the American Southeast. By the 1830's these tribes began to experience encroachment into their traditional homelands. European settlers looked upon these prosperous tribes with some degree

of envy do to their having adopted European culture (Young, 1958). To this end, the tribes were seen as a threat to westward expansion. These tribes had to abandon their homelands and relocate (sometimes forcibly) to the newly formed Indian Territory (modern day Oklahoma). For example, the forced removal and relocation of the Cherokee Tribe (later known as The Trail of Tears) tragically shaped their society as served as an example to other tribes to not challenge the federal governments view on land rights. While harsh, land takings such as these were justified under the European philosophy of discovery doctrine.

A Eurocentric view of tenure over land controlled by indigenous groups interrupts this relationship of land to hunting, gathering, and pastoralism (depending on biodiversity the tribes homeland) (Cronon, 1983; Flannery, 2001). To further nullify this traditional lifestyle, the federal government created several successive phases of Federal Indian Policy which attempted to force the Eurocentric views of land tenure and the related sedentary living pattern upon Native Americans.

Both Native Americans and Anglo-Americans seek some form of tenure over land. Subsequently both view tenure in different ways and only the more powerful party (in terms of legal and military power) has the ability to impose their values regarding tenure. This infers that Native Americans as the conquered or pushed aside society have held a historically weaker position of power and are therefore excluded of highly marginalised from policy regarding issues of land tenure. Additionally, as most native homelands do not possess formal boundaries as a result of resource availability causing tribes to occasionally wander into adjoining territories (Cronon, 1983). This conflicts with the European perspective of land tenure which stresses fixed/clearly defined boundaries and will be discussed further in the following section.

5.4 European Notions of Tenure and Approaches to Settlement

The previous section demonstrated that Indigenous notions of land tenure have contrasting origins to those in European Tradition. This section will explore these European views of land tenure and settlement in further detail, creating a background understanding to inform policy regarding land tenure and settlement. When European beliefs are similar to those shared by Indigenous stakeholders, policy outcomes tend to be far more positive. However, when in conflict Indigenous perception is viewed with skepticism or discounted altogether being labeled uncivilized.

Contrasting with legal title to land is the traditional connection to land established through cultural heritage or customary law. Cultural heritage can be defined as the deeply held sense of belonging which a society has to a particular place; where as customary law takes that sense of

belonging and with it identifies a strong connection to the land (informal ownership) that is understood by the indigenous society (J. Blake, 2000; Sutton, 1996). This connection arises as a result of long term habitation in a specific geographic area (Warhus, 1997) From spending a long period of time in a specific area the intricacies of the land become 'local knowledge' giving rise to the importance of the cultural heritage present in the surrounding land (Joern, 1995; H. Proshansky, Fabian, A., & Kaminoff, R. , 1983).

Discovery doctrine was first demonstrated in the US Supreme Court Case: *Johnson v. McIntosh*, [21 U.S. \(8 Wheat.\) 543](#) (1823) where it was used to establish legal tenure to newly found lands by their European discoverers regardless of Indigenous groups that were present on the land prior to European arrival. Less than a decade after this case, defining them as domestically dependant nations furthered the loss of sovereignty by Indigenous groups (Babcock, 2005). This distinction left Indigenous groups subject to the rules and regulations of the federal government. Tribes have minimal power to establish land tenure as it is not their land to claim under the Discovery Doctrine nor as they were now subject to the federal government (See *Cherokee Nation v. State of Georgia*, [30 U.S. 1, 5 Pet. 1, 8 L.Ed. 25 \(1831\)](#)). While a US specific court case, the Discover Doctrine has been cited in several other countries when discussing indigenous land tenure.



Figure 5.2 - The 1872 painting by John Gast entitled “American Progress” illustrates Federal Indian policy for the first hundred years of the nation’s existence. In the painting several metaphors are used to place positive values on European Tradition and negative values on indigenous ones(Gast, 1872).

With the painting in (Fig. 5.2), many ideas come to light concerning how Anglo-Americans viewed the West and its inhabitants. This highly glorified view contrasts greatly from the indigenous oral tradition. By glorifying progress this painting seeks to justify the impacts of European power on the land. While not implicitly stating land tenure it infers the natives and their beliefs being forced further west while the enlightened Americans move in from the East bringing with them the desire for the wealth yet undiscovered in these new lands. This was part of manifest destiny for settlement and subsequently culture to encompass all lands from the Atlantic to Pacific, which would later be found as a highly destructive process not only from the standpoint of Indigenous peoples but the ecology of the landscape of the American West (Kuletz, 1998; Sherow, 1998).

To gain legal title to the new lands of the West, the **General Allotment Act** or Dawes Act of 1887 was passed to privatise ownership of Indian held land. Instead of having a reservation set aside specifically for the betterment of their tribe, Native Americans were now supposed to become homesteaders farming the land. Going completely against the cultural beliefs of many

tribes who were traditionally practitioners of transhumance, this would further diminish the acreage of Indian lands and continue to propagate a philosophy marginalization well into the 20th century.

An additional, Indigenous view of the land is communal control (or ownership). This was common in many of the arid areas of the American Southwest and carries over into the present day especially in Northern New Mexico where small Mestizo²³ communities have adapted the pueblo concept of the Hopi, Taos, and Zuni peoples for subsistence ranching and farming (Correia, 2007; Raish, 2000). This communal land ownership has been met with resistance from the US Government as it conflicts with European land use traditions.

With the philosophy of land from a European perspective firmly entrenched, change to federal policy for Native American land tenure was slow and only began to take shape around First World War. Several actions taken by the federal government during this time were drastically impacted indigenous land tenure. In 1924 citizenship was granted to Native Americans (Frickey, 2005). This act served ulterior motives as exhibited by the federal government's ability to tax all citizens specifically the land which they owned. While stated in the **Indian Citizenship Act** that this grant of citizenship would not impinge on the extended rights guaranteed native tribes through existing treaties, this was not the case. One view of this is that Indians through the use of federal law and policy were being forcibly integrated into Anglo-American society i.e. eliminating their special status and any claim to land they had previously possessed (Cadena & Starn, 2007).

In most of the treaties previously brokered with native tribes during the 19th century, the federal government was charged to treat Indian lands as sovereign (Deloria, 1974). Even though the native tribes were still sovereign entities after the citizenship act was passed, the federal government now had a legal obligation to act as trustees (asset managers) for the tribes. As a result federal policy towards native peoples became one of administration so that their land resources could be used under the auspices of benefit to the entire country, leading to an era of highly centralized policymaking.

5.5 The Conflict between Indigenous Habitation and European Settlement

In this section, the contrasting relationship with habitation and settlement between Indigenous and non-indigenous cultures will be illustrated. This section will report on policy decisions with a non-indigenous grounding and report how this has shaped the social and physical landscape for

²³ Mestizo – spanish loanword to indicate mixed race. In this research it refers to the native/spanish peoples living in New Mexico.

Indigenous Americans. Originating soon after the First World War, an era of policy known as “Indian” administration is best encapsulated in a federal government report by Lewis Meriam was commissioned to lead a survey on the conditions of native peoples and recommendations for improving their wellbeing. The report titled: *The Problem of Indian Administration* was delivered to the secretary of the interior in 1928. In the report, Meriam highlighted the conditions of native peoples both on and off reservation land and the dismissal by the federal government of traditional rights (Merriam, 1928). While not a cause of public outcry, the report did help to illustrate major flaws in the way social conditions of Native Americans and land tenure were administered.

Living conditions had changed little on many reservations since the Meriam Report was published and nearly fifty years later in 1973, the discontent for these conditions boiled over into what would be called the Wounded Knee Crisis. This occurred when the town of Wounded Knee, South Dakota was taken over by members of the American Indian Movement (AIM). Their justification for the takeover was to draw attention to the poor living conditions that existed on the Pine Ridge Indian Reservation (the location of Wounded Knee), which is still one of the poorest regions in the United States (Bureau, 2010). The takeover of Wounded Knee sparked a swift response from the federal government and for two months drew international attention to the plight of indigenous people. One negative aspect of the Wounded Knee crisis brought about was a weakening of AIM a major advocate at the time for Indian policy. While the weakening of AIM was a blow to Indian issues, the tradeoff was that the Wounded Knee crisis reinforced the need to amend federal policy regarding tribal welfare. Additionally it demonstrated the power of indigenous action in putting forth an alternative to federal policy. This was accomplished through the passage of Public Law 93-638 or **Indian Self-Determination Act** in 1975.

Two major outcomes arose from the acts passage. Firstly it reinforced many of the findings of the Meriam Report such as: changes needed in how services are delivered to Native Americans and subsequently the need for improving tribal welfare to create positive on the ground outcomes requiring fewer government services (Merriam, 1928). Secondly it ended the federal government policy of termination. To improve tribal welfare the self-determination act granted federally recognized tribes the ability to negotiate grants from various federal agencies to provide improved education and welfare to tribal members. The higher level of self governance allowed tribes to pursue more direct and effective responses to wellbeing issues which would otherwise be difficult to address due to outside interference from federal agencies (Cornell & Kalt, 2003). While the act did not equally benefit all tribes, it provided proof that in some cases a

decentralisation of federal level policy could produce positive improvement in the wellbeing of native tribes. The irony of the positive improvement seen in well being as a result of federal policy experimentation is that it was achieved through similar rights which were originally guaranteed to tribes when they brokered treaties (Banner, 2005). This implies, had the federal government honored the language of the original agreements, a substantial amount of effort and expenditure could have been saved. Up to the this section in this chapter all policy relating to Indigenous people in the United States has been constructed from a non-indigenous perspective. Due to the problems and failures associated with these policies culminating in the Wounded Knee crisis, there is a demonstrated need to be inclusive of indigenous beliefs when considering a policy framework.

It is possible that enabling policy from an Indigenous perspective would produce a stronger sense of ownership. By participating in the development of policy, Indigenous people would have a sense of ownership over the policy which will allow for ease implementation while promoting self reliance amongst indigenous tribes (Blaser, 2004; Development, 2009). This is the goal of the most recent federal policy directed at Native Americans respecting indigenous land as sovereign and independent held in trust for the tribe to improve their own well being echoing the tone of the Merriam Report (Merriam, 1928). Whether this will remain the approach of the federal government to address policy in the long term remains uncertain, as other methods have been used for select groups of indigenous peoples (Alaska Natives and Hawaiians).

5.6 Attempts to Address Indigenous land Tenure

One reason why land tenure is of great importance to Native Americans as shown in previous sections was their deep cultural connection to the land. This is also reinforced by their land use practices. However from an economic standpoint, many aspects of the Indian way of life such as land use and culture are unable to sustain themselves given a small enough land base. This has created a situation where many Native American tribes are stuck in a poverty trap due to high variation in employment and the poor quality of land in areas where they live (Duin, 1971-1972). Therefore an effort to restore control of land to Native Americans was needed in order to improve outcomes and bring Native Americans out of poverty.

Efforts to restore land tenure did not last long for all tribes. Reinforced with the passage of tribal termination acts beginning in 1953. These acts effectively dissolved the tribes which agreed to them meaning they ceased to receive any special services effectively making former tribal members ordinary American citizens. In 1953, the acts of congress which initiated the termination policy were: **House concurrent resolution 108** (HCR-108) which ended the

trusteeship of the federal government over some Indian tribes and **Public Law 280** ([Pub.L. 83-280, August 15, 1953](#)) which extended legal federal jurisdiction (law enforcement and direct oversight) over most tribal land in the western United States. Additional federal laws following these, would further the policy of termination and physically impacting indigenous society by providing cash or private land to tribes willing to disband and renounce their tribal rights thereby becoming ordinary United States citizens without special entitlements from the federal government (Fixico, 1986). The passage of these laws led to an increasingly small land base under the control of native tribes. This made it increasingly difficult for native tribes to make a living off the land (Deloria, 1985). Now lacking tenure as a result of the dissolution of reservations, migration to urban centers where employment opportunities were of greater abundance became commonplace. Many Indians accepted cash payments for relocation and through mid century a significant rural to urban migration of tribal population occurred culminating in the majority of native peoples living off reservation in urban centers by the 1980's (Etulain, 1989). These urban populations can still be seen today in many cities of the American West such as Anchorage, AK; Albuquerque, NM; Los Angeles, CA; and Tulsa, OK (Coalition, 2008).

Indigenous urban migration drastically changed the political geography of many western states was significant, noticeably in the state of Oregon where nearly all Indian tribes west of the Cascade Mountains disbanded during this policy era (additional laws see: The Western Oregon Indian Termination Act, or Public Law 588). This era of termination policy can also be interpreted as the federal government's effort to subvert notions of Indian solidarity and special status given to Indians under federal law and brokered in treaties previously. This is one instance where focused government policymaking efforts could vastly improve Indigenous well being.

Termination policy, had many detractors (Walsh, 1983; Wilkinson & Biggs, 1977). Tension about native rights and federal Indian policy was becoming apparent. For many tribes that had a preexisting special relationship with the federal government due to the treaties, which they had brokered, the notion of termination was as threat to well being. This was due to the culture of dependence created when the treaties were brokered. Many of the economic and social services received by tribes came directly from the federal government and would be rescinded if the termination policy were allowed to take effect (Prucha, 1994). A mere decade after the policy of termination was implemented it was made apparent that it was failing and it was during this time several Indian solidarity groups formed as a result. Most notable of these groups was the American Indian Movement (AIM), which was discussed earlier in relation to the Wounded Knee crisis. From their efforts and other vocal Native American groups and allies, work in

Indigenous policymaking has shifted its focus to one of self-reliance. This promotion of a policy of self-reliance and two exceptions to this current policy paradigm will be reviewed in the next section of this chapter.

5.7 Policy Review, Exceptions and Lessons

The previous sections identified milestones in indigenous policy, which would inform upon sovereignty and self-reliance. It was suggested that previous policies had failed due to a lack of social context, of a lacking comprehension of traditional/local knowledge. Policies, which support Indigenous sovereignty and self-reliance, have taken these failures into account, most recently the advent of gaming on tribal lands in the 1980's. Perhaps the greatest benefit gaming provides is the ability to generate income based upon the land that small tribes have tenure to. In many cases the tribes which have benefited most from Indian Gaming are those who control small parcels of land near large urban centers such as those in Connecticut, Florida, and Southern California (Light & Rand, 2005). While an important step towards self-reliance, gaming does have some limitations. For instance, those tribes whose lands are located far from urban centres or does not permit gaming few positive benefits can be seen (Anders, 1998; Rand, 2002). There are also issues related to Indian gaming on new lands, which were not previously part of any Indian Reservation (Geranios, 2010). Since tribal land is sovereign under US law, it is outside of state jurisdiction (Mason, 2000). This allows for certain activities to take place on tribal land, which would otherwise be illegal under state and federal law. The most prominent activity being permitted is tribal gaming.

While most of the income generated from gaming goes to individual tribal members, a portion is directed to improving tribal welfare (Bultjens, 2007). This demonstrates the interrelation of land tenure to the improvement of Indigenous well being. In Indigenous communities where gaming is not permitted and land has low resource value, opportunities for generating income are scarce. This is exhibited by eight of the ten poorest counties in the country (by per capita income) being largely comprised of Indian held land (Bureau, 2000). Given this fact it can be said that while Indian gaming does improve the well being of many native tribes it does so in an uneven manner according to geography (Washburn, 2001; Wilkins & Lomawaima, 2001). In order for the situation to improve for those tribes removed from the benefits of gaming, other reforms regarding land tenure and administration are needed. The answer to the shape these reforms could lay in the two exceptions to Indian policy and administration that occurred outside of the nationally applied policies (Wilkins, 2007).

There are many instances where federal Indian policy is not uniformly applied. A detailed discussion of this will also take place in the next chapter concerning the indigenous peoples of Canada. The two exceptions in the United States where Indigenous policy was not uniformly applied are in the policies governing Alaska Natives and Native Hawaiians where the history of European settlement occurred at a later time than the rest of the United States. Alaska was first settled by Russian traders in 1799 and Hawaii was an independent kingdom before being overthrown by European businessmen late in the 19th century (Michener, 1959, 1988). This late incorporation under European influence and late statehood (1959) for both regions led to a divergent Indigenous policy that was state and culturally specific.

Alaska and Native Corporations

For most of the history of a European presence in Alaska, the indigenous people were largely ignored or used when it served to economic interests of European visitors (Michener, 1988). For the early history of European activity this involved payment/trade for furs and pelts. Economic interests aside, geographic extremes such as latitude and rugged terrain much of the Alaskan interior remained unexplored until the late 19th century. In 1906 the Alaska Native Allotment Act was passed with similar intentions to the Dawes Act it allowed Alaska Natives to gain title of up to 160 acres of land for homesteading (Arnold, 1976; Walsh, 1983). This act had a similar outcome in it effected the transfer of large amounts of native land out of common ownership and into private ownership a state of affairs that remained largely unchanged for half a century. The intention of such policy was to make the development of Alaska's natural resources require less regulation in effect encouraging investment by cutting out Alaska Natives.

After Alaska Statehood, the interests of Alaska Natives (specifically land claims) were noticeably at odds with the growing economic interests present in the region showing that a need for policy to mitigate the negative effects of development (D. Mitchell, 2001). With primary reasoning for policy was to gain access to the timber, petroleum, and mineral resources in the state this made any Indigenous policy developed for Alaska to leave Alaska Natives at a disadvantage, they fared better than their Native American counterparts (Skinner, 1997). The policy was brokered with the passage of Alaska Native Claims Settlement Act in 1971.

The immediate effect of the act was to repeal the Alaska Native Allotment Act, compensation to Alaska Native for petroleum leases, the extinguishment of all native title claims to 85% percent of the states land area, and the establishment of 13 native corporations which would manage the remainder of the states land for the sole interests of Alaska Natives (Arnold, 1976). The establishment of the Alaska Native corporations is a unique study in the administration of

indigenous land tenure in the United States as it departs from the traditional norms of fee simple private land and instead operates as a business. It further departed from past policies in differentiating control of title of surface land rights and those of subsurface rights. Local jurisdiction (a village corporation) controlled all changes made to the surface land in their community; whereas any land use decisions impacting economic interests (timber, petroleum, or minerals) on Alaska Native held land were the responsibility of the Native Corporation of that region ("Alaska Native Claims Settlement Act Of 1971," 1971). Though bearing some similarities to the benefits of Indian gaming it goes further by viewing the land base as an asset itself. The lands tenured by native Alaskans are also significantly larger than those in the continental US affording greater opportunity.

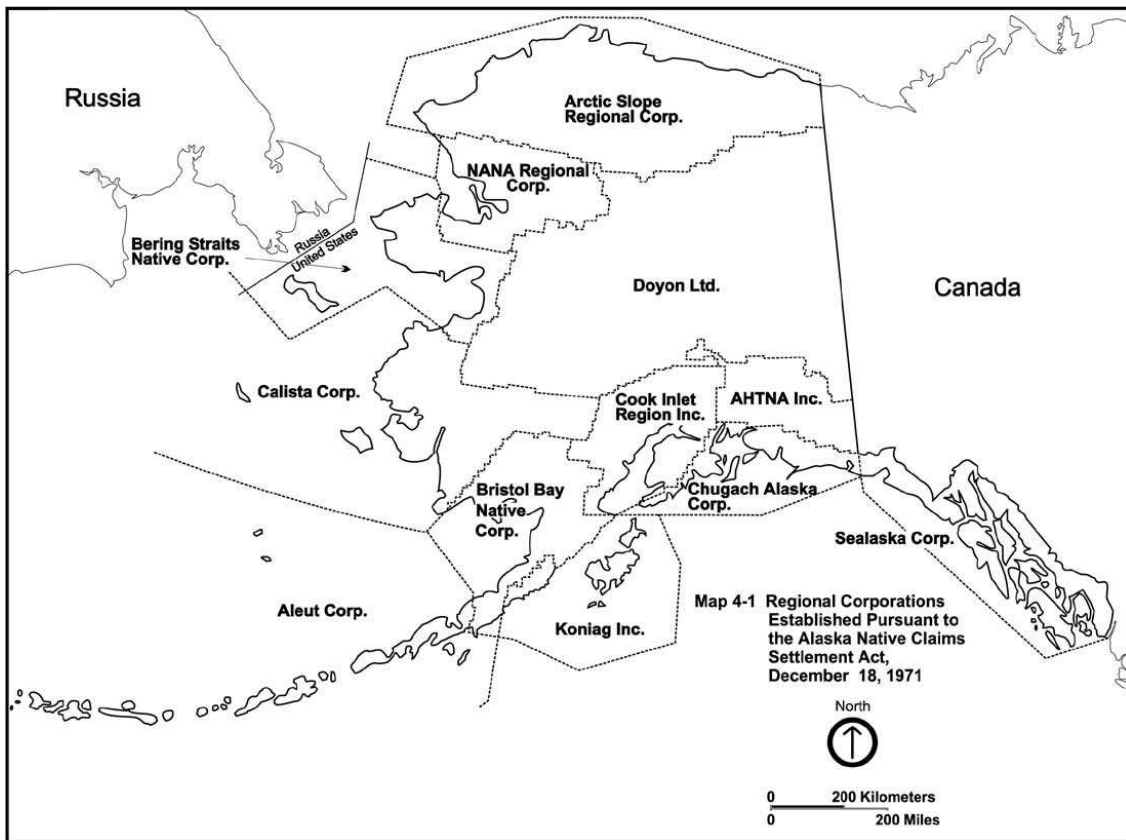


Figure 5.3 - The geographic distribution of the Alaska Native Regional Corporations. Note that only twelve are shown as the 13th corporation was established for the interests of those Alaska Natives who live outside of the state.(Norris, 1992)

The case of Alaska has by no means gone over any better than previous federal indigenous policies. As exemplified by pending events over timber/development rights in the Tongass National Forest (Murphy, 2010). Keeping this in mind there are still lessons that can be gleaned from Alaskan indigenous policy to make a policy framework with greater understanding of the indigenous perspective. One final case within the United States will further supplement this framework.

Native Hawaiians

Hawaii has long been a complex case of indigenous land rights. This can be attributed to a pre-existing land tenure system before European discovery and the archipelago's status as an Indigenous royal kingdom prior to its incorporation into the United States (Levy, 1975). After its incorporation as United States territory in 1900 there was some talk of setting aside tracts of land in the islands as homelands for Native Hawaiians. However, nothing to this effect occurred for another twenty years through the passage of the **Hawaiian Homes Commission Act** of 1921. The act set aside nearly two-hundred-thousand acres for homesteading by Native Hawaiians (Inciong, 1991). Another component of the act put land in trust for the benefit of Native Hawaiians and was one of the federal government's first attempts at putting forth a policy of self-determination (Parker, 1989). Most of the land set aside; however, was of little to no economic value to the owners of the sugarcane and pineapple plantations. The idea of Indian self-determination would become federal policy for Native Hawaiians much later and with statehood in 1959, administration of the Hawaiian Homes Commission Act would pass to that of the state government.

Today some nine percent of the states population claim Native Hawaiian ancestry (Bureau, 2000). Hawaii is the only US state where indigenous people do not have federal recognition barring them from certain entitlements (such as gaming). The entitlements which Native Hawaiians do have are instead administered by the state: Office of Hawaiian Affairs (Parker, 1989). While the case of Hawaii shows that it is possible to administer Indigenous policy at a state level, it requires more oversight than currently used. This oversight should be in the form of ensuring that Native Hawaiians are in fact the ones benefiting from the lease agreements from the Hawaiian homelands (Anaya, 1993-1994; Levy, 1975). If possible, federal recognition of Native Hawaiians should also be considered, though this has the potential to be an exchange of one administration for another is policy reform does not take place concurrently.

The following quote demonstrates the generally negative perception of federal Indian policy and the need for an informed vision to frame policy. To achieve this, the following section will illustrate the value of policy to improve the well being of Indigenous Americans in the areas of tenure and housing. In addition it will demonstrate the slow pace in which policy change occurs and lessons for improving the policy process

Do you know what your Bureau of Indian Affairs, in Washington, D.C., really is? How it is organized and how it deals with wards of the nation? This is our first study. Let us be informed of facts and then we may formulate our opinions. In the remaining space allowed me I shall quote from the report of the Bureau of Municipal Research, in their investigation of the Indian Bureau, published by them in the September issue, 1915, No. 65, "Municipal Research," 261 Broadway, New York City. This report is just as good for our use today as when it was first made, for very little, if any, change has been made in the administration of Indian Affairs since then.
-Zitkala-Sa (Zitkala-Sa, 1921)

5.8 Policy Lessons for Improving Indigenous Land Tenure and Housing

In this section policy lessons will be presented for addressing Indigenous land tenure and housing policy in the United States in a positive manner. As views change over time a case can be made that the most recent policy lesson is most relevant to research on policy reform; however, the solutions and historical events that came previously have many implications for shaping recent policy ideas. It is from this needed background that the four lessons will be discussed. These lessons are: 1) Dispossession; 2) Termination of Native Status; 3) Acculturation; and 4) Self Reliance Through Gaming.

Throughout this section the presentation of lessons will demonstrate the progressive shift in policy ideas from early stages of European influence of intervention and paternalism to an almost laissez faire attitude to policy administration in recent decades. This progressive change has led to a clear means for addressing the specific needs of Native Americans. Disadvantage between Indigenous and non-indigenous Americans has decreased in conjunction with policy change. Fostering ways to engender continuous policy improvement resulting from previous lessons should be at the forefront of thinking.

Lesson 1: Dispossession

The shrinking land base from the influx of European settlement caused many Indigenous Americans difficulty in continuing many of their cultural practices. One such practice that Indigenous groups were dependent upon was transhumance. This nomadic following of herds and prey was all but impossible once land was ceded to European control as Non-Indigenous beliefs held different values of land. Thus, through their dispossession Indigenous peoples were increasingly subjugated as they could no longer depend upon the bounty of the land to maintain their culture or subsist. This affront to their well being forced them to become increasingly

dependant upon the government while giving access to former Indian lands to Europeans for settlement and use of natural resources. While sound economic policy, dispossession took a drastic toll on the socio-cultural well being of many Native Americans.

Lesson 2: Acculturation

The early 20th Century brought the last of the 48 contiguous states into the United States. From this event a shift in policy began to occur that was inward looking. No longer was the United States going to expand. However, to foster growth cheap access to land was still needed. An idea was conceived the take additional Native American lands through what at the time seen as fair and just means. This was acculturation through the granting of citizenship to Native Americans that as discussed previously would cause them to loose any of their extra rights granted to them through treaty negotiations. This facilitated land to be seized by the government upon

Lesson 3: Termination of Native Status

As discussed previously in this chapter during a period in the 1960's and 70's terminated the native status on many tribes as a means of accessing their land for non-native purposes. This policy of termination was unique to the United States and provides a keen insight into the mentality of the federal government during the time the policy was being administered. This policy era represents when the relationship between Native Americans and the federal government was at it most tenuous. Several events from the resulting tensions furthered the resolve of both parties that policy reform was needed even if it was unwelcome. Thus the last attempt to change the administration of Indigenous policy by the federal government was the result of the collective ill will. From ill will the fourth and most recent Indigenous policy lesson emerged as means to return voice to Native Americans in the form of special rights guaranteed to them decade previously. Of these right gaming has received the most prominence.

Lesson 4: Self Reliance through Gaming

The most recent iteration of Indigenous Policy in the United States has been to promote Indian Self Reliance through Indian Gaming. This addressed the twofold problem of generating income from small land bases (Indian Rancherias) and allowing the local tribal leaders decide how to best administer social services using gaming revenue to improve those services that were pre-existing. As identified previously in this chapter the promotion of self-reliance has unequal benefits demonstrating that the policy is still in process and would benefit from continuous improvement.

This chapter offered examples of both how policy should and should not be conducted and how this effects on the ground outcomes for Indigenous Americans. The lessons learned from the United States help to inform the construction of a policy framework which is offered as a potential solution for improving Indigenous outcomes in other nations with similar characteristics such as Australia. Additionally, this chapter has demonstrated the effect of imposing a European model of land tenure in the United States has been generally negative for Indigenous people. This suggests that a new direction must be taken in policy concerning indigenous land tenure. Additionally it points to certain items, which are essential to producing positive policy outcomes around land tenure namely:

- To realise that different laws and customs exist in non-European societies and therefore the same legal framework/policy, which governs issues of tenure, cannot be universally applied to Native and Non Native alike.
- To recognise the social and environmental aspects of land tenure and housing policy and not just the economic aspects i.e. arguments of this will cost us this much money over the life of the policy. This broader approach helps bring to the light the interrelated nature of policy. Money spent improving one aspect (housing) can go further if spent on additional aspects (land tenure, resource management...etc).
- To permit a level of local involvement in the policy development process. This is essential to a policy of self-reliance/determination and gives Indian Nations a sense of ownership over policy, they are directly impacted by. (An effort to incorporate customary law into the European legal framework)

Taking these three lessons away from the US case supports amending current policy. This can be accomplished through the use of a policy framework. Such a framework would be inclusive of both Indigenous and western views of policy in order to ensure the Indigenous well being is improved. Another legacy of Federal Indian policy borne out of the process initiated by European settlers is exhibited by the governments vote against the Universal Declaration on the Right of Indigenous Peoples in 2007. The main argument for this stance is given to be the language in the declaration that is interpreted to mean compensation to native peoples for past indignities. Given this stance, it appears that federal policy on land tenure and housing will rely on programs initiated under past legislation to address issues still facing indigenous communities, which were highlighted in the Meriam Report. Many of these same issues continue to face policymaking and make to goal of improving Indigenous well being elusive. While the legacy of indigenous policy in the United States is tepid, it is still possible to learn from this legacy by improving current policy so as to avoid mistakes made in the past.

6

Indigenous Land Tenure and Housing in Canada

6.1 Introduction

This chapter will detail discussion on the relationship between aboriginal Canadians, their non-aboriginal counterparts, and how perceptions of each other influence policy outcomes. Using a classic anthropological approach will help to explain why indigenous policy in Canada followed a particular course over the past hundred years. Understanding the influence an anthropological approach has upon policy decisions involving the wellbeing of aboriginals in Canada is paramount if policy revision is to be effective. This combined with a better understanding of the on the ground situation using specific conflicts between the federal government and aboriginal Canada will clearly illustrate where policy work should take place. By suggesting that policy outcomes can be improved and conducted with greater efficiency, a claim supported by a body of literature on conflict resolution and resource management; policy recommendations garnered from empirical data on well being (Housing, Tenure, Education, and Health) in Aboriginal Canada will be combined with data from other countries in a subsequent chapter to form a policy framework for improving land tenure and housing outcomes.

Through the following sections, areas where policy improvement is needed will be indicated. In addition, cases studies that present precedent for improved policy outcomes and include transferable qualities for cases of aboriginal and government relations external to Canada. The chapter will consist of seven sections including: scene setting for policy concerning Indigenous Canadians (6.2); a discussion of Canadian geography and legal traditions (6.3); a discussion on Aboriginal title and its significance to Canada (6.4); quantifying Aboriginal well being (6.5); case studies involving conflicts of legal tradition and well being between Aboriginal Canadians and the government (6.6); means for improving policy outcomes in tenure and housing in Aboriginal Canada (6.7); and a section on policy responses (6.8).

6.2 Scene Setting

The geography of Canada plays a large part in shaping the cultural heritage and diversity of its native peoples. At 9,984,670 Sq Km Canada is the second largest country by surface area in the world, all parts of the country ranging from the extreme conditions in the North (home of the Inuit people) to the forests of the South (Tlingit, Coast Salish, and Cree First Nations) contain distinctive indigenous cultures (UN, 2010). The cultures contained in the vast geographic area that is now known as Canada arose out of necessity to adapt to the local landscape. Much of the land is by western standards difficult to inhabit (Flannery, 2001). For example: Tlingit and Haida culture is highly dependant upon the sea for both fishing and transport, whereas Inuit follow the seal migration along the northern slope of the country, and the tribes in the central plains followed the buffalo. While the culture of all these tribal groups differs, they share a common connection to the land. It is deep connection that goes beyond mere habitation as seen in European tradition, rather land in the view of most indigenous peoples in Canada is a part of identity and being (A. Wilson, 1990). This connection was often ignored government policies concerning indigenous Canadians up until the middle of the 20th century.

First Nations²⁴ land use and tenure conflicted greatly from those of European tradition (Cumming, 1972). The native peoples of Canada have gone by many names in academia and common language, the most common of these being First Nations. According to the Canadian government, Canadian Aboriginals consists of three distinctive groups: *First Nations, Métis, and Inuit (Indian Affairs and Northern Development, 2002)*. These groups are further subdivided based upon geographic characteristics and distinguishes between treaty and registered Indians (Industry, 2007).

First Nations – Canadian Aboriginals who have traditionally lived on land set aside by the crown for Indian practice and use.

Inuit – The aboriginals who inhabit Canada’s Northern Slope (Arctic Region).

Métis – Mixed blood Aboriginals who were originally the children of fur traders and Indians.

Two other terms that are sometimes used to further distinguish the different groups of Indigenous Canadians but are not included in the constitution are:

Registered Indian – Persons who are registered under the Indian Act as possessing indigenous heritage

Treaty Indian – Persons registered under the Indian act that belong to a band or tribe, which has signed a treaty with the Canadian government.

²⁴ First Nations is a term used in Canada to refer to Indigenous people

Using the terminology mentioned above, the differences between these groups will be examined using the legal and socio-political history of the nation after the First World War with the intent to demonstrate the effect (positive or negative) terminology has upon policy. It is during this time period that political events have taken place leading to the most recent policy developments regarding Aboriginal Title by First Nations. In addition a push towards greater inclusion of traditional knowledge in policies governing indigenous people has occurred.

6.3 Geography and Legal Traditions

As was the case in the United States, treaties were brokered with indigenous tribes to open up land for settlement in the interior of Canada. Treaties concerned many aspects of Indian life and it was feared by native tribes that these treaties would curtail their ability to conduct their traditional way of life (Conroy, 1921). This implied living off the land and use of the land resources for which Indians were to be compensated for (D. O. I. Affairs, 1921). This type of land use went against indigenous land practices and endangered the ability of tribes to conduct their traditional uses of the land. So while the indigenous peoples of Canada were allowed to conduct their traditional practices, they were only permitted to do so if these practices did not interfere with European land use practices. This word play is a contributing factor to the conflict that arises from different interpretation of legal title. Dismissal of aboriginal title such as observed in the final numbered treaty would continue a pattern of policy, which had existed since confederation²⁵ and would continue until the 1950's.

A watershed moment in Aboriginal title and restoration of rights brokered under the numbered treaties occurred when certain aspects of the Indian Act were repealed. Notably the removal of the prohibition of pursuing native title claims and traditional ceremonies such as potlatch (Tester, 1999). Many tribes (mainly in the province of British Columbia) were not part of any treaty process and therefore had unextinguished claims which they could now pursue.

A report was published by the department of Indian Affairs and Northern Development in 1966, which looked at contemporary issues facing First Nations throughout Canada. The Hawthorn Survey as it would be later called bore several similarities with the Meriam Report published in the United States some forty years prior. It illustrated a gap between First Nations earnings and those of their non-indigenous counterparts as well as being critical of how government policy regarding indigenous peoples was poorly managed (Hawthorn, 1966). Additionally the role of government at both the provincial and federal level was illustrated to show the shared

²⁵ Confederation Refers to Confederation of Canada which took place in 1867 and the Indian act which occurred later in 1876.

responsibility for Indian affairs, building the case for research to occur around this topic. A shared responsibility for Indian affairs meant that the needs of specific tribes could be addressed in a manner appropriate to them and the Canadian government. A shift in thinking away from the top down approach and recognition of the specific needs of Indigenous Canadians due to their geography was one of the first positive shifts in policy since confederation.

From Assimilation to Self-reliance

A second shift Indian policy in Canada occurred during the 1960's which attempted to create a new framework around which policy regarding indigenous peoples was to be conducted in a document colloquially know as the "white paper". Had this been implemented it would have extinguished the special rights which indigenous peoples were guaranteed under the Canadian constitution through negotiated treaties(Chrétien, 1969). One positive that arose from this era was a reporting that the most practical solution to resolving the mismatch in well being between Indigenous and non-indigenous Canadians necessitated the control of Indian lands to be returned to Indian people (Chrétien, 1969). Concerns over this new government approach were also expressed by the indigenous community from several tribal chiefs in a policy paper called "Citizens Plus," (Alberta, 1970). Critical of the government's "white paper" on several points including the government's treaty obligations made previously. "Citizens plus," helped to illustrate opposition to government policy as it did not take the concerns of most indigenous peoples into account by calling for a regimented one size fits all approach (Alberta, 1970; Chrétien, 1969). The eventual demise of the policies of the "white paper" showed the Canadian government a gap in their understanding of indigenous issues and a need for a shared responsibility for improving indigenous policy outcomes. A possible solution for improving outcomes is to reform policy, which can be conducted with a clear definition and understanding of Aboriginal Title as will be explored in the next section.

6.4 Defining Aboriginal Title and its Significance in the Canadian Context

Aboriginal title long in the realm in customary law has slowly been incorporated into Canadian common law from the Calder Case with subsequent legal decisions. For example: *Guerin v. The Queen* [1984] 2 S.C.R. 335 demonstrated that indigenous land rights were *sui generis* (pre-existing) to common law. Contrasting from the experience in the United States where Aboriginal title has little recognition. Additional progress arose out of the Canadian Supreme Court's opinion in the case of, *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010, which clearly defined aboriginal title. It was held that aboriginal title to land was a community asset and as such the indigenous community had control over its use. Meaning that indigenous land has no single owner as well as

land rights being communal and based on a traditional connection to the land (Natcher, 2009; Nettheim et al., 2002).

Recognition of the complexities involved in tenure and ownership resulted in a rethink of political and legal frameworks aimed at Aboriginal Canadians. This rethink was conducted particularly at the behest of Supreme Court of Canada, making the justice system accountable to oral history and traditions of Aboriginals (McNab, 2009). We begin to see this inclusion through the outcome and influence of the Calder Case.

The Calder Case: *Calder v. British Columbia (Attorney General)* [1973] S.C.R. 313, [1973] 4 W.W.R. 1 served as the coup de grace to the white paper policy and set the first legal precedent in Canada for indigenous land rights. This decision went against the belief of discovery doctrine²⁶, that land was being seized from indigenous groups due to their perceived incivility. Additionally it certified that First Nations did indeed have legal title to land given to them as title can only be extinguished by a level of government with constitutional authority to do so²⁷ (Foster, 2007b). The outcome from the Calder decision forced the Canadian government to observe customary rights in addition to those legally defined. Subsequently was the admission by then prime minister Trudeau that maybe First Nations had more rights than the government acknowledged (Foster, 2007b). This influence of additional rights and a shared responsibility for indigenous policy is expressed in four ways in section 35 of the Constitution Act (1982).

- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
- (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

The inclusion of the above points in the Constitution Act denotes a change in policy thinking to one of European and traditional knowledge from what was previously Eurocentric beliefs. It is important to highlight subsection (2) of the above act as it restates that Canadian aboriginal people include three distinctive groups rather than attempting to homogenize them as federal legislation had done before this act.

The legal decisions mentioned above reveal that inner-cultural understanding is an essential element for creating effective policy (Morellato, 2009). An influence which is seen in national policies constructed after these cases setting the foundation for a method of achieving outcomes

²⁶ See first chapter of this thesis for a detailed explanation of discovery doctrine

²⁷ Since joining the Canadian Confederation this power lay with the federal government and not with the BC provincial government

for improving indigenous wellbeing. An outcome which is observed in efforts such as the Kelowna Accord (which has yet to be implemented) and the recently published *Northern Strategy* which restate many of the items mentioned previously in this chapter essential to improving policy outcomes (Indian Affairs and Northern Development, 2009; Secretariat, 2005). The lack of implementation of the Kelowna accord is partly a victim of political will as arguments such as the perceived high cost to taxpayers it would create. While the case of Canada has shown that improved policy outcomes are possible at the national level, it has also shown that policy can get caught in a cycle of stating and restating areas of improvement with little positive change. This cycle identifies a need for a framework that can be used to reform Canadian indigenous policy on housing and land tenure, which identifies and avoids these hindrances to improving wellbeing.

6.5 Quantifying Aboriginal well being

Numerous statistics both in Canada and abroad demonstrate the gap in well being which exists between indigenous and non-indigenous people. The indicators of well being most relevant to the case of Canada are the subcomponents of the Human Development Index (life expectancy, literacy, and educational attainment). These HDI indicators show that “gap” is not an accurate description rather “gaps” exist that need be remedied in order to produce positive Indigenous policy outcomes.

One such gap that exists is in the field of health. A 2009, report that focused on the health of Indigenous children found that they were at greater risk of several preventable diseases that had almost not occurrence within the non-indigenous Canadian population (Smylie & Adomako, 2009). This is general trend for all determinants of well being for Indigenous populations; the greater the distance from the major centers for health, education, and employment the greater the shortcomings in these areas will be. This pattern was first identified in 1963 as the ‘loss of strength gradient,’ identifying the ability to apply military force in a given region was determinant on the ability to maintain the supply lines and forward bases in the region (Boulding, 1963). The application of the loss of strength gradient to Indigenous well being can be seen from the example of locating health service centers in remote locations as reported in (Smylie & Adomako, 2009). This creates a need for further research into how determinants of well being are best addressed. The demographics of Indigenous Canadians shed some light on this.

According to the most recent data available at the time of this research, Indigenous persons in Canada tend live in urban or remote areas depending upon their cultural heritage (Ning & Wilson, 2012; StatsCan, 2006). This means that while some groups such as Métis live near urban centers where they are a small minority of the general population, others such as Inuit live great

distances from urban centers where they compose near the entire population. With this demonstrated preference in living patterns, it can be assumed needs unique to each group in the form of housing, education, and employment exist. To a policymaker this can complicate the delivery and management of services to Indigenous people. Since this research is focused on creating better policy outcomes for remote and regional populations, policy examples from Inuit and First Nations people will be used. These examples will consist of cases studies where questions of title, resources, governance, and law became determinants of Indigenous wellbeing.

6.6 Case Studies Involving Conflicts of Legal Tradition and Well being

Haida Gwaii

Haida Gwaii²⁸ is an archipelago located off the North-West Coast of the Province of British Columbia. It is presented here as a case study to show the process involved in indigenous land governance and subsequently the impact upon the indigenous people. At the heart of Haida Gwaii are the conflicting interests over the land and who should control the resources (Shapcott, 1989). Claimed by the Canadian and British Columbia Government that some of the best remaining old growth timber resources that are easily accessible lay in the archipelago the resources of Haida Gwaii are highly sought after (BCMF, 2000). In contrast, the Haida take pride in the pristine nature of their environment desiring the ability to maintain their cultural identity and supporting traditional practices in regards to fishing and land management. Their unique culture has even been recognized by UNESCO which designated some of their important cultural sites world heritage sites (Zandvliet & Brown, 2006). This designation has brought both wanted and unwanted attention to Haida Gwaii. The media attention was unwanted by the government as it complicated the negotiations for the timber resources on the islands.

To broker a deal and break the stalemate in this situation an understanding of land valuation is needed. In Chapter 1, discussion involved to conflicting aspects of value including the non-indigenous view that tended to center on economics in contrast to the cultural view held by many Indigenous groups including the Haida. In such a case, the Haida people need to be involved in policymaking directly with the entities that desire to extract the resources natural resources. The Haida would have native title and would have a right of refusal to sign off or reject access to their land. If they agreed to access they would additionally be given a share of the revenue (Mills, 2010). Such a revenue or resource agreement would facilitate development in a balanced manner. While Haida Gwaii is not fully resolved, it provides perspective on the complexities of competing interests over resources and land tenure. This leads to discussion around the sharing of resources

²⁸ Haida Gwaii – Is sometimes referenced by its European name the Queen Charlotte Islands

and the sometimes lengthy process involved in reaching an agreement. One such case was the competing interests of the government of Quebec and the Cree people.

The James Bay Cree

The James Bay Cree consist of several tribes of traditional hunters in the forests of Northern Quebec to the East of James Bay. As a subset of the larger Cree tribal culture they are usually referred to the James Bay Cree. This particular tribe was selected as a case study as it concerns two elements essential to improving policy outcomes: traditional use of lands and the autonomy of the tribe from the federal and provincial government (Grim, 2001). Being far removed from Canadian population centers at first glance the James Bay Cree would seem to have a high level of autonomy; this is not the case. Their homeland is ideally situated near several large rivers identified by Hydro-Quebec (The provincial energy supplier) in the mid 20th century as being capable of generating extensive amounts of hydroelectricity. Also due to the location of these rivers any hydroelectric schemes undertaken would have little to no impact upon the wellbeing of the Quebec population according to Hydro-Quebec.

When the scheme began to take shape in the 1960s and 70s, it was conducted without the consultation of the Cree people. It can be speculated as to why exactly this was done give a proven history of not recognizing the autonomy of indigenous peoples. As mentioned in the previous sections of this chapter Canadian Aboriginals have additional rights to those of non-aboriginals. For Hydro-Quebec this inferred a lengthy process of litigation in order to get the hydro projects built which by pushing the projects through assumed they could avoid. As a direct result of these underhanded dealings the James Bay Cree filed suit against the government of Quebec as the projects would flood an extensive land area under their control (Blaser, 2004). The suit worked and forced the provincial government to negotiate with the Cree before the projects would be allowed to proceed resulting in the James Bay and Northern Quebec agreement in 1975.

The agreement in principle was recognition of title held by the James Bay Cree to the land where the hydro projects would be situated as well as establishing a means to compensate the Cree for the impact done to their land and well being (Quebec, 1976). While not a complete resolution of conflict over land tenure in Northern Quebec, the James Bay Agreement helped establish a dialogue between the Cree and provincial agencies on ways to improve indigenous wellbeing. In addition the agreement set an example for the future involvement of traditional knowledge in land administration. This would lead to constructive dialogues with other Indigenous groups concerning land tenure throughout Canada. Agreements in the James Bay region of Quebec have

continued to be brokered so that the province can continue to develop the region and the James Bay Cree can continue their development and maintenance of traditional land management practices. This agreements in principle are (Quebec, 2002) and more recently (Quebec, 2012).

BC Treaty Process

After the discussion of James Bay, the focus of the sub national examples will shift to land tenure at a provincial level in British Columbia with the following quote:

*Native land rights are probably the biggest issue facing the province of British Columbia, let alone Vancouver. Unlike the United States and other parts of Canada, we never fought any major wars with the First Nations peoples, nor were there any treaties - land simply got taken, so it's all mucky and undefined. Should this issue come to a head the same week that various Asian scenarios go critical and the Big One hits, Vancouver is going to be one heck of an interesting place to be.*²⁹

-Douglas Coupland

The quote above hints and the diverse cultural geography present in the modern nation of Canada and the complexity involved in solving land use conflicts. British Columbia is unique from the rest of Canada in how indigenous rights have been negotiated. A major causal factor as to why a treaty process did not occur was that there simply was not enough economic motivation and interest to run one. When treaties were being established in other parts of Canada and The United States, British Columbia was still largely frontier (Harris, 2002). There was little presence of non-indigenous people due to the geographic obstacle presented by the Rocky Mountains. This meant that Non-Indigenous settlement of British Columbia occurred comparatively late and did not experience significant growth until the 1890's with the onset of the Klondike gold rush. The short presence of Non-Indigenous people combined with the geographic isolation of the region from the rest of Canada facilitated the lack of a treaty process. With the lack of a process the bands of First Nations that lived in the province had unextinguished rights, meaning that they were entitled to negotiate their rights directly with the Canadian government to settle land claims and rights to natural resources that they had traditionally accessed (Foster, 2007a). In the absence of a treaty, lands under claim by bands of First Nations were supposed to closed to Non-Indigenous settlement, but could be used for natural resources once under Canadian law these claimed lands were purchased by the crown (Foster, 2007a).

The BC Treaty Process through which, resource and land use agreements are to be brokered commenced in the early 1990's and has only recently produced results demonstrating the complexity and difficulty of making decisions about the management of large swaths of

²⁹ From the essay STO:LO in *City of Glass* (Coupland, 2000)

provincial geography. As of the writing of this thesis only three treaties have been brokered (B. T. Commission, 2011). Part of the difficulty in brokering the treaties is the varied perspectives of the stakeholders involved. In addition the provincial government sees the high economic windfall that natural resources contained within regions where treaties are being brokered can provide to the development of region. In contrast to this are the mixed perspectives many First Nations hold to development where some are in favour while other a vehemently opposed. This has caused delay in the development of several infrastructure and economic development projects as First Nations bands are required by law to be consulted before construction and development are allowed to take place (Crawford, 2012; Foster, 2007a). As it is an ongoing process, treaty negotiations between First Nations, Provincial, and Federal government can afford a lesson in the time consuming of creating policy that is equitable. Additionally it has still yet to be determined what the long-term impacts of new treaty agreements will have upon the well being of First Nations residing within the province.

The Creation of Nunavut

Previously in this chapter it has been established that Indigenous Canadians consist of three distinctive cultural groups based upon their geographic location and cultural practices. One of these groups, The Inuit, live in the far Northern part of the country (Crowe, 1974). This is one of the harshest climates inhabited by humans in the world and as such requires rather unique management solutions. Prior to 1999 management was conducted through the territorial government and the federal department of Indian and Northern Affairs. Under this system all policy decisions were made from Yellowknife³⁰ or Ottawa with little to no input on policy from the Inuit people (Wyman, Shulman, & Ham, 2000). This put the Inuit people in a vulnerable position having to accept whatever policy decisions made in these far off cities. For many years, this was not much of an issue due to the physical and geographic extremes of the Inuit culture region. The land had no economic value to non-indigenous Canadians leaving the Inuit to continue their cultural practices and way of life. These practices were heavily documented and later marketed in the film: *Nanook of The North* (Flaherty, 1922). While much of this film was staged, this was the imagery most Canadians associated with Northern Canada as a cold and fairly inhospitable place (Cresswell & Dixon, 2002).

This image of in-hospitality became less opaque over time. Northern Canada was on the verge of a resource rush of sorts during the later half of the 20th century. The land began to give up its secrets in the form of large gold and diamond deposits located on the edge on the Inuit cultural region (Coates, 1985). To manage these resources development plans were put in place where

³⁰ The then capital of the of the Northwest Territories

mineral leases and exploration grants would be awarded to large companies who had the technological ability to mine precious materials. The Inuit people were largely absent from this process for two reasons: 1) The Canadian and Northwest Territory government did not think it was their business; 2) Involvement of the Inuit people could possibly drag out the process of developing the natural resources. One could speculate as to which reason was the cause, for this research it will be assumed that the cause is a combination of both.

As part of a policy of self-determination, the Canadian government did not desire to subsidise many Inuit people continually (Dahl et al., 2000). From this desire as well as a want to access the valuable mineral resources present in Northern Canada the idea of Inuit self-determination was floated. This meant that some of the revenue from the resource extraction operations on Inuit land would begin to flow back to the Inuit enriching their lives. It was decided by the government of Canada that the best way to achieve this was to carve out of the Northwest Territories a new Inuit home territory that would be called Nunavut. Within Nunavut, the Inuit people would be given near autonomy to manage all aspects of land tenure, resource management, and administration of governmental services (Dahl et al., 2000; A. Henderson, 2007). Giving the Inuit people such freedom to govern their own affairs was an unprecedented step. More so with the creation of a new territory within Canada, the Inuit people now had a unique brand that they could trade upon to market art and tourism for the intrepid (Marie-Sylvestre, 2007). Thus, the creation of Nunavut had a positive benefit for the Inuit people by creating a sense of collective identity that had previously been absent (Ashworth & Graham, 2005). This has further implications about how Inuit value their sense of place in the landscape.

What the case of Nunavut has proven is, Indigenous groups are clearly capable of managing their own affairs through self-determination. Inclusive of self-determination is not only autonomy of management, but culture as well. Nunavut establishes a collective sense of place for the Inuit who reside there. The lesson that can be taken away from Nunavut is good policy can foster positive outcomes in tenure and Indigenous culture through self-determination.

6.7 Lessons for Improving Policy Outcomes in Tenure and Housing

Carrying away has been demonstrated by the renaming of Haida Gwaii, the James Bay Project, and the BC treaty process there are several ways which land tenure outcomes for Aboriginal Canadians have been improved. The primary improvement has been the active engagement of Aboriginal Canadians in the policymaking process. The creation of Nunavut has allowed for the Inuit to determine many of their own policies in terms of equitable land tenure, housing and resource sharing with Non-Indigenous Canadians working in the far North. The

James Bay Project has allowed for the co-operative management of a large portion of the province of Quebec so that the James Bay Cree can continue most of the traditional land use practices and at the same time receive development aid in exchange for the granting Hydro-Quebec permission to further develop a hydroelectric scheme to benefit the economic growth of the cities of the province. These instances of management and treaty rights provide valuable lessons for policy steps that could be taken to improve Indigenous well being. From examining First Nations policy development in Canada, three significant lessons can be taken and applied to the development of a policy framework for the purposes of this research.

Lesson 1: Clarity in Policy Leads to an Understanding of Perspective

Clearly defined policy shows us an understanding of policy in both the legal and traditional sense is essential. Even if specific rights are not defined in a legal context, this does not mean they do not exist or should be ignored during the policy development process. This was evidenced in the BC treaty process when intentions were clearly laid out. Both First Nations, and the provincial government were able to ascertain with improved clarity the perspective of the other stakeholders.

Lesson 2: Localization of Policy Delivers Improved Outcomes

Understand that pre-existing conditions exist and an approach to policy development that is either utilitarian or situational in nature will not achieve meaningful outcomes as they are not inclusive of Indigenous culture. Both Nunavut and the James Bay examples illustrated the suitability of policy for native peoples based upon an awareness of the audience (in this case the first nations). Under either the co-management or self-determination model, policymakers are being culturally sensitive by allowing Indigenous voice to permeate discussion and therefore drive the discussion to in turn improve the process, which in turn will increase Indigenous well being. Additionally, this recognizes the importance of community title in shaping policy outcomes. It is in the best interest of the all parties to not only share decisions but also share the associated risks. This is inclusive of the shared resource agreements that as used to frame the local policy governing the James Bay Agreement (Quebec, 1976).

6.8 Conclusion

Throughout this chapter, discussion has centered around the theme of land rights in Aboriginal Canada. This discussion started with the uniqueness of the Canadian context, that the Canadian constitution distinguishes not only Aboriginal Canadians, but furthermore the three distinctive cultural groups from which, they are composed. This scene setting led to a discussion on geography and the legal traditions around which Canadian understanding of tenure was constructed, followed by a section on the conceptions of Aboriginal (Native) Title and their construction. After defining title, the definition of Aboriginal well being was quantified. Involving various socio-economic factors, this section reinforced the interconnectedness of social factors with conceptions of tenure in the Indigenous and non-indigenous contexts. To support this idea, the next section presented several case studies of regional policy. These studies involved multiple law groups of Aboriginal Canadians seeking native title over their traditional lands to promote self-determination. Additionally the Calder Case was introduced to demonstrate the lingering effects of the decision on native title and subsequently tenure both in Canada and in other pioneer settler nations that have large indigenous populations. From the case studies discussion moved towards means for improving policy outcomes. The methodology supporting these means for improving policy outcomes led to a final section that discussed policy responses. Responses entailed two element of significance that could be taken away from Canada as lessons for producing better policy. Lessons, including the ones from this chapter will be used later in Chapter 8 as part of a meta-analysis to inform a policy framework for Indigenous land tenure and housing.

The next chapter will discuss New Zealand and the conflicts that have arisen from ambiguity in language. These ambiguities have a significant impact on policymaking as will be shown.

7

Indigenous Land Tenure and Housing in New Zealand

7.1 Introduction

In this chapter, treaty rights accorded to the Maori people of New Zealand will be examined. From these rights; discussion will focus on language ambiguities in the Waitangi Treaty that caused some of the obligations of the New Zealand government to the Maori people to go unfulfilled. This is especially relevant to current issues in land tenure and home ownership in Maori New Zealand. Throughout the chapter the connection between the effects of past policy ambiguities from the language in the Waitangi Treaty upon later policy iterations will be alluded to. By doing so the argument will be made that had language been less ambiguous and subsequently less open to interpretation. The socio-economic costs of developing Maori policies concerning land tenure and home ownership would be far less significant than they currently are. This chapter will explore the above ideas through the following six sections: the language of the Waitangi Treaty (7.2); an examination of the Maori (land) wars and the historical dispossession of the Maori people (7.3); the Waitangi Tribunal (7.4); A discussion on Maori fishing and seabed rights focussing on the negotiation process and its implications upon native title (7.5); an examination of Maori housing offering potential policy solutions the pre-existing problems (7.6); and a conclusion with recommendations for improving policy outcomes (7.7).

The most significant difference between New Zealand and the other pioneer settler society case studies used in this research is that since inception as modern nation state New Zealand has been inclusive of Maori views upon land and society. That said the degree to which indigenous views have been included has been contentious. All government legislation includes a Maori translation and all departments all called by both their English and Maori names so there is at least presence of biculturalism (Sissons, 1998). This is called into question based upon the recorded accounts of settlers towards Maori people during their encounters. They were seen as fierce, hostile, and not representative of the noble savage portrayed throughout Europe by anthropologists (Tiffin & Lawson, 1994). Feelings of unease such as these are exuded throughout New Zealand even today in cinema, literature, and landscape (Fairweather & Swaffield, 2001; Knudsen, 2004; Neill &

Rymer, 1995). New Zealand is an utterly hostile and wild landscape bereft of the trappings of the civil. It is these views that may have led to ambiguity in dealings with Maori people and the subsequent brokering of the Waitangi Treaty in 1840.

7.2 The language of the Waitangi Treaty

The Treaty of Waitangi (see figure 6.1) was brokered during 1840 between various Maori chieftains throughout the New Zealand archipelago and representatives of the British Crown. It was intended to achieve two means:

Create a peace agreement between Europeans and Maori

Acquire title to land in New Zealand in order to open it to European settlement.

However, the language which was used by the British representatives meant that, Maori land was to be ceded to the Crown to accomplish the second outcome (Cadena & Starn, 2007). This was not what the Maori understood the treaty to be achieving. Hence as in the cases of indigenous peoples in previous chapters, land was ceded from the Maori through treaty in the North Island and in the South Island through discovery doctrine (Mylonas-Widdall, 1988).

While it seems rather simple, that a treaty was brokered in New Zealand where it had failed in other pioneer societies, it was partly attributed to the small numbers of Europeans, which first arrived. Additionally the Maori society unlike the Aborigines, First Nations, or Native Americans had a sense that they were of a single culture even with disputes between tribes over land and resources. To manage these resources a highly developed land tenure system was in place where each clan or tribe had a clear understanding of where their land ended and another's began (Banner, 2007). This custodial land system in combination with the small numbers of Europeans meant that land could not be taken by force as it had been in so many other cases. Thus to achieve the upper hand over the Maori, a combination of deceptive language as well as a poor understanding of the Maori language (causing a poor translation) was used by the Europeans (J. W. Hayward, Nicola, 2004).

Language also played a role in the future value of lands being purchased from the Maori and sold for settlement. The treaty establishes the crown as the sole purchaser of land from the Maori (Mylonas-Widdall, 1988). As the sole purchaser, agents of the crown had a natural monopoly over initial land transactions enabling them to artificially value Maori land at the time of purchase far lower than at the value at which it could be sold to settlement. Over ensuing years this made the crown well off and put the Maori at great disadvantage financially, fuelling emerging tensions between Indigenous and non-indigenous. These tensions would eventually boil over into open conflict between the Maori and Europeans over land in New Zealand.

7.3 Maori (Land) Wars

This section will entail a discussion of the conflicts between Maori and settlers often referred to as the Maori Wars or Land Wars depending upon whom one might speak to. The period in which the conflict took place was from soon after the penning of the Waitangi Treaty through the later part of the 19th century. Throughout this 60 year period, a series of conflicts between settlers and Maori concerning the settlement, dispensation, and compensation of land occurred. Maori land (Whenua) is a closely guarded commodity as all tribal livelihoods is directly tied to the ability to maintain and utilise land (Waldegrave, King, Walker, & Fitzgerald, 2006; Webster, 1993; Whitt, Roberts, Norman, & Grieves, 2001). As non-indigenous settlers encroached on Maori land on the frontier of settlement, they were met with stiff resistance. Here was a group of people (settlers) intent on taking over Maori land with no concern for any previous use or ownership; a scene seen repeatedly throughout the four case study nations of this research. For emerging nations to become prosperous, they needed to ensure ready access to land, doing so almost guaranteed future prosperity (Reynolds, 1987).

The Maori lands wars can be seen as a means to get back the land that was believed by the Maori to be unjustly taken; however, nor the settlers or the crown thought this to be the case. Instead it was seen as a legitimate threat to the authority of the crown (hence the inclusion of the Queen in the Waitangi Treaty as protector of Maori interests), and the future of an emerging society (Stokes, 2002). In the end, the settlers did succeed in dispossessing large tracts of land from the Maori citing that contesting land takings by force entitled the settlers to the land as payment in kind. This justification would later be disavowed as most land was taken from Maori who had no active involvement in the land wars (Bourassa & Strong, 2002). As a direct result of the land conflicts, Maori were forced to cede control over vast tracts of land to the Europeans culminating in the Settlements Act of 1863. The act specified that land seizures could be made by the crown of lands possessed by Maori tribes who were engaged in hostilities (Hooper & Kearins, 2004). The eventual total of the seizures amounted to several million acres, which were subsequently opened for settlement (Boast, 2008). Marginalising the Maori even further than did the treaty, the settlements act would set the tone of land rights in New Zealand until the Waitangi Tribunal was established.

7.4 The Waitangi Tribunal

This section follows the discussion in the previous section on the Maori land wars and the dispossession of land with negotiating native title and the legal process for doing so. To address incidences of native title in New Zealand, a tribunal was established in the later half of the 20th

century. The tribunal, which took the name Waitangi Tribunal worked in a similar fashion to that of the claims court established in The United States (Wishart, 2001). The 700+ claims that have been filed so far have gone beyond native title to include other rights such as fishing and payments to access seabeds (Bourassa & Strong, 2002).

The Waitangi Tribunal is distinctive in the way it is established under multiple legal statutes. The main statute being the Treaty of Waitangi Act of 1975; however, it owes a debt to many others (J. Hayward & Wheen, 2004). Establishment of the tribunal occurred during the 1970's as a result of growing unrest both in New Zealand as well as abroad. Indigenous rights were becoming an important issue as protests and occurrences of civil disobedience such as the Wounded Knee crisis (see Chapter 5) shined the media attention onto the unequal treatment that many Indigenous groups had experienced through policy regulating their activities. Maori people were no exception to attention of the media and used it in part to get the government to pass the act that established the tribunal. Due to the muddling of language experienced in the Waitangi Treaty, the main question central to the tribunal was one of management.

To award title or rights back to the Maori people, each claimant had to prove that the crown had acted outside the scope of their powers as defined in the Waitangi Treaty (J. Hayward & Wheen, 2004). The tribunal process to some effect acts as a filter, by reducing the number of frivolous or duplicate claims. As the tribunal has progressed, the number of conflicting claims has dropped; however, of the claims themselves most are still ongoing (Cheyne, O'Brien, & Belgrave, 1997). It is speculated that the tribunal will continue for many years to come taking on new roles in keeping with a changing political and social climate (Bourassa & Strong, 2002; J. Hayward & Wheen, 2004). This change in role is of interest for this research as it could potentially include ways of monitoring policy bringing a fresh approach to how issues of disparity between Maori and Pakeha such as land tenure and housing are addressed. Using the Waitangi Tribunal in this way, would take advantage of a governmental system that is already in place thereby having little to no added cost to government or taxpayers.

7.5 Fishing and Seabed Rights

In this section an area where the Waitangi Tribunal has been used to establish specific rights will be discussed these rights are concerned with the ability to fish and utilise the seabed. As New Zealand prides itself on natural and scenic beauty, it heavily regulates the experience of the landscape. This is especially true of the aquatic environment where fishing is a large industry. New Zealand tightly regulates fishing through a quota system, a system that caters to the commercial fishing industry and not Maori people (Bess, 2001). Thus, when Maori tribes attempt

to fish based upon it being part of their traditional culture, they are sometimes prohibited from doing so (Webster, 1993). Instances such as these, which pit the traditional practices of Maori culture against those of the New Zealand government, have given rise to many long running legal disputes.

These legal disputes culminated most recently in the court case of Ngati Apa³¹ named after the Iwi³² in, which the appellant Maori tribe was located. Attempts to resolve this long running dispute stretch on for several decades finally ending with a decision from the courts in 2003 (Ruru, 2004). The ruling allowed for Maori customary title to be recognised over the foreshore and seabed in the area in question (near Wellington). This would allow them to conduct traditional cultural practices such as fishing. Once this resolution came through, it sparked debate in New Zealand government as to what implications the Ngati Apa decision would have upon commercial fisheries (Charters & Erueti, 2005). As fisheries were highly valued commodity, the government did not feel it was in the best interest of the nation for these fisheries to now be inaccessible (Strack, 2004).

7.6 Maori Housing

In this section the problems associated with inadequate housing amongst Maori will be discussed. Throughout the discussion, potential solutions to address inadequacies are alluded with the solution of most prominence being facilitation of housing. New Zealand is distinctive in that the vast majority of Maori people live in urban areas while historically they lived in small villages (Cumberland, 1949; Gandhi & Freestone, 2008). Due to this factor of demographics delivery of housing is usually conducted under a public model. This public model has both supporters and detractors. The argument for the public model is that it is easier to administer and standardise upkeep (Osborne, 1993); while the argument against the model is that is not appropriate in all circumstances and amplifies factors of socio-economic disadvantage experienced by Maori people (Schwartz, 2000). Due to the argument against the public housing model other ideas have been suggested. These ideas appear in the form of lessons that can be used to inform Indigenous policy in New Zealand as well as other pioneer settler societies. The lessons are: 1) Leasehold Housing; 2) National Maori Housing Authority; and 3) Promotion of Private Ownership.

³¹**Ngati Apa** is the informal name for the, **New Zealand Fisheries and Seabed Case**, Decided 2003, allowed Maori to seek 'customary title' to the foreshore enabling them to use the land and adjoining sea for traditional practices such as fishing.

³² **Iwi**: A geographical political and statistical division unique to New Zealand as it relates to customary tribal boundaries of the Maori people (Ballara, 1998). Iwis can sometimes overlap with regional council boundaries, which are the largest form of New Zealand government below the national level. An equivalent in other pioneer settler societies would be a Shire, Parish, or County.

In parallel with treaty rights is the influence that the tribunal process as well as the Waitangi Treaty had upon housing outcomes. Even under current housing policy, the Maori are recognised as having specific needs (N. H. Commission, 1988; Corporation, 2009). This explanation of specific needs has led to greater difficulty for Maori to access public housing or to qualify for home loans. This disadvantage can be traced throughout the later half of the 20th century (D. O. M. Affairs, 1966; Affairs, 1972; Bathgate, 1987; Delaney, 1965; Douglas, 1986). Disadvantage such as this has pointed out shortcomings in Maori policy. Additionally it provides potential solutions to remedying the problem.

Lesson 1: Leasehold Housing

In a case unique to New Zealand are Kaumatua Flats. These 88 block flats sit upon crown land, land received as deed of gift to the crown, and Maori land (Housing, 1992). The flats serve as rental housing for low income Maori. According to the report above, effort has been expended to mainstream Maori housing. This is similar to the attempt made in Canada where indigenous people would be made to access government services (such as housing) through the same means as non-indigenous people. In the case of Maori housing this would be done for one the following reasons:

- A: Access to government services is based upon need not race
- B: This will reduce inequality between Maori and Pakeha
- C: It is advantageous as services would no longer be duplicated reducing costs
- D: Mainstream agencies will deliver programmes and manage client interactions in culturally appropriate ways (Housing, 1992).

Reason A, would infer services provided on a user pay system. How this would work with different housing models is unclear. If for example, if this policy were applied to the Kaumatua flats it would ensure that the most vulnerable in the maori community would have the greatest access to housing; however, this might cause a shift in the demographics of the flats from a mixture of incomes to all extremely low incomes. There is potential then, that if need based housing was used that the Kaumatua Flats would be stereotyped as magnets for vice even if this was not an accurate depiction. In this respect Reason A would not be a suitable policy.

Leasehold provides a mechanism to reduce to reduce inequality between Maori and Pakeha; however, it may be problematic in a long-term approach for housing as tenancy could change and new lease agreements would have to be made. This could produce potential problem if the larger sight upon which the leasehold flats are located were to be refurbished or redeveloped (Stack, 2004).

The issues with ameliorating services through the elimination of duplicate agencies are that special focus could not be paid to the needs of Maori patrons. Meaning potential increasing rather than decreasing costs. Alternatively the quality of service delivery could decline as this is connected to the status of the land the dwellings rest upon (Dale & McLaughlin, 1999). This has potential implications for designing housing policy as many agencies already operate within budgets that have surplus funds infrequently.

Reason D seems to imply that Maori leased housing would become public housing with the same special qualifications for Maori applicants meaning policy changed in name only. One way this was to be rectified was through changes in the complex ownership of the Kaumatua Flats either through a complete takeover by the housing corporation New Zealand or management of the flats by the housing corporation while retaining the complex land ownership. While a good solution from the perspective of government, it comes at a cost of high risk and uncertainty. Leasehold therefore does not seem suitable as a means for administering housing suggesting other policy options such as a Maori housing authority.

Lesson 2: National (Maori) Housing Authority

One novel approach taken was to turn Maori housing over to a Maori housing authority. This would take Maori housing management away from the New Zealand government and respect their obligations under the Waitangi Treaty (Housing, 1992). By doing this it would resolve some disputes between Maori tribes that had previously been disenfranchised by land seizures in the past. The national housing authority would facilitate the delivery of all Maori public housing.

The role of the housing Authority would be akin to that of any large public housing authority: administering the delivery of housing and associated services to those of Maori heritage. The key difference; however, is the assumption that by turning the housing authority over to the Maori people they can operate the current system and meet the needs of the Maori population with greater ability than the former state agency. It is more of a question of Maori and the specific needs of housing for the Maori people (Davey & Kearns, 1994). What may be needed is a capability policy where administration of housing is gradually turned over to a local Maori housing authority. Such a policy would help instil within the Maori population a sense of ownership i.e. they are making the policy decisions.

The sense of ownership created with a Maori administered housing authority could have other potential benefits such as improvements in other determinants of disadvantage faced by indigenous people:

- Land Tenure;
- Education;
- Health;
- and Employment

By addressing these related determinants a holistic policy model is possible. This holistic model is used because of the interrelatedness of social policy factors. One factor cannot be allowed to dominate without putting other factors at risk i.e. by focussing on determinants of health, health may be improved drastically, while education and housing fall by the wayside. By using a holistic approach improvement may not be as quick or significant; however, improvements will be made across all areas. Using local control such as the National Maori Housing Authority is one means to fostering this holistic approach. To further this approach, the promotion of private ownership can be promoted.

Lesson 3: Promotion of Private Ownership

The promotion of private housing and land ownership within the Maori population seems as simple enough idea taken at face value. Research even suggests that if one owns their own home they are highly likely to maintain it with greater care (Retsinas & Belsky, 2002). Additionally research from The United States on the experience of Native Americans and home ownership demonstrated two factors that underpinned home ownership: 1) Location; and 2) access to financing (HUD & Treasury, 2000). New Zealand is well suited for the implementation of the private home ownership model for Maori housing due to the high concentration of Maori in urban areas stated earlier in the chapter. Location as suggested from the American study would imply that the urban Maori would be less likely to face mortgage stress if accessing financing for owning their own home. Additionally access to financing would need to be loosened ensuring that a transaction the purchase the dwelling could take place.

Easy access to financing not only allows Maori people to own their homes, it promotes a sense of community by establishing a long-term presence of the same resident through the terms of the financing. Developing a sense of community has other benefits for Maori people, it re-establishes their close ties to the land and in doing so encourages participation in the larger community (M. B. Lane, 2001). Even if this is only passive participation, the burden is on the property owner to act in a way that is respectful of community ideals. Active communities where there is high home ownership have positive community effects, there are 'eyes on the street' promoting safety and

health (Jacobs, 1961). This and other positive community outcomes are all possibilities under a private ownership model; however, in the case of difficult access to financing there is still potential benefit.

In lieu of easy access to financing, home ownership could still be facilitated through the use of schemes such as renting to own where a portion of lease rates paid during the term of the lease would go towards purchasing the home. As seen in (J. V. Henderson & Ioannides, 1983), when consumers are given a choice between renting and owning their home, owning is chosen because it provides added economic benefit i.e. home equity. To promote the rent to own scheme, at the end of a lease the agency who administered the dwelling under the public model would award the title of the property to the tenant. Using different mechanisms proves both the utility and functionality of the private housing model in the case of urban areas. This demonstrates the private model to be sound policy for usage in the case of New Zealand Maori, but not necessarily for other nations with high indigenous populations in rural areas.

The three lessons presented above to address housing in Maori populations have both pros and cons in terms of suitability. None are a perfect solution, but all at the least establish a dialogue about what is the best policy approach. This dialogue brings discussion of land tenure and home ownership full circle by addressing ambiguity. The language of the Waitangi treaty caused issues about who controls the land resulting in the Maori Land Wars. Furthermore the Waitangi Tribunal has attempted to address these ambiguities through hearing claims of title and native rights. These rights culminated in debate over resources such as fishing and how these were connected to culture. This led to discussion about home as part of being and how policy could better manage it. From discussion conclusions could be made about the importance of land tenure and housing.

7.7 Conclusion

The sections above discussed New Zealand specifically concerning issues of Maori land tenure and housing outcomes. Additionally it was stated that the incorporation of Maori beliefs into policy and governance has been present since New Zealand's inception. However the extent to which this has occurred has drastically shaped Maori land and housing outcomes. To demonstrate this incorporation of Maori beliefs (or lack thereof) into policy concerning land tenure and home ownership, three examples from the history of Maori policy were used. These five examples (The language of the Waitangi Treaty, Maori land wars, the Waitangi Tribunal, recent issues with fishing and seabed rights, and means to address Maori housing), made it clear that while there has been a strong and acknowledged Maori presence since the inception of New

Zealand. Only recently; however, has this presence and influence upon culture been given proper respect. From these snapshots of policy at certain stages of New Zealand's development three lessons can be taken, which can inform Indigenous policy:

- Understand that incorporation of indigenous ideas and beliefs means exactly that and not token recognition such as recognition as a special interest.
- Recognise that governments have specific obligations when signing a treaty. Honouring these obligations is not only paramount, it is extremely effective in reducing costs.
- Acknowledge the contributions of Indigenous knowledge in land and housing management by working with them to provide a sustainable future through improved policy outcomes

This chapter concludes the four case study chapters (Chapters 4, 5, 6, and 7) that compose part 2 of the thesis. They revolved around Indigenous policy successes, failures, and continuing efforts. Research was focussed on the specifics of land tenure and housing as well as related efforts in health, education, and employment. It is from these case studies and supporting discussion on the importance of lesson in policy that the next part of the research can occur. Part 3 presents a meta-analysis (Chapter 8) of the policy findings from four case study nations and a thematic synthesis from which principles will be generated to inform the policy framework presented in Chapter 9.

Part 3



8

Meta-analysis of Tetra-nation Review

8.1 Introduction

In the previous part of this thesis, case studies of Indigenous policy related to issues of land tenure and housing were explored. These case studies consisted of analysis of Indigenous policies in one of four nations (Australia in Chapter 4, The United States in Chapter 5, Canada in Chapter 6, and New Zealand in Chapter 7). Through examination of these policies, it was found that each nation provided both positive and negative examples for conducting policy. To compare these policies based on common parameters a methodology needed to be used that was capable of making observations across several case studies. The methodology most capable of this task was meta-analysis. A meta-analysis consists of a comparative analysis between sets or studies (in the case of this research the sets will be the four policy case study nations) based upon characteristics that each share in common (Anbady & Rosenthal, 1992; Borenstein et al., 2009; R. Ewing & Cervero, 2010; Glass, 1976; Ypinazar, Margolis, Haswell-Elkins, & Tsey, 2007). While each of the four study nations do indeed contain common characteristics none focus specifically on land tenure and housing issues as independent variables. The common points of comparison can be found in the plentiful number of datasets on socio-economic well being. As discussed previously in Chapter 2 factors relating to positive policy outcomes in socio-economic well being such as land tenure and housing can stymie positive outcomes if viewed separately. For this reason meta-analysis serves a limited focus in respect to the results it produces (R. Ewing & Cervero, 2010). To negate this limitation, meta-analysis will be applied to show the lessons learned from each country as compared to ideal policy outcomes (Borenstein et al., 2009). In this case, the ideal outcome would be improvements in Indigenous housing and land tenure that close ‘the gap’ in well being. This is accomplished through a policy framework consisting of eight ‘building blocks’ intended to help close ‘the gap’. These elements will be expressed separately in this chapter on a seven point semantic scale. The ‘building blocks’ and the policy framework they comprise will be discussed at length in Chapter 9. By examining each nation under analysis and rating them based upon the presence of the eight ‘building blocks’ needed to produce a framework (Audience, Context, Equal Partners, Valid Perspective, Proper Management, Sensitivity to Environment, Long Term Short Term Effects of Policy, and Consistency), it will be possible to select out of

each nation the strongest qualities that compose good policy. These qualities will become the basis for each 'building block' that serves as the foundation for an Indigenous policy framework shown in the final section of this chapter. The chapter itself will be divided into the following sections that describe the step-by-step process involved in conducting a meta-analysis leading to its application for the larger goal of creating a policy framework: Common Policy Issues Across Study Nations; Contrasting Policy Issues; Valuation Methodology (Application of Mixed Methods); Semantic Differential / Seven Point Scale (Quantitative scoring of case studies); Evaluation of National Indigenous Policies; What National Indigenous Policy Is Telling Us; Lessons Learned From Indigenous Policy External of Australia and Avenues For Improvement Domestically; and a conclusion.

8.2 Policy issues across study nations

In Chapter 2 some discussion revolved around housing and its importance to the wellbeing of Indigenous people. One of the main issues that arose was that the housing provided was often inappropriate for both tenants and the environment. This showed a need for better policy management to avoid future occurrences of inappropriate housing from being constructed. Additionally it was discussed in Chapter 4 that there was a fly in/fly out mentality for new housing stock being created in remote Australia. This method for constructing housing was partly attributed to the need for standardization of service delivery and had further implications for financing, managing, and maintaining new housing stock.

Australia was not the only country where standardization of services was present in fact, all four pioneer settler societies had multiple occurrences most often in the provision of housing stock and health services. As was shown in Chapter 6, an almost identical parallel between outstations (in Australia) and service centers (in Canada) was shown to lead to uneven outcomes in health and well being among each Indigenous population (Smylie & Adomako, 2009; Smylie, Anderson, Crengle, & Anderson, 2006). From parallels such as this, and legal cases on land title it was demonstrated that there was a clear link in both experiences with Indigenous peoples as well as a sharing of ideas between pioneer settler societies on how to conduct Indigenous policy.

In addition to housing, it was evidenced that there were clear problems in a four nations on aspects of land tenure. These problems ranged from trivial semantics in treaty documents that eventually led to open conflict in New Zealand (Chapter 7); to dispossession and forced relocation as experienced by many Native American tribes in the United States (Chapter 5). In the case study chapters of pioneer settler societies several examples of housing and land tenure solutions were analyzed. What was discovered during this analysis was the housing and land

tenure solutions most often arose when Indigenous peoples were given voice either in the management of enacted policy or during the process of its conception. Out of the various solutions tried in each country, one housing solution (from New Zealand) and one Land Tenure solution (from Canada) stood out.

The good approach to housing in New Zealand was the result of turning over management and implementation to the Maori. While some problems did emerge from disputes over management of housing within Maori communities, this turning over of management while still receiving funding from the New Zealand government contained high potential for successful housing outcomes for Maori people. This management solution stands in sharp contrast to the previous difficulty of housing management when leadership and policy decisions were vested with the state. Similar instances of Indigenous led housing solutions have recently arisen in the United States and Canada, with a strong emphasis placed upon design so that in addition to better management, the cultural appropriateness of housing was taken into account. Some of the ideas around Indigenous led policy also carried over into the realm of land and resource management as was seen in all four pioneer settler societies.

Perhaps the most prominent of these land tenure solutions has emerged from Canada where one of the three major Indigenous groups received home rule in their own federal level territory (Nunavut) in the arctic reaches of the country. As discussed in Chapter 6, the creation and management of Nunavut has been closely monitored internationally as one potential solution to providing a new approach to Indigenous policy. With the exception of Nunavut, policy solutions for land tenure for Indigenous peoples have occurred in the form of co-management of land and the resources contained within. In Australia, this co-management was shown in the operation of Uluru-Kata Tjuta National Park. Canada provided an example of co-management at the provincial level between the James Bay Cree and the Quebec government. In the US state of Alaska, the Native Corporations were prominent stakeholders in most of the resource development agreements in the state as most occurred on Alaska Native land.

Another trend shown in three of the case study countries was the promotion of self-reliance. In Australia, Canada, and The United States this was related to resource management. Australia featured examples of land management where former stations (ranches) in the Kimberly's were now being run as tourist destinations where Aboriginal people employed their extensive local knowledge to facilitate interaction with tourists and the natural environment. Canada showcased the management of natural resources to demonstrate the benefits the land could provide. Finally, Indian gaming was discussed in The United States chapter as means for many Native Americans to generate and income while living of a small land base. These three examples demonstrate the

various forms that a policy of self-reliance can take. Additionally, the diversity of policies under the umbrella of promoting Indigenous self-reliance allude to other unique policy approaches that each pioneer settler society has taken in order to address disparities in well being.

8.3 Policy framework ‘building blocks’ and valuation methodology

Within the four case studies of Indigenous policy, there were several policymaking lessons that were unique to each nation. Each of these unique attributes created policy scenarios that required a creative solution in order to continue policymaking efforts to improve well being. When a creative solution did not present itself, policymakers fell back on old ideas causing policy to stagnate or go backwards as the lessons and the conclusion of each of the four case study chapters demonstrated. These lessons were highlighted and informed the need for improvements to policymaking efforts in targeted areas. These targeted areas came to represent the policy framework ‘building blocks’ each of which has a supporting principle partially based upon the lessons learned from the case study chapters.

Experiencing the Land and People

Building Block 1: Understand the policy audience.

Principle: Prioritize engagement with all policy stakeholders

Building Block 2: Understand the context in which policy is being developed.

Principle: Prioritize policymaking efforts that ensure mutual understanding of concepts from and respect for community stakeholders

Building Block 3: Understand the cross-cultural effects of policy.

Principle: Encourage the incorporation of multiple stakeholder perspectives to effectively measure the social impact of policy decisions across different cultures

Building Block 4: Understand the multiple perspectives (knowledge systems) of different stakeholder interests and their effect on policy development.

Principle: Prioritize the incorporation of one’s own perspective to make informed policy decisions rather than anticipating unanimity of stakeholder groups

The Policy Process

Building Block 5: Policy management (how to best administer policy, by whom, and using what model)

Principle: Promote efficiency in policy management through appropriate mechanisms

Building Block 6: Policy environment (understand the geographic setting and varied stakeholder interests)

Principle: Prioritize the development of policy based upon cultural and geographic appropriateness

Building Block 7: Understand the short term and long term effects of policy decisions.

Principle: Promote the development of policy through greater awareness of intended outcomes and the development of policy that extends beyond political cycles

Building Block 8: Develop consistency in policy implementation.

Principle: Apply policy in an objective manner

The previously illustrated ‘building blocks,’ are reflective of a step-by-step process for framing policymaking to facilitate improvements to Indigenous well being. Starting with an understanding of the policy audience and concluding with consistency in policy implementation, the ‘building blocks’ assist in breaking down policymaking into manageable components. Using these blocks it is possible to observe smaller policy details, which then reflect back upon the larger policy framework. In this thesis the case studies that help generate the policy framework ‘building blocks’ are reflected upon to measure where they could benefit from focused policy efforts. This will be done using a meta-analysis that will then provide an illustrated example of Indigenous policymaking efforts in each pioneer settler society. This research differs from the common use of meta-analysis in that the values generated using the semantic differential is not gathered from survey results. Where survey results would be present, they have been substituted for the delivered policy outcomes in each pioneer settler society. This means that the smaller ‘the gap’ in the calculated Human Development Index between Indigenous and Non-Indigenous peoples, the greater the numerical value upon the semantic differential. When this is applied using the eight ‘building blocks’ needed for Improving Indigenous land tenure and housing policy each pioneer settler society receives and aggregate score with a possible total of 27. This score is reflective of efforts to improve policy to date as well as efforts still needed in the respective society the close ‘the gap’ in wellbeing between Indigenous and Non-Indigenous peoples. These aggregate scores are as shown in Table 8.1.

Table 8.1 – Aggregated Scores of Four Pioneer Settler Societies

Country	Aggregate Score
Canada	11
New Zealand	9
United States	8
Australia	2

The scores have been aggregated based upon how Indigenous land tenure and housing is addressed using the eight policy framework ‘building blocks’ identified in previous combined with the difference in between the Indigenous and Non-Indigenous Human development Index scores seen in Chapter 1. This means that each framework ‘building blocks’ in evaluated independently receiving a score on a seven-point scale between -3 and 3 (see Section 3.3.2). The score is based upon how effectively a pioneer settler societies policy has addressed the principle from the empirical data (solutions) found at the end of each case study (Chapters 4-7). A score of 3 reflects that the policy has effectively addressed this principle, while a score of -3 reflects a large amount of effort is yet required to address the principle. Once the score is tabulated for each of the eight principles, a ninth tabulation is conducted with the most recent HDI gap data (Shown in Tables 1.1 and 1.2) where the country with the smallest gap receives a 3 and the country with the largest gap receives a -3 to further reflect where policy improvement is needed. These numerical values are then combined to produce the aggregate score for each case study. The next section of this chapter will discuss the aggregated score for each case study individually before reflecting upon the embodied implications of these scores for policymaking in remote Indigenous Australia.

8.4 Seven Point Scale (Quantitative scoring of case studies)

The following section will discuss the aggregated scores of each of the four pioneer settler societies and the eight ‘building blocks’ of Indigenous policymaking present in each case. In conjunction with this are criticisms of each of the ‘building blocks’ that have not fully been addressed). When a ‘building block’ is not fully present in one of the countries under review this will be expressed with a lower rating as seen in **Table 8.1**. Additionally it should be noted that the observed value N for each case study may be larger than the number of ‘building blocks’ (as high as 27). This allows for the presence of each ‘building block’ to be rated 0 meaning no observable presence; 1 meaning present with little to no influence; 2 meaning somewhat influential and present; and 3 meaning highly influential. Using this methodology will ensure that each nation under review has an equal chance at containing the ideal for each ‘building block’ essential for creating an equitable framework.

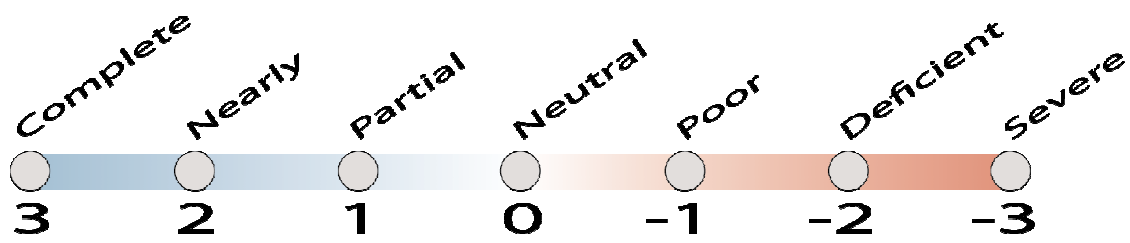


Figure 8.1 - The seven-point scale of good policy

Each pioneer settler society case study will now be discussed during which time a full breakdown of the aggregate score will be given with supporting evidence. The case studies will be presented in the chapter order that they occur in **Part 2** of this thesis. Australia was discussed in Chapter 4 and will be followed by The United States, Canada, and New Zealand respectively.

Australia

As shown in Table 8.1 in the previous section of this chapter, Australia received an aggregated score of **2**. The aggregated score is broken down in the semantic differential shown in Figure 8.2

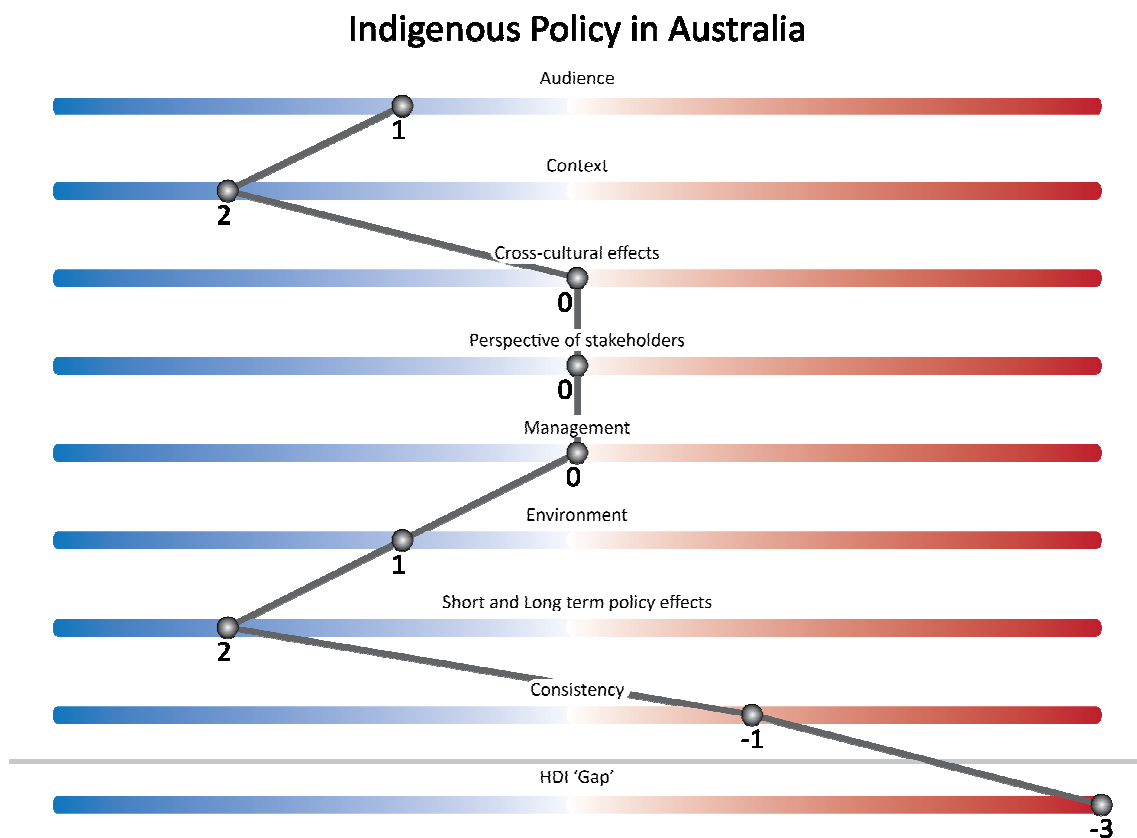


Figure 8.2 - The Aggregated Score and Semantic Differential for Indigenous Policy in Australia

Each 'building block' score will now be discussed and justified concluding with a discussion on the HDI gap score.

Understanding of the policy audience: Australia received a **1** for its audience awareness score. This was the result of recognizing that Aboriginals and Torres Strait Islanders were distinctive cultural groups. However, Australia still received a low mark in this category by not encouraging appropriate policy for each cultural group.

Understanding of the context in which policy is being developed: Australia achieved its highest score in this category with a score of **2**. There is a clear presence of context in Indigenous policy work for remote Indigenous areas. This is exemplified by the use of set goals to which Indigenous policy is directed to meet in a given timeframe. Additionally these set goals have been mentioned in the past by politicians when discussing well being (Section 4.1). Goals are often lofty and unattainable in this context; however, discussion and popularization of goals in media can be advantageous in commanding innovative solutions to make aspirations to improve well being grounded in the proper context.

Understanding the cross-cultural effects of policy: **0** was determined to be a score best representative of the effects of Indigenous policy between cultures. The score additionally reflects that cross-cultural understanding of policy in Australia has little influence and little negative impact upon Indigenous well being. One example of policy across cultures in Australia is the distribution of social assistance payments where programs are trialed in Indigenous communities and eventually rolled out to the larger Non-Indigenous population. This was partly the result of the Racial Discrimination Act (RDA) that attempts maintain equity in policy by making it applicable to **all** portions of Australian society. As was seen in Chapter 4 with the discussion of the intervention, the RDA has been suspended under certain circumstance so the policy can be applied that only effects Indigenous Australians. If this suspension continues, Australia could receive a lower score for cross-cultural understanding of policy in the near future.

Understanding the multiple perspectives (knowledge systems) of different stakeholder interests: A score of **-1** was awarded for in this category as experience gained from negotiated land management agreements was not brought to bear in future policymaking practice. Doing so caused harm to future policymaking efforts by limiting 'Indigenous voice' with continued paternalistic strategies.

Policy management (how is it administered, by whom, and using what model): Australia received a **0** score for its management policy resulting from different management schemes for Indigenous policy based upon geography. This created a policy environment where uneven well being outcomes were commonplace. For example, good policies for land management and

housing in Western Australia were not used in the Northern Territory due to the latter having less independence from the federal government.

Policy environment (the geographic setting and varied stakeholder interests): A score of **1** was given in this category for identifying that Indigenous people living in remote areas do indeed have deficiencies in well being that differ from those Indigenous people living in urban areas of Australia. Where difficulty arises is in terms of resource development where consultation takes place only if it involves land that Indigenous people have tenure and customary title. In some cases where Indigenous groups have had their settlements continuously shifted around this is not possible and in cases of the many outstations (or service) centers scattered around The Territory and parts of SA and WA the Indigenous groups living in the area are not the ones with whom customary title is held (Altman, 2006). This gives these groups few rights to negotiate the beneficial use of remote Australian lands for resource development

Short-term and long-term effects of policy decisions: A score of **2** was awarded in this category as Australia demonstrated a clear understanding of the effects upon well being caused by policy decisions. This understanding was by in large the result of historical policy decisions that had quickly observable effects while other only began to emerge years after policies were enacted. One example of such a policy was shown in the 1967 referendum, that eventually led to awareness amongst Indigenous Australians as to their rights over the next few decades in the form of the wave hill walk off and culminating in the high court case of *Mabo v. Queensland*. This timeline of events is a clear indication that there is an awareness both in government and amongst Indigenous people that the effects of policy are present even if they may not be fully appreciated.

Consistency in policy implementation: Indigenous policy in Australia suffered somewhat due to a lack of consistency in applying policy efforts. This garnered a score of **-1** for the consistency category as it represented one causal effect of the well being of Indigenous Australians to decline relative to Non-Indigenous Australians of the period of analysis shown in Cooke, (2007). It was suggested in this research that the best practice for mitigating against policy inconsistency was to detach policy efforts from election cycles so that they could be given the necessary time to impact well being as well as provide a chance to measure and monitor for necessary modifications to the policy structure to improve outcomes in well being.

Human Development Index **Gap** Score: Australia received **-3** as a result of having the greatest gap in HDI between Indigenous and Non-Indigenous Australians. The high development gap could be attributed to:

- Inconsistent Indigenous policy that is appended to the federal election cycle (approximately every three years) precluding the ability for policy to run its course and improvements in well being could be effectively measured.
- Inappropriate policy actions in the areas of tenure, housing, and training by desiring results to address complex socio-economic well being issues without fully understanding the best policy approach to achieve positive long-term outcomes.

United States

In Chapter 5, policy in the United States was discussed in detail. It was observed that many phases had occurred which drastically influenced housing and land tenure outcomes. These successive phases of policy demonstrate inconsistent application and management. Where policy in the United States does rate high is in its semi-structured approach in conjunction with taking into account the audience for which policy is being constructed. This is especially apparent in the most recent era of policy with the promotion of tribal self-reliance resulting in an aggregated score of 8. The semantic differential and individual score on policy framework building blocks are shown in Figure 8.3.

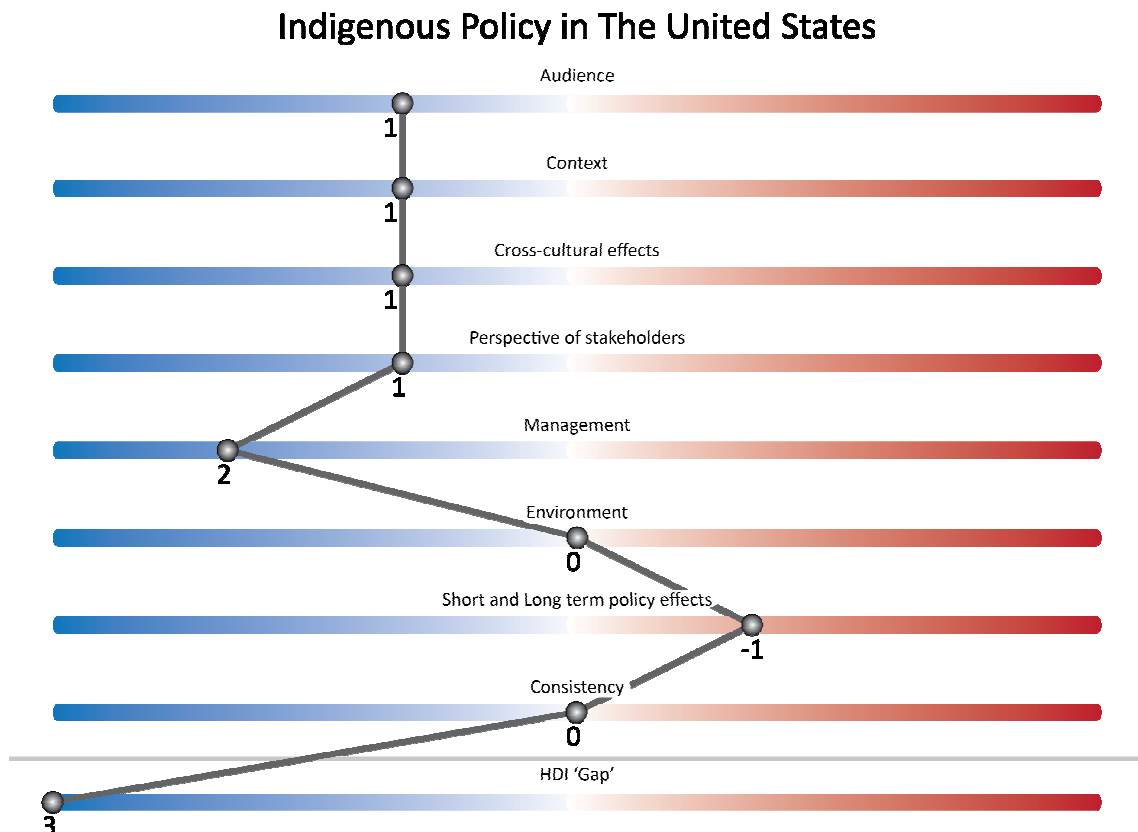


Figure 8.3 - The Aggregated Score and Semantic Differential for Indigenous Policy in The United States

Understanding of the policy audience: The United States received a **1** for its audience awareness score. This resulted from the different approaches taken to policy in Alaska and Hawaii.

However, a far high score could have been obtained had policy been culturally appropriate for Native Americans by taking into account the differences between plains Indians and those in coastal or mountain regions.

Understanding of the context in which policy is being developed: **1** was awarded for the understanding of context in The United States. There were set goals within a legal framework to improve Indigenous well being; however, they did not take into account alternative opinions to policy goals from Indigenous groups making them difficult to obtain. Had this been taken into account clear attainable policy goals could have been established to create tangible improvements to well being.

Understanding the cross-cultural effects of policy: A score of **1** was determined to accurately reflect the cross-cultural understanding of policy as many past policies were create based upon sentiments European settlers had about Indigenous people. This lingering legacy at times inhibited a holistic understanding of the policymaking process. One example of this occurred in the defiance of officers of the federal government to enforce the First Treaty of Ft. Laramie, which awarded the Black Hills to the Sioux in perpetuity. This was due to the resource value of the land being held above its sacred values for which Non-Indigenous people had no frame of reference and subsequently little respect for such values.

Understanding the multiple perspectives (knowledge systems) of different stakeholder interests: in the United States there was an observable use and incorporation of perspective in Indigenous policy and decision-making. For the observed use a score of **1** was given. While a positive score, it is on the lower end as far greater incorporation of perspective could be applied. As represented by the slow delivery and settlement of land use agreements in Alaska and the Western United States, a greater use of perspective would increase equity in policy decisions.

Policy management (how is it administered, by whom, and using what model): Management of Indigenous policy in the United States is currently value adding to Indigenous well being. This elicits a score of **2** and is additionally reflective of the promotion of self-reliance through policies such as gaming in most of the continental United States and Native Corporations in Alaska. The justification for not receiving full marks is that managed Indigenous policy in Hawaii is conducted by the state and does not produce the same positive results as policies previously mentioned. It is possible that in the foreseeable future this could change, the best method to

initiate this change would be to give Native Hawaiians federal recognition allowing them to access the same benefits that Native Americans and Alaska Natives currently share.

Policy environment (the geographic setting and varied stakeholder interests): A score of **0** was given in this category for applying similar policies across Native American tribes throughout the contiguous United States. Another problem was with tribal recognition. In instances when there was no recognition, Native Americans could not benefit from being Indigenous giving them little opportunity to improve their well being.

Short term and long term effects of policy decisions: A negative score was garnered by the United States was for a lack of understanding of the short and long term impacts of policy. A score of **-1** was awarded in this category which reflected the poor short term memory of the federal government especially during the protest movements of the 1960s and 70s where several well publicized Native American protests (and standoffs) instigated government response in the form of confrontation but did not immediately cause changes to policy.

Consistency in policy implementation: A score of **0** was given due to policy implementation containing some elements, which carried over from previous policies. This meant that land tenure and housing policy in the United States reached several peaks of stability where policy changes contained a particular theme i.e assimilation or self-reliance. Over several decades this created consistent policy in the impacts to Indigenous well being (a gradual improvement).

Human Development Index **Gap** Score: The United States received a **3** for having the smallest gap in human development between Indigenous and Non-Indigenous Americans. There were three main factors that this small gap could be attributed to:

- The large and diverse population of Native Americans necessitated appropriate responses in health and education policies based upon geography and community need.
- The longest period of interaction with Indigenous peoples meaning that the United States has made and remedied many more policy mistakes than Australia, Canada, or New Zealand
- The promotion of self reliance through extra rights such as Indian Gaming to equip Native Americans with the financial means to address aspects of socio-economic well being in manner suitable to tribal members.

Such justification for the small gap in well being was supported by the findings from the historical policy review of The United States in Chapter 5; however, this does not imply that there is little work to be done. While the promotion of self-reliance has drastically improved well being for many tribes, this has not helped groups who do not have federal recognition (such as

Native Hawaiians) or those in remote areas (where gaming would not be profitable). So while as a whole the 3 million plus population of Indigenous peoples in the United States are experiencing high level of well being, this does not imply there is still work to be done on policies which require implementation before Indigenous Americans will be at the same levels of human development as their Non-Indigenous countrymen.

Canada

In chapter 6, policy regarding land tenure and housing were examined in Canada. Where this nation has the greatest difficulty is in who was responsible for managing the affairs of indigenous people. This has created highly uneven outcomes for Indigenous groups as demonstrated with the case of the province of Nunavut, if the goal is to preserve a way of life, which is deemed suitable for native inhabitants. Canada has no equal in this realm with an aggregated score of **11**. The semantic differential for Canada is shown in Figure 8.4.

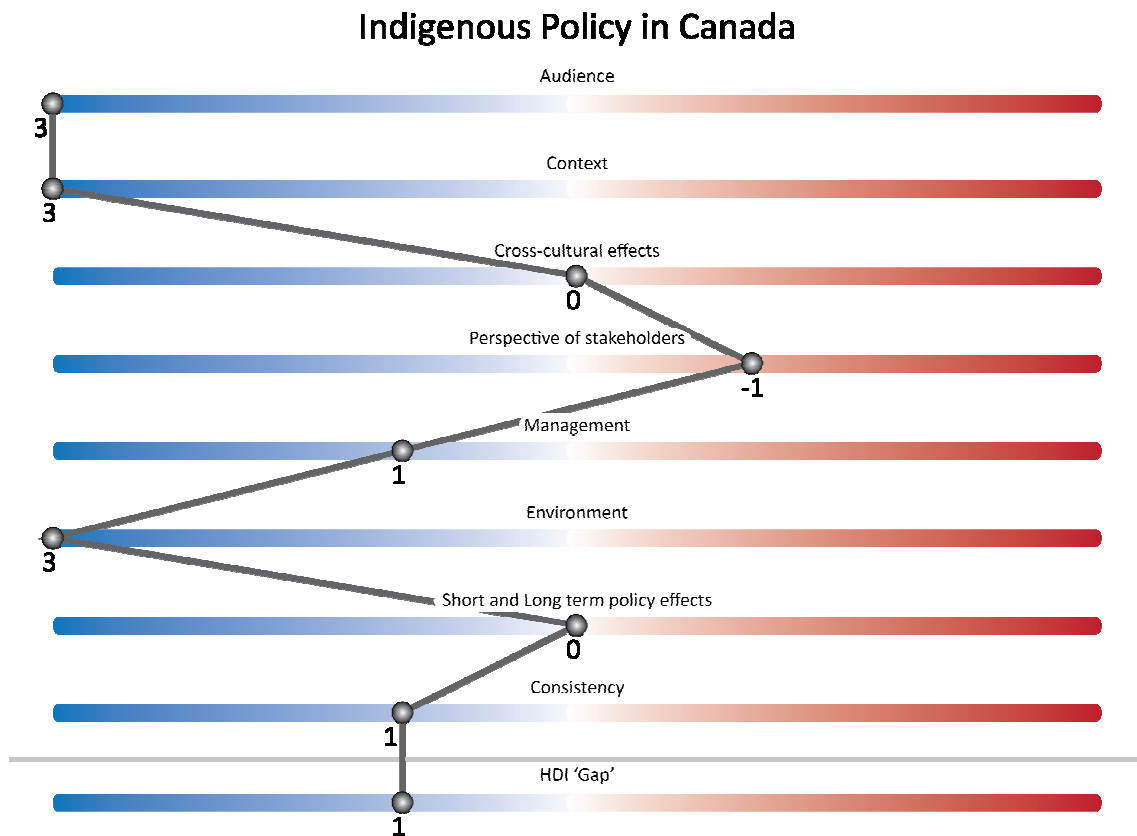


Figure 8.4 - The Aggregated Score and Semantic Differential for Indigenous Policy in Canada

Understanding of the policy audience: Canada has a high understanding of its intended policy audience giving it a score of **3**. This is largely due to the number of Indigenous sub-groups it identifies in policymaking efforts. As a result, the specific needs of each Indigenous group were

more readily addressed at the start of developing new policy. This led to improved outcomes in land tenure and housing increasing the dividend of investing in these areas to improve well being.

Understanding of the context in which policy is being developed: There was an exceptionally high presence of context in Canadian Indigenous policy giving it a score of **3**. This score was the result of efforts to promote self-determination. Doing so allowed for Indigenous people to set the policy goals and objectives. When this was done (in Nunavut) it led to policy outcomes that were culturally appropriate. Even though this may not improve Indigenous well being as quickly as a Eurocentric approach it helps build bridges with Indigenous communities so that they may be more receptive to future government policy.

Understanding the cross-cultural effects of policy: Canada has similar problems in this area of understanding as Australia and The United States earning it a score of **0**. This score is the result of most policymaking efforts being either Indigenous driven or government driven with little middle ground. The exception to this is the administration of James Bay; though only a regional policy the implications of the co-management model are that both parties receive some benefit. If this model or Nunavut were used on a wider basis it is possible to readily understand the effect of policy over different cultures.

Understanding the multiple perspectives (knowledge systems) of different stakeholder interests: While forward thinking in most efforts to improve Indigenous well being many policy solutions are the result of Non-Indigenous ideas giving it a score of **-1**. This is an indicator that Canada would see even better improvements in Indigenous well being through the incorporation of their perspectives on land tenure and housing. Instead, most First Nations are only asked for their opinion when absolutely necessary leaving a black mark on otherwise well constructed policymaking efforts.

Policy management (how is it administered, by whom, and using what model): A score of **1** was most appropriate for Canada largely due to its desire to shift some policy responsibility to the provinces in the 1960s and 70s. This created an outcry and cause a rethink to government managed policy. The low score in this area is due largely from these management efforts and improvements made since (in the promotion of self-determination).

Policy environment (the geographic setting and varied stakeholder interests): Canada has an unequivocal understanding of its policy environment and as a result has scored **3**. This is largely due to the identification of three separate Indigenous groups in Canada each with their own specific needs (these groups are further subdivided giving policy in large parts of Canada a highly

localized appearance). This division has led to many of the unique policy approaches to improving well being currently used across the nation.

Short term and long term effects of policy decisions: Canada received a score of **0** for this ‘building block’ largely as a consequence of most major policies concerning Indigenous land tenure and housing having been introduced within the last two decades. Additionally as a result of still ongoing processes such as the settlement of BC treaty rights it is difficult to think about the long term. While Canadian Indigenous policy is highly progressive it is firmly in the now. Time is yet required to active measure the long term effects of policy decisions.

Consistency in policy implementation: A score of **1** was given to Canada for having some consistency in its policy efforts. These efforts were in the form of regional policy (especially in Nunavut and James Bay). Separately in British Columbia, policy efforts were far from consistent and were drawn down largely due to the use and access to resources. This difficult political climate in British Columbia leads to an uncertain future for policy and questions about whether efforts can be consistent in the future.

Human Development Index **Gap** Score: Canada received a score of **1**, for having the second best gap in well being. This indicated that while policy may not be as developed as The United States, Canada has gone a long way to facilitate the well being of Indigenous people. As a result of their efforts, Canada has a good chance in the near future to approach a close to ‘the gap’ in well being. Canadian efforts have largely been successful in this realm for two reasons:

- Indigenous peoples were recognized in statutory law as ‘citizens plus’ meaning they have specific rights and privileges in addition to those guaranteed to Non-Indigenous Canadians.
- There was a willingness to defer to Indigenous Canadians on policy development issues including the promotion of self-determination in Nunavut, and the co-management of resources in Northern Quebec, which are both highly innovative solutions.

New Zealand

In chapter 7, housing, land rights, and treaty obligations were examined in New Zealand. This nation struggles somewhat in the area of structuring policy as was exemplified in the questioning of language in the Waitangi Treaty. This created an extremely rigid policy structure and made it difficult for Maori to manage their own affairs, qualify for housing, or have access to additional services due to their minority status. Where New Zealand did show positive policy was in how items were managed as well as setting reasonable timeframes in which policy changes were to occur. This gives New Zealand a score of **9**. The aggregated score and scoring of individual policy framework building blocks is shown in Figure 8.5.

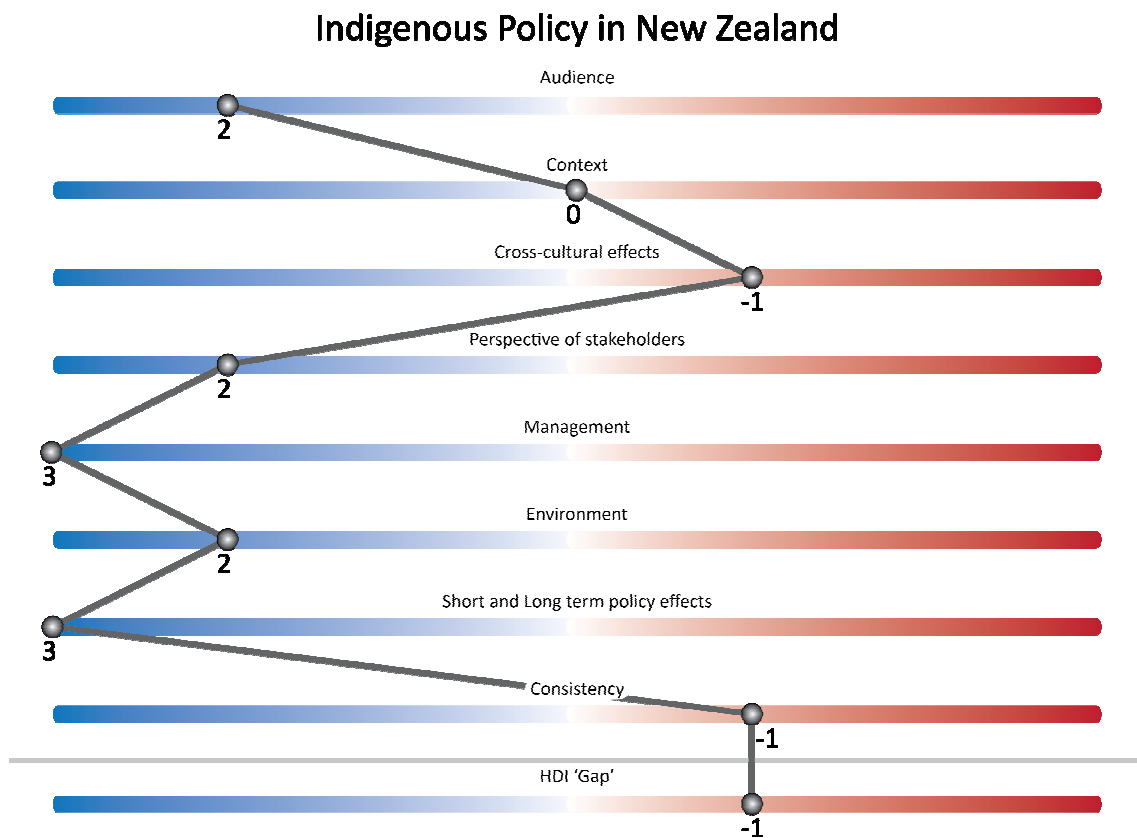


Figure 8.5 - The Aggregated Score and Semantic Differential for Indigenous Policy in New Zealand

Understanding of the policy audience: New Zealand has a high understanding of their policy audience garnering a score of **2**. This is due to its inclusion of Maori ideas in the policymaking process. Even with this inclusion; however, many instances of feigned ignorance have occurred creating rifts between Maori and Pākehā in the past. As these rifts are mended through the restoration of customary rights to land and fishing, it may be possible to see a higher audience score in the near future.

Understanding of the context in which policy is being developed: Context was difficult to determine in New Zealand earning it a score of **0**. This is evidenced from the lack of clarity achievable policy objectives. While there is a desire to continue to improve Maori well being, there is not a clearly defined policy to do so. As a result land tenure and housing policy are seen as separate objectives. An integrated approach could be taken (by understanding how different components of well being are related). Such an approach would increase the possibility of observing contextual clarity for policymaking in New Zealand in the near future.

Understanding the cross-cultural effects of policy: With a score of **-1** it is evident that New Zealand could improve its cross-cultural understating. This score is a bit surprising considering the nations legal incorporation of Maori ideas; however, policy is still administered using Eurocentric values (see Chapter 2), which continue to place the economic implications of land use and housing decisions over policy ones. This problem could be overcome with a holistic approach as is already seen in the use of perspective in policymaking efforts.

Understanding the multiple perspectives (knowledge systems) of different stakeholder interests: in the New Zealand there was no shortage of multiples perspective in Indigenous policymaking which earned it a score of **2**. This score it attributed to the presence of Maori culture and ideas in the policy. Unique to New Zealand is the Maori party in national government, which can provide an important voice when important policy decisions are being made at the highest levels of government. Additionally this high score represents efforts to allow some autonomy in the administration of housing policy in recent decades, though this is largely due to government wanting to shift the burden of providing housing onto local and Maori people to reduce cost.

Policy management (how is it administered, by whom, and using what model): A full score of **3** was given for New Zealand's efforts to proactively manage land tenure and housing policy. This is partly due to recent decisions to restore customary rights in addition to the different approaches taken to housing a highly urbanized Indigenous population. While some management aspects have yet to be fully developed, New Zealand has come the furthest of pioneer settler societies in this area in the shortest amount of time.

Policy environment (the geographic setting and varied stakeholder interests): A score of **2** was given in this category for policy approaches that took into account the different needs of rural and urban Maori populations. Unique to New Zealand was also the land management system of Iwis that took into account historical Maori cultural boundaries. This led to a greater localization of policy in New Zealand that was not possible in other pioneer settler societies.

Short term and long term effects of policy decisions: There is a clear understanding of the short and long term impacts policy choices have in New Zealand giving it a second high score of **3** for this 'building block.' This is indicative of the storied past of policymaking in New Zealand brought on by the consequences of ignoring obligations set forth in the Waitangi Treaty. This set in motion long term distrust by Maori of government policy which is observable in recent decades through the Waitangi Tribunal and the fight over fishing and seabed rights. Additionally it helped to facilitate policymaking dialogue in the short term to avoid any further long term negative consequences to ignoring treaty obligations

Consistency in policy implementation: In New Zealand, consistency is a problem as legally; government has had a consistent policy whereas its actions concerning Maori policy have been anything but. As a result of this confusion a score of **-1** was appropriate. One instance where consistency could be improved is in the implementation of policy. While different approaches have been taken to land tenure and housing, this has not occurred on a consistent basis. Government is still concerned with quick results that are not possible when dealing with such a complex activity as policymaking.

Human Development Index **Gap** Score: A **-1** was given to New Zealand for having the second largest HDI gap score. It should not be seen as a negative in the traditional sense; however, as the gap is far smaller than that of Australia. Instead this low score is merely an indicator of the policy reforms still needed in order to bring Maori people closer to the same level of well being as their Pākehā counterparts. It should also be noted that overall New Zealand has had the most proactive policy approach by incorporating Maori ideas and beliefs into their legal framework since the inception of the nation. This infers that New Zealand could only go down in terms of equality in well being resulting from poor policy decision and therefore the nation should be lauded for its efforts to ensure that 'the gap' approaches closure in the near future.

Scoring of nations under review

Using the nation scores from above, it is now possible input their values into the figure below to express the correlation to what an ideal policy framework is envisioned to be.

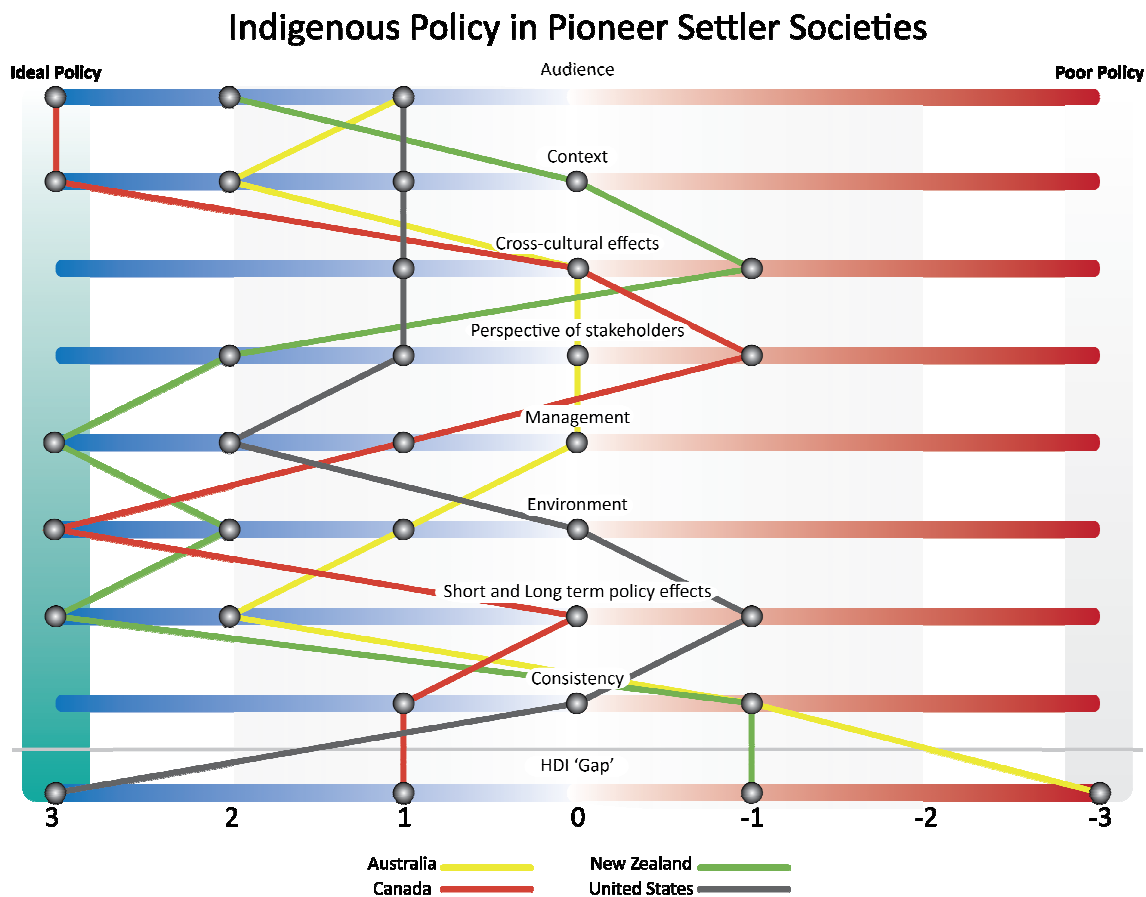


Figure 8.6 – Aggregated Scores of Pioneer Settler Societies Compared to Ideal Policy

What Figure 8.6 is expressing is the closest to the ideal framework other countries can provide. This is indicative of the transferability of elements needed to reach the ideal and the need for the inclusion of local knowledge. This means that in order for a framework to be relevant specifically to Australia, It requires local input and cannot be created from simply borrowing concepts and ideas from abroad. Lessons learned from the other case study nations can be adapted and applied to an Australian specific policy framework.

With earlier discussion this chapter demonstrating that the transferability of policy between nations is being limited, it poses the question what policy lessons from other pioneer settler societies are applicable to Australia. The answer is the concepts, which then feed into the essential elements for policymaking. This means that from each country, the elements which have a 3 rating can most readily be adapted to fit Australian conditions. To summarise, this includes: The management form used in policy in New Zealand, the long term understanding of policy

effects (New Zealand), the policy environment (Canada), the audience (Canada), context of policymaking efforts (Canada). When these policy lessons are applied with local knowledge, a housing and land tenure framework for Indigenous Australia can be drafted and will be discussed in the next chapter.

8.5 Conclusion

In this chapter, a meta-analysis was used to demonstrate the utility of the eight 'building blocks' for generating improved Indigenous well being through policy reform in the areas of land tenure and housing. It was determined from the policy research in the four pioneer settler societies that the identified building blocks served as good benchmarks for measuring overall policy performance in relation to Indigenous well being. The performance of policy in each pioneer settler society when then illustrated against the ideal for Indigenous policy (policy that closes the well being gap). From this illustration (Figure 8.6), the relationship between current policy efforts and outcomes in Indigenous could be seen. Additionally, the illustration demonstrated where policy work should be focussed in each study country in an effort to close the gap. Lastly, it indicated where possible lessons for improving well being could be learned from other pioneer settler societies who met the 'building block' ideal benchmark appropriately. This validated the policy framework elements which will be discussed in the following chapter.

9

Creating a Indigenous Land Tenure and Housing Policy Framework for Remote Australia

The one who adapts his policy to the times prospers, and likewise that the one whose policy clashes with the demands of the times does not

-Niccolò Machiavelli

9.1 Introduction

This chapter presents the results examining Indigenous land tenure and housing policy in the four pioneer settler societies. This examination will serve as a basis for constructing a new Indigenous policy framework, the culmination and final objective of this thesis:

Objective 4: To develop a policy framework for integrating Indigenous and Western perspectives on land tenure and housing policies in Australia.

This chapter is the final of eight chapters used to discuss the findings of the meta-analysis and case study countries. The chapter is focused on the final objective of the thesis while the previous chapters related to Objectives 1,2 and 3. These objectives were achieved through analysis of Indigenous policy in Australia, Canada, New Zealand, and The United States and lessons for altering policy to improve outcomes. These lessons were then brought together through the application of meta-analysis in Chapter Seven to contextualise the lessons specifically for Australia.

Table 9.1 presents a listing of the lessons that will be used in the construction of the Indigenous policy framework. The table is divided into two sections distinguishing between lessons common across all study nations (first section) and lessons unique to one study nation (second section). This division demonstrates what many policy practitioners understand about Indigenous policy and additionally what needs to be learned to ensure successful policy outcomes.

Table 9.1 - Lessons learned from studying Indigenous policy across several nations

Section One: Lessons in common across study nations				
-More Indigenous inclusion needed in policy making	-Indigenous people have special rights/relationships with national government	-Many rights granted to Indigenous groups had to be endowed through the courts	-Recognition of Indigenous peoples' not as homogenous groups but as having multiple beliefs and needs specific to geography or culture region	
Section Two: Lessons Unique to a study nation				
Australia	Canada	New Zealand	United States	
-Native Title Act (1993)	-Ongoing BC treaty process	-Some inclusion from early history in the Waitangi	-Indigenous self reliance	
-Community Housing Infrastructure Programme (CHIP)	-Nunavut: creation of a Indigenous home state	Treaty helped shape policy environment in later years	-Indian Gaming	
-Strategic Indigenous Housing and Infrastructure Programme (SIHIP)	-Shared resource agreements at the provincial level	-Fishing Rights	-Compensation for land dispossession	
		-Waitangi Tribunal		

The second section of this chapter goes into detail about how the lessons from the meta-analysis will be applied to the Indigenous policy framework. As described previously, Indigenous policy lessons are divided into two categories: those shared across study nations and lessons specific to a single study nation. They are divided in this way to delineate trends in policy versus policy outliers.

9.2 Findings from the meta-analysis

There are four lessons for policy that were common across all four study nations. Each of these lessons forms the basis for a principle component of the Indigenous policy framework. As they are introduced *italics* will denote lessons and principles will be shown in **bold** to distinguish one from the other.

The first lesson was that *more inclusion of Indigenous perspective is needed during the policy construction process*. It goes without saying that Indigenous inclusion should be taking place, but so far productive dialogue between Indigenous and non-Indigenous on policy issues is occurring infrequently. The implication here is that policy has historically fallen short of its goals resulting from a lack of perspective. In Chapter 2, this need for perspective was demonstrated by the reported cycle of policy and the continued lack of inclusion of Indigenous populations in understanding concepts of landscape and housing. The use of Indigenous perspective in the policy process alludes to issues that are important to Indigenous people, which may be unimportant to non-Indigenous people. These differences in perspective were demonstrated by the deep spiritual connection to the land seen in the creation stories of the American Southwest and the importance of the wilderness of northern Quebec to the cultural practices of the James Bay Cree (Chapter 6). Again in Chapter 7, the same experience occurred with the disadvantaged

Maori population of New Zealand when the national government questioned federal government obligations under the Waitangi Treaty for respecting the customs and beliefs of Indigenous peoples. From these examples of disconnect in policy, as well as occurrences in Australia it is evident that a framework needs to **understand its audience from the perspective of all stakeholders**. Government is prone to a lack of perspective in the policy process, which is the cause of policy falling short of its intended objectives

The second policy lesson shared across study nations was: *Indigenous people have rights beyond those of normal citizens*; they have a special relationship with their respective national government. To borrow from the title of the 1969 white paper on policy in Canada, Indigenous people are “Citizens Plus.” In chapter three, the principle of citizens plus was shown in both the apology speech given by then Prime Minister Kevin Rudd as well as examples in the United States where Native Americans tribes are legally defined as domestically dependant nations, and New Zealand where the original obligation of the national government was to be a caretaker for Maori land and resources. These examples indicate that **Indigenous groups must be seen as equal partners in policy construction** otherwise an Indigenous policy framework might be seen as paternalistic.

The third policy lesson in common between policy for Indigenous groups in Australia, Canada, New Zealand, and The United States was a *dismissal of the rights guaranteed to them by legislation*. Many rights such as land development, fishing quotas, and collection of flora and fauna pursuant of cultural practices was guaranteed to “citizens plus” under treaties and agreements made with their respective federal governments. These rights were only returned through lengthy legal proceedings. Examples abound in all of the study nations of policy being made after appeals and tribunals. New Zealand used the Waitangi Tribunal in Chapter 7 to solidify the obligations to the Maori people. The Calder Case (Chapter 6) was pivotal in Canada in defining Aboriginal Title and had a strong influence on the Mabo Case in Australia (Chapter 4). While it is possible to develop policy without involving the judicial system, history in the study nations has demonstrated that **proper policy management is needed for an Indigenous framework to be successful**, which to date has largely been absent.

The final policy lesson visible in all the study nations was the recognition that *Indigenous peoples are not homogenous groups and have differing beliefs and needs specific to their geography*. Chapter 6 mentioned that Canada distinguishes Indigenous peoples to be members of one of three groups *First Nations*, *Métis*, and *Inuit* based upon their geographic distribution and unique cultural traits. The United States has land tenure and housing policy specific to *Alaska Natives*, *Hawaiians*, and *Native Americans*. Australia denotes two groups based on strong cultural differences: *Aborigines* and *Torres*

Strait Islanders. What these examples demonstrate is that national governments (on face value) understands that **policy is highly sensitive to the environment for which it constructed**. This sensitivity is expressed in seen in the engagement with policy stakeholders. As was demonstrated in the New Zealand case study (Chapter 7) active engagement is a requirement for effective policy and that some level of variance is needed in order for it to achieve positive policy outcomes. This policy lesson and the three preceding it provide a good starting point for an Indigenous policy framework; however, these lessons are not the whole picture. The next section will examine the importance of the policy outliers (those found to be unique to a study nation and the role they play in a larger framework).

This section identified four lessons from policy across several nations with large indigenous populations. These lessons were then deconstructed after which a solution was given in the form of a policy principle. Each principle was suggested as a means to improve policy to avoid future learning. In the next section these policy principles will function as components of a larger framework for improving outcomes in Indigenous land tenure and housing.

9.3 Informing a holistic framework using lessons from study nations

The lower section of table 9.2, lists the unique lessons found while investigating Indigenous land tenure and housing policy in the four study nations. These lessons are transferable to other study nations in that they are “big picture” or whole of policy recommendations. This part of the chapter will examine in greater detail country specific lessons and how they can be applied to the construction of a policy framework.

Table 9.2 – Nation specific lessons learned from studying Indigenous policy in four nations

Section Two:	Australia	Canada	New Zealand	United States
Lessons Unique to a study nation	-Native Title Act (1993)	-Ongoing BC treaty process	-Some inclusion from early history in the Waitangi Treaty helped shape policy environment in later years	-Indigenous self reliance
	-Community Housing Infrastructure Programme (CHIP)	-Nunavut: creation of a Indigenous home state	-Fishing Rights	-Indian Gaming
	-Strategic Indigenous Housing and Infrastructure	-Shared resource agreements at the provincial level	-Waitangi Tribunal	-Compensation for land dispossession

Each of these lessons conveys the notion that Indigenous policy requires certain characteristics in order to be acceptable to different stakeholder groups. What this means is that each lesson is an integral part of understanding the “big picture” of why Indigenous policy development has such a tepid track record. This track record is exhibited in the existing gap in living standards between Indigenous and non-indigenous peoples across Australia, Canada, New Zealand, and The United

States. Had policy been effective this gap would not necessarily be removed, but would at the least be negligible.

When all of the country specific policy lessons are viewed separately they appear as individual or unrelated subsets of a problem unique to their locality. It might also be said that they resemble a wicked problem, which is to say they are utterly complex social problems that can never be fully resolved and thereby discourage further expenditure of resources to seek a solution (Rittel & Webber, 1973). However, when studied in the context as shown on previously, a defined relationship between previously unrelated policy lessons emerges. This relationship is that each nations Indigenous policy efforts contain both positive and negative elements that when examined using a common language (Chapter 8) avail themselves to avenues for improving policy.

The big picture is often used to describe a problem or situation that is a subset of a problem with far reaching implications. An example would be trying to address poverty solely through income redistribution thereby acting in a way that conceals the larger realities of poverty. The effort to address poverty is not a futile one; however, failing to see the big picture can increase risk i.e. cause greater poverty or greatly increase the cost of reducing poverty. Revelation of what the big picture is arose from a concept first identified by Aristotle in *Metaphysics: The whole is greater than the sum of its parts*. This concept can be applied to research implying there are certain levels at which analysis can be conducted and still produce usable results. Below these yet identified levels of analysis, results may be usable, but only to a small groups of specialists. To reasonably address the big picture specialization cannot occur. Specialization is detrimental to creating good policy by encouraging independent work free from multiple perspectives. Lacking perspective precludes envisioning the big picture of policy

The concept of the big picture was later given the term *Holism* by Jan Smuts as a way of analyzing complex systems focused on the entire system rather than dwelling on specific elements. Holism functions as a means to end silo thinking (the inability to exchange information between internal entities) instead holism posits taking an interdisciplinary approach to address policy shortcomings. This idea is incredibly useful when examining current policy measures such as “the intervention” which use a list of measures such as: improving child and family health, improving welfare reform, and addressing land tenure as a means of identifying where work needs to be done to improve social welfare and where a certain level of improvement has been made. While this type of reporting of social welfare improvement may look good from the standpoint of a government run program e.g. statements to the fact that progress has been made

in these areas, it tends to draw the focus on improving welfare only in specific areas at the cost of others that are closely related such as health and education (Altman et al., 2008; Smylie & Adomako, 2009). What results is a targeted policy approach that under-serves its defined measures and overextends its reach. If a targeted approach is substituted with a holistic one, the issues of overextending and under-serving will be non sequitur.

Using a holistic approach will convey how policy lessons serve as building blocks, which upon final assembly create a policy framework for achieving better outcomes for Indigenous peoples. Evidence will be provided to support the use of a holistic approach to policy and will be discussed in the following pages using country specific lessons for areas needing improvement. This holistic approach is encompassed in what is now termed systems thinking specifically the field of complex adaptive systems. This goes to the heart of constructing effective policy. The mistake often made is that it occurs in a natural linear process with a high degree of order (Figure 8.3). In actuality the policy development process borders on the chaotic (Figure 8.4). With examination of the policy process as system, the ability to discern a path through the chaos towards an effective strategy is possible. Application of systems thinking made a strategy possible and identified several areas where the effectiveness of policy could be measured and improved upon. This strategy was a progression from the policy lessons that were exhibited in the four case study nations and led to a set of 'building blocks' to construct effective policy. Each study nation provides multiple lessons that inform the 'building blocks' of the larger holistic framework. The lessons will follow the order in which they occurred in the main part of the thesis with those from Australia (Chapter 4), featured immediately below followed by The United States, Canada, and New Zealand. Three policy lessons from Australia are listed below. Discussion of these lessons can be found in Chapter 4 of this thesis.

Native Title Act (1993)

Community Housing Infrastructure Programme (CHIP)

Strategic Indigenous Housing and Infrastructure Programme (SIHIP)

Policy lessons become 'building blocks'

Indigenous policy lessons unique to Australia hint at a theme that is part of a larger policy framework that can be characterized by the following phrase: **Any policy framework needs to be contextualized for the nation otherwise it will not be sustainable.** The meaning is that the national government needs to acknowledge and address the concerns of policy stakeholders or it will be passed from one government to the next without seeing any change. Public perception of this "passing the buck" leads to a low level of confidence in governments ability to

elicit change. This lack of confidence is impetus for perception of government efforts in policy as fruitless endeavors leading to feelings of distrust, skepticism, and disappointment. These feelings cause public opinion to turn against policy work. Therefore **context** is an important principle to be included in a holistic framework.

In Chapter four the interplay of policy between Native Americans and the federal government of The United States was shown. Indigenous policy development has a long history of disenfranchisement of Native Americans through land seizures and supposed restitution through “just compensation” (usually monetary). What this demonstrates is a combination of failures on the part of the federal government to understand the needs of Native Americans being different from their own. In Chapter 5 these differences were exhibited. Additionally addressed were the different policy approaches taken in the US States of Alaska, and Hawaii in an effort to achieve improved outcomes for Indigenous people. From this case study of policy in the United States, three unique lessons are presented:

Promoting Self Reliance – In the 1960’s and 70’s with the rise of the American Indian Movement and subsequent Wounded Knee Crisis (section 4.5). The ideas of self-determination and subsequently self-reliance for Native Americans were brought to the attention of government policy makers and the American public. This called decades of policy decisions into question and made future policymaking processes more transparent. From this open process, it was concluded by the government that in order to improve wellbeing indigenous self-reliance should be promoted. Native Americans were given more autonomy over policy affecting their tribal members. This hands off approach to policy by the federal government demonstrated that Native Americans were fully capable of managing their own affairs with only token oversight. Additionally this promotion of self-reliance shows that in some cases the most effective policy can be to leave a group to determine their own future free from outside interference created by a lack of context.

Indian Gaming – While self-reliance helped to improve social wellbeing in many Indigenous communities across the United States, many tribes still struggled due to the remoteness of their communities or the small land size of their reservations making it difficult to generate income from working the land. To combat this Indian Gaming, was promoted as measure to decrease poverty in these remote and small reservations. Gaming has in fact done this but as was mentioned in section 4.8, it should not be seen as a perfect solution as it benefits Native American tribes in a disproportionate manner. Gaming does provide an insightful lesson into what can occur if Indigenous groups are equipped through land title and the right to determine their own approach to improving social wellbeing.

Just Compensation for Seizure of Indian Lands – Aside from promoting Native American self-reliance another tact used by the federal government as an act of restitution for seizure of Indigenous lands was in the form of arbitrated agreements and one off payments to living tribal members. This has been viewed by many tribes as inappropriate as it does not make up for the loss of land itself. Manifested as the misunderstanding of the value of land in a pure economic sense (Non-Indigenous perspective), compared to an intrinsic socio-cultural connection to the land (Indigenous perspective). Compensation for the loss of seized lands in the US had a negative outcome for Native Americans even though the federal government had good intentions.

What the preceding lessons of self-reliance, gaming, and just compensation from The United States demonstrate is inconsistent policy creation. All three lessons are different approaches to policy that are thoroughly designed; however, the tendency is to throw out the existing policy in exchange for a new (politically acceptable) policy. This theme of inconsistency was also apparent in the meta-analysis (Chapter 8). Had **consistency in policy** (specifically geographic consistency as opposed to historical consistency which would induce similar policy mistakes) such as the natural progression seen through promoting self-reliance and gaming been allowed to occur; the Indigenous population in the United States would have comparable indicators of social well being compared to their non-Indigenous counterparts. **Consistency in policy** is therefore an important principle to improving outcomes as intended in a larger framework. Throughout the case study chapters of this thesis, inconsistency in Indigenous policy was epidemic creating a high level of uncertainty for Indigenous groups.

In the third case study of Indigenous policy in Canada (Chapter 6), three lessons emerged which were specific to that study nation:

The BC Treaty Process – Due to Canada's relative age (1867) compared to the United States (1776), it had not developed its western coast as quickly leading to a contrasting approach to policy concerning Indigenous groups living in the Province of British Columbia. This meant that in most cases tribal leaders in BC had no formal relationship with the provincial government. As BC lacked any treaties between Indigenous groups and provincial or national government until recently, the resources located on Indigenous lands did not benefit Indigenous groups and were instead owned by the government. This caused most Indigenous British Columbian residents to be in a perpetual state of poverty wholly dependent on the government for economic subsidy, and unable to practice any of their traditional land uses by being landless. This began to change once the treaty process was initiated and now many Indigenous groups in British Columbia are able to exercise their new land rights at their benefit.

The Creation of Nunavut – In the Canadian North, the national government used a new approach to allow the Inuit people manage their own lives and practice their traditional land (and resource) management techniques. The new territory of Nunavut was created giving the Inuit people in effect “home rule.” Even though this is not full autonomy from the Canadian government, it is acknowledgement at least that Inuit peoples have lived in the arctic successfully long before the arrival of Europeans fostering a sense of mutual respect between Inuit and non-Inuit Canadians.

Shared Resource Agreements – The northern two-third of the province of Quebec has a relatively small population while being rich in natural resources. These natural resources include high potential for hydropower. To facilitate economic growth, the provincial government was eager to develop the hydropower potential of the North. Conflict arose, as this area was the homeland of the Cree people. As was learned in the Canadian policy chapter, this case went through years of dialogue and litigation until an agreement was reached where the Cree would be consulted on any future development. This allowed for the large urban centres of southern Quebec to benefit from hydropower development while at the same time respecting the Cree and their cultural practices. As this breakthrough between the Quebec Government and the Cree on shared resources did not occur overnight, it demonstrates the importance of having perspective to understand competing interests. This will at least foster good policy dialogue.

From these policy lessons unique to Canada, it is clear that the best route Indigenous policy can take in fostering positive change, is to involve Indigenous people in constructive dialogue concerning the management of natural resources as they have a long history of the land in which they reside and plentiful local knowledge. In Canada, Indigenous peoples are best equipped to: **approach policy from a perspective that looks at the short and long term effects of policy decisions.** The preceding policy lesson implies that perspective weighs heavily on how stakeholders view the direction policy development will take. For stakeholders to reach this level of understanding of the effects of policy requires them to think beyond their own (group or individual) interests. Ultimately this necessitates that government and Indigenous people step out of their comfort zones in order to achieve a policy based upon mutual understanding of **perspective**, which until now has been either ignored or dismissed.

In studying the relationship of Maori and Pakeha (Maori term for Non-Indigenous) peoples (Chapter 7) and the resulting policy that arose, three lessons unique to the policy experience in New Zealand emerged that have strong bearing on a principle element of a framework for Indigenous policy.

The Waitangi Treaty – As the founding document of New Zealand, there is a strong sense of respect for the intent of the original authors to include Maori views of land. However, as was demonstrated in this chapter, this inclusion of Maori views was left up to interpretation by the New Zealand government leading to a series of armed conflicts between Maori and Pakeha. This created further losses of land to settlement by Pakeha and made their future policies concerning Maori sharply critical of their culture, beliefs on settlement, and resource (land) management. Non-Indigenous peoples in New Zealand were left with a bitter taste for Maori customs and continued to ignore them creating increasing animosity between cultures.

The Waitangi Tribunal – While the language was present in the Waitangi Treaty concerning Maori practices, they were oft ignored especially after the land wars that had resulted from increased settlement and seizure of Maori land. Maori were further subjugated through policy, pushing them further into poverty. Eventually ignorance led to a need to examine policy concerning Maori (namely government obligation under the Waitangi Treaty) and what should be done to improve Maori living standards. This led to the Waitangi Tribunal and eventually the Maori land courts, which supported many Maori claims to increased rights and self-determination.

Fishing and Seabed Rights – Of the rights restored to Maori people during the Waitangi Tribunal some of the most important were fishing and seabed rights. Fisheries rights specifically who is permitted to profit financially from a lucrative resource, has been an ongoing debate. Maori groups had always claimed they held customary rights to fishing grounds adjoining lands they had a historical connection to; however, after several court decisions fishing and seabed rights were stated to be possessions of the crown. When the matter was finally decided in 2003 (Ngati Apa v. Attorney-General, Chapter 7) it was a matter of language since courts decisions, policy directed at Maori issues, and the Waitangi Treaty itself were not explicit in extinguishing Maori title.

The three preceding lessons from New Zealand demonstrate the importance of **developing a cross cultural understanding of the effects caused by policy decisions**. Often times in policy construction in New Zealand the government was caught up in the language of policy rather than the policy itself. Resultant of that bitter taste left over land disputes and created a sense of unease for anything remotely Maori in appearance being present within the language of official government policy. This suggests policy efforts in New Zealand are one-sided and until a Maori perspective is provided, policy will be insufficient to achieve its goals and objectives. This builds upon the principle from the Canada case study where perspective has strong temporal qualities that can determine the outcome of policy, it additionally has validity and should not be discounted due to its non-indigenous origins.

This section featured discussion on the findings of the meta-analysis by taking the reader through its several stages of development. The main product of this analysis was eight principles: four that were commonly seen in policy across the four nations where Indigenous policy was being examined and four principles that were only exhibited through the policies of one study nation. In addition to these eight principles that inform a larger policy framework examples of other frameworks will be discussed in the next section to demonstrate the strengths and weakness of using a theme to guide the policy work.

9.4 Applied 'Building Blocks'

The eight principles derived from the lessons learned analyzing Indigenous policy in Australia and abroad will now be listed below. These principles play an important role in a larger policy framework for Indigenous land tenure and housing policy. They demonstrate their importance by clearly illustrating what is needed to achieve improved policy outcomes. Additionally the framework principles are presented in the order in which they should be applied leading to a linear framework design. The 'building blocks' shown below in an abbreviated form originate from case study discussion seen in Section 9.2.

- Understanding the policy **audience**.
- **Context** in which policy is being developed.
- **Cross-cultural understanding** of policy effects.
- **Multiple perspectives** (knowledge systems) of different stakeholder interests and their effect on policy development.
- Policy **management** (how is it administered, by whom, and using what model).
- Policy **environment** (the geographic setting and varied stakeholder interests).
- **Short term and long term** effects of policy decisions.
- **Consistency** in policy implementation.

The above 'building blocks' are a set of guidelines, which when applied to the policy design process can be effective in guiding policy in a direction with stated aims and objectives. This methodology ensures that policy has a greater chance of being effective initially instead of repeated attempts to achieve the same stated goal as a result of a failure to understand the complexities involved. Stated another way 'building blocks' identified from examining Indigenous policy can be used to frame an effective approach.

9.4.1 Framework design

The ‘building blocks’ listed on the previous page form the foundation upon which a framework for Indigenous land tenure and housing policy will be designed. As stated in (Fien et al., 2008), a framework has high value for policy makers due to the comprehensive research upon which it is based. The ‘building blocks’ used as the foundation for an Indigenous policy framework represent the culmination of comprehensive research of Indigenous policy from Australia and abroad. As the focus of this research, a new Indigenous policy framework embodies these ‘building blocks’ as a roadmap for improving outcomes that close the gap in well being presently seen in remote Australia. The current national Indigenous policy paradigm follows two principles: a continuation of a focus on remote Australia, especially through the Northern Territory Emergency Response (NTER or Intervention); and ‘practical reconciliation’ or mainstreaming, assimilation ‘Closing the Gap’. Closing the gap in reference to the measurable shortcoming in development between remote Indigenous Australia and the coastal urban centers of population has been the dominant locus of policy for decades, regardless of the government of the day (Altman, 2009b). These policy paradigms provide points of reference for which policy can be compared. This comparison was done in the previous chapter through a meta-analysis. The following figure (Figure 9.1) provides a component of the policy design framework using ‘building blocks’ determined in previous sections to be catalysts for improved policy outcomes

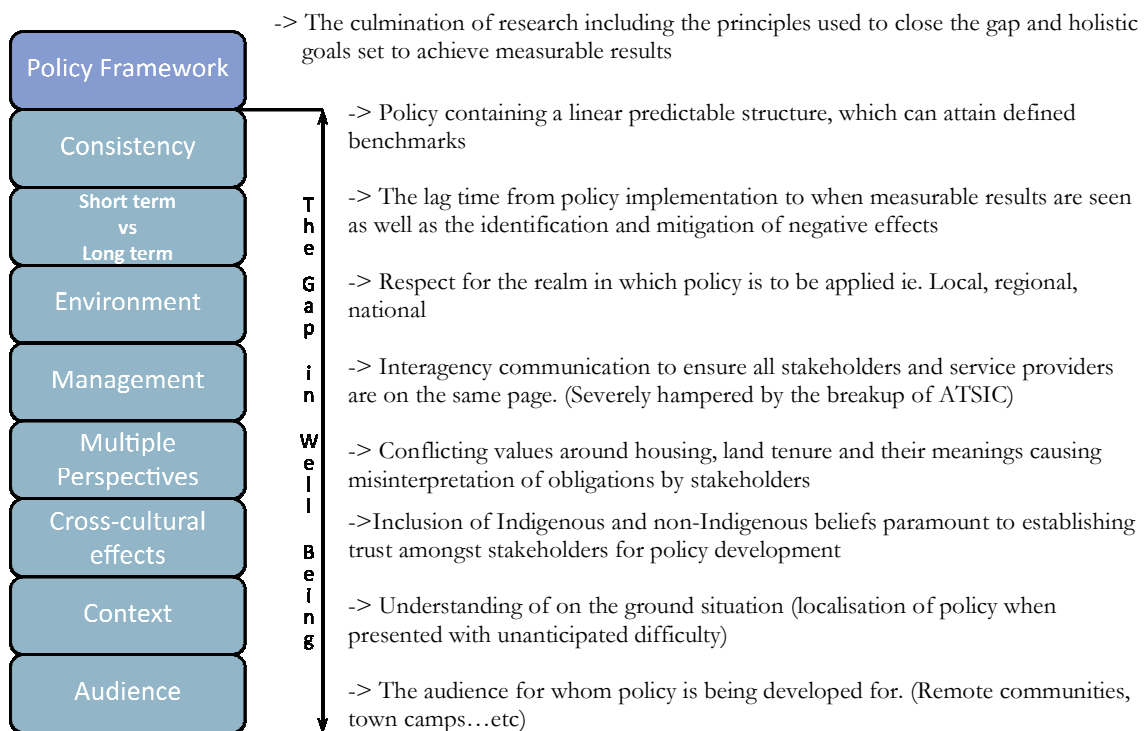


Figure 9.1 – The Policy Framework ‘Building Blocks’

The framework 'building blocks' presented in Figure 9.1, resemble a column where each 'block' represents one of the framework principles. Each block containing principle represents a full 1/8th of the work that is needed to improve policy in an effort close the development gap as denoted by the arrow on the left hand side of the figure. The principles therefore act as building blocks for policy. Representing a natural progression of policy work as it passes through each principle getting closer to the goal trying to be achieved (The policy framework block at the apex). Using this column concept, the visible value of each framework 'building block' is demonstrated. Additionally if one of the policy 'building blocks' is missing, policy will visibly fall short of the goal trying to be achieved.

This research shows policy work needs to be focused in order to "close the gap," and increase the socio-economic well being of Indigenous Australians to levels equal to those of non-Indigenous Australians. As "closing the gap" is the current objective of Indigenous policy work being conducted by the Australian government (Chapter 4), the research from this thesis suggests that way to achieve this is to treat the framework 'building blocks' as essential to policy success. Additionally 'building blocks' need to be approached in a holistic manner so as to negate too many or too few resources being expended on one principle while neglecting others. The policy framework will demonstrate what this could mean for the desired goal. The framework 'building blocks' and their justification/importance to/for achieving the desired policy outcomes will now be discussed following the natural progression as they are presented in figure 9.2.

9.4.2 Framework Principles Discussion

The success or failure of policy is dependant upon acceptance by government agencies. Lacking their support to improve the development process the status quo (currently implemented policy) will remain in place. This is due to many government supported policies dependence upon which political party is in power as well the legacy incumbent of policies (the long tail as it is depicted in economics) enacted by previous governments. Inertial forces behind policy are difficult to slow or alter to support new findings or ideas. This lingering effect present within policy is a clear indicator that it is necessary for policy to meet its aims and objectives as closely as possible from the outset.

Chapters 4 through 7 reported on the experiences of different policies used to address inequalities between Indigenous and non-indigenous peoples in four countries with a common history of settlement by European powers. These policies were summarized in the lessons in Table 9.1. This figure demonstrates diverse nature of policy used to address Indigenous inequality and the lessons that can be garnered to improve policy outcomes. These lessons were followed by a detailed explanation of their utility to informing a policy framework. The utility of these

lessons helped shape the principles that will be used in the framework. There eight principles assist in mitigating the legacy of enacted policies and help frame new ones in a holistic manner: ‘Building Block’ 1: **Understand the audience:** The usual semantics used by Australian politicians is that Indigenous Australians are lagging for behind Non-Indigenous Australians in terms of wellbeing and that something must be done to amend this disparity. This is supported by the characterization of Indigenous Australians by government in policy as well as by media as being slow to change, destitute, and at times uncivilized (Chapter 4). While this characterization is beginning to show signs of fading, it is not the result of a grand awakening. Instead it is related to some of the countries obligations to improving the lives of Indigenous persons under International law.

Corollary to the characterization of Indigenous Australians and the insistence that obligations be met under international law is the, impact this has upon remote communities. There is a spatial mismatch of sorts in reference to how resources are being spent to close the gap in these communities. Methods such as allocating a number of new homes based upon population as well as income sequestration have not been an effective means to improve socio-economic well being (Chapter 4). These policies and there lack of effectiveness represent an omission of audience and perspective influenced by the views of those who are not indigenous. While the capacity to make on the ground improvements in Indigenous Australia rests with Government agencies, they need to look beyond their own cultural perceptions to those of other stakeholders (Aborigines and Torres Straight Islanders) to create successful policy. Historically there has been an assumed innate transferability of Indigenous policy between nations especially in terms of judiciary decisions; however, this can lead to ineffective policy necessitating a need for local context.

‘Building Block’ 2: **Any new policy framework needs to be contextualized for Australia otherwise it will not be sustainable:** After understanding the audience for policy is established the next principle to creating a holistic framework is to establish a context. The use of context helps to establish the operational bounds in which policy development will occur. These bounds are established by a similar means to “Boolean logic” (Chapter 3). Terms are used to establish context i.e. policy will focus on issues land tenure and housing in X,Y, and Z regions. In addition context defines the actors involved in the policy making and their relationships i.e. indigenous groups working with policymakers, Indigenous groups working with government officials, or Indigenous groups working within larger Indigenous communities (Chapters 4 and 6)

The policy context is usually derived from a synthesis of ideas, beliefs, and experience from other places. It is an attempt to meet benchmarks (gaps in development) by attempting to cover all of

the bases. This is exemplified by terming the NTER as a “cash splash” with the idea that simply throwing money at the situation will cause improvement (Chapter 4). Corollary to this are policy ideas that are appropriated from other nations Indigenous experience without providing a local context thereby making policy a muddled exercise. Muddled exercise in the sense an assumption is made on the part of policymakers that a good policy lesson is wholly transferable. The results of borrowing policy lessons or their methodologies from other nations can be detrimental to domestic policy. There are wholly different inputs at work in Australian than in Canada, New Zealand, of The United States and therefore improvements in Indigenous socio-economic well being should not be anticipated if contextualization fails to take place.

‘Building Block’ 3: **Understand the cross-cultural effects of policy:** The often-overlooked principle of equity between stakeholders is characteristic of an assumed need that one group must take the lead in policy development. It is a common occurrence for the Non-Indigenous governance structure to take the lead on policy construction. This is influenced by the historical legal tradition and governance structure that dominates the policy landscape. Western beliefs are assumed to be superior to Indigenous beliefs based upon their familiarity even if they are harmful to the policy development process (Chapter 5). The dynamic between stakeholders in policy construction is therefore skewed in the favor of Non-Indigenous participants, promoting failed policy. Thus, to prevent policy failure Indigenous stakeholders need to play an active and equal role in the development of policies created to improve their livelihoods.

‘Building Block’ 4: **Understand the multiple perspectives (knowledge systems) of different stakeholder interests and their effect on policy development:** While establishing a cross-cultural understanding of policy can lead to better policy outcomes, one more principle is required to insure against staking the deck in favour of a party of non-Indigenous groups. This is the treatment of Indigenous perspective as valid and relevant to the policy development process.

Past policies in Australia, Canada, New Zealand, and The United States reveal a general dislike for all ideas originating from Indigenous peoples. This comfort with ones own perspective while being dismissive of another is represents a huge hindrance to policy development (Chapter 2). Fortunately, alternatives abound for approaches to policy, which are inclusive of more than ones own perspective. These involve a sharing of knowledge and resources to create the best possible outcomes for all stakeholders involved (Chapter 6). A shared responsibility for the success of policy is not only possible, but also essential to fostering positive outcomes in a larger framework. This is done through an understanding of Indigenous perspective, which extols the values that can greatly shape policy success.

With the audience, context, equity, and perspective established; the 5th 'building block' to be included is management, specifically the **proper management that is needed for an Indigenous framework to be successful**: Proper management works to ensure a policy framework achieves its set aims and objectives cannot be understated. Proper management of policy avails itself through improved outcomes for Indigenous Australians, which are conducted in a timely and efficient manner. Policy management should not be seen as derogatory, merely a principle that assists in furthering the development of policy in a responsible way. In this way management of policy suggests it is a means of guidance (holistic approach), rather than a top down (autocratic) or bottom up approach.

'Building Block' 6: **Policy needs to be sensitive to the environment for which it constructed**: Remote Indigenous Australia is an environment with similarities to many rural environments in the developed world. The valuation placed upon this environment contrasts greatly from those values place upon an urban environment (Chapter 2). It is therefore a curiosity as to why the same policy is made to function in both environments (Chapter 4). The land use patterns of remote Indigenous Australians are unique to their environment. Beyond this environment there are other, which bear similar characteristics to remote Australia (The American Southwest in Chapter 5); however, these similarities end when the people that inhabit the land is discussed. So while the physical environment bears similarities to other areas with large indigenous populations, the human environment does not. Different environments therefore have specific set of requirements for improving Indigenous land tenure and housing outcomes. In this sense there is a justifiable need for policy to be malleable to take the unique characteristics of the Australian environment into account. This is contrary to current government policy that is perceived to be a one-size fits all approach (Chapter 4). An approach, which is commonly used to achieve a cost savings, or to reduce risk; however, insensitivity to the environment can backfire leaving policy crippled not being able to determine the long-term consequences of policy changes.

'Building Block' 7: **Understand the short and long term effects of policy decisions**: Whether it is an improper audience, a lack of context, or failing to take into account the policy environment, the principle of time can be greatly impacted. Time and how it is quantified within policy can determine its potential success or failure. This was on display in many aspects of the claims courts and tribunals that took place in the United States and New Zealand. Indigenous groups were allowed a certain period of time during which they could file a claim. It suggests that a government was resolved to settle grievances indigenous groups had once and for future generations. The effects of policy revision are not often immediate and require a measurable

amount of time before conclusions can be made. Policy therefore needs time to run its course free from the political cycles and the changes a new government can bring to policy objectives, which have already been met. Running its course refers to new incoming government initiating drastic policy changes as a result of the policy currently in place being created by a former government with different political views (Chapter 4). Another possible reasons for this change in policy are expressions of dissatisfaction from the government due to the pace at which improvements are being made even going as far questioning its effectiveness. This desire for speed for the sake of improving numbers so the government can prove something is being done to address “the gap”, causing many factors of good policy work to be overlooked. Overlooking factors can generate potentially harmful results (Chapter 2). Therefore it should not be the objectives to create a bold policy that makes a lot of noise politically (through implications of producing rapid results) or through the media and in the end achieves nothing of significant value. Instead a approach with an appropriate balance through a timeframe determined by an evaluation period proving the effectiveness of policy should be enacted ensuring that when policy changes are needed they will be appropriate made without haste.

‘Building Block’ 8: **Consistency in policy**, which is embodied in all of the previous 7 ‘Building Blocks.’ It is of importance by ensuring proper implementation of a policy framework. Complicated with the legacy of previous policy frameworks that cannot be immediately supplanted by a new revision i.e. and alteration of the policy timeframe, it may be some time before results are seen. As positive outcomes for Indigenous Australians is the foremost goal for a policy framework, it is paramount policy show consistency. This means that policy should not be drastically altered from what is currently in place. Instead any positive policy change should be a gradual one. This avoids interruptions in the delivery of services such as subsidies for housing and the administration of other social programs (Chapter 4). The effect of inconsistent policies is exhibited in the NTER, where initially change was so drastic, that the only noticeable change was the size of the budget for the action. Consistency is a proven method for developing beneficial policy with no wasted effort or risk to stakeholders. This is additionally supported within some of the framework examples presented in Chapter 2.

9.5 Final Framework

Thus far in this chapter, components of a larger holistic Indigenous policy framework have been discussed. This has included lessons learned from nations with similar Indigenous policy characteristics that were used to derive framework ‘building blocks.’ These ‘building blocks’ were then discussed along with support from specific elements needed for Indigenous land tenure and housing themes. This section will now present the culmination of this research by combining the

'building blocks' needed for and appropriate Indigenous policy framework with a holistic approach. This, in conjunction with a locus of Indigenous housing and land policy composes the final policy framework. The policy framework development occurred following a step-by-step process. This process showed how each element works together to produce a product of policy. That product is noticeable improvement in Indigenous land tenure and housing policy outcomes. The eight policy 'building blocks' are used to **frame** the policy. A holistic approach **defines** the scope of the policy and ensures the big picture is addressed (i.e. policy is not being constructed at the local level). This approach allows for completion of the goal of the framework. The framework is shown on the following page.

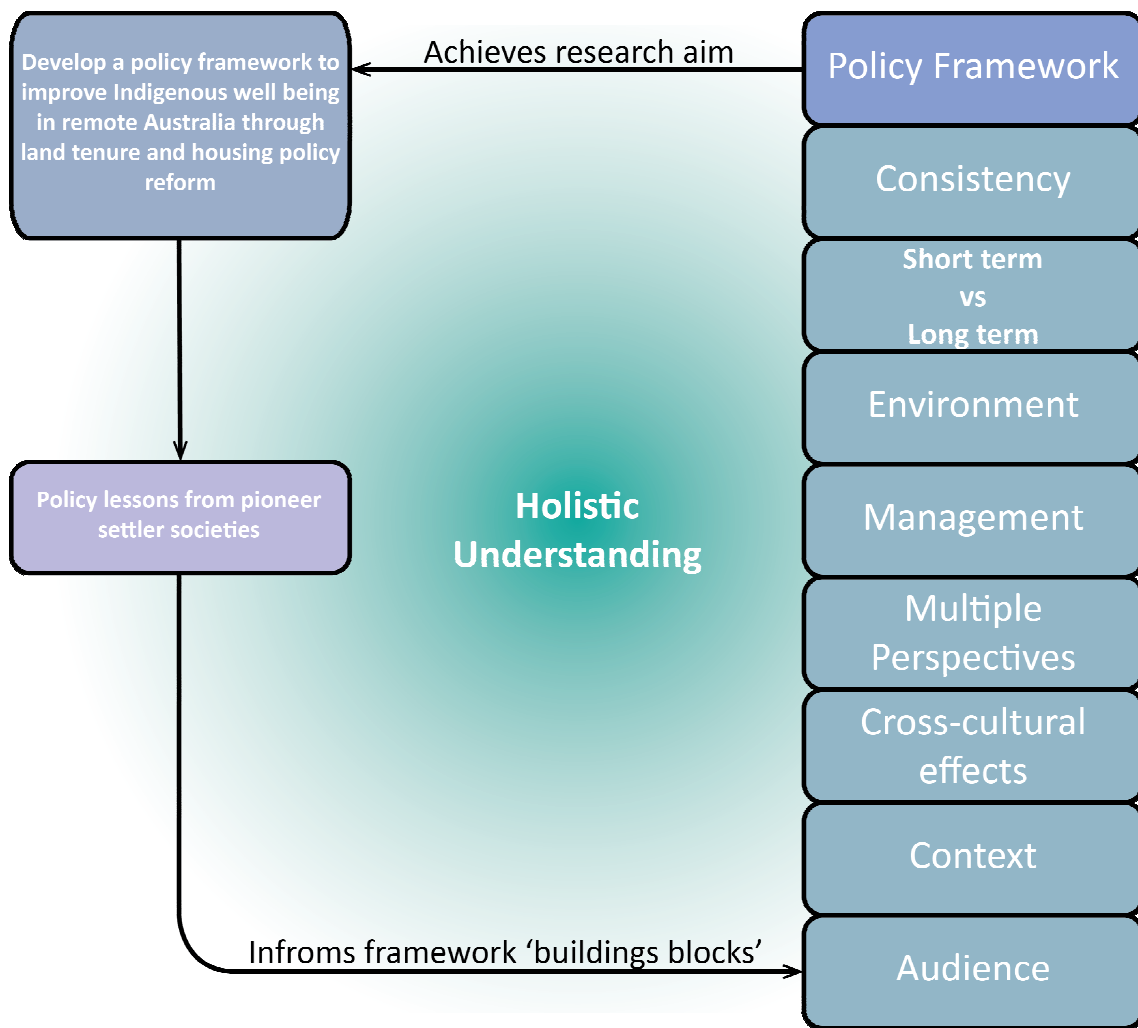


Figure 9.2 – An Indigenous Policy framework with a holistic understanding

As a result of the application of the 'building blocks' to the aim and the supplementary information provided from policy examples a product is produced from the framework. This product is the means to address policy shortcomings by indentifying where improvements to policy can be made to foster better outcomes in land tenure and housing policy for Indigenous groups in remote Australia. Additionally this framework contains a cycle whereby the policy

development process can be repeated as the need for policy revision arises. In this way application of the principles needed for improved policy outcomes is not the final step. Rather an intermittent step that signposts policy achievements and offers means to continually improve outcomes.

From the framework shown in Figure 9.2. The goals established from the outset of this research are achievable if certain principles are adhered to. By adhering to these 'building blocks' using a holistic view, which takes into account the big picture. It not only makes the jobs of policy practitioners easier, but addressing the needs of stakeholders easier as well. Any policy framework should therefore focus upon a clear goal as in this research (to create a policy framework to address land tenure and housing issues in remote Indigenous Australia). Setting such a goal provided a way to move beyond silo thinking towards achieving meaningful results.

9.6 Conclusion

This chapter related to the last objective of the thesis: To develop a policy framework for integrating Indigenous and western perspectives on land tenure and housing in Australia. The discussion of this objective was structured using 'building blocks,' which guided the discussion on framework development. In section 9.1 the origin of the framework 'building blocks' from the meta-analysis of four nations with similar indigenous policy characteristics was used to frame policy development discussion. From this discussion framework 'building blocks' necessary for policy development were gathered into a simplified format to clearly identify the linear progression of the policy.

In section 9.2, the design of the framework was shown using the principles composed during the meta-analysis, which were then applied to demonstrate their effect on the final product of the framework. It was shown that a silo focus on one or more of the framework 'building blocks' negatively affected the final policy as it fell short of its main objective which was to close the gap between Indigenous and Non-Indigenous Australians. Regrettably this policy shortfall was an all too common occurrence as was previously demonstrated. To combat policy shortfalls by encouraging equal focus on all of the framework 'building blocks', the holistic approach was introduced (Figure 9.2). This approach displayed an even hand in terms of policy development as it made the "big picture" ramifications apparent.

Lastly this chapter assembled the framework 'building blocks' in accord with a holistic management approach to produce the final framework for the design of Indigenous housing and land tenure policy for Australia. This achieved the final objective of this thesis. It is anticipated in the case of this thesis as in policy development in general, there will be a continual process to

foster positive policy outcomes for Indigenous people. Therefore the new policy framework should be seen as a toolkit for improving and guiding policy development rather than a complete solution.

10

Conclusion

It is sometimes assumed by those external to the field that policymaking is straightforward. This research has proven this assumption about policy to be untrue. Policymaking requires extensive use of local knowledge and support from stakeholders. It is not possible to achieve positive policy outcomes if we only assume to have the intelligence and therefore the tools to do so. Policymaking is a far more extensive activity requiring years and in some cases multiple generations to fully implement. This Chapter will summarise the thesis research into the creation of a land tenure and housing policy framework for remote Indigenous Australia and suggest where work into this subject should proceed in the future.

10.1 Introduction

This research was focused on answer lingering questions about what can be done to improve Indigenous policy outcomes. Since the arrival of non-indigenous people to Australia, there has been a steady erosion of Indigenous knowledge. This erosion of knowledge holds true for other pioneer settler nations such as Canada, New Zealand, and The United States. As the Non-Indigenous population in these nations increased and quickly surpassed the Indigenous population, a paradigm shift occurred in the understanding of the surrounding environment. Non-indigenous perceptions of land and housing supplanted Indigenous ones (Chapter 2). This led to a subjugation of Indigenous perception on land tenure, housing, and other bodies of knowledge, as they did not function in the dominant non-indigenous paradigm (Chapter 2). The subjugation of Indigenous knowledge was expressed through many of the laws, legal opinions, and policies of these emerging settler nations.

The aim of this research was to develop improve policy outcomes for Indigenous Australians through policy that incorporated their values on land tenure and housing throughout the development process. To achieve this aim the research used a set of four objectives, supported by a series of questions. These objectives and questions were addressed through a research methodology using quantitative, qualitative, and mixed methods. To employ these methods to answer the research objectives, a phased approach was used where a different method was used during each phase of the research. In total three phases were used, each progressing the research

closer to meeting the aim. The results of the research led to eight ‘building blocks’ that informed a larger policy framework for addressing disparities in Indigenous land tenure and housing issues.

This chapter provides a summary of the research findings from each of the objectives and supporting questions. It then concludes by positing the relevance of the research, the real world application of the policy framework as well as avenues for future inquiry.

10.2 Summary of Research

The research findings will be summarised drawing upon the first phase of study that consisted of the research design in Chapter 2 and data collected for the case studies featured in chapters 4,5,6, and 7. The summary of research findings from the case studies is broken down into essential elements in during a meta-analysis in Chapter 8. These essential elements are used as the basis for an Indigenous policy framework featured in Chapter 9 and is based upon the research questions and four objectives of the thesis:

Objective 1: Identify Indigenous v. non-indigenous perceptions of land tenure and housing in four pioneer settler societies.

Objective 2: Examine the evolution of contemporary policy approaches to Indigenous land tenure and housing in four pioneer settler societies.

Objective 3: Identify and examine Indigenous land tenure and housing policy reforms in Canada, New Zealand, and the United States, which have led to successful outcomes and contextualize the lessons for an Indigenous policy framework in remote Australia.

Objective 4: Develop a policy framework for integrating Indigenous and Western perspectives on land tenure and housing in Australia

To policymakers, stakeholders, various levels of government, and Indigenous Australians the policy framework represents a fresh approach for improving policy outcomes. It accomplishes this by establishing perspective making policy relevant to all parties involved in the development process. It is due to this development process that the summary initiates with a discussion of the research methodology developed from the first phase of the thesis.

10.2.1 Initial Research and data collection

The initial research involved several techniques to extract data from a large collection of knowledge on Indigenous and non-indigenous ways of knowing. To expedite this process of data extraction involved:

- selection of data sources relevant to the research;
- developing a research methodology and supporting toolkit to achieve the aim of the research.

Paramount to the initial phase of research was the use of terms that embodied the spectrum of data needed answer questions on perception, land tenure, housing, policy, and other related issues. This was done by identifying sources of data that used many of the terms listed above (and more in Chapter 3). To target these data sources the mathematical tool: Boolean Logic, was employed. Boolean Logic is fundamental to searching through large amounts of data as it can quickly determine the relevance of a data source based upon the occurrence and relation of terms used. With each additional term searched, Boolean Logic can target relevant data with greater precision (Cox, 2005; Rihoux & Heike, 2006). The 'Boolean' originates from the inventor of the mathematical process where 'Logic' is used to denotes a way of thinking (Boole, 1854). From this terminology Boolean Logic is a way of thinking about sets, specifically related data and how these individual bits of data relate to one another. It therefore facilitates getting to the data necessary to draw relevant conclusions when confronted with an extremely large dataset such as: an entire discipline of knowledge.

To achieve the desired result by employing Boolean Logic, there was a need to seek out sources that had a copious amount of data on Indigenous peoples and policy issues. This was accomplished using a number of specialty libraries³³ as well as archival and general circulation libraries. The methodology of Boolean Logic was then tested using the main library at University where this thesis was composed. The results of this methodological test in Chapter 3 validated the use of Boolean Logic to redact irrelevant sources and select sources specifically appropriate to the support the research objectives and questions in this thesis.

As this research dealt solely with previously created empirical data in the form of printed and publicly available digital document, the need for ethics approval to research was avoided. The use of Boolean Logic additionally supplemented a typical archival search in that it pointed to relevant sources for this research that may have been overlooked otherwise. A total of nine sources were used for this research including eight brick and mortar data depositories in addition to the use of online peer reviewed journals. The sources and the relevant locations of data used in this thesis were then recorded using content analysis (Appendix B). Content Analysis demonstrated the quality of material available on Indigenous land tenure and housing at each brick and mortar data source, which facilitated organizing and planning for visiting these sources to reduce the amount of time that might be wasted if each data source were visited for an equal amount of time. Boolean Logic therefore selected relevant sources that were manageable in number and Content Analysis subsequently made the physical examination of sources run efficiently allowing for a

³³ **Specialty Library:** A library with a narrow focus on on a particular topic such as law or Indigenous People.

broader spectrum of research material to inform the research objectives in a holistic manner. The first objective in this research is described in the following pages.

10.2.2 Objective 1: Identify Indigenous v. Non-Indigenous perceptions of land tenure and housing in four pioneer settler societies

As cultures hold different perceptions on a wide variety of environmental and social issues, there was a need to understand these differences of perception and how they informed ontology. Land and home are part and parcel of Indigenous cultures; while, they are seen in non-indigenous cultures as being separately entities. The dominant view on land and home is the non-indigenous one as non-indigenous people represent a majority of the population in Australia, Canada, New Zealand, and The United States. Since this is the dominant view it is often assumed to be the only view that has value. Assuming this negates that there is a diversity of views with both Indigenous and non-indigenous cultures. It is therefore necessary to investigate these other views to determine how land and home are perceived by different cultures. This poses the first question under Objective 1:

- 1.1 *What are the similarities and differences in Indigenous v. Non-Indigenous perspectives and practices relating to land tenure in Canada, NZ, USA and Australia?*

A research design was developed in Chapter 3 to answer this question. It was found that perspective itself was a determinant of the value, which was attached to landscape by different cultures. This implication of value base upon perception was supported using depictions landscape from policy and historical record that expressed both positive and negative qualities in the landscape being observed. There was a strong leaning in the historical accounts by non-indigenous people to wax nostalgic for places, allowing them to take on supernatural qualities. Thus a deeper meaning was conceived that was adoration for the natural aesthetic of landscape rather than an imposition of western ideals upon the land. This adoration of the natural aesthetic especially in Yosemite and Uluru was not dissimilar to the emotive response these places generated in the ontology of the Indigenous peoples who inhabited these lands. These were not simply lands to inhabit or possess due to the spiritual value that outweighed the economic value.

In addition to similarities and differences in the land tenure perspectives were the practices associated with the different cultures. Indigenous practices tended to be non-sedentary i.e. tribes or clans would live seasonally in an area and follow their primary food source as it was effected by changes in temperature. This is in contract to the commoditisation of land, extraction of resources, and farming patters of early non-indigenous settlers. These sharply contrasting land practices perpetuated misunderstanding and dispossession of land from Indigenous peoples.

From these perspectives and practices associated with land tenure in pioneer settler societies, differences and similarities do exist between Indigenous and non-Indigenous interpretations of tenure. These are based upon the perspective that dominates in each culture. Land can act as a vessel, which provides wealth or function as a means to generate it. This quandary led to a successor one in question 1.2 that focused on the conceptions of home and housing:

1.2 *What are the similarities and differences in the meaning of housing to Indigenous and Non-Indigenous people in Canada, NZ, USA and Australia?*

This question was answered through the use of historical literature and policy documents that defined conceptions of home. The home is itself a cultural construct. By this inference the conceptions attached to the meaning of home and subsequent ownership contrast greatly. Home can refer to homeland as in a geographically defined territory that contains similar cultural historical practices (Chapter 2). In the Non-Indigenous construct home tends to be the physical article i.e. the house that one inhabits. This schism in the conception of home and ownership was further displayed in many historical text and policies that governed Indigenous housing in Australia, Canada, New Zealand, and The United States.

As culture informs concepts of housing, the potential exists for traits to be ascribed to housing. For example terms such as the 'Australian Dream' or 'American Dream' are often evocative of an ideal home, possessed by the inhabitant that occupies a defined space, with sections of the home dedicated to various uses. While this concept resonates with many Non-Indigenous cultures, it does not have the same tacit meaning to many Indigenous cultures. The human actor within a Indigenous groups is carrying their home with them as they travel (Pratt, 1992). Therefore, the concept of home to Indigenous groups takes upon an ethereal definition. Home is experience i.e. thinking in terms that one knows they are home because the experiences are not new and the familiar surrounds the society or individual. Housing therefore holds little meaning to most Indigenous groups due to the inherent difficulty in modifying experience.

Regardless of what differing concepts of housing exist the term must be deconstructed in order to properly resonate across multiple cultural and social groups; however, to pioneer settler societies that make policy effecting home ownership the ideal supersedes the experience. This elicits a demand driven response to Indigenous land tenure and housing practices and forms the basis for question 1.3.

1.3 *What are the law and policy responses by European colonists in four pioneer settler societies to Indigenous land tenure and housing practices?*

The response to Indigenous land tenure and housing practices by Non-Indigenous pioneer settlers was usually negative. This negative response was a result of the perception that Indigenous people were unenlightened people. The responses to land tenure and housing practices of Indigenous people occurred in three forms: 1) dispossession or outright seizure of Indigenous lands which was then given over to Non-Indigenous settlement, common practice throughout the history of all four study nations; 2) Passage of laws which discouraged or ignored recognition of native title to lands/homelands, terra nullius used in Australia and discovery doctrine used in other areas for this purpose; 3) Creation of policies that were discriminatory towards Indigenous land tenure and home ownership practices. All of these reactions to Indigenous practices were conducted out of ignorance, assuming that the 'Indian problem' would eventually disappear through acculturation or annihilation. This was not to be the case as was seen throughout each of the four case studies where Indigenous groups persevered even after such heavy handed reactions were used against them as was seen in Question 1.4.

1.4 *What influenced the generally negative response by European colonists to the land tenure and housing practices of Indigenous peoples?*

To answer this question, the research focus shifted from historical sources of legal doctrine and policy to contemporary discourse. These contemporary sources were in the forms of reports published or commissioned by government agencies that reported of the socio-economics of Indigenous peoples in their respective nations. These reports demonstrated a great need for investment of government resources would be required to improve the standards of living of Indigenous peoples in Australia, Canada, New Zealand, and The United States. The example of the Merriam Report was especially striking as it demonstrated the vast inequity between Indigenous and non-Indigenous peoples in The United States fairly early during the early attempts to address inequity (Chapter 5).

The outcome for Indigenous peoples as a result of the responses to their land tenure and housing practices was a stagnation of development. Indigenous society began to suffer, because it was unwilling to forcibly adapt to the non-indigenous customs and traditions that were imposed. No longer were tribes able to carry out their hunting practices in the American Southwest having been put onto reservations and now expected to be pastoralists on land that was incapable of supporting such practices. The Maori in New Zealand suffered under Non-Indigenous practices through rapid urbanisation of what was prior to settler arrival a predominately rural culture. To say that the consequences of Non-Indigenous reactions to Indigenous land and home practices were all negative is not unsound; however, discourse is beginning to shift from this notion.

10.2.3 Objective 2: Examine the evolution of contemporary policy approaches to Indigenous housing and land tenure in four pioneer settler societies.

This objective arose out of a direct response to the most recent policies that have effected concepts of land and home. The idea that there is not a quick fix for addressing these concepts through policy as there will never be full acculturation or rectification between Indigenous and non-Indigenous views is not a new one. In spite of this, attempts have been made in recent years to rectify the issues of non-Indigenous dominance in determining concepts of home and tenure. These attempts are usually in the form of equity; goals such as achieving socio-economic equality between Indigenous and Non-Indigenous people have become commonplace. A significant problem with lofty goals such as this is impracticality. This leads to the first question in objective 2:

- 2.1 *What are the similarities and differences in responses taken by Canada, New Zealand, the United States, and Australia to redress negative outcomes of government created Indigenous policy on land tenure and housing in recent decades?*

This question was answered through the lessons learned sections in the each of the case study chapters 4,5,6 and 7. Each study nation posed its own approach for mitigating tenure and housing issues. A general theme common amongst the responses was one of self-reliance. The idea of Indigenous people being governors of their own welfare resonated deeply. For government, the concept of self-determination had the added benefit of demonstrating little obvious influence upon Indigenous decision-making. Perspectives were being taken onboard by policymakers that up till that point in time had been ignored. This is representative of allowing some autonomy policies of government; however, the practices of self-reliance took this a step further in the United States (Chapter 5).

The United States having dispossessed many millions of hectares of land from Indigenous societies throughout began to see the detrimental effects this was having. Many tribes had control over only a small land area and were unable to generate enough revenue from these lands to support themselves creating a culture of dependency in regards to the government having to subsidize Indigenous peoples. To combat this, gaming was introduced as a way to generate incomes that Indigenous groups could subsist off of. This was successful and allowed many tribes to live at or near the standard of living most non-Indigenous Americans had experienced; however, the one caveat to this successful policy is its unequal effectiveness. It did benefit many Indigenous groups, but only if they were located in proximity to a substantial non-Indigenous population. Those who were not as fortunate have seen no benefit from this policy and continue to subsist through other means. This problem of unequal benefit leads into the second question for this objective.

2.2 *How effective are recent policy approaches to land tenure and housing to improving the societal well being of Indigenous people in their respective nations to their Non-Indigenous counterparts?*

To answer this question the researcher looked at well being data from each of the pioneer settler societies. From this data it was determined in Chapter 9 that social factors drove policy responses to tenure and housing. These factors were closely linked to policy outcomes in other related fields such as health, education, and environment. An assumption was being made that policymakers were potentially aware of and that was weight each of the determinants was given. The factors which underpinned responses were therefore base upon values that mattered most to who was making policy (Provision, 2009). This revelation led to a questioning of the effectiveness of policy to improve the well being of Indigenous people.

Additionally this question used the evidence provided in the reporting methods of each of the four pioneer settler societies that depicted policy success based upon benchmarks measured in Human Development and well being. These benchmarks were set in order to make declaratory statements that policy was more effective in certain societies than others all the while providing justification for spending in areas where little to no improvement in Indigenous well being was observed. This means for measuring successful policy responses made for good press, but did little to change the societal well being of Indigenous people. This has so been observed in the results (to date) of 'the intervention' where benchmarks have been set some of which been met while other have seen no or negative improvement (Chapter 4). Mixed results would suggest a closer watch upon where expenditure is taking place is needed; however, this has not been allowed to occur due to the social stigma that could be incurred through a change in policy. The policy response might be bad but there are no positive alternatives available to government. Subsequently it is a necessity that government be seen as doing something to improve the well being of Indigenous people or otherwise face a potential backlash in the court of public opinion. Therefore, action where Indigenous policy is concerned is perceived as being better than inaction regardless of its effectiveness. This finding suggests that policy reform is needed to not only reduce costs associated with ineffectiveness, but to alter the perception of policy work to parties outside of the process. Undertaking such a tactic would spare government the high cost of overspending to elicit quick results as well as permit the policy process play out with the support of the public. Additionally this would afford government the needed context to support informed policymaking activities.

10.2.4 Objective 3: Identify and examine Indigenous land tenure and housing policy reforms in Canada, New Zealand, and the United States, which have led to successful outcomes and contextualize the lessons for an Indigenous policy framework in remote Australia.

To achieve this objective, policy reform in the four nations was examined, to provide positive examples of outcomes in housing and tenure. The approaches and requirements for successful implementation was also a factor in determining how successful outcomes could be contextualised for Australia.

3.1 What policy reforms have been enacted in Canada, New Zealand, and the United States that have led to positive changes in Indigenous land tenure and housing outcomes?

Reforms to land tenure and housing have been met with mixed result. Mixed in reference to the impact positive or negative that has been made by the policy change. In the Section 6.5, Maori people experienced an absence of their original policy agreement made with government during the treaty process. This was criticized, because had policies written into the Waitangi Treaty been supported, it would have avoided a large amount of conflict between Maori and settlers. The fact that it was not honored was speculated to mean that treaty language gave Maori people (near) equal footing to their Pakeha counterparts. This example illustrates that even the most thought out policy cannot be successful without mutual understanding and support of all stakeholders.

To measure success perspective was also examined. A government or non-indigenous policy maker may denote successful reform as meeting their preset determinants of health, employment, and education were being achieved. This explanation exhibits an understanding of policy that is goal oriented. Results must be produced; as that is the only factor that government should concern itself with. Other factors such as how successful policy was achieved can provide a roadmap for repeatability and justify future policy efforts. In spite of these perceived oversights, effort has been made in achieving successful outcomes.

3.2 What are the key factors that lead to successful land tenure and housing policy outcomes in Canada, New Zealand, and the United States?

The dominant reason for successful outcomes was tenacity. This was on the part of stakeholders and policymakers to stay the course i.e. when problems arose it would not be cause policy development to cease. This could be in the form of a negotiated agreement between stakeholders or a mean for contextualizing the situation based upon local needs (W. Fisher et al., 1999; Ury, 1991).

10.2.5 Objective 4: Develop a policy framework for integrating Indigenous and Western perspectives on land tenure and housing in Australia

This objective was achieved through the production of a policy framework shown in Chapter 9. Representing a culmination of research effort for this thesis, the framework acts as a toolkit for future policy work. Facilitated through eight underlying ‘building blocks’ that are essential to achieving successful policy outcomes are the answer to questions 4.1 and 4.2.

- 4.1 *What perspectives on land tenure and housing policy in Australia are essential to producing an inclusive and lasting policy framework?*

Responses to the policy framework were determined through an examination of past policy reactions. These reactions provided a good sense of what typical responses might be; however, as they are based upon perspectives dependant upon current policy, they are unable to provide a full picture. Therefore, in answering question 4.1, more questions arise leading to numerous avenues of further research beyond the context of this thesis.

- 4.2 *What policy elements are essential to developing an Indigenous land tenure and housing policy framework?*

The perspectives essential to producing a lasting policy framework formed the basis for the eight ‘building blocks’ of good policy present in the framework. These principles were derived from the lessons learned from examples of Indigenous policy in four pioneer settler societies that was additionally supported by a meta-analysis the showed in what areas each pioneer settler society needed to improve upon the support a closing of ‘the gap’ in well being between Indigenous and Non-Indigenous peoples. The ‘building blocks’ found in the proposed framework for the reform of policy outcomes in land tenure and housing in remote Indigenous Australia afforded the needed perspective.

Furthermore perspective was found to be that most divisive as well as the unifying factor in policymaking efforts. Perspective was not fully dependant upon understanding housing, land and culture in order to produce a heuristic for the set of best practices to conduct policymaking efforts in a manner suitable for the environment. Instead it provided the mortar between the eight policymaking ‘building blocks’ allowing them to support and interact with each other. As such perspective forms completeness to policymaking efforts by affording a holistic understanding of the process allowing for the best environment possible for the creation policy that improves Indigenous well being. This echoes a need for acceptance of the presence and influence of perspective (especially those apart from ones own) upon policymaking activities and the notion that a holistic perspective is essential to producing a lasting framework for Indigenous land tenure and housing in remote Australia.

10.3 Summary of Findings

Based upon the aspects of policy that were informed by the research objectives and supporting questions, a summary of the findings will now be discussed. This summary demonstrates the achievement of the original research objectives of this thesis. One finding important to achieving the research objectives emerged from the examination of the past policymaking efforts of each pioneer settler society. It was demonstrated, there was a common pattern repeated across all four nations whereby nations dispossessed Indigenous people of their lands, which also dispossessed many of these people from their culture. This troubling pattern greatly affected relations between Indigenous and Non-Indigenous people. Additionally it was found that dispossession effectively created the initial deficit in well being when compared to the recently arrived Non-Indigenous settlers. The cause for the deficit in well being was also found in this thesis the result of how each side perceived one another. As Non-Indigenous people had a technological advantage in addition to a philosophy of land and housing that was incongruent with the ones held by most Indigenous people they encountered, their belief were subjugated because they were perceived to be inappropriate.

In Chapter 2, an extensive effort was made to explore the notion that perspective was essential to understanding how Indigenous policymaking efforts operate. This was not lost on the research as perspective was used to legitimize even some of the most questionable policymaking decisions. While these decisions often increased the status and well being of many Non-Indigenous people in pioneer settler societies it did little and as exemplified by Australia increased disadvantage amongst Indigenous Australians. From this occurrence of well being decline, a connection to poor policymaking resulting from skewed perspective was found. As perspective itself is difficult to change aim of this thesis was to focus upon reframing policymaking. This also included a highly developed understanding of multiple perspectives upon how to conduct Indigenous policy. An examination of the perspective held upon land tenure and housing found:

Similar understanding across several pioneer settler societies that land was a commodity according to Non-Indigenous people and was a *Raison d'être* or an embodiment of being according to Indigenous people.

- Housing was clearly defined by Non-Indigenous people and was more conceptual for most Indigenous people i.e. it was part of the land rather than a possession.

These beliefs on perspective were additionally through evidence provided on the varying types perspective that contained certain embodied values (Section 3.2.1).

Additional findings emerged from an examination of Indigenous policy in Australia, Canada, New Zealand, and The United States that demonstrated a common practice of borrowing ideas to support domestic policymaking efforts. From a discussion on this activity and a comparison of

policy between the four nations through a meta-analysis (Chapter 8), 'building blocks' for better policymaking efforts were identified. These 'building blocks' helped to guide policymaking in a new direction with the intent to improve Indigenous well being. Giving proper consideration to all impacts both positive and negative that could result based upon a policy decision, this had implications for current and future policymaking efforts as will be discussed in the next section of this chapter.

10.4 Implications

Numerous implications can be drawn from the use of a new policymaking framework for land tenure and housing in remote Indigenous Australia. These implications will be discussed in terms of their applicability to policymakers, Indigenous Australians, government, and other pioneer settler societies.

10.4.1 Policymakers

The central theme of good policymaking in practice showed that it is a highly complex exercise with no 'magic bullet' to engender positive outcomes. The degree of difficulty to make good policy is unquestioned; however, the positive changes to policy that are required to improve the outcomes are difficult to obtain without a proper perspective on policymaking other than the ones policymakers have themselves. Policymakers should consider these alternative perspectives and what values they could impart to the policymaking process to improve the likelihood of its success.

Policymaking conducted while removed from the policy environment is bad conduct as it ignores the importance of perspective and is dismissive of knowledge obtained by means other than those found in formal education practices. As such policymakers lack the necessary life skills to understand their efforts in a holistic manner. Additionally they are hindered from policymaking from a remote location that is geographically separated from the area in which their policies will be implemented.

In addition to their perspective and location, policymakers need to consider the utility of all available information so that they can understand the implications and potential future impacts of the policy that they create. This holistic understanding of policy best equips policymakers to construct effective policy for remote Indigenous Australia that cause no decline in well being. Lastly, the eight 'building blocks' developed in this thesis as components of a policymaking framework are recommended for active use to guide and facilitate positive outcomes for Indigenous Australians. This would best achieve the stated aim of this thesis as well as establish

useful partnerships within government and with Indigenous groups to create an environment for continuous improvement in Indigenous policymaking efforts.

In summary, this research has the following recommendations for policymakers;

- Develop a clear understanding of different perceptions and perspectives of stakeholders affected by policymaking activities.
- On the occasion that an opportunity to form partnerships between stakeholders and policymakers presents itself seize upon it to foster better understanding and the chance to facilitate improved policy outcomes
- Do not rely solely on policymaking activities and information conducted and gathered at sites removed from the policy environment and instead incorporate Indigenous knowledge when appropriate.

10.4.2 Indigenous Australians

The lands upon most Indigenous Australians dwell in remote areas contain valuable assets from the perspective of Non-Indigenous people. These lands are also places with which Indigenous Australians are emotionally and spiritually attached. As important places to cultural heritage and daily importance, much of remote Australia is a study in conflict. To accommodate the interests of Non-Indigenous peoples and their subsequent impact upon the lands is nearly as injurious to Indigenous Australians as their original dispossession. Therefore it is essential that Indigenous Australians be given the opportunity to intervene in the activities on Non-Indigenous peoples upon their lands. This would give Indigenous Australians the opportunity to protect their lived experience on their lands and the ability to continue their traditional management practices where possible.

The notion of handing day-to-day management of Native lands over to Indigenous Australians is a sound one. It takes advantages of their local knowledge and capabilities as stewards that has been garnered over millennia to facilitate the best possible outcomes for their well being as well as the integrity of the land itself. Additionally the ability to access Indigenous lands would require direct negotiations thereby avoiding some of the pitfalls associated with land management done from a distance.

Indigenous housing in remote Australia in its varied forms practices low environmental impact living on the land. This effectively implies that most traditional Indigenous settlements would be classified as substandard by Non-Indigenous people. As an antidote to this negative perception Indigenous Australians could be brought in to work with or as policymakers to create forms of

housing that are culturally appropriate. This would make direct use of Indigenous Australians extensive knowledge of customs and traditions around housing leading to a better duty of care with the housing as a result of the collaborative product being something that can be identified with. Such a process would additionally utilize the eight 'building blocks' created to foster improved policy outcomes by lessening tensions and conflict over land tenure and housing managed in remote areas.

With respect to Indigenous Australians the following recommendations are made:

- Facilitate better cooperation with or the promotion of leadership in policy to Indigenous Australians in terms of land tenure and housing management.
- Actively engage with policymakers, government, and other possible stakeholders to ensure that the extensive knowledge of the local environment Indigenous Australians possess can be utilized to promote positive policy outcomes

10.4.3 Government

There is a vested interest in the land in remote Australia by government as it contains valuable natural resources that facilitate commerce and economic growth in many areas of Non-Indigenous Australia. This growth should also be felt locally in the remote areas where it is initially being generated. To secure growth locally government should consider provisions that ensure a knock on effect whereby a smaller proportion of wealth leaves the area only to be reinvested locally. For instance, a regulatory framework is already in place to ensure that some benefits of extracting resources from Indigenous land do indeed benefit Indigenous people; however, a large amount of goodwill on the part of the resource companies is relied upon. The government could therefore act as impartial middleman to facilitate commerce benefiting from utilizing Indigenous land to ensure that a large proportion of wealth generated would be reinvested into the local economy to the benefit of Indigenous people.

Government should also consider the housing needs of Indigenous people in remote parts of the country. They should be mindful that it is rare that the types of housing seen in Non-Indigenous communities throughout Australia are appropriate for Indigenous communities. Additionally the deliverables of government led housing policy should not be stressed so much as the needs of the community. This push for quality housing over quantity would focus on the needs of Indigenous Australians and how government can work with them in a cooperative manner to meet their housing needs. Additionally cooperative action to address disparities in Indigenous housing would lead to other related avenues of collaboration alluding to potential improvement in all aspects of well being in remote Australia. Additionally this would meet the stated goals of government policy for Indigenous peoples to close 'the gap' in disadvantage.

Subsequently the following recommendations to government arise from this research:

- Avoid dictating land tenure and housing policy to remote Indigenous Australia without first having the appropriate context for the proposed policy.
- Engage and seek council with Indigenous Australians who might be disadvantaged in the name of growth.
- Focus upon the effects of policy decisions both positive and negative with respect to how these effects may be connected to the expected policy outcomes.

10.4.4 Other Pioneer Settler Societies

Policy concerning Indigenous land tenure and housing is utilized in some form in almost every country that currently has an Indigenous population that is culturally distinctive from the national population. This is true of Canada, New Zealand, and The United States where the need to increase Indigenous wellbeing to the same levels experienced by Non-Indigenous peoples is just as important as in Australia. With that said there are many common issues facing pioneer settler societies. For example, the geographic distinctiveness of many Indigenous groups requires creativity when trying to eliminate disparities in land tenure and housing. This is not lost on most pioneer settler societies where a one-size fits all approach is rarely seen. Pioneer settler societies therefore can learn from each other either through observation of past policy missteps and vaccinating their own Indigenous policies against such issues. Additionally it may be possible to facilitate cooperative efforts to resolve supranational policy issues.

What learning from other pioneer settler societies provides is additional utility and flexibility to conceptualize a potential solution a problematic aspect of Indigenous policy. It draws on the common policy problems to observe a new perspective on how policy can be managed. This represents a symbiotic relationship in policymaking when faced with a laborious task. A division of labour in policymaking offers many advantages and was why looking at policy procedures from other pioneer settler societies will prove invaluable to Indigenous policymaking efforts in Australia by helping a difficult task becomes achievable. To ensure this, the following recommendations are made to the other pioneer settler societies in this research:

- Value collaborative efforts on policymaking highly by acknowledging their importance to achieving positive outcomes for Indigenous people thereby encouraging other nations with Indigenous populations to seek innovative solutions to improving wellbeing

- Focus on both positive and negative aspects of policymaking efforts to lead and learn by example.
- Treat policymaking as a challenge that achievable with assistance from foreign sources and difficult using only domestic ideas.

10.5 Recommendations / Avenues for Further Inquiry

Policymaking is a dynamic process; this section will discuss this by providing recommendations for avenues of further inquiry. These recommendations will be presented in relevant terms to researchers, policymakers, and stakeholders in Indigenous land tenure and housing policy efforts.

This thesis examined past and current land tenure and housing policy for Indigenous Australians living in remote areas. As a broad topic this research was limited in its scope of inquiry by not examining the implementation process of the proposed policy framework. As a product of this omission, it was left to future investigators to gage the reception of a policy framework and how it can be used to support future efforts to produce improved well being in remote Indigenous Australia. In relation to this further study it should be noted that within this thesis research there were several ideas for how implementation may take shape. For example in the case study chapters shown in Part 2, Canada and the United States used the approach of Indigenous led policy and implementation. In Canada this formed the basis for the self-governing territory of Nunavut (Section 6.5). This example showed that when Indigenous people were given a leadership role in policymaking it led to in their well being. Supplementary to this example is found in the US state of Alaska where Natives are given resource management right over large portions of the state that are administered by Native Corporations. A principle investigator should examine the cases of Alaska and Nunavut in greater detail to determine if these approaches do indeed increase the well being of Indigenous peoples. This is highly recommended as anecdotal evidence suggests that these approaches have been effective; however, as statistical data used to calculate human development for these groups of Indigenous people is not available it is not possible to quantify their well being apart from other Indigenous populations at this time.

Furthermore, a focus on national level Indigenous land tenure and housing policy while insightful especially when the focus included analysis of polices across several nations is highly selective. This implies that with effort other relevant nations with large indigenous populations (Such as Finland, Japan, the Russian Federation, and South Africa) could be included to further clarity in making recommendations for policy reform. This future research could also incorporate additional context due to semantic differences resulting from working in multiple languages. As a

result, further study into countries outside of those identified in this thesis as pioneer settler societies would enhance awareness of different perspectives on Indigenous land tenure and housing policy. To support this the incorporation of Indigenous voice should also be apparent, as it would serve to provide balance to any observations made about policies concerning Indigenous people. A similar practice is suggested by Altman (2006), and Kenny et. al (2004), to ensure that policy responses are culturally appropriate. Thus, when using additional policy studies to examine practice in Indigenous policy it should become common practice to incorporate Indigenous voice into the discussion. This incorporation would greatly assist the policymaking process not only in a holistic sense, but also improve relationships between Indigenous and Non-Indigenous through active engagement rather than pandering or paternalism as has been commonplace in Australia and elsewhere historically.

One advantage to an expanded research project is that many of the means of obtaining and analysing data are scalable to meet the needs of such an increased study scope. The greatest challenge will be the availability of data in a relatively similar format to that, which has already been collected for this thesis. Scaling the research could potentially produce further innovation in Indigenous policy research thereby encouraging refinement of the framework for reforming Indigenous land tenure and housing policy to suggest approaches to other related inequalities such as health, education, and employment.

10.6 Closing

This chapter has provided a comprehensive summary of the thesis research. It was accomplished through the restatement of the research design and a walkthrough of the thesis objectives and supporting questions as well as further implications for research. The walkthrough was fashioned to affect a sense of closure to a complex topic. In Section 10.1 a summary of the research questions and objectives framed the research findings provided a roadmap to the research aim of producing an Indigenous policy framework to produce improved outcomes in land tenure and housing in remote Australia.

A summary of findings was discussed in Section 10.2, using the products of the research case studies in Chapters 4,5,6,7 as well as the meta-analysis and policy framework (Chapters 8 and 9 respectively). It was found that the use of case studies of Indigenous policies enacted in several nations could indeed inform policy in Australia. This was found to be the case during historical periods of policymaking where the outcomes from legal proceedings in Canada and The United States were utilized to inform legislation in Australia. This appropriation of legal knowledge concerning Indigenous people was unsettling due to the assumed ease of transferability. Had it

been contextualised following the principles that were established in the new policy framework, there would have been a far greater chance of success.

Section 10.3, discussed the implications of the findings from the research objectives and questions examining issues such implementation of a policy framework and the difficulties associated with such an endeavour. It was demonstrated that a paradigm shift was indeed needed to further and effective policy development process. Whether or not this shift in thinking would actually take place was left to speculation. Other implications such as how changes in policy might effect the allocation of scare resources were also examined.

The final section of the chapter posed future avenues of inquiry for this research topic and others that are closely related. As policymaking is a continuous process there are many opportunities open for later research. This included a shift from conceptual research to field study where new policy would be tested to gage its overall utility. The door never closes on policy work and there is always room for improvement provided there is a willing partnership on the behalf of the policymakers and stakeholders. This involves a clearly defined audience, a context under which policy is being designed, understanding the cross-cultural effects of policy decisions, having a valid perspective, proper management skills, being sensitive to the local socio-political environment, understanding the short and long term effects of policy, and most importantly consistency in policy implementation. Using these 'building blocks' will not only assist in facilitating policy, but improve the process of policy development.

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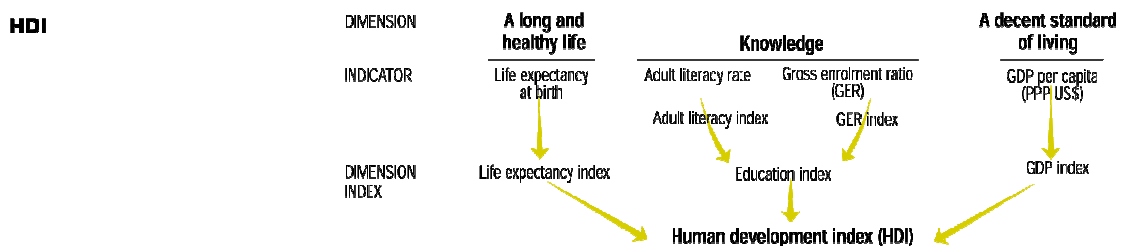
Appendix

Calculating the Human Development Index

This appendix provides a brief overview of how the Human Development Index (HDI) is calculated. The primary focus of the HDI is to provide a measurement of how developed one country is compared to another. For the first twenty years of the index this was calculated based upon three supporting datasets:

- Average Life Expectancy;
- Rate of Adult Literacy / Educational Attainment;
- Purchasing Power Parity (PPP) per capita

The United Nations uses this illustrative in their 2009 Human Development Report to further explain the calculation:



The above HDI gave a fairly accurate score for human development clustering most industrial and post industrial nations fairly high on the index. However, the methodology some problems where measuring nations that has very similar inputs. Partly to counteract this problem and to more accurately measure rates of inequality in each nation, the methodology has added and modified several components: the example used in the 2010 Human Development Report is China : the HDI scores from 2010 onwards average five hundredths of a point lower than the former methodology

$$\text{Life expectancy index} = \frac{73.5 - 20}{83.2 - 20} = 0.847$$

$$\text{Mean years of schooling index} = \frac{7.5 - 0}{13.2 - 0} = 0.568$$

$$\text{Expected years of schooling index} = \frac{11.4 - 0}{20.6 - 0} = 0.553$$

$$\text{Education index} = \frac{\sqrt{0.568 \cdot 0.553} - 0}{0.951 - 0} = 0.589$$

$$\text{Income index} = \frac{\ln(7,263) - \ln(163)}{\ln(108,211) - \ln(163)} = 0.584$$

$$\text{Human Development Index} = \sqrt[3]{0.847 \cdot 0.589 \cdot 0.584} = 0.663$$

B

Appendix

Content Analysis of Research Libraries and Archives

This appendix provides a comprehensive list of sources consulted at various research libraries and archives using Boolean Logic prior to viewing these sources. The Data is displayed in four tables representative of the four nations in which research data was retrieved.

Location Code	Title (Partial)
AUBLIT001	Reconciliation and colonial power : indigenous rights in Australia / Damien Short.
AUBLIP002	Indigenous rights and United Nations standards : self-determination, culture and land / Alexandra Xanthaki
AUBLIT003	Negotiating claims : the emergence of indigenous land claim negotiation policies in Australia, Canada, New Zealand, and the United States / Christa Scholtz.
AUBLIP004	Settling with indigenous people : modern treaty and agreement-making / edited by Marcia Langton ... [et al.]
AUBLIH005	Indigenous housing 1996 census analysis / Roger Jones.
AUBLIH006	Settlement : a history of Australian indigenous housing / edited by Peter Read
AUBLIH007	Agreement on national indigenous housing information.
AULLIT001	Mabo in the courts : Islander tradition to native title : a memoir / Bryan Keon-Cohen.
AULLIP002	Territorianism [electronic resource] : politics and identity in Australia's Northern Territory 1978-2001 / David Carment.
AULLIT003	Contesting Native Title [electronic resource] : From Controversy to Consensus in the Struggle Over Indigenous Land Rights.

Location Code	Title (Partial)
CAKLIP001	Crossed purposes : the Pintupi and Australia's indigenous policy / Ralph Folds
CAKLIP002	Let right be done [electronic resource] : Aboriginal title, the Calder case, and the future of Indigenous rights / edited by Hamar Foster, Heather Raven, and Jeremy Webber
CAKLIT003	Matrimonial real property on reserves [electronic resource] : our land, our families, our solutions / Assembly of First Nations
CAKLIP004	First Nations sacred sites in Canada's courts [electronic resource] / Michael Lee Ross.
CAKLIH005	Draft discussion paper for the development of the on-reserve BC First Nations housing action plan
CALLIP001	First Nations, Métis and Inuit health care [electronic resource] : the Crown's fiduciary obligation / Yvonne Boyer.

Location Code	Title (Partial)
NZNAIH001	Maori Housing (R15967486)
NZNAIL002	Maori Land (R1646133)
NZNAIL003	Maori Land (R18842611)
NZNAIL004	Maori Land (R18842613)
NZNAIL005	Maori Land (R18842699)
NZNAIL006	Royal Commission on Native Lands and Native Lands tenure [record group] (16085)

NZNLIH001	Maori Housing Amendment 1985 No.115
NZNLIH002	Some aspects of Maori housing By: Rosenberg, G,
NZNLIH003	Housing for Maoris and Islanders New Zealand. Dept. of Maori Affairs
NZNLIT004	[Māori land tenure] Shortland, Edward, 1812-1893
NZNLIT005	Principles of Maori land tenure : a bibliography Sissons, Lesley.; New Zealand Library School.

Location Code	Title (Partial)
USBRIT001	Pagans in the promised land : decoding the doctrine of Christian discovery / Steven T. Newcomb
USBRIT002	Big Sycamore stands alone : the Western Apaches, Aravaipa, and the struggle for place / Ian W. Record.
USBRIT003	Report of the Native American sacred lands forum
USBRIT004	You are on Indian land! : Alcatraz Island, 1969-1971 / edited by Troy R. Johnson.
USBRIT005	Ecocide of Native America : environmental destruction of Indian lands and peoples / Donald A. Grinde, Bruce E. Johansen ; foreword by Howard Zinn.
USBRIT006	Native American estate : the struggle over Indian and Hawaiian lands / Linda S. Parker
USBRIT007	Protecting Indian natural resources : a manual for lawyers representing Indian tribes or tribal members / by Allen H. Sanders, Robert L. Otsea, Jr. ; prepared for the Indian Law Support Center of the Native American Rights Fund under a grant from the Legal Services Corporation
USBRIP008	The Stealing of California
USBRIH009	Do all Indians live in tipis? : questions and answers from the National Museum of the American Indian / foreword by Rick West ; introduction by Wilma Mankiller.
USBRIT010	Riding buffaloes and broncos : rodeo and native traditions in the northern Great Plains / Allison Fuss Mellis
USBRIT011	INDIAN GIVER: THE ILLUSION OF EFFECTIVE LEGAL REDRESS FOR NATIVE AMERICAN LAND CLAIMS
USBRIP012	North American Indians : a very short introduction / Theda Perdue and Michael D. Green.
USBRIP013	Place and native American Indian history and culture / edited by Joy Porter.
USBRIP014	American Indian nations : yesterday, today, and tomorrow / edited by George Horse Capture, Duane Champagne, and Chandler C. Jackson.
USBRIP015	Legislating Indian country : significant milestones in transforming tribalism / Laurence Armand French.
USBRIP016	Talking back to civilization : Indian voices from the Progressive Era / edited with an introduction by Frederick E. Hoxie.
USBRIP017	Strangers in their own land [videorecording].
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