

have a moral and educative effect in the community. It proposed the conferral upon the Legal and Constitutional Committee the functions of:

- automatically scrutinising the Bills and newly-made subordinate legislation for compliance with the Declaration and
- undertaking specific reference to consider compliance with the Declaration of existing Acts of Parliament, subordinate legislation, the common law and areas of executive action. (See July 1987 *Reform* No47, p137–139)

The Victorian report did not recommend the adoption of a Bill of Rights.

How New Zealanders use their new Bill of Rights will no doubt be closely observed by many Australians.

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meech lake, multiculturalism and the rights of peoples

Some men look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be touched.

Thomas Jefferson, 1816.

The sovereign state of Canada as it is currently constituted is under threat as a result of provincial disagreements over the 'Meech Lake' accord. This dispute highlights the difficulties that a nation faces in trying to accommodate the values and ethnic identities of its multicultural constituency. Where does the balance lie between the rights of an ethnic minority to maintain its cultural identity, and the need to maintain the identity and the integrity of the nation state? To what extent should collective minority rights have priority over individual rights? The emerging concept of the 'rights of peoples', as discussed in a recently released book of that name edited by Professor James Crawford may throw some light on the Canadian situation. This includes a discussion of whether

collective rights are necessarily incompatible with individual rights.

what is 'Meech Lake?' The uneasy relationship between the mainly french speaking province of Quebec and the rest of Canada is not new. The current crisis has arisen as a result of the Trudeau government's decision in 1982 to repatriate Canada's constitution from its traditional custodian, the British House of Commons. As a means of trying to get a better deal for its constituents, the Quebec government refused to ratify the new constitution. The Meech Lake accord, named after the country resort where all ten provincial governments agreed to it, was Prime Minister Mulroney's deal to buy Quebec's compliance. This was done by the provinces agreeing to define Quebec as a 'distinct society' with sweeping rights to impose francophone culture in the province. It could be said that the Canadian government has recognized the population of Quebec as a 'people' for the purpose of applying the principle of self-determination. The core of this principle according to Ian Brownlie in a chapter of *The Rights of Peoples* is

... the right of a community which has a distinct character to have this character reflected in the institutions of government under which it lives.

the controversy. This support was won only by granting the rights sought by Quebec under the new constitution to the other provinces as well. These included extensive rights to veto federal law, to opt out of federal programmes and to nominate Supreme Court judges. Apart from defence and foreign policy, this would leave very little for the national government.

Several of the provinces are now refusing to ratify the agreement which can only survive if all provinces ratify it by June this year. The entry of ex-Prime Minister Trudeau into the debate has intensified the controversy. His comments reflect some of the reasons, discussed by Gillian Triggs in another chapter in *The Rights of Peoples*, why there remain significant barriers to the implementa-

tion of group rights in international practice. She writes

The most important reason is that to concede special treatment to minorities within a State is perceived as detrimental to national unity and stability. The fear is that, once a minority is recognized and grows in strength, it will demand to secede from the host State or at least, seek some form of autonomous status. The notion of 'peoples' rights' is thus seen as a challenge to the sovereignty of the nation State and to associated precepts of international law.

The other barrier to the implementation of 'peoples' rights' is the argument

that rights for minorities . . . threaten individual human rights. It is argued, for example, that group rights create invidious distinctions between citizens which are contrary to international law rules prohibiting discrimination on the grounds of race, national origin or religion. Where an individual human right is in question, the individual is the measure of the violation. By contrast, where groups rights are involved, the focus is on all the circumstances of the group rather than upon the individual.

As reported in the *Guardian Weekly* of April 15

Trudeau despises the Meech Lake deal because it runs counter to the two grand principles which he sought to establish. The first was that citizenship should rest on one's rights as an individual, and not on any special or communal rights as a French-Canadian, or any other kind of minority. The second . . . was that Canada needed a strong central government to hold the federation together.

The possible clash between collective and individual rights is seen in a reported new Quebec law which bans anglophones from putting English-language signs outside their places of business. The Quebec government sees the need to preserve French as the provincial language as critical to the maintenance of its cultural identity. The new law is designed to achieve this aim. However, in asserting its rights, as against the rest of anglophone Canada, it could be argued that

it is infringing the right to freedom of expression of the individuals and minorities within its province.

Gillian Triggs points out in her chapter that there is no necessary tension between group rights and individual rights. The interdependence of the two must be recognized, and it is often a question of balance.

multiculturalism in Australia. The historical position is different in Australia. However, the same issues arise in the context of the Agenda for Multicultural Australia and the ALRC's reference on multiculturalism and the law. The commission's Issues Paper no 9 points out that there is considerable debate in Australia about the extent to which the retention of ethnic identity on the part of individuals and groups in Australia is compatible with the maintenance of national unity and where the line between them should be drawn. The federal government in its National Agenda for a Multicultural Australia sets the following carefully defined limits on the rights of Australians to express and share their individual cultural heritage.

Multicultural policies

- are based on the premise that all Australians should have an overriding and unifying commitment to Australia
- require all Australians to accept the basic structures and principles of Australian society – the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language and equality of the sexes and
- impose obligations as well as rights, in particular, the obligation to accept the right of others to express their view and values.

As the issues paper states, these principles will be part of any test applied by the Commission to determine whether the law takes adequate account of the cultural diversity of Australian society.

peoples' rights — the issues. In his concluding chapter in *The Rights of Peoples*, James Crawford considers that there are a number of important issues posed in the debate over 'peoples' rights'.

- Is the almost exclusive emphasis on individual human rights in international law since 1945 enough?
- Can the legitimate interests of groups be sufficiently protected by recognition of the individual right to associate?
- Should individual rights, including the right to opt out of groups or communities, prevail over the interests of those groups or communities?

These are some of the issues which will face the ALRC in its reference on multiculturalism and the law when it makes decisions about whether the law should be changed to accommodate minority ethnic values.

Finally, he raises an even more basic question of whether international law should continue with its established pattern of rights and obligations of a primarily inter-state character, and whether there is room for a new category of 'peoples', with rights against their own, or other governments. Crawford emphasises that it is important that conclusions about this 'third generation of rights' are not reached without providing answers to these questions.

Crawford examines the history and development of related concepts in international law, and the relationship of peoples' rights with states rights and human rights. He concludes that there are good grounds for considering that the category of 'peoples' rights' is a legitimate one. He suggests three criteria for determining whether a particular asserted right is a peoples' right. These are

... first, whether the right is a right of peoples rather than governments or States; secondly, whether the right has been articulated in such a way that it can be seen to have a certain content, that is, legal consequences of some kind, and thirdly,

whether the right, as so articulated, has achieved a sufficient degree of acceptance.

He considers that the right of self-determination is clearly a peoples' right, as is the right to existence. Minority rights as spelt out in Article 27 of the International Covenant on Civil and Political Rights, may not be because it is not clear whether they are intended to be collective or individual. Crawford would argue that they do qualify as peoples' rights.

Crawford then takes the discussion beyond the question of the place that the category 'peoples' rights' may occupy in the established system of interstate relation and international law, to a broader perspective. He discusses Richard Falk's view expressed in a chapter of this book that

'peoples' rights, and indeed the whole third generation of 'solidarity rights', are part of a developing normative order substantially independent of the State system. Falk describes this as an expression of a developing international civil community, one in which individuals and groups combine to express values, independent of their acceptance by States, but rather relying on the inherent rights and common conscience of mankind.

Crawford concludes that however one views the notion of peoples' rights, it is firmly entrenched within the interstate framework and that

As with human rights generally, the task for international lawyers is to understand the framework, to explain it — ... to those seeking to rely on it, and to make it work, if possible in the interests of individuals and their communities, as well as in the interests of the governments whose primary domain it continues to be.

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company law

Compromise used to mean that half a loaf was better than no bread. Among modern statesmen it really seems to mean that half