'One Law for All'

By Hon John von Doussa QC*

In the second century AD, Marcus Aurelius, a Roman emperor and Stoic philosopher, thanked one of his brothers for teaching him to value 'the conception of the state with one law for all, based upon individual equality and freedom of speech, and of a sovereignty which prizes above all things the liberty of the subject'.[1]

In the modern world, 'One law for all' is a much more troubled and ambiguous ideal. From a political perspective it is an appeal to national unity, and so, to social, cultural and ethnic unity. From a legal perspective, it is an appeal to equality before the law. Equality before the law is, itself, a multifaceted and ambiguous concept. Equality can refer to equal or uniform treatment under the law, or it may import notions of substantial equality that attract Aristotle's maxim that like cases should be treated alike, and other cases according to their degree of difference. Equal treatment under the law implies a formal model of equality under which everyone is assessed and treated without regard to their particular circumstances. Equal treatment in this sense pays no regard to individual disadvantage. Substantive equality requires that individual circumstances and disadvantages are compensated for so that the law has equal outcomes for everyone.

Assertions of equality usually imply positive connotations, but may disguise hidden vices. Differences of race, ethnicity, religion, sex and economic and cultural circumstances can mean that 'one law for all' protects the values and interests of a majority of citizens at the expense of minorities. It does so by privileging unity and formal equality over cultural diversity and substantive equality.

Since World War II, lawmakers, especially at the international level, have recognised the extent to which this threatens the very existence of minorities. They have directed attention to the regulation of social, economic and cultural affairs in order to achieve substantive equality of opportunity and outcomes for all peoples. The response has been to confer specific, enhanced rights on vulnerable groups, ranging from cultural diversity and anti-discrimination laws to rights of political, legal and cultural self-determination. At times this has led to tension between, one the one hand, national majorities who seek to invoke formal equality as their touch stone, and use slogans like 'one law for all' and 'unity' to consolidate their grasp on power, and, on the other hand, minority groups who appeal to principles of social and economic justice, multiculturalism and biculturalism in order to gain for themselves a just outcome.

I propose to approach the topic from a human rights perspective. For this reason I first discuss three types of rights recognised in international law that lie along the spectrum of this tension: (a) universal individual human rights; (b) minority rights which reflect universal rights but which also seek to protect and promote substantive equality within disadvantaged groups; and (c) Indigenous

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* President of the Human Rights and Equal Opportunity Commission of Australia.

1 Robert Royal, 'Who Put the West in Western Civilization?' (Spring 1988) *The Intercollegiate Rev* 3, 8 (quoting M Aurelius).

rights, including the contentious concept of self determination which, according to some, abandons 'one law for all' in favour of outright legal pluralism.[2] I will then consider how these types of rights have been recognised in the domestic law of Australia. In doing so, I will identify failures to achieve substantive equality before the law, particularly among indigenous Australians, and note the minimal extent to which domestic law has moved towards legal pluralism which echoes developments in international law.

I. International Human Rights Law: Equality, Minorities and Indigenous Rights

International developments recognise a stratification of rights, and hence 'different laws for all,' and shed light on the way international law seeks to resolve the tensions between equal treatment on the one hand, and diversity on the other.

The bedrock of international human rights law is, undoubtedly, equality. This is reflected in Articles 1 and 2 of the Universal Declaration of Human Rights, which enshrine, respectively, equal dignity and anti-discrimination. Yet, this principle has not prevented international law from drawing distinctions between classes of persons, and extending to minorities and Indigenous peoples a variety of distinct rights, *in addition* to the general rights enshrined in the Universal Declaration.

Whilst international law recognises that every human being is unconditionally, and without exception, entitled to the fundamental rights enshrined in the Universal Declaration, and in the derivative human rights conventions, it allows for 'special measures' that make provision for those suffering discrimination[3] either on account of some personal characteristic, or because of membership of a minority group. The focus in taking those measures is on equality of outcome, rather than equality of form. These measures are additional to the general rights — individual members of minorities are entitled to rely on both.

Minority rights are recognised in Article 27 of the International Covenant on Civil and Political Rights ('ICCPR'), which states that:

> persons belonging to [ethnic, religious or linguistic minorities] shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or use their own language.

The Human Rights Committee has commented that Article 27 is 'directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.'[4]

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2 International human rights law recognises a distinction between individual indigenous rights and the rights of 'peoples.' Self-determination is a collective or 'peoples' right. In Australian and New Zealand, these rights only apply to the indigenous population. For the distinction between the categories of international human rights law, see: A Eide, 'Working Paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and those of Indigenous Peoples' UN Doc E/CN.4/Sub.2/2000/10 (19 July 2000).

3 Discrimination contemplates 'any distinction, exclusion, restriction or preference, which is based on any ground … which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing, of all rights and freedoms'. Human Rights Committee, General Comment 18, para 7 of the 37th Session of the Human Rights Committee, 1989. *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev.6 (1989).

In 1992, the protection offered by Article 27 was reinforced by a resolution of the General Assembly, in which it approved the Declaration of the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (the 'Minority Declaration').[5] The Minority Declaration obliges States to protect minorities, as well as promote their participation in public life, but subject to the corresponding right of others to enjoy the fundamental rights enshrined in the Universal Declaration. It expressly empowers States to 'take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.' International law endorses the principle of equality of outcome over equality of form; and to this end sanctions separate laws for separate persons, in order to ultimately ensure substantive equality before the law. Pertinent to both Australia and New Zealand, international law accords to indigenous peoples rights that are both separate and additional to the general human rights enshrined in the Universal Declaration and the minority rights preserved in Article 27 of the ICCPR.

Significant legal recognition of indigenous rights occurred through the 1970s and 1980s.[6] Whilst the first Convention (ILO Convention 107) dealing exclusively with indigenous issues was created between 1953 and 1957 by the International Labour Organisation,[7] there was little, if any, indigenous participation in its negotiation. The Convention sought to integrate indigenous peoples into mainstream national economies without coercion or abuse, but it was condemned by indigenous groups for advocating assimilationist policies.[8] The Convention was revised in 1989.[9] Australia has signed neither Convention.[10]

A more extensive statement of indigenous rights is contemplated in the draft Declaration on the Rights of Indigenous Peoples. The draft is still before a special Working Group of the UN Human Rights Commission. Several more years are likely to pass before the draft is finalised. So far only two provisions have been adopted. They relate to the right to equality and the right to nationality. Little progress has been made on others. Rights of self-determination, collective ownership of land and intellectual property are still the subject of significant disagreement.

A right of self-determination by an indigenous minority, exercisable in possible conflict with the mainstream structure of state government, has always been contentious, notwithstanding

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4 Human Rights Committee, General Comment 23 on the rights of minorities (Article 27), in *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/Rev.3 (1997).*

5 The Declaration was adopted by General Assembly Resolution 47/135 on 18 December 1992.

6 W Jonas, *Aboriginal and Torres Strait Islander Social Justice Report,* Human Rights and Equal Opportunity Commission, (2002) 181. This recognition grew out of landmark events, such as the Report of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities in 1971 ('the Cobo Report'); the 1977 international NGO conference in Geneva, which resulted in the Declaration of the Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere; and the 1987 World Conference to Combat Racism and Racial Discrimination.

7 ILO, Convention Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries 1957, (No. 107).

8 Jonas, above n 6, 181-182.

9 The Convention carries the same title but is listed as Convention No. 169 in the ILO Convention series.

10 Australia has, however, signed and ratified the Convention on the Rights of the Child [1991] ATS 4, which specifically protects certain rights for indigenous children.

Chapter IX of the Charter of the United Nations, and the first Articles of the International Covenant on Civil & Political Rights ('ICCPR') and the International Covenant on Economic Social and Cultural Rights ('ICESCR') which recognise that 'all peoples have the right of self-determination'. The Charter and the Conventions do not define what is meant by 'peoples', nor do they lay down rules as to how this right is to be exercised. States and indigenous minorities alike have taken advantage of this ambiguity to assert a position which the other denies.

II. Australia's Domestic Situation

To a greater or lesser degree, the categories of international law rights I have mentioned are found in Australia. It will come as no surprise that Australia's domestic record is relatively sound in relation to the categories of universal and minority rights but falls short of the international standard when it comes to indigenous rights.

A. Australia's Multicultural Composition

At the outset, let me indicating the extent of cultural diversity in Australia.[11] Some 43 per cent of the population was born overseas, or has a parent who was born overseas. This reflects the highest level of immigration in the western world.[12] One quarter of immigrants comes from the United Kingdom, 8.7 per cent from New Zealand and 5.4 per cent from Italy. These counties have featured heavily on the cultural landscape of Australia for many decades. In recent times, however, the numbers of migrants from other regions have increased markedly. As a result, there are over 200 languages spoken in Australian homes and all the major religions are represented. According to the most recent census compiled in 2001, there are 410,003 indigenous Australians. 366,429 identified themselves as Aboriginal, 26,046 as Torres Strait Islander and the remainder claim to be both. This roughly corresponds to 2.2 per cent of the population.

B. Australian Legal Landscape: Federal Level

Australia has no national Bill of Rights. The Commonwealth Constitution does not enshrine, expressly or by implication, the notion of universal equality. And there is little prospect that a national Bill of Rights will be enacted, let alone constitutionally entrenched, in the foreseeable future. At the Constitutional Conventions held in the 1890s, the framers of the Constitution rejected the idea of incorporating an American-style Charter. They preferred, as Dawson J noted in the High Court case *Kruger v The Commonwealth*, 'to place their faith in the democratic process for the protection of individual rights and saw constitutional guarantees as restricting that process'.[13]

In 1992, the High Court considered whether there was an implied right to equality in the Constitution in *Leeth v The Commonwealth*.[14] The appellant had been convicted of several crimes under the Customs Act 1901 (Cth), including the offence of conspiring to import commercial

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11 Statistics are available from the forthcoming edition of *Face the Facts: Teaching Resources for use in Australian Classrooms*. For the current edition, see: <www.humanrights.gov.au/>.

12 New Zealand is next (18.7%), followed by Canada (18.4%) and the United States (11.4%).

13 [1997] 146 ALR 126, 154.

14 [1992] 172 CLR 455.

quantities of cannabis resin. As a federal prisoner, he was sentenced under the Commonwealth Prisoners Act 1967 (Cth), which permitted the sentencing judge to fix a minimum non-parole period which reflected the non-parole period of a State or territory prisoner, convicted of a crime attracting an equivalent sentence, in the State or territory in which the crime took place. The plaintiff challenged the constitutional validity of the Act, submitting that it infringed an implied constitutional right of equality, since federal prisoners would receive different non-parole periods depending upon the State or territory in which the trial took place. By a majority of 4 to 3, the Court rejected this submission, holding that the law was valid as there was no general requirement contained in the Constitution that Commonwealth laws should have a uniform operation throughout the Commonwealth.[15] Each Judge alludes to the need to ensure that like cases are treated alike,[16] this being an inherent feature of judicial power,[17] but the majority considered the relevant factor was equal treatment between federal prisoners within each State and territory.

The majority view in *Leeth* was followed five years later in *Kruger v The Commonwealth*. Dawson J in that case observed:

> While the rule of law requires the law to be applied to all without reference to rank or status, the plain matter of the fact is that the common law has never required as a necessary outcome the equal, or non-discriminatory, operation of laws. It is not possible, in my view, to dismiss the discriminatory treatment of women at common law or such matters as the attainder of felons as 'past anomalies'. To do so is to treat the doctrines of the common law with selectivity.[18]

The absence of a constitutional guarantee of universal equality, however, does not mean that Australia has forsaken its international law obligations.

Federal and state anti-discrimination laws, together, provide fairly comprehensive protection against discrimination. The federal anti-discrimination laws make unlawful discrimination on many grounds, including:

- Race, colour, descent or national or ethnic origin;
- Sex;
- Marital status;
- Pregnancy or potential pregnancy;
- Family responsibilities;
- Disability; and
- Age.

Although cast in universal terms, these laws provide the principal source of minority rights in Australia.

The Human Rights and Equal Opportunity Act 1986 (Cth) and Regulations thereunder protect additional labour rights, giving effect to Australia's obligations under the International Labour Organization Convention (No 111) concerning Discrimination in respect of Employment and Occupation.[19] They include the right not to be discriminated on the grounds of:

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15 Per Mason, Dawson and McHugh JJ at para 24.

16 Per Mason CJ, Dawson and McHugh at para 32; Brennan J at paras 7 and 13; Deane and Toohey JJ at para 13; Gaudron J at para 21.

17 See, for example, Gaudron J at para 21.

18 *Kruger v The Commonwealth* [1997] 146 ALR 126 per Dawson J, 157-8.

19 The Convention was opened for signature on 25 June 1958 and entered into force on 15 June 1960. It was entered into force in Australian law on 15 June 1974.

- Religion;
- Political opinion;
- Criminal record;
- Nationality;
- Sexual preference; and
- Trade union activity.

State and Territory anti-discrimination and equal opportunity legislation augments the coverage of the Federal Acts by adding homosexuality, transexuality and religion to the list of prohibited grounds of discriminatory behaviour.[20]

Like international law, domestic anti-discrimination law allows 'special measures'[211] to be taken in order to remedy persistent, or structural, inequalities. In Australian law, the focus of special measures provisions is on the achievement of substantive equality or equality of outcomes, rather than formal equality or equality of opportunity. The provisions contemplate that the achievement of substantive equality requires more than the simple termination of discriminatory practices. It requires measures or programmes to correct or compensate for past or present discrimination, or to prevent discrimination from recurring in the future. In a recent decision of the Federal Court, the special measures provision in the Sex Discrimination Act was interpreted as accommodating the taking of 'hard' measures so long as the particular measure was proportionate to the goal sought to be achieved. The measure upheld as a 'special measure' in this case was an inflexible quota system reserving a number of elected positions on the branch executive of a union exclusively for women.[22]

C. State and Territory Laws

I have already briefly discussed state and territory anti-discrimination laws. At the State and Territory level of government, again no constitutional Bill of Rights or principle of equality is legally entrenched. However, the Australian Capital Territory enacted a legislative Bill of Rights in 2004, which provides in section 8(2) that 'everyone has the right to enjoy his or her human rights without distinction of any kind.' It also protects minority rights under section 27 but deliberately excludes indigenous rights from its purview.[23] In form it is not unlike the New Zealand Bill of Rights Act 1990.

The ACT Act is the first of its kind in Australia. The process of pre-enactment negotiation was fraught with difficulty as disparate groups either claimed it was a dangerous precedent to set or, alternatively, that it was a toothless tiger. It is too early to determine whether the Act has succeeded in improving respect for human rights. Although it has been in force for one year, its provisions have not yet been invoked in the courts. Importantly, there are limits to its potential impact as it does not cover economic, social and cultural rights. Nor does it provide remedies.

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20 See Anti-Discrimination Act 1977 (NSW); Equal Opportunity Act 1995 (Vic); Anti-Discrimination Act 1991 (Qld); Equal Opportunity Act 1984 (SA); Equal Opportunity Act 1984 (WA); Anti-Discrimination Act 1998 (Tas); Anti-Discrimination Act 1992 (NT).

21 For example, Race Discrimination Act 1975, s 8(1).

22 *Jacomb v Australian Municipal Administrative Clerical and Services Union* [2004] FCA 1250.

23 Bill of Rights ACT Consultative Committee, *Towards an ACT Human Rights Act: Report of the ACT Bill of Rights Consultative Committee*, (May 2003) 100-105.

Consequently, a person has little chance of vindicating his or her right to equal treatment on *any grounds* (except, of course, through pre-existing anti-discrimination legislation).

The Victorian Government is also considering adopting a Charter. The Government has indicated that it would prefer a model similar to the ACT law, in which universal political and civil rights are included but economic, social, cultural, minority and Indigenous rights are excluded. It has also indicated that it wishes no right of action to be created.[24]

D. Multicultural Policies

Australia has also developed policies that are intended to further the enjoyment of individual and minority group rights. Australia formally repealed the White Australia immigration policy in the early 1970s, although it had ceased to operate in any meaningful sense in the 1960s. Since that time, the federal Government has embraced a policy of multiculturalism. The Government's current policy was updated in 2003 in a policy statement called 'Multicultural Australia: United in Diversity.'[25] There are four pillars:

- Responsibilities of all – in which Australians have a civic duty to support the basic structures and principles of Australian society, including parliamentary democracy, the Constitution, freedom of speech and religion, English as the official language, the rule of law, acceptance, and equality.
- Respect for each person – which entails the right to express your own culture and beliefs free from interference, within the limits of the law. Those laws include the federal anti-discrimination and anti-vilification laws.
- Fairness for each person – which, again, is a reference to equality and anti-discrimination; and
- Benefits for all – which is the theory that the country as a whole will benefit from the productive diversity of multicultural influences.

Australia has also adopted a Public Service Charter of Cultural Diversity that espouses a similar policy. Given that the Commonwealth is the largest employer in Australia, this is significant.

These policies are considered to be very effective by international standards. Multiculturalism aims to promote diversity and tolerance, but at the same time the Australian policy protects the absolute integrity of the state. These policies are not flexible enough to incorporate some of the more contentious rights claimed by indigenous Australians.

III. Equality of Outcome for Individuals and Minorities

Does this legislative and administrative appearance of equality achieve equality of outcome for minorities? At least for Indigenous people as a minority group, the simple answer is 'no' or 'not sufficiently.' The legacy of racial discrimination, social inequalities and extreme poverty continue to affect the majority of Aboriginal Australians,[26] although in recent years, as the Committee on the Elimination of Racial Discrimination (CERD) noted in its periodic report this year,

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24 An electronic version of the Statement of Intent is available at <www.justice.vic.gov.au>

25 'Multicultural Australia: United in Diversity - Updating the 1999 New Agenda for Multicultural Australia: Strategic directions for 2003-2006' available at <www.immi.gov.au>

26 Report of the Special Rapporteur on Racism and Racial Discrimination at the 58th Session of the Commission on Human Rights, Geneva. UN Doc. E/CN.4/2002/24 (26 April 2002) para 9.

'significant progress has been achieved in the enjoyment of economic, social and cultural rights by the indigenous peoples'.[27]

The Racial Discrimination Act 1975 was intended to entrench racial equality in the Federal legal system, but this result remains elusive. The existence of systematic racism and stereotypical assumptions about people from non-English speaking backgrounds and Aboriginal Australians has been routinely acknowledged by the courts, but there has been a reluctance to use this acknowledgement as a basis for drawing an inference of racial discrimination.[28] In *Sharma v Legal Aid Queensland*[29] the applicant sought to draw an inference of racial discrimination from evidence that there were very few people from non-English speaking backgrounds in the employ of the respondent, especially at the higher levels of the administration. This evidence did not persuade the trial Judge. The effect of her judgment is that courts should be wary of presuming racism, in the absence of clear direct evidence. The Full Federal Court affirmed this view on appeal.[30] CERD noted the difficulty of proving that discrimination is racially based in its March 2005 report, recommending that the government consider changing the burden of proof.[31]

The ineffectiveness of the Racial Discrimination Act in achieving racial equality also rests on another fundamental issue that undermines any notion that the ideal of 'one law for all' is a reality. That is the practical issue of access to justice. If a person is unable to gain the benefit of a legal right, it has no practical value. As in all fields of human right discourse a human right is meaningful only if it can be enjoyed. Indigenous Australians, because of their social, economic and educational disadvantages find it very difficult to understand the intricacies of the law, to gain the necessary advice, and to withstand the stresses of going through the legal process. Access to justice and all the practical dimensions of this topic are topics in themselves. I do not intend to expand on them here, but their importance is obvious. Access to justice may be denied if a right is created but no remedy exists. This is the obvious shortcoming in the ACT Human Rights Act.

CERD also noted in its report concern for the increasing prejudice against Arabs and Muslims that occurred in Australia in the wake of September 11 and the Bali bombings. In 2003, the Commission inquired into prejudice against Arabs and Muslims. The project was called 'Isma,' which means 'listen' in Arabic.[32] The purpose was, quite literally, to listen to the concerns of the Arab and Muslim community to better understand the nature of the prejudice they were experiencing, and to come up with recommendations for strategies to counter it. The project included national consultations with over 1,400 Arab and Muslim Australians and empirical and qualitative research. This process identified the already well recognised deficiency in the Federal anti-discrimination law which does not adequately cover discrimination on the ground of religion and does not provide an effective remedy. More pertinent, however, was evidence that those suffering the prejudice were either not aware of avenues open to them under the law to seek protection, or were too apprehensive to pursue them either out of a fear of officialdom or a belief

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27 CERD, 'Concluding observations of the Committee on the Elimination of Racial Discrimination,' UN Doc. CERD/C/AUS/CO/14 (March 2005).

28 Human Rights and Equal Opportunity Commission, 'Submission to the Committee on the Elimination of Racial Discrimination' (7 January 2005) part 2.

29 [2001] FCA 1699.

30 [2002] FCAFC 196.

31 Above n 27, para 15.

32 The report is available at: <www.humanrights.gov.au/>.

that it would be pointless to do so. Again the inequality in enjoyment of their human rights was not so much a failure of the law itself, but a combination of practical access considerations that had a much greater impact on equality outcomes.

IV. Indigenous Rights

Notwithstanding the acknowledged disadvantages suffered by indigenous Australians, few laws give special recognition to Aboriginal and Torres Strait Islanders in Australia.

There has been no federal constitutional recognition of the status of indigenous people as custodians and first owners of the land. The Constitution Act of Victoria was recently amended to include section 1A, to recognise that the colonisation of the State happened without proper consultation with local Aborigines and that Victoria's Aboriginal people, as the original custodians of the land, have a unique status as the descendants of Australia's first people; and have a special relationship with their traditional lands and waters. The Victorian Constitution is careful, however, to specify that this symbolic recognition does not create any new legal rights.[33]

There is no equivalent in Australia to section 45 of the New Zealand Electoral Act 1993, which creates Maori electoral districts, thereby ensuring their representation in the national Parliament.

Native title is one of the few areas in which distinct. Indigenous rights have been recognised, first by the courts in 1992 in *Mabo v Queensland [No 2]*,[34] and then by the Native Title Act 1993 (Cth). Native title rights have proved elusive and of limited cultural or economic value. This is partly due to the fact that at best they are merely a bundle of fragile rights that are extinguished by inconsistent legislative or executive action, and partly because of the difficulties claimants confront in discharging the evidentiary burden of establishing their continuous connection with the land.[35]

Attempts by indigenous tribes to establish legal rights by invoking the concept of Aboriginal sovereignty based on them being a nation have comprehensively failed. The courts have consistently held that Aboriginal people are subject to the laws of the Commonwealth and of the States and Territories in which they respectively reside.[36] In *Walker v State of New South Wales* Mason CJ observed that to hold otherwise would offend the basic principle that all people should stand equal before the law.[37]

It will be apparent from what I have said that the aspirations of the Aboriginal peoples of Australia have, at least for the most part, not been formally recognised to this point in time, and Australia has not kept pace with the developments at the international level. However, the future may not be entirely bleak. In a recent speech on reconciliation, Prime Minister Howard seemed to acknowledge, for the first time since assuming power in 1996, that indigenous rights in Australia might involve recognition of civil and political rights.[38] He said: 'Reconciliation is about rights as well as responsibilities. It is about symbols as well as practical achievement'. Indigenous leaders

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33 Section 1A(3)(a).

34 [1992] 175 CLR 1.

35 *Members of the Yorta Yorta Community v Victoria* [2002] 214 CLR 422.

36 *Walker v State of New South Wales* [1994] 126 ALR 321; *Coe v The Commonwealth* [1979] 24 ALR 118, 129; and *Coe v The Commonwealth* [1993] 118 ALR 193, 200.

37 *Walker*, ibid, at 323.

38 J Howard, 'Address at the National Reconciliation Planning Workshop' (30 May 2005). <www.pm.gov.au/>.

admitted to being 'astounded' by Mr Howard's comments, and suggested that they marked a 'tectonic shift in the Federal Government's approach to indigenous policy'.[39] A great number of Australians hope that is the case. What ever the virtues or vices of the catch-cry 'one law for all', it is beyond the time when indigenous Australians should enjoy all the benefits, privileges and happiness enjoyed by the rest of the Australian community. If ever there was a case for special measures, and special laws for the benefit of a small section of the community, this must be it.

I think the conclusion from my discussion is simply that the proposition 'one law for all' is too ambiguous to be meaningful. If a further example of this is necessary what is the result of applying it to, say, a Migration Act? The Act would be one law that applies to everyone, yet within its provisions people are divided into different categories according to whether they are citizens, non-citizens arriving lawfully in the country with a visa, or are unlawful arrivals. The outcome for each group will be very different. The proposition is a loaded one, often called in aid to support a majority position, but it is not a useful tool for legal analysis. Nor is it useful in discussion about human rights. Rather, the focus should be on equal treatment under the relevant legal system. I will end by noting that, as a human rights practitioner, this means more educational work is required by me and all my counterparts so as to encourage broader discussion and community acceptance of a notion of equality that goes beyond mere formal equality.

39 S Peatling, 'Pearson applauds reconciliation as PM's finest' *Sydney Morning Herald*, 6 June 2005.