

INDIGENOUS SELF-DETERMINATION: RETHINKING THE RELATIONSHIP BETWEEN RIGHTS AND ECONOMIC DEVELOPMENT

LARISSA BEHRENDT*

I INTRODUCTION

The centenary of Federation is an appropriate time for reflection on how well the *Australian Constitution* ('Constitution') serves our society today. For Indigenous peoples, it provides an additional impetus to encourage non-Indigenous Australians to reflect upon the impact of colonisation on Indigenous communities and the extent to which Indigenous rights remain vulnerable today. In making this assessment, we can also consider how well the institutions of governance it has created have worked for the most socioeconomically disadvantaged cultural minority in Australia. It is thus a time for reflection upon both the way in which our modern system of government was established and the way in which it may or may not fulfil the needs and embody the values of our communities today.

The statistics highlight the undeniable socioeconomic disparity between Indigenous people and all other Australians in every measurable service sector: access to medical treatment, education, employment and economic development.¹ The processes of dispossession and colonisation have placed Indigenous communities in a cycle of poverty: poor health, little education, high rates of unemployment, low incomes, and poor access to essential services.² Perhaps the greatest condemnation is that many of these disparities occur in areas that are considered to be unquestioned rights to all other Australians.

* Professor of Law and Indigenous Studies and Director of the Jumbunna Indigenous House of Learning, University of Technology, Sydney. Thanks to Jilpia Jones, Hannah McGlade, Lisa Strelein, George Williams, Andrew Mowbray and Kris Faller.

1 See Aboriginal and Torres Strait Islander Commission, *Indigenous Australians Today* (1999); Australian Bureau of Statistics, *Australia Now – A Statistical Profile of Australia* (2000) <<http://www.abs.gov.au>> at 30 October 2001; Federal Race Discrimination Commissioner, *Face the Facts* (1997).

2 See the conclusions and recommendations in both Royal Commission into Aboriginal Deaths in Custody, *National Report: Overview and Recommendations* (1991); and the Human Rights and Equal Opportunity Commission, *Bringing Them Home: A Guide to the Findings and Recommendations of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (1997).

There are two answers that are often proposed as the solution to these socioeconomic disparities:

- a welfare approach to breaking the cycle of poverty by injecting funds into the areas of need, an approach sometimes referred to as ‘practical reconciliation’; and
- a rights framework that focuses on altering the institutions that can continue the colonisation process.

This paper will look at the tensions between the concept of ‘practical reconciliation’ and the development of a broad Indigenous rights framework. It seeks to address some of the concerns about a big picture approach to achieving a more equitable and just society through constitutional, legislative and jurisprudential change. It also argues that, while the link between economic issues and rights issues is not being made, the notion of ‘practical reconciliation’ is antagonistic to a broader rights framework. The paper discusses the need to take a new approach to the connection between broader legal reforms and economic development, one that moves away from a welfare mentality.

II IN THE BEGINNING ...

Much is rightly made of the fact that the negotiations leading up to Federation did not include Indigenous representation or perspectives. Indigenous peoples were left out of the negotiation process and the deliberations leading up to the drafting of the document that sets out our modern governance structure. Much is also made of the assumptions that were pervasive in the minds of the drafters of the Constitution and in Australian society generally at the time. It was a period in which Indigenous peoples were viewed as a dying race and there was, whether malevolently or benevolently, an assumed racial superiority of white over black.

The legitimacy of the formation of the Australian state is thus vulnerable to questioning about Indigenous inclusion and consent at the time of Federation. This vulnerability is compounded by the question mark left after *Mabo v Queensland [No 2]* (*‘Mabo’*).³ Whilst overturning the doctrine of *terra nullius* and rejecting British claims to Australia on that basis, Brennan J found that Australia had been ‘settled’ and acknowledged that this status could only be challenged in an international court. The Indigenous perspective, that views this ‘settlement’ as an invasion, points to the unsuccessful resolution of that assertion of British sovereignty. It is this grey area that leaves the legitimacy of the Australian state open to question and it is compounded by Indigenous exclusion from the nation-building processes that led up to Federation. While Indigenous exclusion and assumptions about white racial superiority leave open the question of legitimate nation-building, they also give some insight into why the Constitution is seen as being a continuation of the colonisation process.

3 (1992) 175 CLR 1.

III A CONTINUING LEGACY

An example of how those ideological legacies can still permeate our laws and institutions can be seen in *Kartinyeri v The Commonwealth* ('*Hindmarsh Island Bridge Case*').⁴ In that case, the issue was raised whether the race power (s 51(xxvi) of the Constitution), which allows the federal government to make laws with regard to Indigenous people, could be used to deprive Indigenous people of their rights. The plaintiff had brought an action to prevent development on land she asserted was sacred to her. The Government sought to settle the matter by passing legislation, the *Hindmarsh Island Bridge Act 1997* (Cth), designed to repeal the application of heritage protection laws to the plaintiff. She argued, inter alia, that when Australians voted in the 1967 referendum to extend the federal race power to include the power to make laws concerning Aboriginal people, it was with the understanding that the power would only be used to benefit Indigenous peoples.

Although the Court did not directly answer this issue, finding that the *Hindmarsh Island Bridge Act 1997* (Cth) merely repealed existing legislation, it is interesting to note the arguments of the defence. On behalf of the Federal Government, the Solicitor-General argued that there was nothing in s 51(xxvi) to prevent the government using the power to pass racially discriminatory laws, including Nazi-style laws.⁵ As abhorrent as that idea is – and as much as it appears to be the antithesis of our contemporary social values – there is much, when using ordinary rules of constitutional interpretation, to support this conclusion. One need only look at the intention of the drafters to see why it remains this way.

In fact, a non-discrimination clause was proposed in the Constitution through the Tasmanian Parliament when the instrument was being drafted. The proposed cl 110 was drafted to include the phrase: 'nor shall a state deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of its laws'.

This clause was rejected for two reasons: first, it was believed that entrenched rights provisions were unnecessary; and second, it was considered desirable to ensure that the Australian States would have the power to continue to enact laws that discriminated against people on the basis of their race.

If one is aware of the intentions and the attitudes held by the drafters of the Constitution, then it comes as no surprise that it is a document that offers no protection against racial discrimination today. It was never intended to do so and the 1967 referendum in no way addressed or challenged those fundamental principles that remain entrenched within its text. Even if it did, it is difficult to see how such an intention in one sub-section of the Constitution would be enough to counter the ideologies that are imbued in the document as a whole.

Many would point to the 1967 referendum as a *symbolic* point at which the exclusion of Indigenous peoples from Australian nation-building was to some

4 (1998) 195 CLR 337.

5 See George Williams, *Human Rights Under the Australian Constitution* (2000).

extent rectified. And it is true to assert that the ideologies that permeated the drafting process and document 100 years ago are not as dominant in our society today. Indeed, the decade of reconciliation would point to a more tolerant and inclusive attitude of Australians towards Indigenous peoples.⁶ However, these social movements and symbols have not created an end to the socioeconomic disparity between Indigenous and non-Indigenous communities.

Nor has this system of governance turned into a legal regime that recognises and protects the rights of Indigenous peoples. One can track the frustrating struggle for the recognition of Indigenous property rights, including *Milirrpum v Nabalco Pty Ltd* ('Gove Land Rights Case'),⁷ *Mabo*, and the passing of the *Native Title Amendment Act 1998* (Cth) to appreciate the precarious place of Indigenous rights.

Another example of this lack of rights protection is the case of *Kruger v Commonwealth* ('*Kruger*'),⁸ the first 'Stolen Generations' case to be heard in the High Court of Australia ('High Court'). The plaintiffs had brought their case on the grounds of the violation of various rights by the effects of the Northern Territory ordinance that allowed for the removal of Indigenous children from their families. The plaintiffs had claimed violations of the implied rights to due process before the law, equality before the law, freedom of movement and freedom of religion as per s 116 of the Constitution. They were unsuccessful on each count, a result that highlighted the general lack of rights protection in our system of governance and the ways in which, through policies like child removal, there was a disproportionately high impact on Indigenous people as a result of those silences.

IV BREAKING THE LEGACY

Today, over 35 years after the 1967 Constitutional Amendment, Indigenous people are still the most socioeconomically disadvantaged within Australian society and are still vulnerable to systemic discriminatory practices. At the same time momentum gathered for the 1967 referendum, Aboriginal and Torres Strait Islander people began to push even harder for the recognition of their traditional property rights, and for the recognition of their assertion of sovereignty. This protest culminated in the establishment of an Aboriginal tent embassy on the lawn of Parliament House. There were two strains of political strategy being used by Indigenous people at the tent embassy that were integral to Indigenous people's aspirations:

- Indigenous people wanted to be treated the same as all other Australians and demanded the reversal of paternalistic, racist and discriminatory practices; and

6 See generally Michelle Grattan (ed), *Reconciliation: Essays on Reconciliation in Australia* (2000).

7 (1971) 17 FLR 141.

8 (1997) 190 CLR 1.

- the notion of a tent embassy highlighted the fact that Aboriginal people saw themselves as a distinct people, a distinct nation within the borders of the Australian state.

These competing political aims reveal the intricate relationship between claims of equal protection and special protection. They understand the false promise of formal equality and demand something more.

With the benefit of hindsight, we can read these socioeconomic disparities and conclude that formal equality has allowed socioeconomic disadvantage to continue and has done nothing to stop the erosion of Indigenous rights, especially property interests. It is becoming increasingly evident that the formal structures and institutions within Australia are not addressing Indigenous peoples enough to equalise – let alone reverse – the socioeconomic impact of colonisation and past government policies and practices.

V PRACTICAL RECONCILIATION

At the hand-over of the Final Report by the Council for Aboriginal Reconciliation, Prime Minister John Howard announced that his Government rejected the recommendation of a treaty with Indigenous peoples, preferring instead to concentrate on the concept of ‘practical reconciliation’. This ‘practical reconciliation’ describes a policy of government funding in targeted areas that go to the core of socioeconomic disadvantage; namely, employment, education, housing and health:

We are determined to design policy and structure administrative arrangements to address these very real issues and ensure standards in education and employment, health and housing improve to a significant degree. ... That is why we place a great deal of emphasis on practical reconciliation.⁹

Howard targets, only through policy, the main socioeconomic areas. To this end, he pointed to the money he had spent on ‘Indigenous-specific programs’:

A measure of the genuineness of the government’s commitment to practical reconciliation is that the \$2.3 billion now annually spent on Indigenous-specific programmes is, in real terms, a record for any government – Coalition or Labor.¹⁰

What Howard did not detail is that part of that \$2.3 billion went towards defending the ‘Stolen Generations’ case brought by Peter Gunner and Lorna Cabillo in the Northern Territory¹¹ and also towards the various areas of the government arm that were actively trying to defeat native title claims. That is, included in the money allocated for specific policy areas is money spent preventing the recognition and protection of Indigenous rights. It is an image of practical reconciliation that many would want to avoid.

9 John Howard, (Address presented at the Presentation of the Final Report to Federal Parliament by the Council of Aboriginal Reconciliation, Canberra, 7 December 2000) <<http://www.p.m.gov.au/news/speeches/main00.htm>> at 30 October 2001.

10 *Ibid.*

11 *Cubillo v Commonwealth* (2000) 103 FCR 1.

This response, encapsulated in the concept of 'practical reconciliation', signifies an approach to the resolution of the legacies of colonisation that focuses on socioeconomic disparity. In his Menzies Lecture, delivered on 13 December 2000, just a few days after receiving the Final Report from the Council for Aboriginal Reconciliation, Howard stated:

It is true, as was noted recently, that past policies designed to assist have often failed to recognise the significance of indigenous culture and resulted in the further marginalisation of Aboriginal and Torres Strait Islander people from the social, cultural and economic development of mainstream Australian society.¹²

Under this view, current socioeconomic disparity is the result of past cultural conflict and unsympathetic policy making. The approach to policy making has compounded this socioeconomic disparity and has been instrumental in establishing a welfare mentality in Indigenous communities.

This led to a culture of dependency and victimhood, which condemned many indigenous Australians to lives of poverty and further devalued their culture in the eyes of their fellow Australians.¹³

The main issues are dependency, victimhood and poverty, which can be redressed, according to the proponents of 'practical reconciliation', by a more benevolent legislature.

It is absolutely true that past government policies, such as child removal, have contributed to the socioeconomic inequality and systemic racism experienced in Indigenous communities and families today. However, as *Kruger* illustrated, this has been compounded by the absence of a rights framework to offer protection from unfair and racist policy making.

For a Government that claimed that Indigenous problems should not just have money thrown at them, the focus on funding will confine Indigenous empowerment to the policy making area. Further, it will do so in a manner that seeks Indigenous input at only a cursory level. It fails to delegate to the communities who are receiving these measures decision-making powers as to how the money for these programs will be allocated within the communities.

This approach to 'practical reconciliation' does not attack the systemic and institutionalised aspects of the impediments to socioeconomic development. While claiming that 'more handouts' are not going to make a difference, it fails to address the issues and put strategies in place that go to the heart of historical and institutional racism. 'Practical reconciliation' also fails to understand that there need to be real outcomes and protection of rights, and that these include economic rights and property rights. The recognition and protection of these rights would put land under people's feet, allow access to natural and economic resources and work towards ensuring that Indigenous communities are economically self-sufficient.

Without a rights framework that works, there is no opportunity to create and protect the rights necessary for economic self-sufficiency, leaving Indigenous peoples, families and communities dependant on welfare. Even worse, they will

12 John Howard, 'Perspectives on Aboriginal and Torres Strait Islander Issues' (Menzies Lecture Series, 13 December 2000) <<http://www.pm.gov.au/news/speeches/mainoo.htm>> at 30 October 2001.

13 Ibid.

remain dependant upon the benevolence of the government. As can be seen by the contents of the *Native Title Amendment Act 1998* (Cth), the days of governments actively truncating and extinguishing Indigenous rights are far from over. These reasons give some indications as to why the rights framework remains an attractive pathway towards breaking the legacies of colonisation.

VI A RIGHTS FRAMEWORK

In recent times, there has been an emerging voice starting to question the emphasis on the rights framework, with particular frustration expressed at the slowness of the process. It is a compelling claim too, that esoteric talk of constitutional change does not put food on the table or end high levels of violence in the community. It is easy, when placed in that light, to dismiss the focus on the rights agenda as the privilege of the elite.

Granted, structural change, particularly constitutional change, is a long-term goal. However, there are several things that the rights agenda offers Indigenous people even in the short-term.

Firstly, it provides a language with which to communicate about harms suffered and political aspirations held. As *Kruger* highlighted, the existence of an agreed standard of rights creates a medium through which to communicate harms suffered. The plaintiffs in *Kruger* were able to articulate the harms suffered by those affected by the child removal policy and, in particular, were able to show that these are rights that others take for granted, such as freedom of movement and due process before the law.

In a more positive way, the language of rights can provide a means of communicating political aspirations. The principle of the right to self-determination has become a powerful description of the notion of deciding our own future. Indeed, the content of that notion is also expressed in the language of rights: the right to hunt and fish, the right to native title, the right to work, the right to provide for our families, the right to education and the right to adequate health services.

Secondly, the international rights framework already provides minimum standards against which we can hold the federal government accountable, and therefore provides the basis for objective assessment of performance in relation to the recognition and protection of Indigenous rights. Such an objective assessment was particularly evident in the 2000 report by the United Nations Committee on the Elimination of Racial Discrimination, critical of Australia's record.¹⁴ It found that our country, and our government, had failed to meet certain obligations that we, as a nation, have agreed to uphold under the *International Convention on the Elimination of All Forms of Racial Discrimination* ('CERD').¹⁵ The CERD Committee's report expressed concern

14 Committee on the Elimination of Racial Discrimination, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*, Un Doc CERD/C/56/Misc.42/rev.3 (2000).

15 Opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

about the absence of any entrenched law guaranteeing against racial discrimination, provisions of the *Native Title Amendment Act 1998* (Cth), the government's failure to apologise for the 'Stolen Generations' and its refusal to interfere to change mandatory sentencing laws. The need for these objective standards is particularly strong while we are without stronger domestic remedies for rights protection.

The rights framework also offers long-term benefits that should not be dismissed because of the long time-frame necessary for their implementation. It offers the ability to provide renewed protection of Indigenous rights and to substantially change the status quo between Indigenous peoples and the Australian state. Such institutional change needs to be targeted at the Constitution since it is the document that establishes government and, not insignificantly, symbolises our coming together to consent to nationhood.

There are several ways in which the Constitution could better protect Indigenous rights:

- *A new preamble to the Constitution* – a preamble is important because it sets the tone for the rest of the document. It can be used to give assistance in interpreting the Act that follows. Particularly in our Constitution, a new preamble will offer an opportunity to articulate our shared goals, principles and ideals as a nation. If recognition of prior sovereignty and prior ownership was contained in a constitutional preamble, courts may be able to read the Constitution as clearly promoting Indigenous rights protection, clearing up the unanswered question left by the *Hindmarsh Island Bridge Case*.
- *A Bill of Rights* – as *Kruger* showed, very few rights are protected by our Constitution. Those that appear in the text have been interpreted in a minimal manner. Although members of the High Court have implied some rights, this is a precarious approach to rights protection. A Bill of Rights that granted rights and freedoms to everyone would be a non-contentious way in which to ensure some Indigenous rights protection. Public discussion needs to be focused on whether we should have a constitutional or a legislative Bill of Rights. A legislative Bill of Rights could be viewed as an interim step towards a constitutionally entrenched Bill of Rights.¹⁶
- *A non-discrimination clause* – such a clause could enshrine the notion of non-discrimination in the Constitution. Such a clause must also adhere to the principle that affirmative action mechanisms aid in the achievement of non-discrimination.
- *Specific constitutional protection* – the Constitution could be amended to include a specific provision. In Canada, a comparable jurisdiction with a comparable history and comparable relationship with its Indigenous

16 See, in this issue of the *University of New South Wales Law Journal*, George Williams, 'Human Rights and the Second Century of the Australian Constitution' (2001) 24 *University of New South Wales Law Journal* 782. For a full discussion of the legislative Bill of Rights model, see George Williams, *A Bill of Rights for Australia* (2000).

communities, the *Constitutional Act 1982* added the following provision to the Constitution: 'Section 35 (1): the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed'.

- *Repeal s 25* – s 25 of the Constitution contains the clause: 'if by the law of any State all persons of any races are disqualified from voting at elections'. The racist implications of the section offend principles of racial equality and even though it may be unlikely that the States will pass such legislation, we need to move away from expressions of such overt racism in the text of the Constitution.

Some of these steps to improve the Australian rights framework for Indigenous people – a constitutional preamble, a Bill of Rights – would have benefits for all Australians. This reinforces the point that comes out of the litigation in *Kruger*; namely, that many of the rights of Indigenous people that are infringed are not 'special rights' but rights held by all people. On the flip side, measures that protect the rights of all Australians will have particular relevance and utility for Indigenous people.

VII THE LINK BETWEEN RIGHTS AND ECONOMIC DEVELOPMENT

Not all the answers to the problem of breaking the legacies of colonisation lie in the blind implementation of a rights framework. In ensuring that rights mechanisms can be used to counter socioeconomic inequality, the Canadian experience holds many lessons. Canada has several mechanisms in place that work towards greater rights protection, including a constitutionally entrenched Bill of Rights and a clause in its constitution that gives specific protection to Aboriginal and treaty rights. However, except in the areas of health, the socioeconomic statistics are fairly comparable between the Indigenous communities in Canada and Australia. This raises a serious challenge for advocates of the rights framework: if it looks so good on paper, why isn't it working in practice?

Four suggestions can be offered as to why this is so:

- *an economic block* – that communities do not have the economic ability to access rights;
- *a bureaucratic block* – that the bureaucracy both within the First Nations communities and in the federal government is difficult to navigate;
- *a time lag* – that the constitutional protection has only been in place since 1982. With centuries of colonisation and with racist ideologies embedded in the institutions of the state, a longer time will be required to overturn the impediments to rights protection; and
- *the continual impact of negative racial stereotypes* – that the decision-making processes within the framework are influenced by the continuing

and pervasive influence of negative stereotypes about Indian and First Nations people.

The Canadian experience highlights two points of relevance for the Australian context. Firstly, there is a need for a holistic approach to counter 200 years of colonisation. With the persuasive and concerted effort to dispossess Indigenous people and to colonise Australia, it is simplistic to assume that one approach or one strategy is going to effectively address the systemic legacies left by the plethora of legal, political, cultural and social practices that have impacted on Indigenous people, families and communities.

Secondly, there is a link between economic status and the ability to access rights frameworks, indicating a relationship that requires further examination. It would appear that our understanding of the connection between the rights framework and socioeconomic position has, to date, been unsophisticated. There have been two areas where there has been a particularly apparent failure to draw the links between the rights framework and economic development and sustainability:

- advocates of the rights framework have failed to address how that agenda is relevant to everyday issues. The fact that a rights framework could offer protection from the policies that erode Indigenous self-sufficiency is not often mentioned; and
- there has been a failure to introduce the language of rights in communicating about economic issues. Rights such as the right to work, the right to own property, the right to education and the right to a family go to the heart of everyday issues.

VIII RETHINKING RELATIONSHIPS

The situation of Indigenous people in Australia demands a resolution that considers the desirability of socioeconomic equality, the importance of inclusion and the demands of political and cultural recognition. The challenge of improving rights protection needs to be approached with broader strategies than piecemeal court wins and 'band-aid' welfare measures. Finding a better approach to the protection of Indigenous rights is a multifaceted process that must include the following:

- There must be acknowledgment of past wrongs committed against Aboriginal people. This includes acknowledging the failure to recognise Indigenous sovereignty.
- There needs to be a better understanding of how inequalities have become institutionalised, allowing 'formal equality' to become a tool that maintains an unequal status quo and perpetuates injustice.
- There needs to be a thorough understanding of what Indigenous political aspirations are and an exploration of how those aspirations can be accommodated within Australia's institutions. This means understanding

what Indigenous people mean when we say we want our 'sovereignty' recognised and we want to be 'self-determining'.

- Legal victories need to be coupled with attempts to change public (mis)perceptions about Indigenous Australians. These changes need to be further coupled with changes to Australia's institutions.

These steps lead back to the formula of recognition of past wrongs backed up by concrete legal enforcement. At a minimum this involves:

A A National Apology

Central to the recognition of Indigenous rights is the need to recognise past injustices and past discrimination. Though this may seem tokenistic, such recognition has four consequences that could have profound effects on the relationship that Aboriginal people have with the rest of Australia:

- it restores dignity to Aboriginal people, which is fundamental to self-respect and a feeling of acceptance;
- it understands that recognition of the treatment of Aboriginal people and the true story of how Australia was invaded will have a profound effect on Australia's national identity;
- it recognises that prior ownership and sovereignty by Aboriginal people could have legal implications; and
- it also counters the psychological *terra nullius* that allows arbitrary lines to be drawn between the rights of Indigenous Australians and the rights of others.

B A Principle of Substantive Equality

Australia's apparently neutral property laws operate in such a way as to produce a result where the rights of one group of Australians are valued less than the rights of all others. It is not enough that laws appear to be equal on their face; their application must generate equality. Equality needs to be measured not by the mere existence of a rights framework, but by assessing the end results of that framework. The focus needs to be on what happens after the institutions and ideals are incorporated into the legal and social fabric, not on how it looks in the abstract. Equality needs to be substantive and must be judged on its results.

C A National Framework Agreement

There needs to be a negotiated agreement between Indigenous peoples and the Australian state to define the principles and terms of the relationship between the two. Such a framework agreement must allow for further detailed agreement making at the regional and local levels. This process would have two benefits:

- it would begin a process of inclusive and legitimate nation-building – a process that did not take place at the time of Federation; and

- it would allow for the exercise of self-determination at a grass roots level as Indigenous communities would have a greater say over the way they live their lives and their future directions.

IX CONCLUSION

To counter the impacts and legacies of colonisation, there needs to be a holistic approach to the protection of Indigenous rights. This means that the 'either/or' tension that has developed between 'practical reconciliation' and the rights framework needs to be rejected and replaced by strategies, initiatives and policies that seek to develop a better understanding about the relationship between economics and rights. Just as Indigenous political responses have focused both on inclusion and special recognition, viewing them as complementary rather than antagonistic, the approach to the tension between rights and economic development needs to be undertaken in the same holistic manner.

'Practical reconciliation' fails to understand the institutional barriers to substantive equality and it fails to understand that policy changes affecting how money will be spent cannot effect structural changes that will allow communities to break from a welfare dependency.

At the same time, advocates of the rights framework need to focus more intently on the economic rights that can and should be promoted within such a framework. Better links need to be formed between the rhetoric, substance and form of rights protection, on the one hand, and the placing of food on the table, better health, clean water, suitable housing and access to educational and employment opportunities, on the other.

Lessons must also be learnt from the Canadian experience, where rights protection has been improved through the introduction of specific legal mechanisms. Advocates of the rights framework must also concentrate on ensuring that recognition of rights that appear on paper are given tangible effect in Indigenous communities. Ensuring that such transmission occurs will ease emerging scepticism about the rights framework as a workable, practical and useful solution.

Until the relevance of the rights framework becomes clear to those who need its protection the most, the changes needed will not gain the support required to implement them. Without that support, we will be unable to implement the changes that will go to the heart of overturning the psychological *terra nullius* still pervasive in our Constitution, laws and policies.