CHAPTER ONE

Taking Civil Rights Seriously

The achievement of civil rights by Indigenous people receives so little exposure in mainstream accounts of Australian history that one could be forgiven for thinking that the achievement was not significant in the nation's history. Aside from occasional (generally inaccurate) public reminiscences about the effects of the 1967 referendum, the gaining of civil rights by Indigenous people is not part of Australian popular consciousness. The general histories of Australia that do mention it do not devote much space to it, and the analysis tends to characterise the acquisition of civil rights as the delayed rectification of injustice that was motivated by the changed consciousness of politicians, judges and bureaucrats.

Even extended scholarly accounts of Aboriginal history rarely devote more than a few pages to the events that saw Indigenous people, generally from the 1960s onwards, gain civil rights such as the vote, access to social security, equal wages and so on. These historical accounts tend to emphasise certain important political protests, including the Yirrkala petition for land rights in 1963, Charles Perkins's freedom rides of 1965, the
1966 Gurindji wage and land dispute, and the 1967 referendum, before moving to consider the more radical activism of the 1970s, such as the establishment of the Aboriginal tent embassy in 1972.

These were all very significant events, and there is now a deal of literature primarily devoted to examining the myriad ways that Indigenous Australians have fought the injustices imposed on them, the best examples of which are Bain Attwood's Rights for Aborigines, Attwood's and Andrew Markus's collection of documents in The Struggle for Aboriginal Rights and Heather Goodall's Invasion to Embassy.

However, there exists no written account that details how it was that laws came to be changed throughout the country to give Indigenous people formal legal equality with non-Indigenous Australians. There are some biographies and autobiographies of key Aboriginal civil rights activists, but these naturally concentrate on the details of the activism and motivations of the books' subjects. At best they only speculate about reasons for governmental change. There are other academic discussions of 1930s civil rights protests, but again the focus is not on the motivations for changes to government policy. Those historical accounts that do mention most of the significant developments of the 1960s and beyond that saw Indigenous people gain civil rights do not attempt in any concerted way to establish the reasons behind the policy changes.

On absorbing the considerable body of literature referred to above, the student of Australian and Aboriginal political history is left with the message that there were occasional rather than concerted protests on civil rights issues, and that, with a couple of exceptions (most notably the 1967 referendum, whose civil rights relevance is greatly overstated, as will be discussed shortly), these protests did little to bring about changes to the civil rights status of Indigenous Australians. Instead, one is led to believe that Indigenous Australians gained civil rights as a result of a slowly developing governmental mindset that gradually and simply came to see the existence of racially discriminatory laws as unjust.

A very different approach is taken when recording the victories of the American civil rights movement, or even the land rights developments here in Australia. The changes in both these fields are rarely depicted in isolation from the vigorous political activism that preceded the political change. This chapter explores why the struggle for Indigenous people's civil rights is so poorly remembered.

First the meaning of the term 'civil rights' needs to be clarified. Despite its now almost defining identification with the American civil rights movement of the 1960s, the term has a long heritage that dates back centuries. The term is used in this book to refer to the shared legal, political and social rights of citizens that are provided for by Commonwealth and state laws. It is used to distinguish this set of 'equal rights' or shared national rights from 'Indigenous rights', which are group-specific rights that reside only with Indigenous Australians and which result from Indigenous people's occupation of the country prior to the arrival of Europeans. 'Civil rights' has been used in preference to other terms such as 'human rights' (which has international connotations that, while relevant, extend beyond the scope of this
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Civil Rights

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and 'destitute' that existed in general child welfare legislation in all jurisdictions were subject to fluid definitions and thus enabled Indigenous children to be removed under laws that did not appear to be racially specific. Child welfare legislation existed in all states and ran in tandem with Aboriginal 'protection' legislation. Thus amendments to 'protection' legislation that removed some of the most specific powers held by administrators over Indigenous children (a process that largely happened between the mid-1950s and the mid-1960s) probably did not lead to a significant change in the practice of child removal. A lack of evidence prohibits any detailed conclusion about the relationship between amendments to protection legislation and the level of child removal.

The report of the National Inquiry found that after 1940 the states tended to follow the lead of New South Wales in removing Indigenous children under general laws rather than under Aboriginal 'protection' laws. Despite this, nothing much changed:

The same welfare staff and the same police who had previously removed children from their families simply because they were Aboriginal now utilised the neglect procedures to remove just as many Aboriginal children from their families."

The main issue was thus not the existence of powers over children in Aboriginal 'protection' legislation but the manner in which a child's Aboriginality was so readily taken as evidence of neglect. Administrators in this field had even more discretion, and thus power, than they had over civil rights such as the right to vote. In the latter case the law was racially specific: the ability to vote depended on one's race. By removing the racial specificity, the formal bar was removed. But in the case of child removal, the removal of racial specificity in the legislation did nothing to stop the practice, since administrators had almost limitless discretionary power.

The practice of routine child removal had long been vehemently opposed by parents, by Indigenous communities, and by activists. But the practice was only eventually (and gradually) stopped as the damage caused to all parties by forced separation became clear. Thus this was a change in administrative practice that was gradual and that, in many ways, was the result, it could be tentatively suggested, of different factors from those that brought about changes to racially discriminatory legislation.

By not examining child removal in any depth, this book may be said, in one historian's words, to be subscribing to a 'masculinist political discourse', which has 'placed an emphasis on civil rights and the like and paid little attention to matters such as the removal of children'. To this (in some ways, imagined) charge, two things can be said.

First, the 'civil rights' discourse cannot adequately be described as masculinist. Certainly the discourse does engage the 'public' realm, the place where the individual has engaged with the state (in voting, in having wages regulated and so on), and this can undoubtedly be seen as masculinist, just as a concentration on this public realm goes some way to reinforcing the very existence of the public/private dichotomy. It is also true that one of the best ways to challenge the dichotomy is to bring the
'private' into the 'public': to reveal, in terms of the subject matter of this book, the impact that laws had, or did not have, on individual lives. But for reasons stated earlier, this is not the task of this book; it is a task for Indigenous people to undertake should they so wish (and increasing numbers, of course, are doing this).

The reason it is inappropriate now to use the term 'masculinist' to describe a concentration on the public sphere is that, although the term is not meant in this way, its use suggests that the 'civil rights' discourse has been engaged in predominantly by men. Although this has been true in terms of the governmental side of the equation, a significant number of the vocal activists have been women. To label the 'public' discourse of 'civil rights' as masculinist risks the unintended side effect of actually belittling the central role played by activists such as Jessie Street, Shirley Andrews, Faith Bandler and Oodgeroo, to name a few.

Second, a book like this, which concerns governmental activity, cannot be said to play a part in silencing or marginalising discussion of issues such as child removal. As stated earlier, the child removal policies doubtless had a much more profound impact on those affected than did any of the discriminatory laws and policies examined here. This book should not be taken as evidence to the contrary. A fair criticism might simply be that the issues covered are not the most central ones that impacted on Indigenous people's lives. That is a different point, and one that is undoubtedly true.

No watershed moment

One of the principal reasons why the acquisition by Indigenous people of civil rights receives so little popular or scholarly attention is because there was no defining moment of victory that can easily be commemorated. In the popular media, the 1967 referendum receives sentimental treatment as the time when Indigenous people became citizens. But given the simple inaccuracy of this observation—which, despite the efforts of Bain Attwood, Andrew Markus and others, appears to be compounding daily—the repetition hardly amounts to a serious attempt to understand what should be an important time in Australian historical memory.16

The legal effects of the referendum were that the Commonwealth gained a concurrent power with the states to legislate with regard to Aboriginal people, and that Aboriginal people from then had to be counted in official population statistics. The referendum has taken on an important symbolic value for many people, Aboriginal and non-Aboriginal, and the large vote in favour of the changes can legitimately be seen as some recognition by the majority of Australian people that Indigenous people had been unjustly treated. The passage of the referendum was certainly relevant to the civil rights status of Indigenous people inasmuch as it ensured that the Commonwealth had the power to override discriminatory state laws. It can also be seen as a vote for non-discrimination. But while the fight for the 'yes' vote is clearly part of the struggle by Indigenous people for civil rights, its limited legal significance renders it unable to be seen as the principal defining
moment. This point is reinforced by the recognition that it was not until the election of the Whitlam government in 1972 that the new Commonwealth power was put to any substantial use.

Aside from reminiscences about the referendum, there is no single event which could even remotely be described as 'the civil rights moment' in Australia. For on all civil rights indicators, the change from exclusion to inclusion was gradual and piecemeal.

Nowhere is this more clearly the case than with the right to vote. The point in time that has most claim to be 'the moment' when Indigenous people were enfranchised is 1962, when the Commonwealth removed the last of its barriers to Indigenous enrolment. However, by this stage Aboriginal people in Tasmania, Victoria, New South Wales and South Australia could vote at Commonwealth level, as could Indigenous people who lived elsewhere if they had served in the army or if, in the case of Western Australia, they held state 'certificates of citizenship'. This had been the case since 1949, and some Aboriginal people in the south-eastern states – though it would seem to have been few – had earlier held a section 41 constitutional right to the Commonwealth vote on the basis that they had been enrolled at state level prior to the passage of the first Commonwealth franchise legislation, the Commonwealth Franchise Act 1902.²⁷ Western Australia and the Northern Territory also removed their restrictions on Aboriginal voting in 1962, giving that year more claim as the year of enfranchisement. Only in 1965 did Queensland remove its restrictions.

So 1962 was the year when all Commonwealth restrictions and some state and territory restrictions on Indigenous voting were removed. But it is difficult to hold this date out as of commemorable significance, given that Aboriginal Victorians, for instance, had in theory long held the state vote, and had since 1949 – or even earlier under section 41 of the Constitution – possessed the right to a Commonwealth vote.

Nor is it easy to construct simple time-lines for the achievement of other civil rights. In 1959 most restrictions on access to social security were removed, but prior to this some Aboriginal people who adopted European lifestyles had been able to receive benefits if the wide discretionary powers of bureaucrats were exercised in their favour. Even after 1959, some restrictions still existed. It was not until 1966 that Aboriginal people who governments categorised as 'nomadic or primitive' were able to claim benefits on an equal footing with non-Indigenous Australians.

If one looks to those civil rights over which the states had control, such as freedom of movement, one sees an even more complex picture. All states eventually repealed legislation that enabled Indigenous people to be forcibly removed to reserves. But each state did this in its own time, leaving no one date that can easily be commemorated.

So we can see that the lack of a key defining moment is one reason why the fight for Indigenous people's civil rights is so readily forgotten. But there are several other equally important reasons.
Civil rights and assimilation

The notion that the attainment of civil rights allows for inclusion in the political community ties in with a second reason for our indifference about civil rights struggles – the belief that Indigenous people were granted civil rights in order to further the process of assimilation. On this view, Indigenous people were granted civil rights as part of a bid to remove any differences that might exist between them and non-Indigenous people. Thus, the argument follows, the good that came from the acquisition of these rights must be weighed up against the evils that were done under the policy of assimilation: the break-up of traditional lifestyles and modes of organisation and the forcible removal of Indigenous children from their parents.

Under the assimilation policy, a distinct cultural group was forced to forfeit its uniqueness in order to adopt the ways of a supposedly superior culture. The policy now is quite rightly seen by most people to have been a grievous mistake. The issue here though is: was the discredited policy of assimilation responsible for the changes to the civil rights status of Indigenous Australians?

One of the key arguments of this book is that the acquisition of civil rights by Indigenous people is not something that can simply be attributed to the governmental policy of assimilation. This may seem a surprising argument, given that the policy, as it related to legal rights, was simple. The policy was straightforward as it related to legal rights. The combined governmental statement on assimilation in 1961 specified the following:

The policy of assimilation means that all Aborigines and part-Aborigines will...live as members of a single Australian community, enjoying the same rights and privileges, accepting the same responsibilities, observing the same customs and influenced by the same beliefs, hopes and loyalties as other Australians.¹⁸

The relationship between the policy of assimilation and the acquisition of civil rights has led noted academics in recent times to adopt very ambivalent stances with regard to the achievement of civil rights. Tim Rowse, in his often brilliantly insightful study of rationing in central Australia, entitled White Flour, White Power, looks at the way the introduction of the assimilation policy oversaw a shift away from the provision of rations to the provision of cash to Aboriginal people during the 1960s and 1970s. This came about as a result of the acquisition of civil rights by Aboriginal people, particularly social security entitlements and equal coverage under industrial awards. Rowse examines the ways in which these changes, and the flow-on effects that saw non-Indigenous work and social practices take hold, took many Indigenous people into poverty and disturbed Indigenous family structures. He notes that unemployment rose

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when equal wages were required to be paid to Aboriginal stockmen, and that non-Indigenous family structures became imposed on Indigenous people, with men expected to be breadwinners and women expected to be economically reliant.*O

In another piece on the same topic Rowse gives two alternative renderings of the assimilationist 'triumph of contractual relations over tutelary ones'. First, he draws attention to the quintessential assimilationist policy of removing Indigenous children from their families, and argues that this horrendous practice far outweighed any of the benefits individuals were now able to enjoy in their new relationship with the state. Second, he refers to the nostalgia of some Aboriginal people in central Australia for their pre-cash relationships with non-Indigenous people.21

Peter Read has been even more ambivalent about the acquisition of civil rights by Indigenous people. In discussing the principle of non-discrimination, which underwrote the acquisition of civil rights and which received its clearest expression in the 1948 United Nations Universal Declaration of Human Rights, Read writes:

The moment that principles such as equal pay, equal education and full social-service benefits contact collectivist and tribally secure Aborigines they clash with a deep association with land, a shared economy and a distinctive social hierarchy. The deployment of the Declaration of Human Rights does not necessarily help indigenous people to free themselves from post-colonial domination, rather it may serve to hasten their flight towards post-modern capitalism, waste and unemployment, into environmental and social degradation.22

The concern of Read and Rowse is that access to cash, through social security and equal wage entitlements, changed forever the lives of 'tribally secure Aborigines' (Read) and impacted on Aboriginal family structures that had sought to reconcile Indigenous ways with Western concepts of work (Rowse).

Both Read and, less directly, Rowse take an unlikely subject as the focus of their ambivalence towards the acquisition by Indigenous Australians of civil rights. The principle of non-discrimination on the grounds of race – which is one of the basic tenets of the Universal Declaration of Human Rights and which was the main rallying call of civil rights activists in Australia – is one of the pre-eminent human rights that have been overwhelmingly supported by the representatives of most of the world's population.23 While neither Read nor Rowse has argued, or would argue, that civil rights should not have been accorded to Indigenous people, and while neither of them would denigrate the hard work performed by Indigenous people and their non-Indigenous supporters in the political battles that resulted in gradual political change, their views about the acquisition of civil rights seem unduly negative.

This undue negativity stems from two apparent beliefs, which are also evident in many of the works referred to in the first part of this chapter. First, a popular belief seems to exist that civil rights were not so much won by Indigenous Australians as simply granted to them in accordance with the government policy of
assimilation. Second, it is then assumed that the civil rights gains are indelibly linked to, and need therefore to be weighed against, the more horrendous practices conducted under the name of assimilation, such as the removal of Indigenous children from their families. Each of these concerns is dealt with in turn.

Were civil rights won or granted?

When viewed as steps simply taken by governments to further the process of assimilation, the acquisition of civil rights takes on an almost conspiratorial tone: these rights were granted in furtherance of the practice of wiping out any distinctiveness between Indigenous and non-Indigenous Australians. It is unsurprising that politicians of the time would attempt to depict civil rights changes as driven by their own policy of assimilation, thereby claiming internationally popular moves stemmed from their own initiatives. Paul Hasluck, when he was Minister for Territories, did this when he said of the enfranchisement of Aborigines that 'The great feature of this bill and its true meaning...is that we are moving closer towards the ideal of one people that must be treasured by all of us...It has been our ideal that we should be not a nation with divisions of race or class, or a nation of different levels, but that we should be one people.**

Somewhat surprisingly, however, a similar characterisation is evidenced in the reference earlier by Read to the 'deployment' of the Universal Declaration of Human Rights. He seems to suggest that the principle of non-discrimination was simply put into action from on high, rather than following on from political action. This kind of depiction is clearer still in the following remark by Rowse:

The movement from rations to cash in the 1960s and early 1970s was consummated by including Indigenous people in industrial awards and giving them equal access to social security benefits. These changes were linked to the lifting of statutory restrictions on their movement, property-holding, associations and consumer choices, and to the granting of their right to vote. 'Assimilation' was planned social change, conferring 'citizenship'.

Russell McGregor, a noted historian, has repeated this characterisation that civil rights were bestowed as a central plank in the policy of assimilation. In a review of Rowse's White Flour, White Power, McGregor commends Rowse for coming 'to grips with the assimilationist project itself: the attempt to achieve equality by conferring equivalent rights on all citizens'. In another piece, in which he discusses the fact that 'assimilation' has always been a contested term, McGregor writes:

Certainly there was agreement on the desirability of Aborigines acquiring the fundamentals of citizenship - the vote, social security benefits and so forth - but there was disagreement over the basis on which such rights should be conferred...27

According to these accounts, the conferral of civil rights was simply part of 'the assimilationist project' and came about as the result of government initiatives and the implementation of government programs.

The main reason for rejecting this line of argument is
that the policy was so open-ended, and the criteria that needed to be satisfied before changes could be made were so vague, that the policy could not be said to have driven the legal changes that will shortly be examined. Assimilation, as it related to legal status, was an 'in the fullness of time' policy that specified equality as the ultimate aim but did not specify how and when this was to be achieved. The vagueness of the policy requires us to look to other causal factors to understand why Indigenous people gained civil rights when they did.

In the case of some of the legal changes examined in this book, such as the Commonwealth vote, the evidence of other causal factors is so strong that one could argue that the change would have come about even if assimilation had not been stated government policy. On other occasions this evidence is not so strong, and the policy of assimilation was relevant to the extent that it gave a certain philosophical consistency to proposals that might not otherwise have gained the necessary political support to be adopted. For most of the civil rights changes examined in this book the evidence is good enough, however, to support the general argument that a combination of international pressure and domestic activism led various Commonwealth and state governments to make civil rights changes when they did.

The period when the most significant changes to the civil rights status of Indigenous Australians were occurring was a time of enormous change in international law and politics, evidenced most clearly by the growing status of the United Nations and its declarations and conventions, the rise in popularity of the belief that universal 'human rights' which are not culturally specific exist, and the increasing international muscle exercised by former colonies in South-East Asia and Africa. This was a time, more than ever before, when rights talk by domestic activists was likely to receive significant international consideration. By characterising their struggle both for civil equality and for the recognition of specific Indigenous entitlements (primarily to land) in terms of rights, Indigenous activists and their non-Indigenous supporters were able to shame Australian governments into acceding to many of their demands. Rights talk and national shame were the essential elements that explain changes to the civil rights status of Indigenous Australians. As Paul Have-mann and Kaye Turner have written, 'The politics of rights and its other face, the politics of shame, are crucial vehicles for the kinds of symbolic challenge which are essential when minorities take on majorities in a liberal democracy.'

As shown in Chapters 2 and 3, extensive lobbying by the Federal Council for Aboriginal Advancement (later the Federal Council for the Advancement of Aborigines and Torres Strait Islanders), the pre-eminent Aboriginal rights group of the time, preceded important changes to the social security legislation in 1959 and later in 1966; the decision of the Menzies government to establish the committee whose recommendations saw all adult Indigenous Australians enfranchised at Commonwealth level in 1962 can be directly traced to activism (and the attendant international attention received) by the Federal Council in 1961; and the Conciliation and Arbi-tration Commission's 1966 decision to award equal
wages to Aboriginal cattle workers in the Northern Territory has to be placed in the context of the threatened and actual industrial action of Indigenous people and supportive unions, just as it must be seen as following on from the tireless lobbying of numerous Aboriginal rights groups. Meanwhile state-based organisations—like the Council for Aboriginal Rights in Victoria, the Western Australian Native Welfare Council, the Aboriginal-Australian Fellowship in New South Wales, the Aborigines Advancement League of South Australia, and the Queensland State Council for the Advancement of Aborigines—were crucial in pushing state governments and the federal government to repeal racially discriminatory laws.

Many of these Aboriginal rights groups were established in the 1950s by non-Indigenous people, and continued to be dominated by non-Indigenous people until the late 1960s. This has no doubt contributed, with some justification, to the caution with which the operations of these organisations is judged. But the work of these often very effective pressure groups cannot simply be dismissed on this basis. And indeed the groups did increasingly seek out Indigenous viewpoints, particularly in the 1960s when Indigenous people began to take leadership roles.

*Separating civil rights from the horrors of assimilation*

The understanding that civil rights were won, and not simply granted in line with government policy, has implications for the other apparent belief at the base of many negative views about civil rights: that the acquisition of civil rights needs to be weighed against horrendous assimilationist practices such as the removal of children. This belief is clearly held by Rowse, who baulks at describing the gaining of access to cash as a simple 'story of emancipation'. In his chapter 'Indigenous Citizenship and Self-Determination' he poses the question of whether the move from rations to cash amounted to 'progress', and he states that the removal of Indigenous children from their parents is one of the 'critical alternatives to such a celebratory account'.

This balance-sheet approach to civil rights, whereby civil rights gains are weighed against destructive assimilationist practices, is an approach that is informed by the belief, held by some, that 'Any discussion of equal rights for Aboriginal people was inevitably and inextricably linked to assimilationism'. To be sure, the policy of assimilation did give a certain theoretical consistency to rights and welfare talk in Aboriginal affairs, and there was a clear proximity, in the minds of some, between equal rights and the desire to remove cultural distinctiveness. Marilyn Lake has usefully categorised this closeness as a "dangerous intimacy" between the "progressive" principle of non-discrimination and the "repressive" policy of assimilation. Nevertheless, there are two reasons why we ought to make a distinction between the search for non-discrimination and the policy of assimilation.

The first is a philosophical one: the acquisition of equal rights did not necessitate the sacrificing of cultural identity that was germane to the assimilationist desire for all to become part of, in the words of the policy, 'a single Australian community... observing the same
customs and influenced by the same beliefs'. One could, both in theory and in practice, have equal rights and yet maintain a distinct cultural identity.

The second reason we now ought to make a distinction between non-discrimination and assimilation is that this was a distinction that was held by many of the activists who were seeking civil rights. They sought equal rights, but most did not want to see Indigenous identity sacrificed in order to create a single Australian community which observed 'the same customs' and had 'the same beliefs'. Often times the search for equal rights was simply part of an ongoing political struggle, But when activists felt the need to locate the search for equal rights within a broader policy program, they inevitably chose the term 'integration' over 'assimilation', simply to separate their rights program from a policy that had at its core a desire to remove cultural distinctiveness.

Probably the most important statement outlining the difference between integration and assimilation came in the International Labour Organisation's Indigenous and Tribal Populations Convention 1957, which among other things placed an onus on governments to enable Indigenous people 'to benefit on an equal footing from the rights and opportunities which national laws or regulations grant to the other elements of the population', and to create 'possibilities of national integration to the exclusion of measures tending towards the artificial assimilation of these populations'. The distinction here was thus essentially a distinction between non-discrimination and assimilation. While Australia never ratified the Convention, the distinction was one to which activists and activist organisations firmly clung.

Mary Bennett, in her 1957 booklet 'Human Rights for Australian Aborigines', called for the application of the Universal Declaration of Human Rights to Aboriginal people, and at the same time she was strongly critical of that most despised of assimilationist practices, the removal of Aboriginal children from their parents. She wrote:

We do not want a policy that would destroy [Aboriginal] heritage by assimilating all the Aborigines in such a way that they would disappear into the general population and lose all connection with their past. Rather we want a policy of integration of two equal and friendly groups . . .

In 1959 the Aborigines Advancement League of Victoria, in its journal Smoke Signals, outlined the debate about the policy of assimilation that was then being waged by Paul Hasluck and the anthropologist A.P. Elkin. Hasluck's vision, which became the pre-eminent one in terms of both public policy and public perception, was that Indigenous people would gradually surrender a large degree of cultural identity as they moved increasingly into non-Indigenous society. Elkin was more open to the retention of some degree of separate group identity. After outlining these positions, the Aborigines Advancement League of Victoria, a strong advocate of equal rights, argued the following:

The term 'integration' is used in preference to assimilation on the grounds that it implies the ability of the smaller group to retain its identity while living within and in harmony with the National community. 'Assimilation'
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Indigenous rights. Specifically, there are three issues relevant to Indigenous rights that have clouded our thinking about civil rights. First, there is some uncertainty about whether we can talk in Australia about the existence of a civil rights movement as opposed to an Indigenous rights movement. Second, recent citizenship theory has attempted, for a variety of reasons, to merge discussions on Indigenous rights and civil rights under the one rubric of 'citizenship'. Third, there exists the belief among some noted commentators that the acquisition of civil rights has actually inhibited the legal recognition of Indigenous rights.

Was there a civil rights movement in Australia?

The search for civil rights is now often seen as the more earnest and less radical sibling of the search for the recognition of Indigenous rights, but there remains confusion as to whether we should talk in Australia about the existence of two separate movements or just the one 'Aboriginal rights' movement.

This question has been the subject of much academic debate, the terms of which have principally concerned Indigenous people's rights to land, and the basis on which land rights have been sought. One view is that until the 1960s Indigenous people sought land rights principally for reasons of economic security. The other view is that the fight for land rights has always been driven by Indigenous beliefs about spiritual connectedness to the land.

Russell McGregor is circumspect about the centrality of land in Aboriginal politics prior to the 1960s. He argues, with particular reference to the 1930s, that land was sought by key Aboriginal organisations not on the basis of prior occupancy and historical rights but rather because of 'the need of Aboriginal citizens for economic security'.

On this understanding one could suggest the existence of two separate Aboriginal rights movements, which perhaps overlapped in the 1960s: a civil rights movement that incorporated a desire for land for economic reasons; followed by a land rights movement as we understand that phrase today, according to which land was sought on the basis of spiritual connection and rights that existed prior to 1788.

Heather Goodall differs from McGregor, arguing that land has always maintained a unique place in Aboriginal political activism. In her important study of Aboriginal politics in New South Wales, Goodall argues that, even in the 1930s, 'land continued to maintain an important position in Aboriginal demands'. In that decade, however, other pressures meant that 'it could not be the primary, urgent goal it had been in previous decades'. Moreover, she questions the assumption that Aboriginal struggles in the 1950s and 1960s were concentrated purely on civil rights." For Goodall, then, to refer to two movements in separation from each other is to fail to understand the dynamics of Aboriginal political activism.

Without seeking to resolve this complex debate (which is not so much about whether land has always been important in Aboriginal politics but why it has been important) it is fair to state that it does not make much sense to talk of a 'civil rights movement' in
contrast to an 'Indigenous rights movement' or a 'land rights movement'. And indeed the non-existence of a clearly defined and separate 'civil rights movement' is yet another reason why civil rights achievements have been marginalised.

Can we still talk of two sets of rights?

Another cause for confusion about civil rights stems from recent international developments in citizenship theory that have sought to merge seemingly divergent rights (equal rights and group rights) under an expanded concept of 'citizenship'. Historically 'citizenship' has connoted the shared enjoyment of certain rights. But attempts have been made over the past decade to broaden our understanding of citizenship so that the term might also encompass the enjoyment of certain 'group-specific' rights.

Iris Young and Will Kymlicka are the foremost advocates of this position, and an expansion of the meaning of 'citizenship' to incorporate group-specific rights has been given a direct application to Indigenous rights by a number of Australian and New Zealand scholars, such as Mick Dodson, Paul Havemann and Alastair Davidson. Nicolas Peterson and Will Sanders, in the introduction to their book Citizenship and Indigenous Australians, adopt Kymlicka's argument that 'true equality' requires the 'accommodation of differences', and go so far as to state that the 'recognition of indigenous rights thus becomes the pursuit of equal rights at a more sophisticated level'.

The intended result of this expanded concept of citizenship is that talk of specific kinds of rights is cast aside in favour of discussions about the extent of peoples' feelings of 'belongingness' to their societies. The focus is on what makes people belong, not how equivalent their rights are. The underlying current in recent citizenship theory is that different peoples need the recognition of different rights in order to share a sense of belonging to their society.

The positive side to this is that Indigenous rights cannot so easily be dismissed as 'additional' or 'special' rights that only Indigenous people have access to. When subsumed under a generalist concept like citizenship, Indigenous rights appear less controversial.

But the negative side to this practice is that it tends to obscure the very real divisions that exist between civil rights and Indigenous rights. These divisions need particularly to be highlighted when policy makers discuss the appropriate balance to be struck where Indigenous rights conflict with civil rights. This issue is further discussed in the next section, but for present purposes the point to be made is that the use of an expanded concept like citizenship to encapsulate divergent sets of rights has helped to discourage discussion of civil rights.

Does the acquisition of civil rights prevent the recognition of Indigenous rights?

A still more pertinent reason for the lack of attention to civil rights stems from the view of some academics that the acquisition of civil rights actually inhibits the recognition of Indigenous rights.

Tim Rowse has argued that the Racial Discrimination Act 1975
Act 1975 (Cwlth), Australia's pre- eminent (if belated) expression of the non-discrimination principle that underwrote all civil rights changes, 'may not be adequate to the recognition of indigenous political forms', and that the Act 'enshrines individualist rights against discrimination, consistent with the axioms of assimilation policy'.

What quite properly troubles Rowe is the difficulty of reconciling the acquisition of civil rights with the diminishing existence of traditional forms of Indigenous political organisation, and the emerging recognition of Indigenous rights, such as native title.

But that is no reason to be ambivalent about the acquisition of civil rights. At the outset it should be noted that if the Racial Discrimination Act had not been in place, the High Court would not have been able to recognise common law native title in the Mabo (No. 2) case in 1992. But for the existence of that Act, Queensland's legislative attempt to wipe out native title on islands off that state's coast would have been successful.

Nevertheless, it is certainly true that there are many (and there will be more) demarcation disputes where the recognition of Indigenous rights conflicts with the enjoyment by Indigenous people of civil rights. These disputes have arisen where Indigenous communities have sought to limit the supply of alcohol in their communities, where Aboriginal customary law is practised, and in a variety of other contexts.

These disputes, though, as are discussed in detail in Chapter 5, should not be seen as evidence of the fundamental incompatibility of the two sets of rights, but rather as boundary disputes which Indigenous communities and the state must negotiate. Henry Reynolds, Paul Havemann and others have discussed the ways in which Indigenous rights might be viewed and positioned as existing alongside the civil rights shared by Indigenous and non-Indigenous people. These two sets of rights entail two sorts of belonging: to one's community, and to the state. For Indigenous Australians these two relationships often require quite divided loyalties, which will occasionally come into conflict with each other and will raise quite complex issues. On such occasions Indigenous people's civil rights may have to take second place to their Indigenous rights, and at other times their civil rights may prevail. Since few Indigenous people are seeking complete separation from the state as a political aim, this is a negotiating process that cannot be avoided. Indeed its existence is just one of the ongoing effects of colonisation. But the need for this negotiating process does not justify ambivalence about civil rights, any more than it should justify ambivalence about Indigenous rights.

What is there to commemorate?

The final and overriding consideration that has led to silence about civil rights victories is that no significant positive changes appear to have occurred in Indigenous communities since these rights were won, and some decidedly negative effects (alcoholism, unemployment and domestic violence) appear to have coincided with the acquisition of civil rights.

It is to Australia's shame that many Indigenous communities have third-world standards of health, and that education and employment indicators consistently label
Indigenous people as the most disadvantaged group in the country.\(^4^9\) In this regard the removal of discriminatory laws from Australian statutes has not led to dramatic changes. That is not to say that there has been no improvement since the 1960s,\(^5^0\) but the changes in Indigenous well-being that have taken place are certainly not so significant as to be the cause for celebration.

In Chapter 4 some of the reasons why civil rights changes have not led to greater changes in Indigenous well-being are explored, but for present purposes there remain a number of reasons why the achievement of civil rights by Indigenous Australians should be remembered. The first involves recognising the agency of Indigenous activists and their non-Indigenous supporters in bringing about changes in governmental policy. It was not the case, as received wisdom has it, that the granting of civil rights was just another plank in the governmental policy of assimilation.

Second, the work and achievements of these activists broke new ground in forcing reluctant governments to deal with Indigenous leaders, while at the same time fostering in future Indigenous leaders the belief that positive results could come from an active engagement with political processes. The challenge posed to the state by the recognition of Indigenous rights makes it tempting to view today’s proponents of Indigenous rights as holding categorically different philosophical views from those held by the seemingly more conservative activists of the 1960s. But today’s Indigenous activists – whose success at achieving national prominence has seen them denigrated as belonging to the ‘Aboriginal industry’ – are very much the political heirs of civil rights activists.

Moreover, the connections between civil rights and Indigenous rights activism is even more explicit than that. Many key Indigenous rights activists became politicised, or received on-the-job training in political activism, in the civil rights campaigns of the 1960s and beyond. One could refer here to many individuals who were both civil rights and Indigenous rights activists, but two will suffice. Oodgeroo and John Newfong were two Indigenous activists who pursued Indigenous rights with great commitment: Newfong was a key player in the establishment of the Aboriginal tent embassy, and Oodgeroo’s poetry remains for many the best expression of Aboriginal connectedness to the land. Yet both were very active in civil rights campaigns of the 1960s with the Federal Council for the Advancement of Aborigines and Torres Strait Islanders and other rights organisations. Civil rights activism went hand in hand for many with Indigenous rights activism.

For some commentators the relationship between civil rights activism and Indigenous rights activism is not apparent. They see the acquisition of civil rights by Indigenous Australians as the result of a paternalistic relationship between Indigenous people and the state. The apparent connection between civil rights and the policy of assimilation, and the perceived difficulties that civil rights present to the recognition of Indigenous rights, have ruled out the possibility of any triumphal or even favourable commemoration of the acquisition of civil rights. For others, the complex web of dates and events that mark the acquisition of civil rights by
Indigenous Australians has made commemoration simply too difficult.

That is unfortunate, because civil rights activists achieved a great deal in forcing a reluctant state into a new relationship with Indigenous people. In so doing, they instigated significant social change in Australia that is still occurring. While there has never been cause for Australian history to be triumphal about the relationship between Indigenous people and the state, the achievements of civil rights activists at least deserve to be remembered.

CHAPTER TWO

Defending Australia's Reputation: Ending Commonwealth Discrimination

The movement against racial discrimination has found expression both within Australia and in the international sphere. The [Inter-Departmental Committee on Racial Discrimination] noted the activities of Aborigines advancement organizations and the increasing interest and concern that has developed for the welfare of Aborigines. During the session of the 24th Parliament that has just concluded 56 petitions containing 64,500 signatures were presented to the House of Representatives...

The Committee, concluded that, in the light of its understanding of Australian public opinion... proposals for further progress towards the removal of discrimination would, on the whole, be favourably received.'

Confidential Report of the Inter-Departmental Committee on Racial Discrimination, March 1964

Why did Indigenous Australians acquire civil rights in piecemeal fashion between the late 1950s and the mid-1970s? What factors motivated governments to make or support the legislative, constitutional and quasi-judicial changes that saw Indigenous Australians placed on an
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