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# ABORIGINAL SOVEREIGNTY

## Justice, the Law and Land



**Kevin Gilbert**

Burrambinga Books



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**includes DRAFT TREATY**



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**This Draft Treaty and  
Aboriginal Sovereign Position and  
Legal Entitlement**  
was written after consultation with  
**Aboriginal Members of the  
Sovereign Aboriginal Coalition**  
attended at Alice Springs  
on 19th to 21st June 1987  
and incorporating the advice of  
the **Aboriginal Sovereign Communities**  
throughout these our Sovereign Domains

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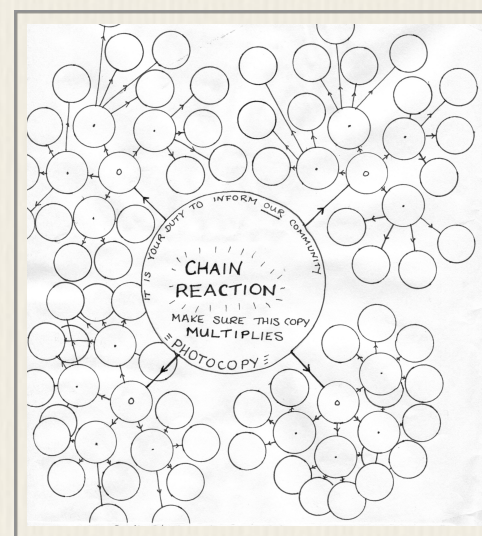
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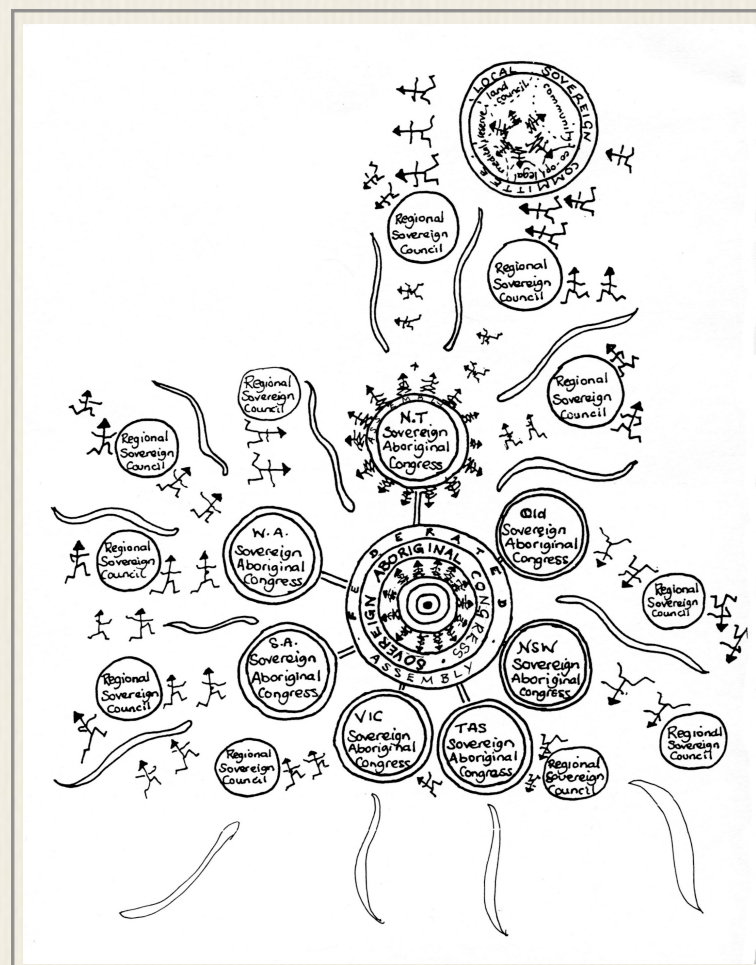
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Also by Kevin Gilbert:

Because a White Man'll Never Do It



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Living Black: Blacks talk to Kevin Gilbert  
People Are Legends  
Inside Black Australia: an Anthology  
The Cherry Pickers: First Written Aboriginal Play  
The Blackside, People Are Legends and other poems  
Child's Dreaming  
Black from the Edge  
Me and Mary Kangaroo

## CONTENTS:

Foreword

A case to answer

Sovereignty: The king is dead – long live the king!

Aboriginal sovereign position

Definitions

Only legal ways by which sovereignty may be transferred in International law

The illegal invasion

Australia's attempts to legitimize the illegal invasion of this land

Recognition of inherent sovereign rights within Australia

Aboriginal Sovereignty both viable and exercisable

Sovereign Treaty to enshrine our rights



# DRAFT SOVEREIGN TREATY

## Bibliography

## Postscript



# Foreword

With the previous hard copy editions out of print this iBook edition digitises *Aboriginal Sovereignty: justice, the Law and land* for the first time through [www.kevingilbert.com.au](http://www.kevingilbert.com.au). The ground-breaking work resonates in the contemporary era as a foundation stone to the Sovereignty Movement, by casting a web of text around the fundamental legal argument that sovereignty has never been ceded by First Nations and Peoples in Australia and that the colonial Commonwealth government of Australia does not hold a beneficial root title to land and is, in effect, an illegal occupying power.

Although first published in 1987 the subsequent time period has served to affirm this position, which was verified in 2011 when the original version of the *Pacific Islanders Protection Act* 1875 was extracted from the archives of the Office of Parliamentary Counsel in Whitehall, London. The Act, which is to be read together with the 1872 Act of the same name, clearly relates to the Australian colonies of the era. By an Order-in-Council Queen Victoria inserted Section 7, which affirms that Britain never claimed sovereignty over the 'islands and places' and Section 10 decreed that the Act was to be proclaimed by the governor 'in each Australian colony':

7. *Saving the rights of tribes: - Nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest Her Majesty with any claim or title whatsoever to dominion or sovereignty over any such islands or places as aforesaid, or to derogate*



*from the rights of the tribes or people inhabiting such islands and place, or of chiefs or rulers thereof, to such sovereignty or dominion ...*

Since 2013, First Nations in Australia, one by one, are declaring the status quo through Unilateral Declarations of Independence (UDIs) and affirming that Aboriginal Peoples have always been excluded from the Australian Constitution [[www.sovereignunion.mobi](http://www.sovereignunion.mobi)]. Murrawarri and Euahlayi Nations were the first to inform HRH Elizabeth II of their Unilateral Declarations of Independence.

Now that the concept of unceded sovereignty of Aboriginal Nations and Peoples is firmly embedded in the psyche, the movement is towards Treaties between the Sovereign Nations as they rebuild from the grip of an ongoing genocide. How the occupying Commonwealth government deals with its Achilles Heal remains to be seen. Certainly, the referendum to coercively include Aboriginal and Torres Strait Islanders in the Australian Constitution is one response not welcomed by those who understand the trap.

Eventually, the vision of a land continuing to be nurtured by the oldest living cultures on earth can be manifested through decolonisation, effective reparation to guarantee the wellbeing of the independent First Nations and Peoples and the growing up of the newcomers 'proper way'.

Eleanor Gilbert, Alice Springs, 11 September 2015.



### **Foreword to 1993 third print edition:**

It is appropriate that this edition includes the Aboriginal perspective on reconciliation and the High Court's decision in the 'Mabo case', which confirmed that native title to land in the Murray Islands was recognised and had survived the white invasion.

Sadly, Kevin has returned to the place of the ancestors, so an extract from an interview with him in August 1992 by a BBC radio journalist can serve to clarify the widely held view of the grass-roots Aboriginal People.

### **WHAT ARE WE TO RECONCILE OURSELVES TO?**

"We have to look at the word 'reconciliation'. What are we to reconcile ourselves to: to a holocaust, to massacre, to the removal of us from our land, from the taking of our land? The reconciliation process can achieve nothing because it does not at the end of the day promise justice. It does not promise a Treaty and it does not promise reparation for the taking away of our lives, our lands and of our economic and political base. Unless it can return to us these very vital things; unless it can return to us an economic, a political and a viable land base, what have we? A handshake? A symbolic dance? An exchange of leaves or feathers or something like that?

It is not possible, and the people who comprise the reconciliation council are not the indigenous representatives from the Aboriginal communities. The eminent white people are from the mining industry. They are selected from the churches. They are selected from the business council. So immediately the white people (who are these eminent Australians on that body) are people who come from areas of very deeply-vested interests and these interests are certainly not pro Aboriginal ownership of land.

The Aboriginal people who are on there (the reconciliation council), many of them are employees of the government. They work in government departments. They have a vested interest in following the various programmes or policies of government and there can be no representative voice. It is a ten-year period for this process to occur. Now that means to us a further ten years of dying, and a further ten years where there is nothing promised at the end of the day.

Justice, in fact, is not even the objective within this. The object is reconciliation, which means to educate people to the Aboriginal condition – and heaven knows they must be educated – and to wash their hands, virtually, of the obtaining of justice for Aboriginal People.

## MABO IS THE TURNING POINT FOR JUSTICE

“The Mabo decision clarified the Aboriginals’ right in land. It clarified the position held, even by the colonial office at the time of settlement, and the attitude of the colonial office in 1788 was that Aboriginal People had incontrovertible rights in land. Now those rights have always existed in British law. The fact that Britain declared that Aboriginal people were British subjects at the very moment that British law came into this country ensures that Aboriginal ownership in real estate must be protected, must be constant and the Mabo case does clarify that. It reinforces Aboriginal rights in land.

However, there are some faulty interpretations within that. To look at British law we cannot assume that the Crown cannot be a robber, that the Crown cannot be an assassin, that it cannot kill the population off with strychnine and then claim that real estate to itself. Because we are clearly defined groups of people our inheritance, according to British law the very foundation of Australian law, has never passed away. Even though we were driven off our lands, even though we have not been allowed the enjoyments of those lands, even though we have been denied any type of title to those lands, the inheritance from our forebears still exists and must exist, otherwise the Crown becomes a thief. Australia becomes a



nation of thieves. The Crown becomes an assassin. The white Australians become assassins who have stolen the land.

Either the British law must stand - it must have a foundation as justified by the Mabo case - or else it does not exist. You cannot play with the integrity of the Crown, with the very basis of the integrity of the law, and then hope to use it to deny Aboriginals their very valid claim in real estate, their very, very valid claim of inheritance and indeed their very Sovereignty.

Until there is a Treaty, the laws of the ancient kingdom still exist and the rights must be negotiated and then certain rights must be recognised and negotiated in the most unequivocal of terms. The Mabo case substantiates all that we have been asking for in that time.

Australia, white Australians especially, must remember that you cannot build a nation on the massacred blood of a People. You cannot build upon the stolen lands of a People. There must be justice. You cannot develop a culture unless that is developed upon the land. You cannot build a sound culture, if that culture is based on pillage and murder and massacre. So we must go back to the very, very basics.

The Mabo case is the turning point for justice for Aboriginal People and indeed the turning point to lay the firm foundations and a vision for the whole of this country”.

# A Case to Answer

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## Forward to Second Edition

While white Australia celebrates two hundred years of colonial settlement amidst self-congratulatory sounds of champagne corks and balloon popping, there seems to be an undertone of hysteria which seems to be saying, ‘Look at ME, World’. ‘We really are happy buffoons a la Crocodile Mick Dundee.’ ‘We are friendly Australians that even your mum would be pleased to meet’. ‘We are achievers so pat our backs!’ But above the crescendo can be heard the awesome rattle of convict chains, the echo of a society built upon crime, blood, inhumanity, murder, land theft and a callous, criminal lack of compassion and integrity that places the murders, the theft of land, the crime against humanity not in the distant past, but as recent as yesterday.

Today and tonight as I type these words the sound of human abuse and the white Australian contemporary lack of humanity, guts and integrity, whimpers hauntingly through my windows, surging above the crackle of my campfire, as Black children die from the deprivation of clean drinking water, shelter, medical facilities.

The ‘celebration’ is seen in many quarters, especially overseas, as an ego philandering debauch; a drum booming hollowly, an invitation for the unseen guests to enter and be merry in the house of a host of dubious company. There are reasons, good sound earthy reasons why the bicentennial celebrations have not drawn the crowds, the international visitors, who were expected by governments and tourist bodies to overflow the facilities and swell the depleted coffers of this miserable society.



Perhaps the most important reason affecting international visitors is that the world is no longer the victim of misinformation and political ignorance, as it was fifteen years ago. The evidence of Australia's inhumanity, racism, genocide, its corporate greed, its record of arrogance and criminal business involvement in drugs, sex, confidence exploitation has seeped, like a malodorous vapour, into the knowledge of the citizens of the world. That knowledge of the REAL Australia has placed Australians in a category of racist abusers of humanity to the same level as white South Africa. Indeed, Pic Botha, the white South African Foreign Minister said, and rightly so, that, despite the position of South Africa, Aboriginal people were forced to live under worse conditions, suffer a higher rate of deaths and murder in custody than Black South Africans; have less political representation, etc. Certainly, the material, everyday living conditions of Aboriginals are on a par with Black South Africans. Aboriginal families live and die without clean drinking water facilities, often being forced to carry water, for drinking purposes, twenty or more kilometres. In cases, in the Northern Territory, although camped upon tribal territory which whites took as 'pastoral lease', and the camp only one kilometre from a running stream, the white pastoralist won't let our people drink the water because, he says, "They will frighten the cattle away or upset them". Kids die from lack of adequate clean water.

Even in New South Wales, Aboriginal people live in old car bodies, under scraps of tin, without water coming from a tap, without electricity, without a rain-proof roof over their heads. In New South Wales Aboriginal children are refused medical attention after 'hospital hours'. Their condition is viewed dispassionately and shrugged off as 'neglect' and 'won't help themselves' and 'bludgers' and 'they WANT to live the way they do'. So much is the stereotype entrenched in New South Wales, that the public accepted without protest, and even supported, one of the first actions of the recently elected Liberal Premier, Nick Greiner, who moved to repeal the more humane and positive acts the former Labor Government had instigated in its Land Rights Legislation for that State. Once again white Australians and their 'statesmen' opted for retrogressive tyranny in preference to moving forward to vision and integrity.

As recently as May 1988, the 7.30 Report on ABC National Broadcast television showed the deplorable conditions of a group of Aboriginal people living near the tourist town of Coffs Harbour, on the North Coast of New South Wales. Their shelter was made out of scraps of tin, gleaned from the town rubbish tips, and old hessian bags. There was no roadway, no water supply or electricity, no hope for a better future without the direct intervention of the local Aboriginal Land Council. Yet the Premier, Nick Greiner, has moved to destroy the basis of the Land Council that would have ultimately encompassed the group in humanitarian aid projects.

On the 29 July 1987, the Sydney Morning Herald carried a news item with the heading, 'Deprived town where taps won't even give water'. The article stated how Victor Dennison, an Aboriginal street cleaner, pays \$800 a year in rates to the Moree Plains Shire Council, a white Council. A substantial part of the payment is for the privilege of having two taps standing outside his house but not connected to the water main. In fact, the water mains were installed with substantial assistance from the Department of Aboriginal Affairs Budget Allocations. Most of the Aboriginal families cannot afford the \$600 connection fee to the mains. The majority of the families live below the poverty level on social service yet are expected to pay for a service that is normally available throughout any residential area in the white community.

On nearby Toomelah Reserve (a refugee camp), the families have to make do with water that runs for only fifteen minutes each morning and evening. The local health worker, Pam Duncan, told the Human Rights Commission that it was not unusual for the 400 residents of the Toomelah Reserve to go without water for a week. The article details the cases of gastro-enteritis, skin and other infections.

On the 13 September 1987, the Sydney Morning Herald reported, through its journalist David McNight: "When the Royal Commission into Aboriginal Deaths in Custody examines New South Wales' record, it will find a situation similar to the aftermath of a war." Dr Sutton, the Director of the Bureau of Crime Statistics, released preliminary figures from a study on crime and justice in north western NSW. He said, just as Germany was devastated in 1945, similarly Aboriginal society has undergone the 'wholesale destruction of the entire social



fabric’... The difference was that in Germany there was an attempt to rectify the situation. Here, there was no attempt.” He went on to say, “There was war between whites and blacks in this country and the whites won. And I suppose the blacks, you know, just have to accept they lost. But, on the other hand, the aftermath of war rarely lasts for two hundred years and that is what occurred in this case”. Dr Sutton also commented on attitudes, saying that “whites in country towns sometimes blamed Aborigines for not taking up the few opportunities which existed ...but in most cases the Aborigines simply did not have the personal resources to take them up because of the destruction of the social fabric.” The statistics showed, “a portrait of a culture harassed and beaten down for decades.”

Indictment indeed for a nation founded upon lies, deception, fraud and racial murder, especially when someone of the stature of the Victorian Returned Servicemen’s League chief, Mr Bruce Ruxton, recently stated, during a tour of South Africa that: Australia’s Aboriginal policy was as racist as Pretoria’s apartheid regime. He advised Australia to look at their own Government’s policies towards Aborigines before protesting about South Africa’s apartheid regime. He said, “I would suggest that some of the homes in the black settlements in South Africa are far better than yours (in Sydney). I would suggest that the Australian Aboriginal lives in far worse squalor than the South African Black does”. (Canberra Times 16/9/87).

Justice Einfeld, of the Human Rights Commission, broke down and wept when he saw the inhumane conditions, the abuses against human right and dignity as witnessed in Toomelah, New South Wales. The judge exclaimed, “It is beyond belief...I have been to Soweto in South Africa, to German concentration camps, but this is my own country.”

Despite our two hundred years of effort to force a sense of justice within white Australia and despite our attempts to find a catalyst to engender a national spirit of integrity, humanity, decency in white Australia generally, our two hundred year war continues – denial of our basic human and indigenous rights continues. How DO we attempt to broaden the dialogue? Especially when that old foe, ignorance,

bigotry, racism is so widely entrenched in the white psyche within the community, as well as at the government level?

Australia has signed major covenants on human and political rights internationally. Perhaps a greater moral force will develop the poor white creatures who alienate our great land?

Hope springs eternal, for in more recent times the white community seemed to be saying: "...but we don't know what Aboriginals want." So we set out to tell them. Land Rights. What is Land Rights? Land Rights equals integrity. Land Rights equals justice. Land Rights equals laying the cornerstone for justice and future human development in this land. A development that will ultimately reach out and encompass many parts of the world within our humanity, our abhorrence of wars, maiming, torture and racism; our abhorrence of human degradation, abuse of nature and the land. Still, they do not hear. To the contrary, many say: "Aboriginals get too much." There is much ado about tax-payer money and this from a society that has murdered us, the rightful owners, placed us in exile and then used the mineral and natural resources of our estates to grow and wax fat like maggots upon the carcass of the stolen inheritance, an inheritance which is and remains rightfully Aboriginal inheritance.

Land Rights equals the return of a viable land base to us; an economic base; reparation on a scale that will allow us to begin the healing of the wounds of two hundred years; compensation to enable us to pipe clean drinking water, to establish medical clinics, to erect adequate shelter, and preserve and practice our culture. Surely, justice is never too high an ideal that it be unattainable for societies like white Australia and white South Africa? Is our last alternative to be that of our brother indigenous people, the Kanaks? Surely all decent and worthwhile nations will move to stop the ultimate genocide that is planned for them by the colonising French. Indeed the same genocide is planned to us, the Aboriginals in this land, by white Australia, who daily does what it can to deprive us of human right, including the right to our land and our culture and to enjoy even so much as one good full week of experiencing what it must be like to be healthy, to feel healthy and good and unoppressed.

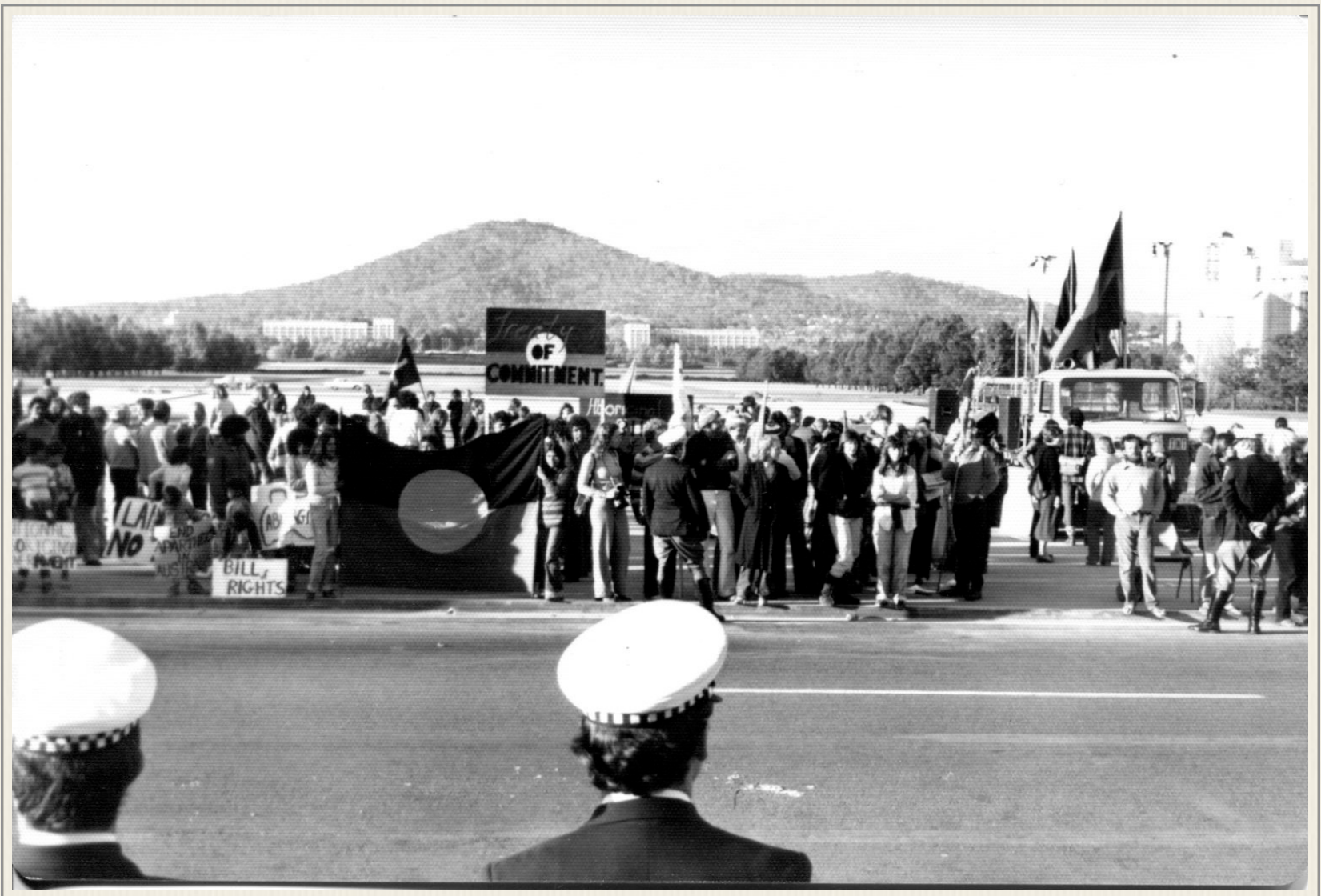


The Sovereign Position and ‘Draft Treaty’, which follow, are not the ultimate document of the Aboriginal claim, but guides which set out a proto-type documentation in the processes required to obtain some guarantee of integrity and fair dealing. The historical quotes, evidence and legal argument are positive proof of Australia’s crimes against humanity and that its claim to ‘Australian sovereignty’ is a fraudulent claim, illegal and completely untenable in International Law.

Kevin Gilbert, 5 May 1988



# SOVEREIGNTY THE KING IS DEAD - LONG LIVE THE KING!



August 1979: Early demands for a Treaty outside Parliament House, Canberra

The ‘Iron Lady’ of Britain, Prime Minister, Margaret Thatcher, declared to the world – via courtesy of the BBC on 19 May 1982 in reference to the Falklands War episode – or debacle –

*‘Sovereignty is ours. It has not been changed by invasion and Sovereignty must never be changed by invasion.’*



Her statement defines precisely the position of Aboriginals and our rights in land. We were invaded. Our Sovereignty has not changed, has never changed. It has not changed by invasion, despite the fact that the invaders drove us from our traditional and ancestral lands. It has not changed by the fact that our forebears, and we their descendants, were pushed into small areas of land called by white Australia 'Reserves' and those reserves were used to contain and imprison us.

Sovereignty has not changed, despite the terror and the injustices of the British/Australian system levied upon us and the legal fiction of the peaceful settlement can in no way be sustained. The King is dead. Long live the King.

My country, the Wiradjuri, covers the most extensive area of tribal land in NSW, approximately one seventh of the total land area, plus the area of traditional usage-passage-commerce with the neighbouring tribal areas. In the British colonialist war of extermination against us to deprive us of the land and the enjoyment and ownership thereof, they attempted to completely annihilate and deprive us of life itself. Our resistance to the invasion is clearly recorded in the annals of history. The fact the British used troops against us is a matter of recorded history. I will quote several examples of the use of soldiers in my land, Wiradjuri.

These quotes are a small selection from the many passages of horror that could be so chosen by some historian for every part of Australia:

In October and November (1823) natives attacked the stations belonging to Wylde and Palmer and Marsden, to the west of Bathurst, scattering the herds, spearing cattle and killing some of the stockmen. The men were intimidated and would not leave their huts to round up the cattle and bring them in without protection. The Government station at Swallow Creek was abandoned and the cattle brought in to Bathurst. Wylde asked urgently for military assistance from the Government to protect his cattle, and Lawson agreed that more soldiers were needed to ensure some degree of security for life and property. He dispatched a party of soldiers and prisoners with Wylde's overseers, instructing them not to fire except in self-defence, but to bring in as many prisoners as possible, and particularly not to do any violence

to the native women and children. He feared, however, the white persons ‘in the first instance have been the aggressors’.

It is quite obvious that the instruction to ‘bring in as many prisoners as possible’ meant that a hostile act would be carried out against the natives no doubt with killings involved. In an extract from a letter to the Rev. Wm Horton, Methodist missionary at Bethel:

There is a number of people and a party of soldiers in pursuit of the natives and I hope they will over-take them. I have only sent you the particulars as far as I know.

The Sydney Gazette of June 10th, 1824 also refers to a party of soldiers sent out:

We would hope the report incorrect, which goes to say that a party went out in quest of the natives, for the purpose of spreading destruction among their ranks, but the only horde they fell in with comprised three women; and without questioning the propriety of such a step, immediately despatched the poor inoffending creatures, notwithstanding they were females! If this be a fact, Heaven will not readily absterge so foul a stain – how then is it to be expected that man should justify such blood-stained guilt.

In a letter to the Sydney Gazette on 12 August, 1824, in response to reports of the killing of sixty to seventy ‘natives’ and five whites, Honestus wrote:

Sir: Beyond the Blue Mountains we have 41,000 acres of located land, 83,000 sheep, 1,500 horned cattle, and about 300 horned cattle (sic.) The inhabitants are necessarily scattered over an extent of the country 120 miles long by 60 wide. For the defence of this property and population, we have three magistrates, four constables, and a few soldiers. One of the magistrates who left Bathurst but 3 days since, with other settlers of great respectability, report that the natives are assembled in a body to the number of six or seven hundred proclaiming aloud their hostile



intention. About 20 Englishmen have already fallen miserably before those pitiless savages; and still a Philanthropist obtrudes himself upon the Public, recommending the 'law of kindness'. Would not the wisest of men say... 'this also is vanity and vexation of spirit'? He that spareth the rod hateth the child'. Every true friend to the Aborigines must desire that they be made to learn by terror those lessons which they have refused to acquire under a milder discipline. We are now to oppose strength to strength, that an end may be put to the effusion of human blood.

Those 'lessons' not acquired under the 'milder discipline' were no doubt the recorded instances of feeding the Wiradjuri with arsenic-laden food, etc. or as W H Suttor wrote:

Under this condition of things the blacks were shot down without any respect. Getting the worst of it, most of them made out into the deep dells of the Capertee country and although some escaped, many were killed there. At the place we are writing of, a camp of blacks had been established. The proclamation of martial law was as undecipherable to them as an Egyptian hieroglyph. This mattered little to the whites – the fiat had gone forth and must be acted upon. So a party of soldiers was despatched to deal with those at this camp. Negotiations apparently friendly, but really treacherous, were entered into. Food was prepared and was placed on the ground within musket range of the station buildings. The blacks were invited to come for it. Unsuspectingly they did come, principally women and children. As they gathered up the white men's presents they were shot down by a brutal volley, without regard to age or sex. While Bathurst with its surrounding vicinity is engaged in an exterminating war, peace reigns around the ever verdant valley of Wellington." And, "When martial law had run its course extermination is the word that most aptly describes the result. As the old Roman said, "They made a solitude and called it peace". The last effort of a doomed race thus ended.

## BRISBANE'S FIAT GOES FORTH:

New South Wales

### PROCLAMATION

By His Excellency Sir Thomas Brisbane, Knight Commander of the Most Honorable Military Order of the Bath, Captain-General and Governor in Chief in and over His Majesty's Territory of New South Wales and its Dependencies, etc. etc.

WHEREAS the Aboriginal Natives of the District near Bathurst, have for many weeks past, carried on a series of indiscriminate attacks on the Stock Stations there; putting some of the Keepers to cruel Deaths, wounding Others, and dispersing and plundering the Flocks and Herds, - themselves not escaping sanguinary Retaliation'-

AND WHEREAS the ordinary Powers of the Civil Magistrates (although most anxiously exerted) have failed to protect the Lives of His Majesty's Subjects, and every conciliatory Measure has been pursued in vain; and the Slaughter of Black Women and Children, and unoffending White Men, as well as of the lawless Objects of Terror, continue to threaten the before mentioned Districts:-

AND WHEREAS, by Experience, it hath been found, that Mutual Bloodshed may be stopped by the Use of Arms against the Natives beyond the ordinary Rule of Law in Time of Peace; and for this End, Resort to summary Justice has become necessary:-

NOW THEREFORE by virtue of the Authority in me vested by HIS MAJESTY's Royal Commission, I do declare in Order to restore Tranquility, MARTIAL LAW TO BE IN FORCE IN ALL THE COUNTRY WESTWARD OF MOUNT YORK:-



And all Soldiers are hereby ordered to assist and obey their lawful Superiors in suppressing the Violences aforesaid, and all HIS MAJESTY's Subjects are also hereby called upon to assist the Magistrates in executing such Measures as any one or more of the said Magistrates shall direct to be taken for the same Purpose, by such Ways and Means as are expedient, so long as Martial law shall last...

Soon after martial law was declared many of our Wiradjuri people were herded into a swamp by mounted police who kept shooting until all were killed. The missionary, Rev. Threlkeld reported:-

Forty five heads were collected and boiled down for the sake of the skulls. My informant, a Magistrate, saw the skulls packed for exportation in a case at Bathurst ready for shipment to accompany the commanding officer on his voyage to England.

There were many massacres, some still remembered by place names in current usage such as Murdering Island in the Murrumbidgee River and Poisoned Waterholes Creek near Narrandera.



August 1979: Budget Day march from National Aboriginal Government camp, Capital Hill, Canberra



The following poem tells the story of my immediate family:

## KIACATOO

On the banks of the Lachlan they caught us  
at a place called Kiacatoo  
we gathered by campfires at sunset  
when we heard the death-cry of curlew  
women gathered the children around them  
men reached for their nulla and spear  
the curlew again gave the warning  
of footsteps of death drawing near  
Barjoola whirled high in the firelight  
and casting his spear screamed out “Run!”  
his body scorched quickly on embers  
knocked down by the shot of a gun  
the screaming curlew’s piercing whistle  
was drowned by the thunder of shot  
men women and child fell in mid-flight  
and a voice shouted “We’ve bagged the lot”  
and singly the shots echoed later  
to quieten each body that stirred  
above the gurgling and bleeding  
a nervous man’s laugh could be heard  
“They’re cunning this lot, guard the river”  
they shot until all swimmers sank  
but they didn’t see Djarrmal’s family  
hide in the lee of the bank



Djarrmal warned “Stay quiet or perish  
they’re cutting us down like wild dogs  
put reeds in your mouth – underwater  
we’ll float out of here under logs”  
a shot cracked and splintered the timber  
the young girl Kalara clutched breath  
she later became my great grandma  
telling legends of my Peoples’ death  
the Yoorung bird cries by that place now  
no big fish will swim in that hole  
my People pass by that place quickly  
in fear with quivering soul  
at night when the white ones are sleeping  
content in their modern day dream  
we hurry past Kiacatoo  
where we still hear shuddering screams  
you say “Sing me no songs of past history  
let us no further discuss”  
but the question remains still unanswered  
How can you deny us like Pilate  
refusing the rights due to us  
The land is now all allocated  
the Crown’s common seal is a shroud  
to cover the land thefts the murder  
but can’t silence the dreams of the proud.

And so, with such a lie of ‘peaceful occupation’, Australia, white Australia, went on to form a ‘Commonwealth’ in 1901. The Australian Aboriginal saw the cattle industry and the early mining industry in the far north, cemented in Aboriginal blood. The dispossessed “King”, his governing structure and authority destroyed, became a slave, as history describes, living not well but on the offal, the remainder of the viands thrown to him by the station-owners, the white stockmen. The Government, refusing to recognise his humanity, did not provide for any social benefit. Rations of a most sparse nature were given those who laboured on the Mission or the Reserve. If they spoke in anger, they had their rations cut. Many lived in old derelict car bodies. Whole families lived – and still live – in those old car bodies and under pieces of galvanised iron. Most camp areas have no running water. In many instances in the Northern Territory, the pastoralists won’t let Aborigines camp near the creeks ‘because it will upset the cattle’.

Blacks see white Australians living most comfortably with a sound economy based on the resources taken from Black Land. We find denial and racism in the Church, in the hospitals, in the street where, instead of finding compassion or some sort of gratitude for the great benefits present day Australians enjoy from Aboriginal lands and slavery, we find hatred, jealousy, ignorance, abuse.

The ‘King’ becomes an alcoholic. Others try to imitate whites, others are kept ‘as prisoners of war’ with ‘camp commandants’ and police invading their privacy, abusing their human right, flogging them, often killing them – not only with impunity, but with the blessing of the law. Many are today suffering the effects of being displaced persons in our own land. Sick, poorly nourished, ill-educated, ten and fifteen crowded per room into derelict houses on reserves, no hot water, psychologically depressed, many are ‘drunk’, ‘dirty’, ‘lazy’, ‘sullen’, ‘hate white Australia’, ‘smash windows, doors’ and other fifth rate trinkets with which White Australia tries to salve its conscience – and tries to prove an international image of benign indulgence – and all they get from Blacks is the ungrateful stereotype response. Still, Whites ask: “Why? Why??”

We are like we are because you in your greed, your inhumanity, your selfish lack of maturity, your outright pathetic bloody ignorance, help the Government in its



constant repression facile trickery and corruption, to continue the denial of our Sovereign Right, our human rights, our rights of independent self-determination. We are what we are because we do not want to ever be like you. We don't want to be poor like you – in the spiritual sense. Poor like you are without a sense of justice. Without a sense of Land and without a sense of culture. Without a sense of nationhood. Without brotherly and family love extending to the tribe. You are not a people to be proud of. You are not a people that anyone with the foregoing sensibilities would wish to imitate. We'll stay in here, as drunks, dirty, poor in the material things, sick because the means of our being well have been taken from us. We'll stay in here, knowing the war, the two hundred year war has not availed you victory; knowing it has not ended and will never end until our Sovereign Rights, our Land Rights are recognised. We do not wish to shake hands and blot out the horror, effacing it by joining you as assimilated citizens thank you very much.

Australia's furphy of 'peaceful occupation' was further compounded by the heinous lie of declaring that the Blacks were henceforth 'Subjects of British Law'. Wherein we were given no protection and no 'Citizens Rights' until the Australian Referendum of 1967. Extermination, rape, slavery, the most detestable forms of abuse of human rights were allowed to be executed against us. When massacre occurred, no process of law could proceed because Blacks were seen by the courts as 'incapable of recognising and swearing an oath', plus the attitude that a Black could not testify because his/her word could not be accepted against the word, no doubt the 'integrity', of the white accused. This little bit of legal footwork ensured that mass murderers never had to even fear a legal retribution. When syphilis was spread amongst the Blacks by the colonists, they and their servants developed the nasty little habit of killing the men and the women, and then raping Black children before making them slaves or killing them. When an arrest did occur in Queensland, the case was brought to nothing because Blacks, and in this case, the Black child, 'did not know the nature of an oath'.

Apartheid in Australia was an institutionalised fact. Aborigines were trucked like cattle from their tribal lands and 're-settled' in remote areas on 'reserves' ostensibly for their own 'protection'. They were also pushed out of the town areas

to dwell on the riverbanks, near local rubbish tips, anywhere where they were out of sight of the ‘sensitivities’ of the white population. From these police controlled and white manager controlled areas Aboriginals had to have permits, passes to enter to visit families, to go to work.

We had to be ‘out of town’ at clearly defined curfew period, usually sun-down, or, when I was a teenager in Condobolin, Griffith and Leeton, NSW, by fifteen minutes after the Saturday night movies – or when the bus left town. We were roped off, actually by stretched rope, from the ‘white’ area in the picture theatres, and if we didn’t leave town at the curfew hour, we were bashed by police. To guard against this, we would only remain in town after curfew in groups of eight to ten – outnumbering the police and to stop their little game of punch-up, but still having to move out sullenly under the threat of a gun.

The ‘reserves’, those pitiful little islands of despair, became ‘home’ to us. ‘Home’, where despite the continuing savagery of the white-man, the taking of our children, the police abuse, the semi-starvation, the sickness, the denial of doctors to visit, or heal our sick, was still ‘home’. A survival point where as a group, enough people were in close proximity with the aid of our dogs and a few old hunting rifles, to ensure that those perverts and little white hunting parties could be kept at bay. They became ‘our’ reserves.

The ever-greedy, implacable whiteman started selling off our reserves. Pastoralists wanted our little islands of land, sometimes ten acre lots, a hundred, sometimes five hundred acre lots. Their friends in the Government, the country Ministers, aided them to re-gazette the land. Wanting ALL of it, the governments declared Aborigines must move off the reserves and become a part of the white communities.

Now, I take you back to 1972, January, Australia Day. William McMahon brought out his Government’s paper on Land Rights, promising a twenty-five year ‘Special lease’ for Christ sake! We moved to confront Australia on this matter by erecting the little tattered ‘Tent Embassy’ on the lawns in front of Parliament House. The ‘Embassy’ in itself was a compromise because we had to halt the surge in our own



ranks to grab guns and stop a more violent confrontation. The Embassy brought to international notice the predicament we were in.

Out of the land arose several white people of basic integrity, humanity and a sense of justice. Those men were Gough Whitlam, Don Dunstan, Nugget Coombs, Al Grassby. Their female counterpart, the poet Judith Wright. For the first time we were seeing whites in this country with a depth of humanity and honesty, with a spirit that comes from a native born on the soil. In this I am not being over sensational or sentimental as time, history, will tell. These people, and also many lesser people on the similar rise toward honesty, aided the Black cause by their outspoken comment; their attacks upon policy, their international and political influence.

It was then with the introduction of substantial policy change, that the real deception, the legal trickery, the filthy in-fighting, the legal fictions Country Party style began.

The Federal Labor Government, committed to Aboriginal Land Rights by policy and the obvious deeply personal commitment of its leader, Gough Whitlam, introduced an Aboriginal Land Rights Bill in 1975. In 1976, the succeeding Government, the National Country Party Coalition passed its own modified version of the Bill, giving in the first instance the Northern Territory Legislative Assembly power to pass complementary legislation. The modified version also took away control of roads running through Aboriginal lands.

Remember the deeply entrenched mining and pastoral influences are such, at the local Northern Territory Government and Federal Government level, as to have the governments subservient to their interest. Despite the fact that the Land Rights Bill effectively excluded those tribes who were forced off their traditional areas and, by the affects of mass slaughter, could no longer establish before the whiteman's courts, ownership and traditional occupation, they were to be deprived of land and compensation. Compensation was never acceded to in the Bills; the only lands available for claim were the reserves, land of traditional occupation, traditional association and occupation from unalienated Crown land areas.

It is well to remember that not one European lost his land or entitlement to land in any of these claims. Those tribal groups whose lands had been stolen for town sites, pastoral leases, or adjacent to Crown land areas, were effectively denied claim. The fact that the Aboriginal Land Councils, the Northern Land Council and the Central Land Council had to 'prove' their case and enter into expensive litigation through the enquiring court was another insult to injury, especially in a community where every bit of finance was essential to give urgent relief to the injured community.

To circumvent Aboriginal Land Claims, mining industry, such as the powerful Mt Isa Mines in Queensland, purchased a pastoral property and took up pastoral leases on properties on which Aborigines had traditional camping sites and sacred areas. Darwin and other towns throughout the Territory extended their 'town borders' earmarking those borders for 'future planning'. Darwin's area is now larger than the city of Greater London. In other areas of the country, local business men formed cartels and purchased available Crown lands.

The Pitjantjatjara Land Claim was altered by subsequent amendment and, indeed, all Aboriginal Land Claims, under the present legislation, can be amended or taken away by the same legislative process. If the legislation is seen as having protection under the special application of the racial Act, all such Acts can be repealed at any time the Government decides that legislation, made under that Act for purposes of 'positive discrimination', can be repealed when that 'positive discrimination' has been seen to have been effective in redressing some social imbalance. The deciding factor being the Government's opinion of when that stage has been achieved. In 1837 the British House of Commons Select Committee on Aborigines acknowledged that:

...the native inhabitants of any land have an incontrovertible right to their own soil; a plain and sacred right, however which seems not to be understood.



Concerning the erection of the new colony of South Australia, the Select Committee observed the obvious contradiction that South Australia was described as:

...consists of waste and unoccupied lands, which are supposed to be fit for the purposes of colonization.

but:

... great numbers of natives have been seen along part of the coast.

The Select Committee continued:

Such omissions must surely be attributed to oversight; for it is not to be asserted that Great Britain has any disposition to sanction unfair dealing; nothing can be more plain, nothing can be more strong, than the language used by the government of this country on the subject.

In order to try to halt the continuing invasion of Aboriginals' land by illegal means, the Letters Patent issued to the South Australian Colonisation Commission on 19 February 1836 contained the proviso:

... provided always that nothing in these our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own persons or in the persons of their descendants of any Lands therein now actually occupied or enjoyed by such Natives.

The Colonisation Commission actually informed the House of Commons that no land that the Aboriginals occupied or possessed in enjoyment would be offered for sale until ceded to the Colonial Commissioner. Even though instructions were issued to implement this undertaking, nothing was done about it. As a result, and despite the Letters Patent:

... South Australia's Aboriginal people were dispossessed, decimated, and pauperized in similar fashion to those in other Australian colonies.

White Australia's bar-room boys and their back-room boys *still* do not understand the sacred, incontrovertible, undeniable right we have to our land. These white boys, playing at being 'statesmen', feel that they can allow, amend, take away, swear off, deny any or all aspects of Aboriginal Right in land. It is not the case, and will never be the case at the crunch level.

The evolution of conscience, however, in this land will no longer allow political corruption; selling off of the country's land and resources to foreign investment companies, the outright denial of human right by government practice in operation, and an increasing identity in the land. The issues of justice will not, for much longer, be submerged in apathy of the voters as was witnessed in the past. Too many white Australians are now involved. Too many are now prepared to act to achieve positive result and positive understanding of our 'incontrovertible right'.

Forced by an overwhelming increase of world contempt against Australia's treatment of Blacks, the Federal Government carried out a series of publicity stunts in an attempt to placate Blacks and world opinion. The Federal Labor Government under Whitlam, having taken the first great moral leap into Land Rights, hesitantly tried to manoeuvre through the minefield of reaction and entrenched racism.

The National Aboriginal Consultative Committee (NACC) was formed and the papers and many Parliamentarians gave it a false image in the national press as 'The Aboriginal Parliament'.

Gough Whitlam said, "Aborigines would have restored to them the 'power to make their own decisions'." He added, "The NACC will meet at least twice a year in Canberra."



In fact it was a powerless body, without any secretariat of its own and with no funds to call itself together. It was described officially as an Advisory Body but, in fact, between October 1975 and March 1976 it was unable to meet, at a time of constitutional and political crisis which was certain to affect Aboriginal Australians – and hurt them as it did. Again, from March 1976 onwards, for more than a year, the National Aboriginal Consultative Committee did not meet even once, although the Land Rights Bill was being discussed and debated in Parliament.... Finally, the National Aboriginal Consultative Committee was abolished and the present National Aboriginal Conference, the NAC, was set up, again as a Government initiative.

In its meeting in April 1979, the National Aboriginal Conference stated:

That we, as representative of the Aboriginal Nation (NAC) request that a Treaty of Commitment be executed between the Aboriginal nation and the Australian Government. The NAC request as Representatives of the Aboriginal people that the Treaty should be negotiated by the NAC.

Accordingly resolved that we immediately convey our moral, legal and traditional rights to the Australian Government and that we immediately proceed to carry from our people the suggested areas to which the Treaty should be relevant and that we proceed also to draft a Treaty and copies of the Motion be sent to the Prime Minister and to all Members of the Australian Parliament.

Knowing that our previous applications to have our proper status in land, our rights to compensation and our sovereignty recognized had, to the mid 1970s, availed us little, either in white society or the legal avenues of redress in white Australia, we called a national conference to be held in Redfern in August 1979, where the National Aboriginal Government representatives were chosen and sent to erect a camp on Capital Hill, Canberra, on the proposed site of white Australia's new Parliament House.



August 1979: National Aboriginal Government, Capital Hill, Canberra

## Aborigines set up 'embassy'

CANBERRA. — A group of Aborigines has set up tents on Capital Hill, the site of the new Parliament House, in a new bid for compensation for loss of traditional land.

Five representatives of the Organisation of Aboriginal Unity set up their camp in near freezing conditions on Monday night.

They say they will not move until the Federal Government has agreed to introduce a bill of Aboriginal rights and recognised Aboriginals sovereignty over Australian soil.

A spokesman for the Aborigines, Mr. Kevin Gilbert, said they had been delegated as representatives of a national Aboriginal government by Aborigines at a national conference in Sydney on Monday.

Mr. Gilbert said the Aboriginal bill of rights should include:

- Cash compensations for all Aborigines moved off their land;
- Payment of a fixed percentage of gross national product to an elected Aboriginal forum;
- The return of all traditional land and all land where massacres of Aborigines occurred;
- The handing over to Aborigines of all missions and stations occupied by Aborigines.

Yesterday, almost seven years after ACT police tore down the Aboriginal "embassy" of tents outside Parliament House, Mr. Gilbert said the new camp would stay until the bill of rights was guaranteed by the Government.

ACT police officers inspected the camp yesterday morning but took no action.

*Melbourne Age 8/8/79*



# Aborigines stake claim on Capitol Hill

Capitol Hill, the planned site for Canberra's new and permanent Parliament House, has been claimed as an Aboriginal sacred site by a group calling itself the National Aboriginal Government of Australia.

The group set up their tent capital on top of the hill at 4am yesterday and issued a statement calling for a Federal Aboriginal Bill of Rights and a treaty of commitment from the Federal Government.

One of the nine-member group, Mr Kevin Gilbert, said that the members had driven all night from Sydney after a meeting there of a national conference called by the Organisation of Black Unity. The conference had decided to establish the "government" and call for the bill of rights and treaty of commitment, he said.

"Capitol Hill is a site of special significance to the Aboriginal people — it was traditionally so to the people of the Monaro region", Mr Gilbert said.

"It is still a recognised spiritual and sacred place to the people of the South Coast".



Members of the National Aboriginal Government of Australia with their tent on Capital Hill yesterday: Mr George Rose, left, a man who gave his name only as Kevin, Mr Cecil Patten and Mr Kevin Gilbert.

Mr Gilbert said the Aboriginal people did not recognise the usurping of their land by the British and later the Australian Government, and would never recognise it.

"The national Government of the colonising power is going to

build another Parliament House on our land — they plan to again usurp land from us", Mr Gilbert said.

Officers of the Department of Aboriginal Affairs in Canberra said they were not aware Capital Hill was an Aboriginal sacred site.



PRIME MINISTER

CANBERRA

The National Aboriginal Government sent a letter to the Prime Minister, Malcolm Fraser, who in reply, indicated that his Minister was prepared to discuss a Treaty with Blacks.

21 AUG 1975

Dear Mr. Gilbert,

I refer to your letter of 17 August concerning a number of matters affecting Aborigines in Australia.

Whilst in no way do I question the sincerity of your motives, I do ask you to examine the validity of your argument that I have been hypocritical in condemning racism overseas in the light of our own treatment of Aborigines. Over the past ten or so years the legal discrimination against Aborigines has been dismantled. At the same time, major programmes aimed at removing the inequities of the past have been instituted. My Government is committed to positive programmes which will restore Aborigines to their proper place in Australian society.

The Government, like others wishing to improve the lot of Aborigines, must contend with the fact that dramatic solutions are not to be found to problems of poverty, housing, unemployment, infant mortality and alcohol abuse amongst Aborigines. The problems are complex and simple answers are not available, as is the case with other indigenous groups throughout the world.

I do not question the need to provide persistent and patient response on a number of fronts to the needs of Aborigines, as determined by themselves in their communities or through their representative organisations. My concern is that your letter highlights the apparent failures of our joint efforts whilst some of the successes, for example, in the provision of Aboriginal medical and legal services and business enterprises go largely overlooked. I believe that this attitude does less than justice to the Aboriginal people themselves as well as to the efforts of various governments on their behalf.

As you will be aware, there are numerous Aboriginal health programmes funded by the Commonwealth. Recent reports by Parliamentary Committees on Aboriginal health are currently being considered by representatives of Aboriginal medical services, Commonwealth and State Health Departments and the Department of Aboriginal Affairs. The effectiveness of these programmes will be evaluated in this process.

Your statistics on the proportion of Aborigines in prison and of the unemployed are inaccurate, but I concede that there is no room for complacency in either area.

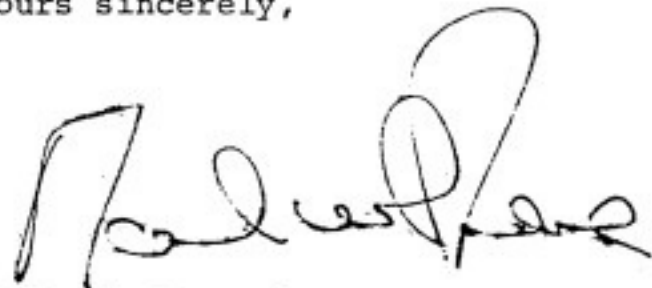


The National Aboriginal Conference, comprising the elected representatives of Aborigines, has already put forward its proposal for a Treaty of Commitment. My colleague, the Minister for Aboriginal Affairs, is examining the proposal and will bring the matter to the Government for its consideration. I understand that some months ago Senator Chaney held informal discussions with some of your group on the proposal. The Government is considering the various proposals which have been put forward. There is no intention to do as you suggest, namely rush through legislation relating to the treaty concept without proper consultation with Aboriginal people.

I make no apology for the attitude of my Government in relation to matters such as Zimbabwe or Vietnamese refugees. Nor do I see the slightest conflict with our domestic policies in relation to Aborigines. Whilst I accept that we can and should do better in the whole area of Aboriginal affairs, such a result can only be achieved by obtaining the co-operation of the whole Australian people.

My colleague, the Minister for Aboriginal Affairs, is willing to meet a delegation of your group in his office at Parliament House. You will be aware that he makes himself accessible to a wide cross-section of Aboriginal organisations throughout Australia. I shall be pleased to discuss the concept of a treaty with the National Aboriginal Conference at a mutually convenient time, if they wish to do so.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Malcolm Fraser', with a large, stylized initial 'M'.

(Malcolm Fraser)

Mr. Kevin Gilbert,  
Capital Hill,  
CANBERRA, A.C.T., 2600.

Prime Minister's reply, and indication of his Government's position to discuss a Treaty, is in itself de facto recognition of the right of Aboriginals to so call for and discuss the manner in which the Treaty would apply.

The Government chose to discuss the Treaty with the NAC at a mutually convenient time. In the meantime, the Minister for Aboriginal Affairs, Senator Chaney, managed to squash the call for a Treaty and issued the following:

The NAC has made it plain where it stands in the discussions on the 'treaty'.

It has put aside the idea that caused concern – namely that a treaty between nations was being sought. What is being sought is an agreement about what is needed by and due to the Aboriginal people.

In finding the Aboriginal word 'Makarrata' they have adopted its meaning for this proposed agreement – the end of a dispute and the resumption of normal relations.

Thus, a sovereign Treaty would not be entertained, because a TREATY was an agreement between two sovereign powers ... and Aboriginals were not considered 'equal', were not sovereign. Hence the Blacks were given the choice of nothing or else to enter into a common agreement, called the 'Makarrata', with the Government. The bone to the dog.

Aboriginal ownership, Aboriginal 'Sovereignty' has always been in the forefront of Aboriginal thinking. Many ways of expressing the position of sovereign ownership, apart from bitter fighting, and the assertion of colonization by force upon us, have been contained in the statements and recognition of sovereign role by the early settlers; titles such as 'King of the Brungles' etc., etc. And the Aboriginal way – "I am 'boss' for this country." "I got the 'Rules' for this country." "I got the 'business' for this country." And the control, both social and economic, as well as the spiritual office, was executed by governing figures – and is still executed by governing figures. The 'King', the 'Queen', of the country has not passed away, will never pass away. Trying to grasp a way of communicating and dealing with



white governments has many pitfalls, which made themselves apparent from the initial stages of discussing the 'Treaty'. Aboriginal people understand one thing. We are talking about Sovereign Treaty.

The Government was now ready to discuss the Agreement with the National Aboriginal Conference.

Of course, an 'Agreement' is a far cry from a 'Treaty' and the full domestic and international interpretation of a Treaty. There is no doubt that the NAC meant Treaty, and the secure status of a Treaty in its discussion with Government. However, they were told that the Government would not accept the implications contained in the word 'Treaty' and would accept another terminology. The NAC was somehow, by some misfortune in legal interpretation, told to adopt the word 'Makarrata', a tribal name of loose interpretation meaning:

'Things are OK again after the fight.'

Of course, in Aboriginal Law, such a position would have been binding and carry the executive power of equal sovereignty. In white Australian terms it meant, with a sigh of relief, an opportunity to deceive the world and pull the wool over the eyes of old Jacky again. The NAC produced a leaflet circular to the Aboriginal communities which said:

For many years some people have been saying that the Government in Canberra should have an agreement with the Aboriginal and Torres Strait Islanders. This Agreement would mean that the Government agrees that Aboriginals owned Australia before the white people came here. This Agreement would mean that the Government would do some special things for the Aboriginals. The white people call an agreement like this a 'Treaty of Commitment'. The National Aboriginal Conference had a talk about it and decided it should have an Aboriginal name:

“...THE NATIONAL ABORIGINAL CONFERENCE SAID

‘MAKARRATA’ WAS A GOOD NAME...”



*The idea of a 'Makarrata' or 'social compact' is NOT a treaty. It is a rubbish agreement which gives away Aboriginal rights to white political structures. It can always be amended or repealed.*

*A 'Sovereign Treaty' is a solid Treaty of ownership that over-rides all other laws denying our rights. K.G.*

This statement of position of the NAC clearly shows that the Government by admitting prior ownership of the whole of Australia, immediately placed itself in a position of legal/international consequence. They recognized ownership and prior title, therefore their occupation by trespass and invasion is an occupation over-riding the natural right of the indigenous owners. In short, they recognized 'native title' and sovereign status. This recognition of responsibility was clearly indicated, again with full domestic and international consequence, when Senator Neville Bonner put a motion to the Australian Senate in 1975:

That the Senate accepts the fact that the indigenous people of Australia, now known as Aborigines and Torres Strait Islanders, were in possession of the entire nation prior to the 1788 First Fleet landing in Botany Bay, urges the Australian Government to admit prior ownership by the said indigenous people, and introduce legislation to compensate the people now known as Aborigines and Torres Strait Islanders for dispossession of their land.

The Australian Senate passed Senator Bonner's motion unanimously. In his introduction to Human Rights for Aboriginal People in the 1980s, Senator Bonner said:



May I with due modesty state that a follow up to this motion, and the significance, has been the concept of a Treaty, to be agreed upon between my race and the government.

But the Senate motion was only a statement of intent, not of law, and it was never debated by the House of Representatives.

In May 1985, Aboriginal people in their hundreds traveled from all parts of Australia in old cars, buses and were piled on the back of cattle trucks on a trek covering thousands of kilometres to attend one of the biggest gatherings of Blacks since invasion. The purpose of the gathering was to decide policies and tactics, to clearly define our position on Land Rights. We met with the government formed National Aboriginal Conference (NAC), who in its last year of existence relayed to the Federal Government that Aboriginals demanded recognition of our sovereign status in original possession and ownership, the right to return to us a land base and the right to compensation.

National Aboriginal Conference made its views known nationally and internationally and was quickly disbanded by the Government, which ceased to fund them when the NAC would not retreat from its sovereign position. It was too hard for white Australia to accept our Sovereignty of entitlement and to meet its obligations it is committed to under the international charter of Human Rights, with fair dealing and integrity. Justice, substantial justice, has never yet been able to motivate the colonial ego half as much as the staged 'generous' and 'charitable' grandstand posturing it has always effected overseas.

Invasion Day, January 1988, witnessed the gathering of Aboriginals in their thousands, with tens of thousands of white supporters, to protest the re-enactment of the original invasion. The unity and strength of our people was broadcast to the world telling them, in effect, what Xavier Herbert said: Australia is not a nation but a community of thieves.

**ABORIGINAL SOVEREIGN POSITION**  
**AND**  
**LEGAL ENTITLEMENT**  
**FOR**  
**NEGOTIATING A TREATY**  
**UNDER**  
  
**THE VIENNA CONVENTION**  
**ON THE**  
**LAW OF TREATIES**  
  
**WITH THE AUSTRALIAN 'GOVERNMENT'**  
**IN ORDER TO**  
  
**ENSHRINE**  
**ABORIGINAL SOVEREIGN RIGHTS**  
  
**AND CREATE THE**  
**FOUNDATIONS**  
**FOR**  
**BLACK/WHITE RELATIONS**  
**IN THIS LAND**  
**BASED ON**  
  
**LAND LIFE LAW JUSTICE**  
**AND PEACE**



## SUMMARY

Sovereignty has always inhered in the Aboriginal People of this land now known as 'Australia'. From the Beginning, the practise of customary and traditional ownership and possessory right has been held inviolate with the Aboriginal Nations and from these Sovereign Rights, all legal and social rights flow.

Aboriginal Sovereignty still inheres in the Aboriginal People of this land: it has never been extinguished by cession, by treaty, nor by formal purchase, nor by conquest; neither was it acquired by the invaders, the British/Australians, by peaceful settlement of an uninhabited land. Our land has been inhabited since the Beginning and resistance to invasion was so aggressive and protracted that the frontier has been described as a line of blood. This resistance has never ceased nor abated to this present day.

In order to enshrine our Sovereign Rights we pursue a Sovereign Treaty under international law with the 'Australian Government'.

### THE VIENNA CONVENTION ON THE LAW OF TREATIES

Reports of the Commission to the General Assembly  
Yearbook of the International Law Commission,  
Vol. II, 1966, Part II, Chapter 2, Section 1, Article 11.

Article 50. Treaties conflicting with a peremptory norm of general international law (*jus cogens*)

A treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Part III.—Observance, application and interpretation of treaties

Section 1: Observance of treaties

Article 23. *Pacta sunt servanda*  
Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Section 2: Invalidity of treaties

Article 43. Provisions of internal law regarding competence to conclude a treaty  
A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation of its internal law was manifest.

Article 10. Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:  
(a) The treaty provides that signature shall have that effect;  
(b) It is otherwise established that the negotiating States were agreed that signature should have that effect;  
(c) The intention of the State in question to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation

Article 25. Application of treaties to territory

Unless a different intention appears from the treaty or is otherwise established, the application of a treaty extends to the entire territory of each party.



# DEFINITIONS of SOVEREIGNTY



26 January 1988: Invasion day, Elizabeth Street, Sydney

## SOVEREIGNTY

Sovereignty is the ‘supreme controlling power’. In communities not under monarchical government, it is the supreme dominion and authority. (1)

The criteria used to establish the sovereign status of Aboriginal People must avail itself of explicit and conceptual comparison with international law. The rights of



'first discoverers' alone gave Aboriginal People an original root title that extends back to the beginning of time. Alberico Gentili, the 16th century jurist and professor of law considered 'natives' equal to other people under the law of nations. (2)

Vattel declared in his Law of Nations:

Every nation that governs itself, under what form soever, ... is a Sovereign State. Its rights are naturally the same as those of any other state ... it is sufficient that it be really sovereign and independent, that is, it governs itself by its own authority and laws. (3)

The complex rules of Aboriginal sovereign law in its application and attainment of social equality, well-being of our citizens and the order of overall universal peace prevailed to a greater extent than that which obtained in Britain at the time of their invasion of our land (1770).

That all nations recognised the sovereignty of indigenous peoples in the 'New Worlds' is also an indisputable fact, even when indigenous sovereignty has been denied legal status. Such denial of legal recognition within the statutes of the invaders cannot remove that original sovereign right.

In 1537, Pope Paul III declared:

The said Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property, nor should they be in any way enslaved; should the contrary happen, it shall be null and of no effect. (4)

In 1975, the International Court of Justice confirmed in the Western Sahara Case that, where an indigenous people exercise a traditional use of passage and/or, a usufructuary right, that land cannot be regarded as *terra nullius*, land belonging to

no-one.(5) Aboriginal sovereignty continued unextinguished despite the Spanish colonists' claim that the land was *terra nullius*.

In a separate opinion, Judge Ammoun referred to Mr Bayona-Ba-Meya, Senior President of the Supreme Court of Zaire, who dismisses the materialist concept of *terra nullius* and substitutes a spiritual notion:

... the ancestral tie between the land, or 'mother nature', and the man was born therefrom, remains attached thereto, and must one day return thither to be united with his ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty.. (6)

In the Western Sahara Case the claim of *terra nullius* had to give way to the original sovereignty of the indigenous owners due to evolving International legal standards.



It is quite clear that the principle of establishing sovereignty on the basis of *terra nullius* is an untenable basis of claim for Australia. International jurisprudence maintains that: '...acts contrary to law - cannot become a source of legal rights for the wrong-doer.' (7)



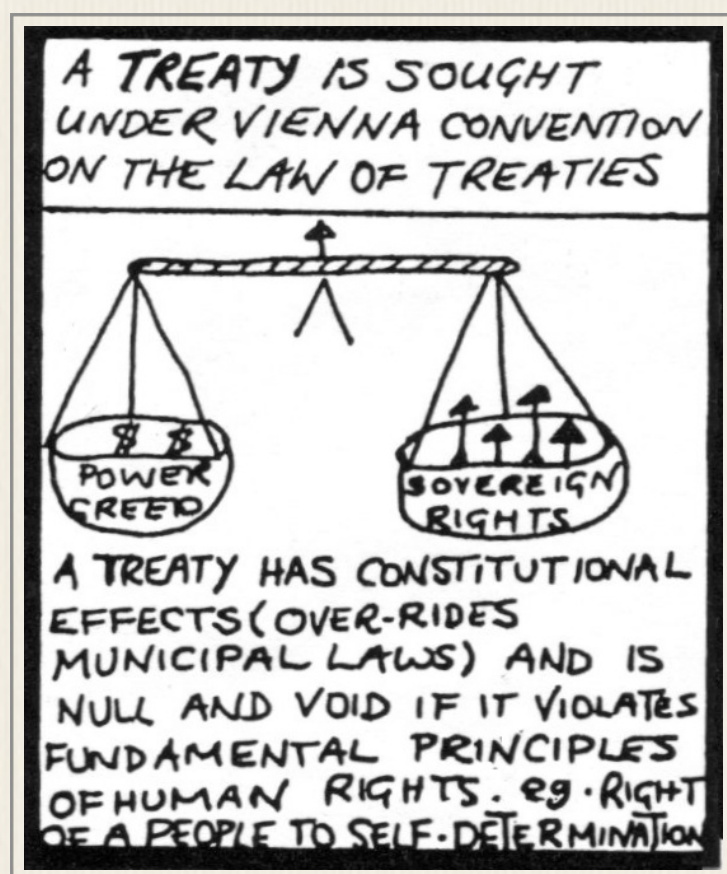
# ROOT TITLE TO LAND

Root title to land is that ultimate title clear of any claim or encumbrance by another party, e.g. the sovereign root-title. It can be established on occupation, unowned wasteland, by first discovery and subsequent possession. Where a land is inhabited by a People, who exercise their possessory right, the derivative root title is obtained for these lands by ceding, through the instrument of Treaty. (8)

## TREATY

Treaty is an international agreement concluded between Nation States in written form and governed by international law. It is an exchange of powers and duties between two or more Nation States who are prepared for any dispute arising under the Treaty to be arbitrated according to international legal principles and by international legal instructions. (9)

A Treaty is automatically constitutional and over-rides internal laws (10).



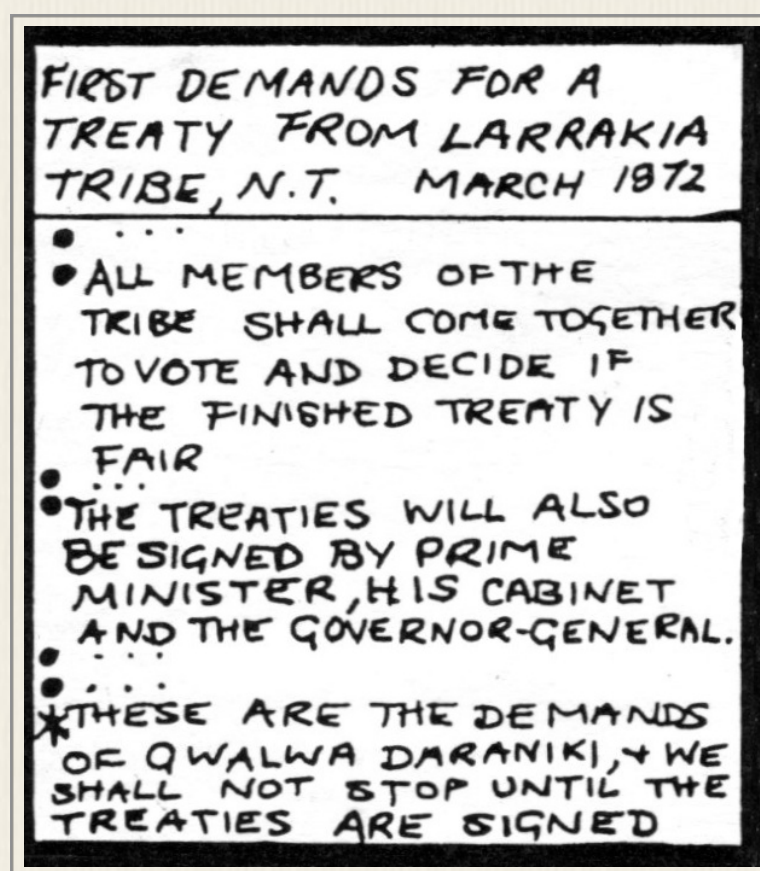
A Treaty cannot contravene ‘any relevant rules of international law (11) e.g. Civil and Political Rights; Elimination of Racial Discrimination; and Economic, Social and Cultural Rights; all of which Australia has ratified. (12)

Treaties affect only the rights explicitly mentioned, so there can be no loss of any Sovereignty by signing a sovereign Treaty, unless specified in the Treaty itself. On the contrary, when other governments make Treaties it is taken as evidence of the recognition of ‘international personality’. So making Treaties can actually become a way of proving and maintaining sovereignty.

## INDIAN or MAORI ‘TREATIES’ or MAKARRATA

Indian or Maori ‘Treaties’ or Makarrata are, according to the law of nations, a ‘legislative action on the part of the State’. They are domestic unilateral acts. (13) The Canadian Government recently described them as:

‘... those treaties are merely considered to be nothing more than contracts between a sovereign group and its subjects.’ (14)





When studying the legislative methods for a Makarrata, a domestic treaty, or 'social compact' in Australia, the Senate Standing Committee warned that the methods were vulnerable '...to the possibility of amendment or repeal by subsequent Parliaments.' (15)



Even in a domestic treaty under the Australian Constitution's external affairs powers (section 51xxix) the 'Commonwealth Government' is able to ignore their constitutional power over the internal states, as we have witnessed by the failure of the 'Commonwealth Government' to use the powers, granted to it by the 1967 referendum, to over-ride racist laws.

Only a Treaty under international law is constitutional, over-rides internal laws and is enforceable.

# STATE OR NATION STATE

State or Nation State is a centralised legal order. (16)

In international law it is a sovereign nation. The qualifications for Statehood are:

- Permanent population;
- Effective Government capable of maintaining order within its territory;
- Ability to enter into relations with other States;
- Sovereign personality, i.e. recognised by other Nation States. (17)

Aboriginal People fulfill the requirements of Statehood. We are a Nation State. Our root title to land has remained intact since time began.

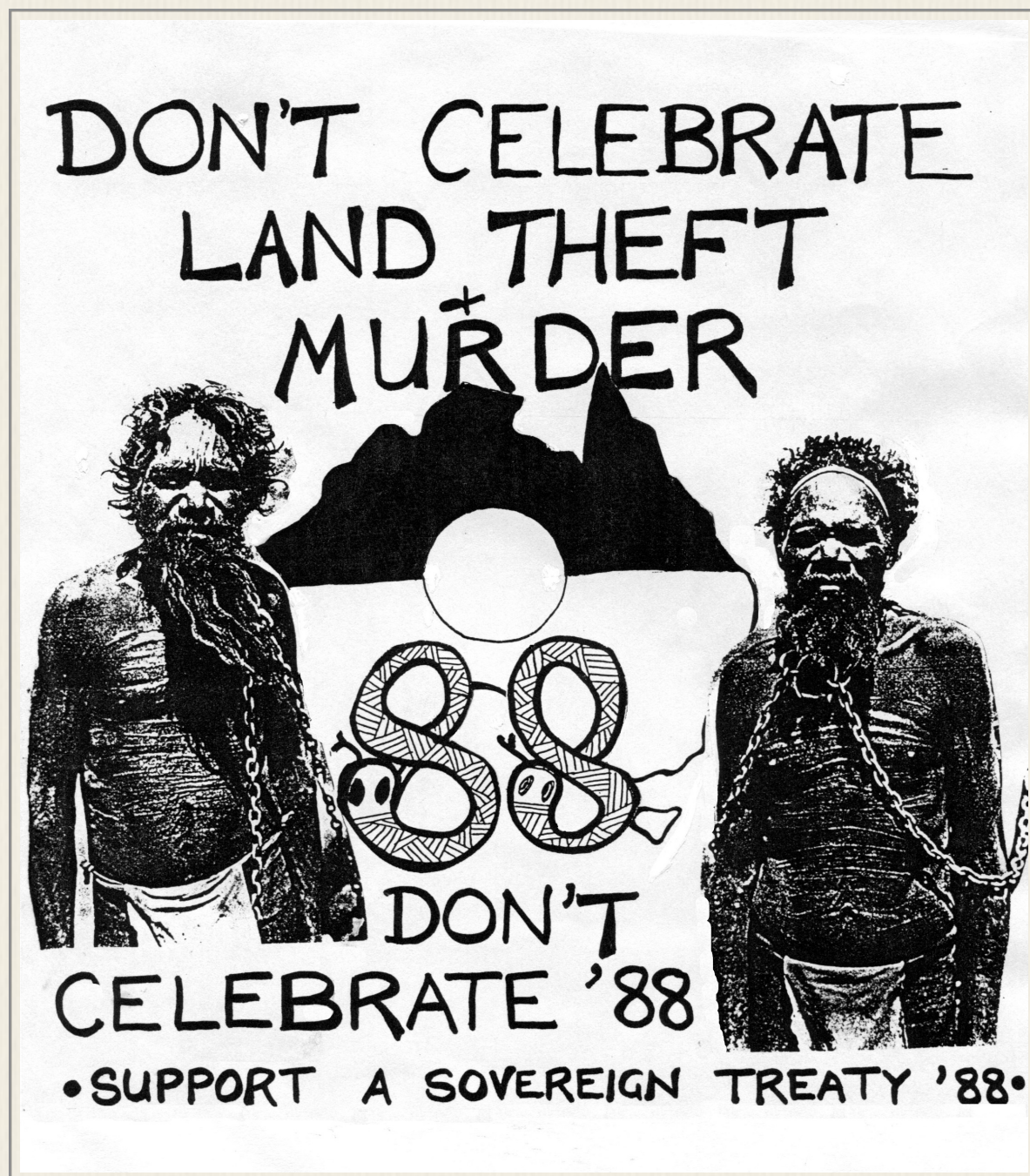
Aboriginal/Indigenous People are a sovereign State if they have law, root-title to land by original 'discovery' and possession of the land, since time began.







# ABORIGINAL SOVEREIGN POSITION



1988 Bicentennial Boycott sticker

Aboriginal Ownership, Occupancy, Possession and Sovereign jurisdiction over these our lands remain intact and is enforceable under the legal auspices of the Law of Nations.

Within our oral tradition and structure, possessory title has been handed down through the generations by a system of mnemonic hieroglyphics, often seen represented by Tjuringas, bark paintings and rock art, and in traditional re-enactment of ceremonial history and law. Sovereignty and Possessory Right, that Entitlement to Land and Law as inherent in the Aboriginals both collectively and individually, was immutably retained throughout time. Thus, in effect, such Entitlement and Possessory Right remained intact and was not disbursable or negotiable in any form as transfer or barter.

Notwithstanding the assertions by our invaders to the contrary Aboriginal Sovereign Right, Prior Ownership and Possession of these our lands has remained constant and in force as our proprietary right and inheritance, despite alien intrusion, invasion and colonisation by the British.

While Aboriginal Law, Possession and Successional Inheritance have always been based upon a traditional and immutable set of laws that was non-erodible, it had certain universal similarities with common principles that are seen reflected in common as well as international law. Some of those principles bear relevance in asserting the tenets of the immutable rights to life, property, inheritance, descendancy, self-determination and sovereignty of Aboriginals within these, our Sovereign Domains.

## **RIGHT TO PROPERTY**

Where property belongs to the individual or tribal collective in the real form, such as personal effects, weapons etc., or in the abstract such as song, markings, orchestrations, dance etc. that property is protected in law and cannot be removed arbitrarily by theft, fraud or other illegal means. Property in estate, land is sovereign property inviolate and cannot be removed, bartered or sold.

The ownership is encompassed within the legal entity of the total members of the group; all distinct rights and roles in and to the land, in a complex series of duty and ritual. For instance, the ‘traditional owner’ section holds the special and



sacred duty of 'Title Holder' by performance of duties, keeping of legal mnemonics, (Title Records such as in Tjuringas, inscriptions, ceremonial and initiation). The sub-section groupings, holding all other rights such as hunting, ceremonial, usage rights, still retain 'Ownership' right and 'Belonging', both real and abstract, within that sovereign group and to that sovereign domain.



Sovereignty of each group and the recognition of sovereign boundaries has been established and protected from the Beginning. That such Sovereignty was a distinct recognition can be attested by the manner of representation between the groups (tribes) and within the boundaries of the groups. For instance, each Sovereign Area has been an area inviolate and not able to be trespassed upon by other groups. Where, as in times of drought, or ceremony to be performed across sovereign borders sovereign representation has to be adhered to in a series of ambassadorial initiatives.

Trade routes and dreaming tracks have been formally established on the same principle. These tracks still exist. In effect, a universal language and inter-state

intercourse was maintained and can still be maintained under the auspice of the Aboriginal Federated Nation State.



## LAND MANAGEMENT AND USAGE

It is now an established fact (abroad in the non-Aboriginal community) that our People practised a complex form of land and animal husbandry, for instance, in the planting and distribution of seed, species maintenance, firing, land clearing, regeneration, fish harvesting, enclosed breeding areas, species distribution and maintenance of grasslands. (18)

## LAW AND GOVERNMENT

It is also an established fact that our system of law was in place, complex, humane and indeed, in the terms of compassionate humanity and fair dealing, ranks as one of the most civilised systems of law in the world, as then extant and up to our contemporary period where such traditional application continues. (19)



Our family moiety and system of genetic and moral controls for the well being and development of our Peoples rank as one of the most complex systems, while our traditional culture, economy, land management and indeed our physiological continuity beginning from early modern man distinctly place us amongst the oldest and most enduring cultures and People upon the earth to this day.

The 'collective' title of the group/tribe has a far wider implication than the much mooted 'communal native title' simply implied. For instance, the title and boundary were effectively defined in the widest possible sense of continuity, inheritance, legal system, inter-nation communication and negotiation.



## INTERNATIONAL COMMUNICATION

The ability to communicate and negotiate with other Nation States is evidenced in earlier dealings from time immemorial with the Macassans, the Portuguese, Dutch and French, before the British arrival and invasion by Captain James Cook. (20)

Our Sovereign Position was tested by the Dutch Empire in 1606. The Dutch ship, Duyfken, attempted to establish territorial right upon our lands in northwest Australia. Repulsed by our force of arms, they recorded in the annals of the Duyfken this record: ‘... but every attempt to land was opposed by hostile Aborigines with spears in their hands.’ (21)

At a further point, which the Dutch named Cape Keerweer, where they landed and began to erect habitations, our People set fire to the boats, killed a large number of the crew, and forced the Dutch to evacuate.

In 1688, William Dampier landed and was driven off. (22)

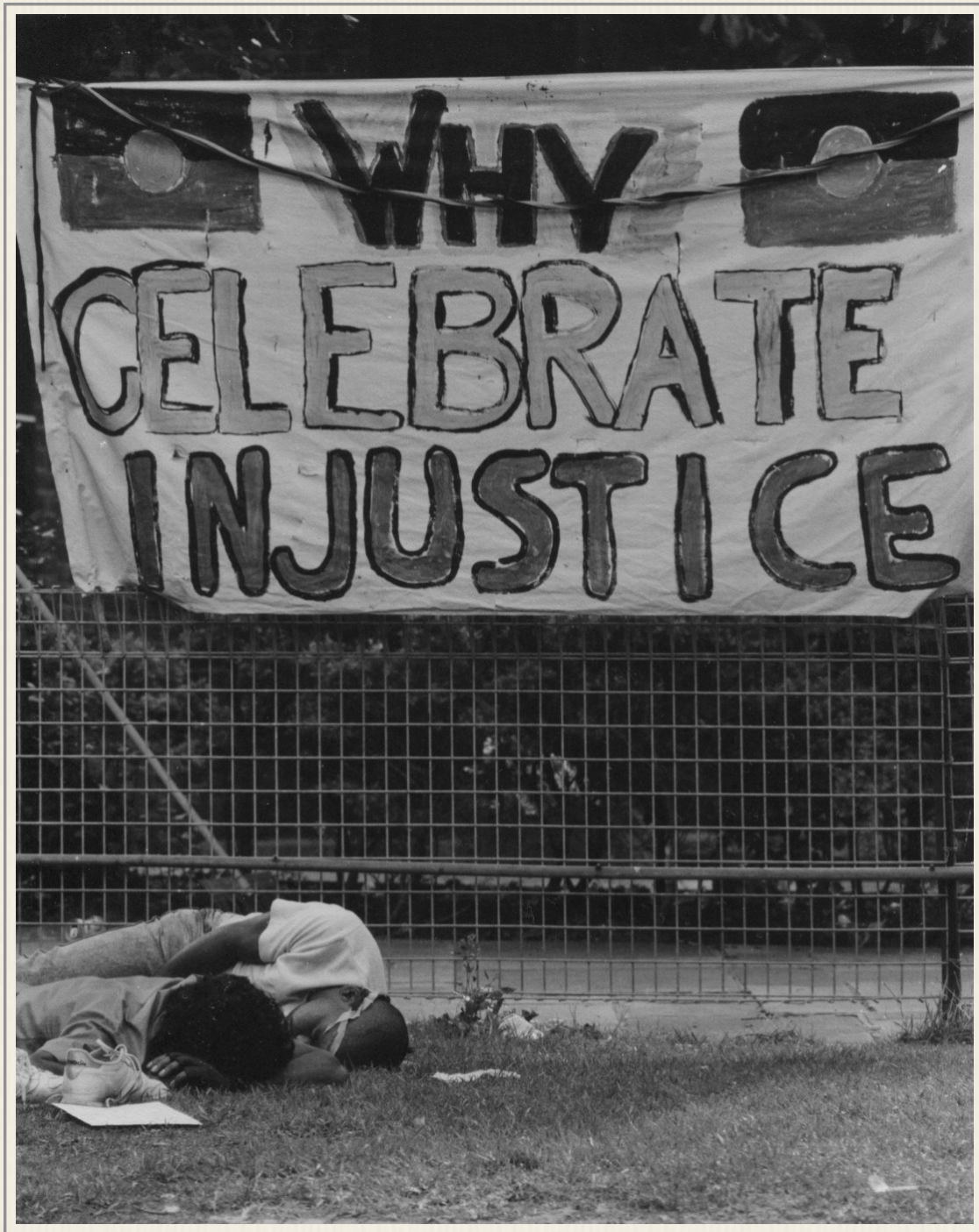
All previous ‘discoverers’ recognised our Sovereign Rights according to principles of international law.

But, in 1770, watched from the shore by Aborigines, a British sailor planted his flag for Britain and claimed ‘Discovery’ of our land. Unable to entice our people to accept gifts as ‘formal purchase’ of our land, he took possession **WITHOUT** consent and from this one act, emphasised with musket shots, asserted ‘sovereignty’ for Britain over the entirety of our land. In so doing, he contravened not only our established law but also the legal tenets of Nations.





# THE ONLY LEGAL WAYS BY WHICH SOVEREIGNTY MAY BE TRANSFERRED IN INTERNATIONAL LAW



26 January 1988: Invasion Day, Sydney

Any acquisition of Sovereignty must be in the clearest and most unequivocal terms. (23)

There are two fundamental classes for acquisition of Sovereignty:

A) Inhabited land

B) Uninhabited land

## **A) INHABITED LAND**

Sovereignty can be acquired by:

### **1.CESSION**

Cession or the formal transfer of a territory (by a treaty). Indigenous rights still remain in place. Aborigines still retain ownership, giving up only those areas they want to give up by Treaty. (24)

### **2.CONQUEST**

Conquest or the military subjugation of a territory over which the 'ruler' clearly expresses the desire to assume Sovereignty on a permanent basis. Conquest would leave all laws in force (including those regulating land, at least until a new sovereign changed them.) War has to be officially declared. (25)

### **3.ANNEXATION**

Annexation or the assertion of Sovereignty over another political entity *without* military action or Treaty. (26)

Discovery and annexation allowed the colonising State to exclude all other European powers from the territory annexed and gave the Sovereign power sole right of acquiring the land from the inhabitants. Derivative root title was claimed by the Crown but the indigenous peoples did not lose everything by the annexation. Their rights were circumscribed insofar as they could only dispose of the land to the Crown. In effect, it gave the Crown exclusive pre-emptive right, that is, the right to purchase from a willing vendor. (27)



Aboriginal possessory right was clearly defined by in 1823 by Justice Marshall in the authoritative ruling:

... in no instance entirely disregarded; but were admitted to be the rightful occupants of the soil, with a legal as well as a just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will ... was denied by the original fundamental principle that discovery gave exclusive title to those who made it. (28)

Britain was fully aware of the peculiar illegality of its position in Australia. This is highlighted by the Treaty of Waitangi in New Zealand in the 1840s, thereby gaining title by 'cession', (the giving up of Maori title), then proclaimed title over the whole area by right of 'discovery', then annexed this colony to New South Wales. It is well to remember discovery does not create 'Aboriginal title' it actually confirms Aboriginal title, which already is existent and has its source: '... in the Law of Nations, now incorporated into the common law.' (29)

A weaker power does not surrender its independence, its right to self-government, by associating with a stronger power and taking its protection. Justice Chapman stated in 1847:

Whatever may be the opinion of the jurists to the strength or weakness of the native title it cannot be too solemnly asserted that it is entitled to be respected, that it cannot be extinguished ... otherwise than by free consent of the native occupiers. But for their protection, and for the sake of humanity, the Government is bound to maintain and the Courts to assert, the Queen's exclusive right to extinguish it. It follows, from what has been said, that in solemnly guaranteeing the native title, the Treaty of Waitangi ... does not assert, either in doctrine or practice anything new or unsettled.

Justice Chapman also added that: '... the practice of extinguishing native title by fair purchase is certainly more than two centuries old.' (30)

In fact, by 1700 the recognition of superior possessory right was imbued as a natural and inalienable right of indigenous inhabitants and such recognition was an established legal practice in British law. (31)

Five years before Cook received his first direct Admiralty Order to: ‘... *take possession with consent...*’ in Australia, the King of England had declared the rights of the Indians of Canada to the undisturbed use of their land. (32)

Thus Britain was well aware of the natural inherent rights of indigenous peoples to their land.

## 4. SUCCESSION

Succession or the mutually agreed transfer of sovereign title by legislative act, e.g. Britain withdrawing constitutional ties from Australia.

## 5. SECESSION

Secession is when a new State is formed by separation of a territory from a State or by the union of two or more States or parts of States e.g. under sections 121-124 of the Australian Constitution, new States may be established.

International legal principle now acknowledges that:

While secession from a lawful State is prohibited, if the national unity claimed and the territorial integrity invoked are merely legal fictions which cloak real colonial and alien domination, resulting from actual disregard of the principle of self-determination, not only secession, but even armed struggle are lawful means of liberation. (33)

In effect, where there is an enclave sovereign indigenous people, such people have as much right to decolonisation and self-determination as those countries which



have already been decolonised but were considered a priority in decolonisation because their territories were separated ‘by blue water’.

## B) UNINHABITED LAND

### 1. SETTLEMENT or OCCUPATION

Settlement or occupation was legally an original means of peacefully acquiring sovereignty over territory otherwise than by cession or succession. It was a cardinal condition of a valid ‘occupation’ that the territory should be *terra nullius* - land belonging to no-one - at the time of the act alleged to constitute ‘occupation’. (34)

In effect, *terra nullius* meant a land that was not used by humans for purposes such as hunting, camping and living ceremony. It was desert, wasteland without human habitation, without human rights being exercised over it.

First discovery by a nation was considered adequate protocol for that nation to possess and defend the newly found land from other nations, provided that nation lawfully occupied it.

The difference in legal position between inhabited and uninhabited lands is clearly stated by Blackstone (1765) in his *Commentaries on the Laws of England*:

... if an uninhabited country be discovered and planted by English subjects, all the English laws are there immediately in force. For as the law is the birth right of every subject, so wherever they go they carry their laws with them. But in conquered or ceded countries, that have already laws of their own, the king may indeed alter and change those laws; but, till he does actually change them, the ancient laws of the kingdom remain ... (35)

By 1700 it had become settled British policy to acquire indigenous lands by formal cession.

The International Court of Justice advisory opinion in the Western Sahara Case confirmed this principle in 1975. Territories inhabited by tribes and peoples having a social and political organisation were not regarded as *terra nullius*. In the case of such territories the acquisition of sovereignty was not generally considered as effected unilaterally through 'occupation' of *terra nullius* by original root title but through agreements concluded with local rulers. (36)

With the single exception of Australia all of England's ex-colonial countries have upheld the basic principle of recognition of the title of their indigenous people. (37)







# THE ILLEGAL INVASION



26 January 1988: Yarra Bay House, La Perouse, Sydney

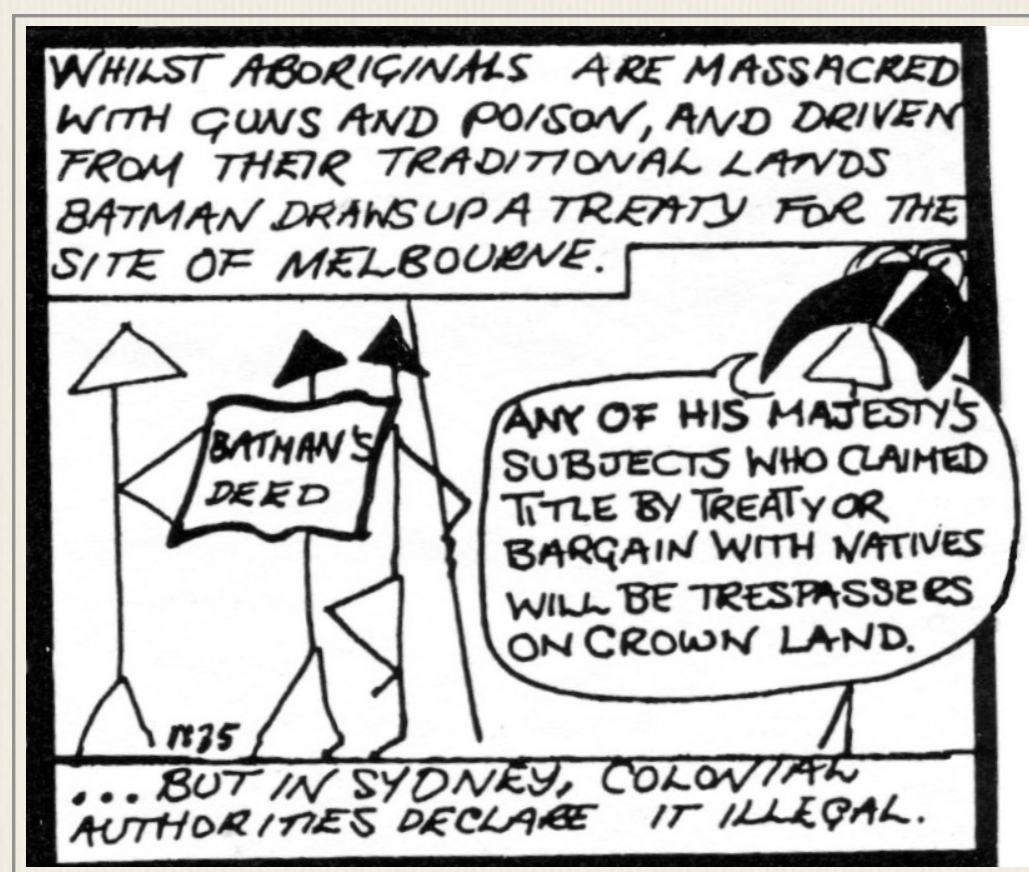
From reports of the Dutch contacts with our people in the 17th century, it is reasonable to assume that the British were quite aware of the position of this land and the conditions that pertained.

On 30 July 1768, Captain James Cook, as an official representative of the Crown of Britain, was given legally binding orders from his superiors, the British Admiralty.

The Admiralty Orders carried not only the most precise and unequivocal terminology of legal recognition of our Aboriginal Estate, but also binding

direction to act given two legal scenarios. The first article was: You are with the consent of the natives to take possession of convenient situations in the country in the name of the King of England...' and the second article was: 'Or, if you find the country uninhabited, take possession for His Majesty by setting up Proper Marks and Inscriptions, as first discoverers and possessors.' (38)

The second article, emphasizing the uninhabited and therefore vacant estate, allowed of no vagaries or sophistries of assumption to preclude any indigenous title, nor deprive any usage therein. In the precise implication contained in the Orders, 'uninhabited' meant literally and legally 'uninhabited'. The precise direction of it negates any implication of 'wasteland' and *terra nullius*. As an instrument of establishment of sovereignty that instrument must be clear, precise, accountable and unequivocal.



The obvious minimal conclusions to be drawn from the precise Orders to Cook are that Britain was aware of the natural, inherent rights of indigenous people to land rights, land entitlement, usufructuary and cultural rights and that the



Instruction was so made as to protect and encompass those rights in a unilateral framework of legality within the Crown.



This is confirmed by an article written by Lord Morton, President of the Royal Society in London, and delivered to Captain Cook shortly before his departure:

Hints offered to the consideration of Captain Cooke, Mr. Bankes, Doctor Solander, and the other Gentlemen who go upon the Expedition on Board the Endeavour...

To exercise the utmost patience and forbearance with respect to the Natives of the several Lands where the Ships may touch. To check the petulance of the Sailors, and restrain the wanton use of Fire Arms. To have it still in view that shedding the blood of those people is a crime of the highest nature: - They are human creatures, the work of the same omnipotent Author, equally under his care with the most polished European; perhaps being less offensive, more entitled to his favor. They are the natural, and in the strictest sense of the word, the legal possessors of the several Regions they inhabit. No European Nation has a right to occupy any part of their country, or settle among

them without their voluntary consent. Conquest over such people can give no just title; because they could never be the Aggressors. They may naturally and justly attempt to repel intruders, whom they may apprehend are come to disturb them in the quiet possession of their country, whether that apprehension be well or ill founded. Therefore should they in a hostile manner oppose a landing, and kill some men in the attempt, even this would hardly justify firing among them, 'till every other gentle method has been tried'. (39)

That our land was indeed inhabited and that our presence, land management, economy and derived benefits were immediately apparent to Cook, can be gathered from his testimony in his journals in which he describes the eastern coast with soils 'capable of producing any kind of grain', and as having fine meadows 'as ever seen'.(40)

In fact meadows or, in this case grasslands, occurring in naturally afforested areas are phenomena reflecting the manipulation of nature by the land management of people over an extended period of time. Cook's attestation of inhabitancy was couched in terms, not only recognising presence, but also inviting speculation upon the subsistence economy, the social order and government of the group. He wrote of the Aboriginal Possessors:

...in no way inclined to cruelty, as appeared from their treatment of one of our people ... they may appear to some to be the most wretched People on Earth; but in reality they are far happier than we Europeans .... They live in a tranquility which is not disturbed by the Inequality of Condition. The Earth and sea of their own accord furnished them with all the things necessary for life... (41)

Cook also admits that attempts to formally purchase the land with trinkets were unsuccessful:

... they have very little need of Clothing ... many to whom we gave the cloth, etc, left it carelessly upon the Sea beach and in the woods as a thing they had



no manner of use for; in short they seemed to set no value on any thing we gave them, nor would they part with any thing of their own for any one article we could offer them. This, in my opinion, argues that they think themselves provided with all the necessities of Life and that they have no superfluities. (42)

Thus, these our lands were recognisably inhabited; such manner of habitation carried no manner of legal impediment; such lands were indeed in the possession of the inhabitants, even to the point where Captain Cook was incumbent to imply terror and force by the discharge of weaponry to hold the Possessors at bay. (43)



Despite this first hand knowledge of our existence Cook failed to formally obtain cession of our land by treaty or formal purchase and instead claimed possession by discovery. On 22 August 1770 he wrote: 'I now once more hoisted English colours, and in the name of His Majesty King George the Third, took possession of the whole Eastern Coast.'(44)

He thus implied that our land was uninhabited, *terra nullius*, land belonging to no-one, so that its root title could be acquired by first discovery.

There are four possible explanations for this incongruous act. As the Accredited Agent and Official Representative of the Crown of Britain, Captain Cook either:

1. fraudulently took possession holding his orders in contempt, or
2. was involved in the conspiracy between the Colonial Secretary of Britain and the British Admiralty to fraudulently acquire sovereignty and deprive Aboriginal inhabitants of their natural legal right, or
3. committed a misapprehension, an error of fact, in interpreting his orders, or
4. acted in good faith intending that a remedy, the official negotiation and ratification of cession or formal purchase, would be pursued in a profoundly more formal and legitimate capacity by his superiors at a later date.

In fact, in the subsequent manifestation of territorial assertion, Governor Phillip was instructed, in April 1787, to: ‘... endeavour by every possible means to open an intercourse with the natives, and to conciliate their affections...’ This can be rightly interpreted as that intercourse necessary to bring about the negotiation and ‘consent’ to Possession. The fact that no such intercourse nor ‘consent’ to Possession ever happened between Aborigines and Britain's formal Representatives renders Britain's claim to Sovereignty of this land to be reduced to absurdity.

Long before Cook claimed ‘discovery’ of Australia, England was fully aware, through its involvements in North America, of the lawful occupation and sovereign possession of indigenous peoples. England challenged Spanish claims in North America using the principle that, to satisfy the requirements of international law for establishing sovereignty, discovery of a land (territory), the first arrival, does not establish sovereignty until the land is settled and controlled. Discovery must be followed by effective occupation.



The leading jurist, Vitoria, confirmed: ‘... the aborigines in question had true dominion before the Spaniards arrived.’ (45)

England disputed the Spanish claims to sovereignty through discovery and occupation by stating that they had: ‘... no claim to property there except that they had established a few settlements and named rivers and capes. ... Prescription without possession is not valid.’ (46)

In 1928 the Permanent Court of Arbitration in the Hague ruled on the international law of discovery in a dispute between the United States and Netherlands: ‘The title of discovery ... would, under the most favorable and most extensive interpretation, exist only as an inchoate title, as a claim to establish sovereignty by effective occupation.’ (47)

In 1832, in the US Supreme Court, Justice Marshall applied this principle:

It regulated the right given by discovery among the European discoverers, but could not affect the rights of those already in possession, either as aboriginal occupants (or through earlier discovery). ... The extravagant and absurd idea, that the feeble settlements made on the sea-coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the minds of any man. ... (T)hese grants asserted a title against Europeans only, and were considered as blank paper so far as the rights of natives were concerned. (48)

In the reference to ‘blank paper’ Marshall inferred that Aboriginal entitlements were intended to be thereon enshrined in order to effect a legitimate ceding of portions of territories and exchange of powers between indigenous people and colonists.

The application of these leading authoritative interpretations of international law to Australia, means that the simple act of Cook's landing on the east coast and claiming possession in the Name of the King of England did not establish sovereignty for England over these OUR lands.

Even IF treaties had been made with Aboriginals on the east coast, all the wide lands, still occupied and in possession of Aboriginal people today, are not occupied by, nor in the possession of non-Aboriginals.

These interpretations will apply until the illegal claim of *terra nullius*, peaceful settlement and the illegal implication of British (now Australian) Sovereignty has been removed or made to conform to the Law of England at that time extant and to the Principle of the Law of Nations. Indeed, the Law of Nations must be adhered to and result in legally rectifying those ills and defects at law, which are capable of remedy by means of a valid Treaty under the Vienna Convention on the Law of Treaties.





# AUSTRALIA'S ATTEMPTS TO LEGITIMISE THE ILLEGAL INVASION OF THIS LAND



Gathering medicine for her father

Australia's unlawful sovereignty claim cannot be legalised by any other recourse to law, except a Treaty under international law. The ways in which the 'Commonwealth Government' and legal opinion have attempted to

legitimise its claim to sovereignty over this our land have been by trying to maintain the now untenable fictions of *terra nullius*, land belonging to no-one, 'peaceable settlement' and other ill-founded facades of legal sophistry, such as contained in this impressive list, all equally without foundation in fact:-

- annexation
- 1967 imposition of 'citizenship' on us
- prescription
- intertemporal law
- conquest
- Act of State
- cession - never attempted

## 1. ANNEXATION

Annexation is only legal when a political entity is annexed without military action. In this land there were more military orders than in any other former British colony, with the exception of South Africa.<sup>(49)</sup> Several examples of Martial Orders are:

### IN TASMANIA:

Proclamation, 15 April 1828, by Colonel George Arthur, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies:

Now therefore I, ... do hereby notify, that for the purpose of effecting the separation required, a line of military posts will be forthwith stationed and established along the confines of the settled districts within which the Aborigines shall and may not, until further order made, penetrate, or in any manner or for any purpose, save as hereinafter specially permitted; and I do hereby strictly command and order all Aborigines



immediately to retire and depart from, and for no reason, or on no pretence, save as hereinafter provided, to re-enter such settled districts, or any portions of land cultivated and occupied by any person whomsoever, under the authority of His Majesty's Government, on pain of forcible expulsion therefrom, and such consequences as may be necessarily attendant on it.

And I do further authorise and command all other persons whomsoever His Majesty's civil subjects in the Colony, to obey the directions of the civil, and to aid and assist the military power... (50)

Proclamation by Colonel George Arthur, 1 November 1828:

... martial law is and shall continue to be in force against the several black or aboriginal Natives, within the several districts of this island... (51)

Government Order No. 9: Colonial Secretary's Office, 9 September 1830:

... 4. The utmost disposable military force will be stationed in a few days at those points in the interior which are most exposed to attack, or in which the Natives are most likely to be encountered. (52)

Proclamation by Colonel George Arthur, 1 October 1830:

... Martial Law was, and should continue to be in force against the said black or aboriginal Natives within the several districts of this island... because it is scarcely possible to distinguish the particular tribe or tribes by whom such outrages have been in any particular instance committed, to adopt immediately, for the purpose of effecting their capture if possible, an active and extended system of military operations against the Natives generally throughout the island, and every portion thereof, whether actually settled or not. (53)

## IN NEW SOUTH WALES:

Government Order of 28 April 1805:

... the Governor has judged it necessary for the preservation of the lives and properties of the Out-Settlers and Stockmen, to distribute Detachments from the New South Wales Corps among the Out-Settlements for their protection against those uncivilized Insurgents ... it is hereby required and ordered that no Natives be suffered to approach the Ground or Dwellings of any Settler... the Settlers are required to assist each other in repelling those visits; and if any Settler... harbours any Natives he will be prosecuted. (54)

Governor Brisbane's proclamation of Martial Law of 14 August 1824:

...Now therefore by Virtue of the Authority in me vested by HIS MAJESTY'S Royal Commission, I do declare that in Order to restore Tranquility, MARTIAL LAW TO BE IN FORCE IN ALL THE COUNTRY WESTWARD OF MOUNT YORK... (55)

The fact of invasion by the British people and their army, the fact of usurpation of land and dispossession thereof by the means of massacre and terror is an indisputable fact. The claim of 'peaceable settlement' and legal establishing of British sovereignty in this land is without foundation in fact. To the contrary, evidence is available both by oral testimony and historic records that 'settlement' was officially established by means of invasion, massacre, fraudulent appropriation and instilled terrorism, including genocidal practice. The prevalent attitude was:

Extermination is then the word - wholesale massacres of men, women and children ... These terrible *razzias* occurring in the remote back settlements and pastures, are for the most part ignored by the local authorities - crown land commissioners, police magistrates, and others, or else considered a justifiable negrocide. (56)



A Catholic missionary, McNab, wrote to the Earl of Kimberley that, at a banquet given by the Queensland Governor in 1880, the policy of genocide was approved:

... the discourse turned on the treatment of the Aborigines and the conclusion arrived at (as I learned from a member of the Legislative Council, who was present on the occasion) was, that there is nothing for the Aborigines but extermination. (57)

In fact, the first Governor, Phillip, portrayed by whites as a benign Governor who sought friendly relations with us, had his own policy of breaking the Aboriginal resistance. His policy was described by his expedition leader, Tench:

That against this tribe he was determined to strike a decisive blow, in order, at once to convince them of our superiority, and *to infuse an universal terror...* (58)

Governor Arthur adopted the same policy: 'Terror may have the effect which no proffered measures of conciliation have been capable of inducing.' (59)

On 31st October 1828, the minutes of the Executive Council in Tasmania concluded: 'To inspire them with terror ... will be found the only effectual means of security for the future.' (60)

The historian, Rusden, wrote in 1883: 'The rule was to inspire terror by slaughter...' (61)

Our aggressive and protracted resistance to invasion is also well documented in white history, as well as being embedded in Aboriginal memory and oral history:

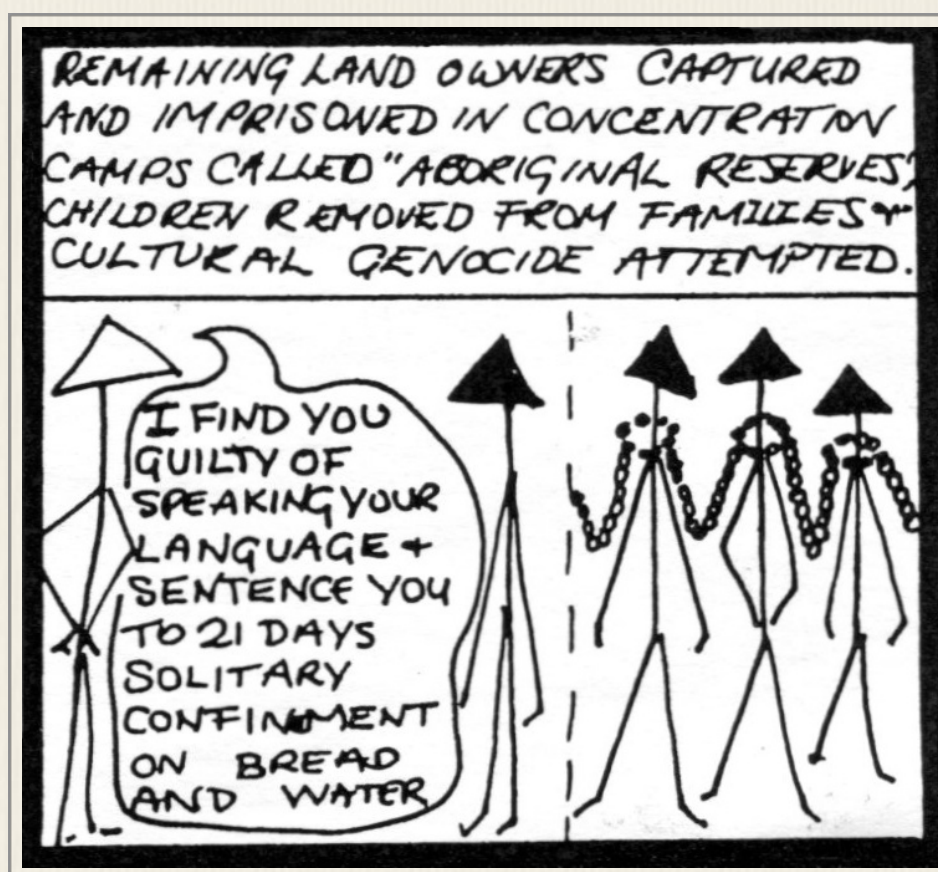
The aggression of the Aborigines along the whole border of civilisation grew worse and worse daily; they involved the loss of life as well as loss of property ... AN ENTIRE LINE OF ACTIVE HOSTILITY CIRCUMSCRIBING THE TERRITORY ALONG ITS ENTIRE BOUNDARY. (62)

It is otherwise known as 'the line of blood'.

Peaceful settlement cannot be claimed on grounds that our land was uninhabited, nor that our land was settled without violence. In fact, such was the 'universal terror' instilled in our people to quash the resistance that many of our people are still afraid to speak out for fear of retribution. In 1900 Meston reported in a survey of blacks in south-west Queensland, that was supposedly 'peacefully settled' for fifty years, 'not ever before had I seen Aboriginal men living under such extraordinary terrorism.'(63) A white official reported on Cape York Blacks in 1890 that they were like: '... hunted wild beasts afraid to go to sleep in their own country ... having lived years in a state of absolute terrorism.' (64)

A policy of universal terrorism was supplemented by the policy of extermination and genocide. Along with 'universal terror', extermination and genocide was a denial that we were human beings, rather: '... as vermin, to be cleared off the face of the earth.' (65)

Thus there was a total denial of, not only our land rights and our sovereign rights, but also our human rights. Many crimes against our humanity have been committed.





The British invasion claimed at least 600,000 Aboriginal lives.(66) Live babies were buried in a line up to their necks in sand and their heads kicked off in a contest to see who could kick a head the furthest. Men had their testicles cut off and were left to run around screaming.(67) Women had their throats slashed, they ran until they collapsed and were then thrown, alive, onto a fire.(68) Live children were thrown onto fires.(69) ‘Sport’ was the shooting of blacks, men, women and children, on sight.(70) Starving blacks were invited to a feast, then shot as they came in for food.(71) Whole family groups were poisoned by strychnine in the flour or water.(72) Children were stolen. Many never saw their families again. Over 5000 children in living memory have been removed from their group.(73) Whole tribes/groups have been forced to live in exile alongside incompatible tribes at close quarters. Punishments of 21 days solitary confinement were given to those speaking their own language. Women were kept imprisoned for prostitution. Men were tortured, (74) etc. etc..

The litany rolls on.

Even to the present day that terror, that disregard for our human lives, is entrenched in the social and bureaucratic structure of white Australia.

As recently as 28th July 1987, a report in the Canberra Times, entitled ‘Aborigines Living Like Prisoners’, Federal Court Judge, Justice Einfeld, President of the Human Rights Commission, had evidence that Aboriginals in the New South Wales border community of Toomelah, live in conditions as bad as World War Two concentration camps. The Judge exclaimed: ‘It is beyond belief...I have been to Soweto in South Africa, to German concentration camps, but this is my own country.’ (75)

The recent Black deaths in custody are a deliberate extension of that terror, today.

The dispossession by terror of our lands was unlawful by international legal standards contemporary with Captain Cook and has continued to be illegal to this day. E. de Vattel, in a standard work of international law, *The Law of Nations*,

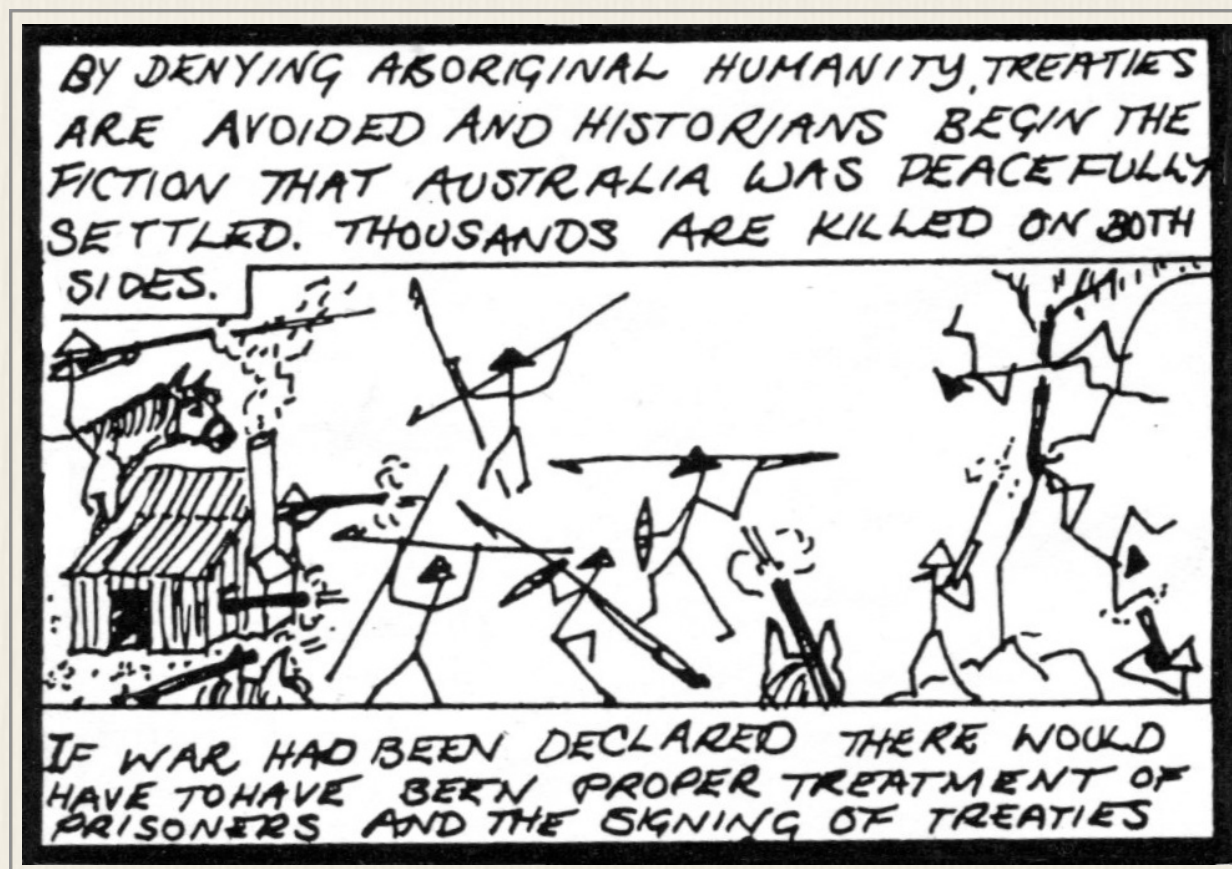
written in the mid 18th century, recognised indigenous peoples' rights to our lands on its true legal basis:

... whosoever agrees that robbery is a crime, and that we are not allowed to take forcible possession of our neighbour's property will acknowledge that, without any other proof, that no nation has a right to expel another people from the country they inhabit in order to settle in it herself.

In another section he observed that if a nation: ' ... takes up arms when it has not received any injury and when it has not been threatened it wages an unjust war.' (76)

When a nation enters a country to usurp the land and does not declare war, but prefers to use methods of assassination against the civilian population, against babies, women, children and men armed only with hunting weapons, that invading nation commits, not war, but crimes against humanity.

Genocide.





Such acts bear no semblance of right or lawful purpose and from such acts no lawful position could arise. According to Vattel our resistance against an unjust attack was not only right but a sacred duty, for which we were massacred.

This continent has been acquired by assassination and invasion, not conquest, not peaceable settlement, not by any humane, just or legal manner. This land has not become the legitimate property of the invaders, the murderers by the mere passage of time or by a paper script marking the boundaries in English.

Even the High Court of Australia has never made a ruling as to how Australia was settled, therefore 'peaceful settlement' is not an established fact and cannot be given credence in Australian Law.

## 2. AUSTRALIAN CITIZENSHIP FOR ABORIGINALS

Australian citizenship, forced upon us as a result of the 1967 referendum, did not extinguish our sovereignty as has been claimed.<sup>(77)</sup> We never voted to be incorporated with non-Aboriginals. Australian citizenship was imposed upon us unilaterally.

In fact, Aboriginal People still do not have equality in the sense of 'Australian citizenship' as evidenced in the extremes of dispossession, poverty, homelessness, health, unemployment and standing before the courts and the awful fact that the majority of us live in oppressive circumstances in conditions far below those which are acceptable in most Third World countries and in far worse conditions than that which prevail for white prisoners and the mentally ill. For instance, Australian prisoners, wards of the State and the mentally ill have access to fresh reticulated water, adequate shelter, electricity, sanitary disposal, three meals a day and medical clinics in each community. Most of these services are denied Aboriginal People.

In many areas, approximately 7000 Aboriginal People have been coerced, by bullying and promise, to work for the dole (social security payments). Even with this forced labour that is completely unacceptable to white dole recipients and unionists, adequate shelter, clean drinking water and medical facilities are still not available in these communities. We are still treated like refugees in our own country.

The principle of Plenary Power over Aboriginal people assumes authority to enact and enforce any kind of limitation on Aboriginals and their rights of property which it deems appropriate. The courts also assume this authority. Those 'realities' seem inconsistent with any Aboriginal claim to self-determination and sovereignty, but if Australia imposes restrictions upon us in violation of international law, the restrictions do not change the rights which Aboriginal people are entitled to exercise under that international law (78), i.e. the right to pursue our sovereign position.

### 3. PRESCRIPTION

Prescription is acquisition of sovereignty over a territory through continuous and undisturbed exercise of sovereignty over it during such period as is necessary to create under the influence of historical development the general conviction that the present condition of things is in conformity with international order. (79)

Prescription has been invoked, by the Commonwealth Ombudsman's legal advisor, as a justification of Britain's/Australia's claim to sovereignty. (80)

However, where there has been a continuous and unabated resistance to such an assertion of prescription and where superior force has been utilised to economically and politically deny avenues of redress to the original owners, prescription by such coercion cannot be accepted by international law as legalising the invaders' assertion of sovereignty by this means.



The International Court of Justice has taken the view that the emerging principle of self-determination supercedes States' historical claims to territorial integrity. (81) That is, a State can no longer claim it is immune from decolonisation if it encompasses enclave indigenous Peoples, who were unlawfully dispossessed:

The fact that a people have long been displaced or oppressed does not convert a lawless act into a lawful one. (82)

## 4. INTERTEMPORAL LAW

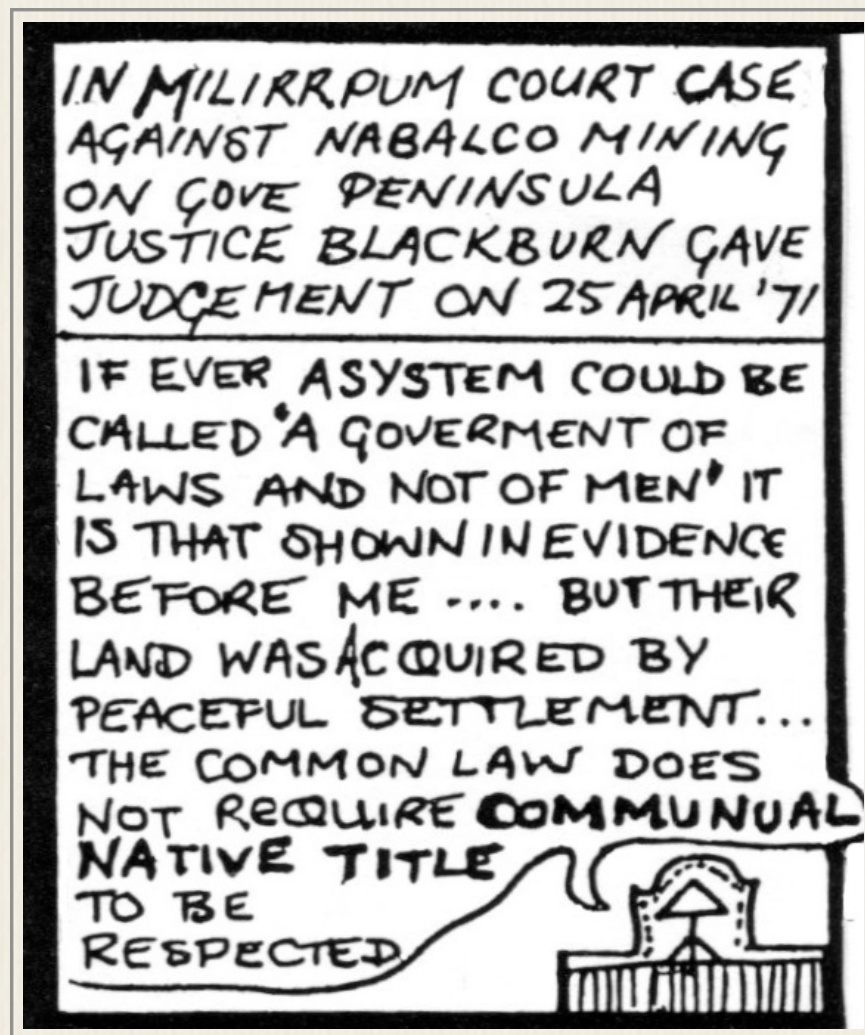
Intertemporal law is that: '...a judicial fact must be appreciated in the light of law contemporary with it.' (84)

Intertemporal law cannot be legally invoked, because the law extant at the time of invasion was that cession could only be made through treaty or formal purchase, neither of which occurred in this land. Nevertheless, intertemporal law was wrongly applied in Justice Blackburn's ruling in the Gove Land Rights Case (*Milirrpum v Nabalco Pty. Ltd*). Blackburn acknowledged the principle of 'communal native title':

... at common law the rights ... of native communities to land within territory acquired by the Crown ... persisted, and must be respected by the Crown itself and by its colonising subjects, unless and until they are validly terminated. Such rights could be terminated only by the Crown and only by the consent of the native people or perhaps by explicit legislation. Until terminated, the rights of the native people to use and enjoy the land, in the manner to which their own law or custom entitled them to do, was a right of property. (85)

But he chose to ignore the international law extant at the time Cook claimed possession and Phillip established the colony, i.e. indigenous lands were to be acquired by formal cession. Blackburn has tried to create a 'legal' foundation for

Aboriginals' gradual eviction from our land, by working from the premise that this land was peaceably settled and Aboriginals immediately became British Subjects. Therefore Australia need not recognise 'communal native title', because 'communal native title' did not exist within England at the time of invasion of our land and there was no recognition of such a title in English Law.



In his deliberations, Blackburn totally disregarded the fact that Aboriginals had not been accorded rights or entitlements as 'British Subjects' accorded to them by the invaders. In fact, Aboriginals were deliberately slaughtered and *specifically* excluded from any such right as enjoyed by a British Subject. Aboriginals were not given standing in the courts; were not allowed to give evidence or swear oaths in witness against the whiteman; were specifically excluded from buying and holding title in land; were excluded from equal social welfare benefits and excluded from citizenship under the Australian Constitution.

It cannot be said with any legal validity that Aboriginals were accorded the rights of British Subjects or equal citizenship and status. In fact, such social and legal



equality still has not been accorded to us, despite the fact that in 1967 distinct and separate apartheid laws were removed by Referendum from the Australian Constitution.

His failure to recognise that Aboriginals had a highly complex legal structure, capable of negotiation and economic transaction in land sits peculiarly at odds with his statement: ‘... if ever I have seen a system of government ruled by law and not of men it is that which I have before me....’

He failed to interpret the significance of the Batman Treaty and it would seem that he predicated his findings on the view of the Privy Council of 1881:

There was no land law tenure existing in the colony at the time of its annexation to the Crown; and, in that condition of matters, the conclusion appears to their Lordships to be inevitable that, as soon as colonial land becomes the subject of settlement and commerce, all transactions in relation to it were governed by English law, in so far as that law could be justly and conveniently applied to them. (86)

He did not realise, as he should have, that the question of land tenure and law related to a litigation between an Englishman and the Crown. He did not examine, as he should have, that sacrosanct principle contained therein, in that finding ‘... in so far as that law could be justly and conveniently applied to them....’

Most incredibly he failed to take legal cognisance of the fact that Aboriginals, from the Beginning, owned in possessory and proprietary right the land in accordance with the ‘ancient laws of the kingdom’ and that law remains in force until such time as it is terminated in the clearest and most unequivocal terms by clear negotiation. It is not necessary and has never been necessary, for such ancient laws to have a legal corollary in English jurisprudence. The whole of the Aboriginal case rests on the fact of prior occupation, possession and sovereign root-title.

His refutation of Aboriginal proprietary right by the dictatorial assertion (not in any way legal!) that Aboriginals did not own the land, the land owned the Aboriginals can be likened to that of a thief who, found in possession of a stolen car, asserts: ‘No-one owns this car, the car owns me. This inanimate object exercises a legal proprietary right over me.!!’ and the Judge finds in favour of the thief, awards a certificate of title to the car as legal proprietor!!

His assertion that ‘communal native title’ was not a legal concept in English Law fails as a juridical fact when examining the legal direction and principals in law, and used by Britain in external colonial application, such as the lawful recognition of indigenous rights in America etc. etc., the Crown treaty with the Maoris, the Imperial Directives to recognise Aboriginal communal rights in land, i.e. Letters Patent to South Australia and Western Australia etc..

By setting this precedent in Australia, Justice Blackburn opposed the mainstream view that indigenous title arises from the incontrovertible fact of occupation and possession; that indigenous rights remain until extinguished by formal ceding of root title.

He chose to ignore the Proclamation by King George III, on October 1763, (only 5 years before Captain Cook received his orders) which directed that indigenous lands be occupied only after public purchase and cession under the supervision of Crown officers, and ordered non-conforming settlers to be removed. (87)

An Imperial Directive, such as that contained in the Proclamation of King George III over-rides, and is superior to, any other legal or constitutional doctrine then in place. In itself, such a Proclamation becomes a legally binding instrument in English law, with consequence and direction upon the Accredited Agents of the Crown and its servants.

Blackburn not only ignored the Admiralty Order, which bound Captain Cook as the Accredited Agent of the Crown, to recognise indigenous title: ‘... take possession with the consent of the natives ...’ (88) but also the clear direction by Lord Morton to Cook:



They are ... in the strictest sense of the word, the legal possessors of the several Regions they inhabit ... Conquest over such people can give no just title.... (89)

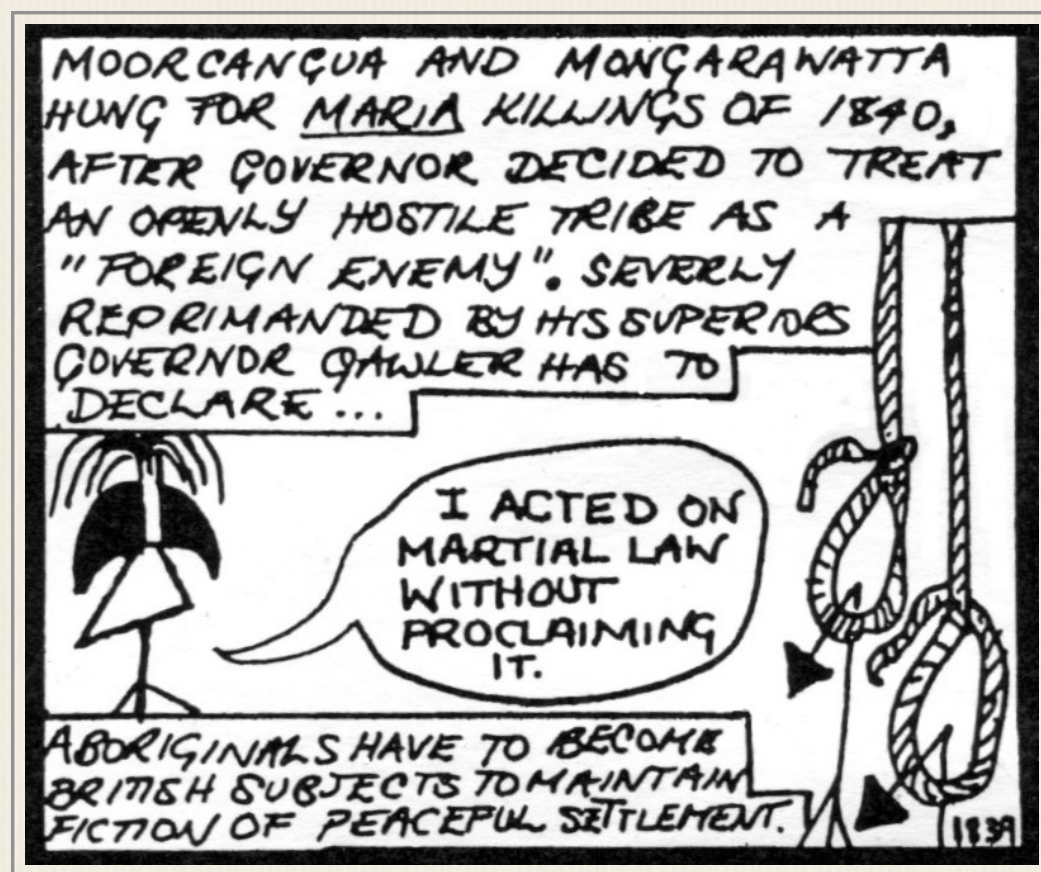
Blackburn created a defect at law by claiming indigenous rights only existed if specifically created. His judgment has been criticised ever since by the legal fraternity both in Australia and overseas. (90)

One is left to conclude that he sided with the mining interest, Nabalco, who stated: 'To accede to the Aboriginal propositions would be to unsettle the property laws of the continent.' (91)

## 5. CONQUEST

The concept of *terra nullius* - land belonging to no-one - is fast becoming an abandoned method to justify the white invasion of our lands. Lawyers and politicians are desperately seeking another foundation to base a premise of interwoven fictions and acts to justify, in the courts, a continual denial of Aboriginal rights to land. The term of 'peaceable settlement' has also been abandoned in face of historic evidence to the contrary. The current device being propounded is the claim that Aboriginals have lost all entitlement to proprietary right through conquest.

Any comparison to the formal conquest of American Indians, at the end of the Indian Wars, when reservations were set aside for Indians separate from white settlement, is invalid in Australia because, no war was declared. In fact Britain was careful NOT to declare war otherwise Aboriginals would have to be accorded the recognition of certain rights.(92) The Aboriginal reserves, in this land, were created as concentration camps to contain the rightful owners of this land in exile, where the majority of Aboriginal People are forced, through political, economic and medical circumstances to live to this day.



We have never surrendered our rights, nor entered into a treaty, despite 200 years of terror, massacre and inhumanity levied against us.

For Australia to claim a *legal* base in land title, to try and establish a superior root title of sovereignty over these our lands has as much moral and legal foundation as would an assassin's claim be to the property of the victim.

## 6. ACT OF STATE

The Act of State principle has been suggested as that manner of legal enactment, which nullified Aboriginal rights and claims in territory. When a territory is acquired by a Sovereign State under the principle of 'Discovery', the Act and Proclamation for the first time is an Act of State. That Act of State still requires the appropriate principles be maintained throughout. In the case of 'Discovery', such Proclamation of a sovereign right served to stay any encroachment of right by any other international State upon the declared position of the 'discoverer'.



Such ‘discovery’ and proclamation, however, were not sufficient in themselves to abrogate the inherent rights in law and land of the indigenous possessor of those lands, and encumbered the ‘Discoverer’ State to then proceed to negotiate, by treaty or war, to assert a sovereign position. Upon the cessation of hostilities, it was still incumbent upon a State to negotiate the principles upon which the indigenous rights were to be recognized; the manner in which and extent of lands to be ceded and the sharing or exchange of powers to be negotiated in the most unequivocal terms.

The first ‘Act of State’, ‘Discovery’, and ‘Possession’ carried with it a principle of established law that was binding and irrevocable, which could not, of itself, create a superior title unto itself by misappropriation, fraud or massacre of the original possessors. An Act of State is implicit in the total integrity of the State so acting.

An Act of State must flow from a State that has a legal foundation in the first principle manner of acquisition, and from which all valid Acts of State may flow.

A sovereign State cannot legally claim territorial right of another country and, by subsequent Act or Acts, create a legal countenance to the initial fraud, i.e. ‘Discovery’ and *terra nullius*.

But an original and first Act of State, such as that involving the proclamation of sovereignty over a foreign and occupied country, the State so acting is bound by legal consequence of Nations to act lawfully. If the principal first Act of State is an Act unlawfully executed to claim root title, that Act is illegal and cannot be given legal credence by any other Nation State. (93)

Some more recent Australian juridical interpretation of Act of State has been inclined to assume that an Act of State can, in effect, shield the usurping State from imputation of impropriety or municipal remedy to an overtly illegal premise in practice by that State. (94)

The so-called Act of State principle has also been used in Australian Law to shield the Crown from Aboriginal land claims arising after the date of annexation e.g. in

the *Gove Land Rights Case* (95). Act of State was also used to quash the Aboriginal sovereignty challenge in *Coe v. Commonwealth of Australia* (96), by claiming that the Act of State by Britain claiming sovereignty over this land could not be challenged in municipal courts, not even in the highest court of the land. The legal adviser to the Commonwealth Ombudsman submitted:

The proclamation of sovereignty is an Act of State. The courts will not adjudicate on such a proclamation, even if it appears to be in violation of international law. (97)



Any examination of an Act of State, however, must bear the scrutiny of lawful conduct. Where an executive arm of State acts outside the perimeters of its legal charter (such as the colonial powers contravening the Imperial directives sacrosanct in State Letters Patent)(98) and where an Agent of the State ignores the binding orders of the Crown and thereby establishes that Act by fraudulent methods, that Act is not only questionable in law but becomes null and void.



In such a case, where fraudulent representation, terror and massacre have been employed as a principal means whereby the State originates a root title in order to achieve status, the very foundation of the origin of that State has no legal powers to proclaim an 'Act of State'.

Previously Aboriginals had no recourse to municipal remedy at law, our case being considered a 'domestic issue', which effectively gagged us from seeking redress in the international arena. But the now poorly regarded 'Act of State' has fallen into disrepute, as archaic and untenable even in the country of origin. The international area of jurisprudence and internationally binding covenants override domestic Acts of State. For example, a principle of international law is that a Nation State cannot excuse itself from applying an international law by claiming its internal laws limit its international responsibilities.

Article 43 of the Law of Treaties (99) means that when a State signs an international treaty any internal laws that conflict are over-ridden. Section 109 of the Australian Constitution enables internal laws to be over-ridden and made consistent with ratified international covenants. (100)

Australia ratified the International Covenant on Civil and Political Rights on 13 August 1980 (101) and thereby agreed, under international law, to protect indigenous rights to land (Article 1). (102)

Such ratification of international treaty not only enjoins a legal position upon the signatory States, but indeed over-rides municipal and State laws, which do not conform to the principles of Charter, but also over-rides the Constitution of State.

In fact the Australian Government has reported to the United Nations that it considers that national Governments should not be able to hide behind their domestic political system in order to sidestep their international obligations. (103)

This position, taken in the knowledge of the original precise legal Admiralty Order, to Captain James Cook upon 'Discovery', and subsequently the Imperial Directives, as delivered by the various Colonial Secretaries and Governors to the

colony, leaves no doubt as to our Aboriginal rights and entitlement to land, prior possession and sovereign status in domain.

Where an Act of State has been employed to declare 'peaceable settlement' and to suggest the imposing of a 'British subject' status upon Aboriginals, that 'status' of 'British subject' immediately then conferred such right to life and property as was commonly available to British subjects in England. A guarantee, in effect, that Aboriginal life and land right was sacrosanct at law. That such right was not accorded to Aboriginals goes but to prove the invalidity of the Crown to a Sovereign assertion legally over the land.

## 7. CESSION

There has never been any formal purchase of this land from any Aboriginals, nor negotiation and signing of a treaty with British or Australian 'Government'.







# RECOGNITION OF OUR INHERENT SOVEREIGN AND INDIGENOUS RIGHTS WITHIN AUSTRALIA



26 January 1988: Invasion day, Sydney

Cognisance of our inherent rights has been apparent within Australia and first acknowledged for protection by solemn laws then applied by nation States and in practice as a mandatory principle in English law elsewhere.

The lawful recognition of Aboriginal prior and possessory right was acknowledged in Australia, not only by the Crown, but also by the various sovereign representative agents of the Crown and its citizens. But these rights were subsequently refused to us on arbitrary grounds of omission, racism, political expediency and greed.

1. In 1807 Governor King prepared a confidential memo for his successor, Bligh. Under a section entitled 'Respecting Natives' he explained that he had never been willing to force Blacks to work because he had '...ever considered them the real proprietors of the soil.' (104)

2. On 15 April 1828, Governor Arthur proclaimed Martial Law in Tasmania but acknowledged the need for a treaty and the recognition of usufructuary rights:

It is expedient, by a legislative enactment of a permanent nature, to regulate and restrict the intercourse between the white and the coloured inhabitants of this Colony, and to allot and assign certain specific tracts of land to the latter for their exclusive benefit and continued occupation.

And whereas, with a view to the attainment of those ends, a negotiation with certain chiefs of aboriginal tribes has been planned.(105)

Nothing herein contained shall prevent the Aborigines from traveling annually (according to their custom). (106)

3. In 1835 colonial authorities in Sydney declared illegal Batman's attempt to buy land (which is now Melbourne) by treaty with Aborigines. The Crown claimed that it alone had the pre-emptive right to root-title to land and to make land grants. Batman's company sought legal opinion from three of Britain's leading constitutional lawyers, one of whom was William Burge, who was 'in all matters of colonial law...one of the first authorities.'

Burge referred to Marshall's authoritative recognition of 'communal native title':



.. a principle adopted by Great Britain as well as by the other European states, in relation to their settlements of the continent of America, that the title which discovery conferred on Government by whose authority or by whose subjects the discovery was made, was that of the ultimate dominion in and sovereignty over the soil, even whilst it continued in the possession of the Aborigines. This principle was reconciled with humanity and justice towards the Aborigines, because the dominion was qualified by allowing them to retain, not only the rights of occupancy, but also a restricted power of alienating those parts of the territory which they occupied. (107)

4. The British House of Commons Select Committee on Aboriginal Tribes made its report in 1837, having realised that the Act of British Parliament initiating the establishment of South Australia in 1834 on ‘waste and unoccupied land’ ignored Aboriginal title and rights despite evidence that Aboriginals were known to inhabit the area:

It might be presumed that the native inhabitants of any land have an incontrovertible right to their own soil: a plain and sacred right, however which and, when there, have not only acted as if they were the undoubted lords of the soil, but have punished the natives as aggressors if they have evinced a disposition to live in their own country.

In a clear reference to the Aboriginals of Australia, the report states:

If they have been found upon their own property, they have been treated as thieves and robbers. They are driven back into the interior as if they were dogs or kangaroos. (108)

Referring again to South Australia, the House of Commons Select Committee commented:

A new colony is about to be established in South Australia and it deserves to be placed on record, that Parliament, as lately as August

1834, passed as Act disposing of the lands of this country without once adverting to the native population....

The Commissioners acknowledged that it is:

... a melancholy fact, which admits of no dispute, and which cannot be too deeply deplored, that the native tribes of Australia have hitherto been exposed to injustice and cruelty in their intercourse with Europeans.

... This then appears to be the moment for the nation to declare that...it will tolerate no scheme which implies violence or fraud in taking possession of such territory; that it will no longer subject itself to the guilt of conniving at oppression... (109)

5. Letters Patent issued to the South Australian Colonization Commission on 19 February 1836 contained the proviso:

.. provided always that nothing in these our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own persons or in the persons of their descendants of any Lands therein now actually occupied or enjoyed by such Natives. (110)

Two years after the founding of the Province, the Secretary of the South Australian Association observed in a report:

No legal provision by way of purchase of land on (the natives) behalf or in any other mode has yet been made, nor do I think with proper care it is at all necessary. (111)

The observation made by the Secretary clearly shows it was the intention of the South Australian 'Government' to perpetrate a fraud and land theft in his advice for caution.



6. Sir George Grey, a member of the 1836/7 House of Commons Select Committee requested of the King of England: ‘... that measures be taken to secure to the natives of the several Colonies the due observance of justice, and protection of their rights.’ (112)

7. Lord Glenelg, as Secretary of State for the colonies, wrote to the South Australian Colonizing Commission, aware that the claim of *terra nullius*, land belonging to no-one, was false:

An object of very serious importance. This is more especially evident when it is remembered that the Act of Parliament presupposes the existence of a vacant territory and not only recognises the Dominion of the Crown, but the proprietary right to the soil of the Commissioners or of those who shall purchase lands from them, in any part of the Territory.... Yet if the utmost limits were assumed within which Parliament has sanctioned the erection of the colony it would extend very far into the interior of New Holland, and might embrace in its range numerous Tribes of People whose proprietary title to the soil we have not the slightest ground for disputing. (113)

8. To satisfy the Colonial Office in Britain the South Australian Colonizing Commission agreed to protect our rights:

Should the Protector of the Aborigines find that the Lands, or any portion of them ... are occupied or enjoyed by the Natives, then the lands which may be thus occupied or enjoyed shall not be declared open to public sale, unless the Natives shall surrender their right of occupation or enjoyment, by a voluntary Sale made to the Colonial Commissioner ... Should the Natives occupying or enjoying lands ... not surrender their right to such land by a voluntary sale, then, in that case, it will be the duty of the Protector of the Aborigines to secure to the Natives the full and undisturbed occupation or enjoyment of their lands and to afford them legal redress against depredators and trespassers. (114)

A method of compensation was drafted to amend the South Australian Act:

That it shall be lawful for the said Commissioners to assign or allot any Part of the Lands of the said Province to the Aboriginal Natives thereof free of any Price ... and also to make such Compensation to the said Aboriginal Natives as the said Commissioners shall deem it just in Compensation for their Interests in any Lands now occupied by them in the said Province; and any such Compensation shall and may be paid out of the Produce of Lands sold ... by the Commissioners in the said Province. (115)

9. In 1840 Governor Gawler and Land Commissioner Sturt defended Aboriginal Rights against the Settlers in South Australia, stating that Aboriginal root title prevailed over any rights or claims possessed by Europeans: ‘...as preliminary to those of the Aboriginal inhabitant...’ whose ‘... natural indefeasible rights were vested in them as their birthright.’

It was acknowledged that we possessed: ‘... well understood and distinctly defined proprietary rights over the whole of the available lands in the Province.’

The South Australian colony was founded, on paper, on the principle that Aboriginals had:

... an absolute right of selection prior to all Europeans ... over the extensive districts over which, from time immemorial, these Aborigines have exercised distinct, defined and absolute rights of proprietary and hereditary possession. (116)

10. In the 1841 House of Commons Select Committee on South Australia passed the resolution:

...authorised to reserve and set apart within the said Province, for the use of the Aboriginal inhabitants thereof and lands which may be found necessary so to reserve and set apart for the occupation and subsistence of such Aboriginal Inhabitants. (117)



11. Then the British Parliament, in 1842, passed the Australian Wastelands Act which specified that land be reserved: ‘... for the use and benefit of the aboriginal inhabitants of the Country.’ (118)

12. Governor Gipps explained to the New South Wales Legislative Council in 1840 that: ‘... the uncivilised inhabitants of any country have but a qualified dominion over it, or a right of occupancy only...’ (119)

It is quite clear that Governor Gipps recognised not merely a communal title but actual *dominion* and those rights inherent with occupancy, which amount to a greater position than occupancy alone and usufructary right.

13. In 1848, Secretary of State for the Colonies, Earl Grey, sent a dispatch to the Governor of New South Wales, giving official recognition of our minimum rights on the granting of pastoral leases:

... purpose give the grantees only an exclusive right of pasturage for their cattle, and of cultivating such land as they may require within the large limits thus assigned to them but *that these leases are not intended to deprive the natives of their former rights to hunt over these districts, or to wander over them in search of subsistence in the manner to which they have been accustomed*, from the spontaneous produce of the soil, except over land actually cultivated or fenced in for that purpose. (120)

14. When Western Australia was set up by the Imperial Government a directive was that the: ‘State Government should give one per cent of its gross revenue towards assisting natives...’

Needless to say: ‘The Legislative Council of the day approved an alteration of that provision at the first opportunity...’ (121)

15. In 1901 the new constitution of Federation explicitly excluded Aborigines because, under international law, new laws for indigenous people, original owners, could not be made until the existing ‘ancient laws of the kingdom’ were extinguished by cession or formal purchase. This was never done. (122)

16. In 1975 Senator Neville Bonner's Bill was unanimously passed by the Australian Senate:

That the Senate accepts the fact that the indigenous people of Australia, now known as Aborigines and Torres Strait Islanders, *were in possession of the entire nation prior* to the 1788 First Fleet landing in Botany Bay, urges the Australian Government to admit prior ownership by the said indigenous people, and to introduce legislation to compensate the people now known as Aborigines and Torres Strait Islanders for dispossession of their land. (123)

17. In 1983 the Senate Standing Committee on the 'Makarrata' concluded:

*It may be a better and more honest appreciation* of the facts relating to Aboriginal occupation at the time of settlement, and of the Eurocentric views taken by the occupying power, could lead to the conclusion that sovereignty inhered in the Aborigines at that time...(124)

Then with no legal argument the Select Committee stated: 'In particular they are not a sovereign entity under our present law, so that they can enter into a treaty with the Commonwealth.' (125)

18. In 1984 Australian Minister for Aboriginal Affairs addressed United Nations Human Rights Commission's sub-commission's Working Group on Indigenous Populations in Geneva: 'The Australian Government *recognises the prior occupation and ownership* of Australia by Aboriginal and Torres Strait Islander People.' (126)

Despite quickly following up with a denial of present Aboriginal sovereignty the 'Commonwealth' has formally recognised our prior occupation and ownership in the international arena.

19. Having ratified the United Nations Conventions: a) International Covenant on Civil and Political Rights; b) International Convention on the Elimination of all forms of Racial Discrimination; c) International Covenant on Economic, Social and Cultural Rights (127), Australia, as a treaty State to these Covenants, has to



bring her internal laws into line with these Conventions. Section 109 of the constitution enables the law of the 'Commonwealth' to prevail over the laws of an internal state where there is an inconsistency.

A fundamental principle of the United Nations Conventions is:

All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The peoples may, for their own ends freely dispose of their own natural wealth and resources. In no case may a people be deprived of its own means of subsistence. (128)

In 1984, during the Third Session of the UN Working Group on Indigenous Populations in Geneva, the Minister of Aboriginal Affairs, Clyde Holding, committed the 'Federal Government' to legislate on the basis of the Five Principles of Land Rights. (129)

- Aboriginal land to be held under inalienable freehold title,
- Protection of Aboriginal sites,
- Aboriginal control in relation to mining on Aboriginal land,
- Access to mining royalty equivalents and
- Compensation for lost land to be negotiated.

But on February 20 1984, the 'Government' abandoned the 'Five principles' and introduced the Preferred National Land Rights Model, which negated four of the five principles. It allowed:

- no mining rights
- no negotiation of mining royalties

- no compensation for lost land
- no protection of Aboriginal sites (130).

In August 1985 the Federal Government deceived the UN Working Group on Indigenous Populations by reporting that it was still committed to legislation for the ‘Five Principles’. (131)

On March 3 1986 the Federal Labor Government announced it would NOT proceed to introduce any national land rights legislation (132) and consequently has broken faith with its ratification of the Human Rights Covenants.

It is only a matter of time and increased international awareness of our position before Australia will be forced to comply with international standards on Human Rights. Already the UN has received submissions on:

Genocide against our people; (133)

Conditions of slavery of Aboriginals in Queensland and Western Australia; (134)

Desecration of Sacred Sites; (135)

That the ‘Government’ works against self-determination by controlling who Aboriginal organisations may employ; (136)

That sovereignty was asserted on the discredited doctrine of *terra nullius* - land belonging to no-one; (137)

Despite the ‘Government’ asserting, to the UN, its commitment to the ‘Five Principles’ of Land Rights the ‘Government’ has abandoned these principles; (138)

That the ‘Government’ will not proceed to introduce any national land rights legislation. (139)



Despite the Federal Government's claim in the United Nations to compliance with the principles International Bill of Human Rights, it has not brought forward any remedies, nor shown good faith in meeting the obligation of its international Human Rights Treaty responsibilities. In effect, it has shown such blatant disregard for International State Treaty obligations that Australia should be dismissed from the UN.



It is also a principle of international law that:

Even if Australia offers Aboriginal people no municipal (internal) legal remedies for land confiscations pleading act-of-state, this cannot affect the rights and duties of other nations. At a minimum, other states need not recognise Australian Sovereignty over territory acquired, without native consent in violation of international law. At a maximum, other states may be obliged to aid Aboriginal people in asserting their territorial rights. (140)

THE "LUCKY COUNTRY"  
BREATHES A SIGH OF RELIEF

FEDERAL HOUSE OF REPS  
FINALLY HONOURS NEVILLE BONNER'S  
BILL PASSED UNANIMOUSLY  
BY SENATE ON 20th FEB 1975:  
"Aborigines + Torres Strait Islanders  
...were in possession of  
entire nation..."

... Government to admit  
prior ownership  
... legislation to compensate the  
people for dispossession of  
their land."



THEY DIDN'T WANT  
MY BACKYARD  
AFTER ALL

CEREMONIES SPREAD ACROSS  
THE LAND

WE HOLD  
THE LAW  
FOREVER

NOW WE CAN  
HEAL OURSELVES  
AND THE LAND AND  
GROW EVERYONE UP  
PROPER WAY.

TERRA NULLIUS  
DEPORTED FOR  
LIFE TO THE  
ARCHIVES

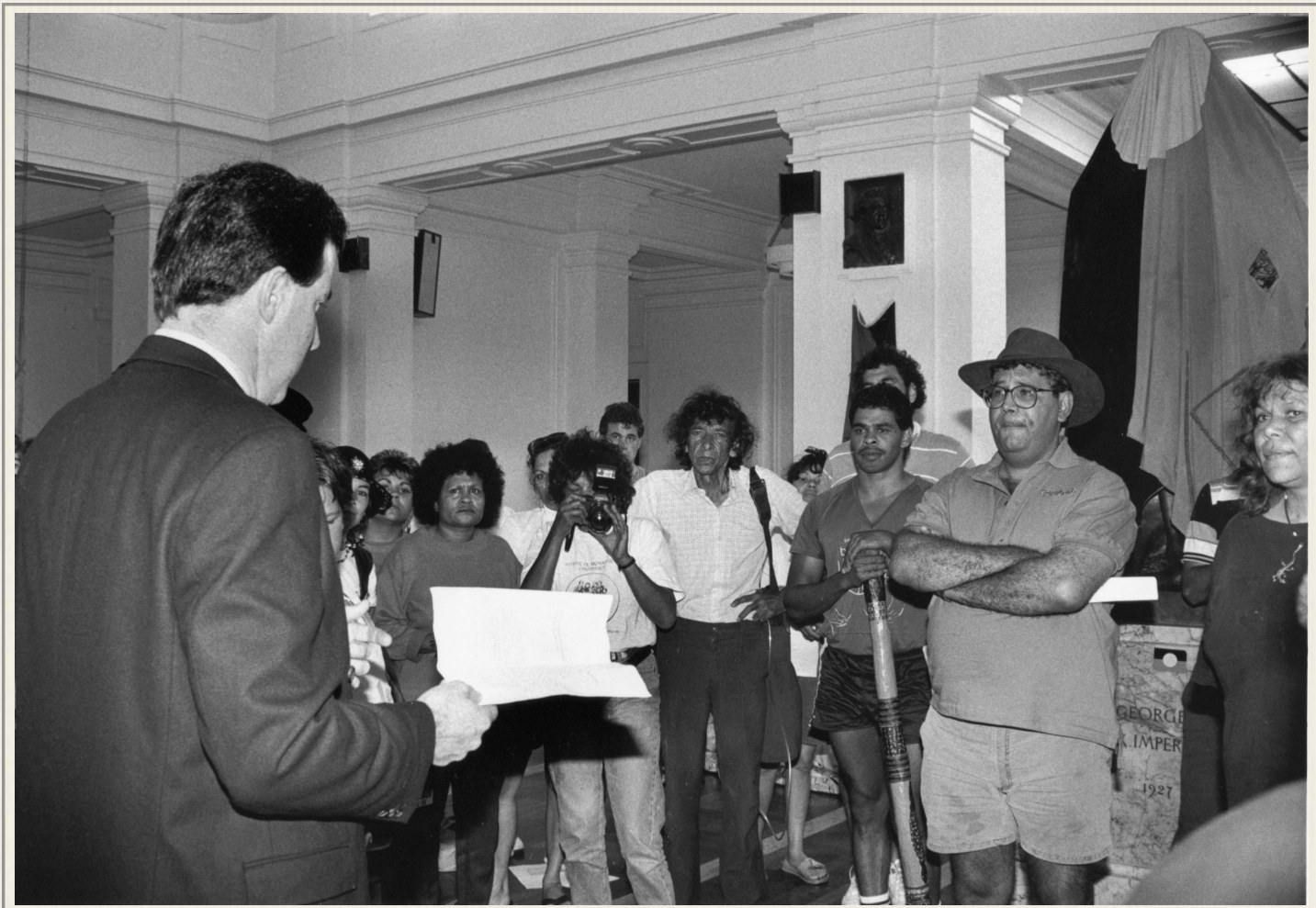


THE 200 YEAR  
WAR ENDS....





# ABORIGINAL SOVEREIGNTY BOTH VIABLE & EXERCISABLE



## TO THE INTERNATIONAL COMMUNITY AND UNITED NATIONS: DECLARATION OF ABORIGINAL SOVEREIGNTY

We, the members of the Aboriginal Nation and Peoples, do hereby give notice of invoking our claim to all the land of the Territories of our ancestors. Accordingly, we invoke the Rule of International Law that we have never surrendered nor acquiesced in our claim to these lands and territories. This occupation of the site of the old Parliament building is evidence of our right to self-government and self-determination in our lands and territories.<sup>a</sup>

We, therefore draw the attention of the International Community and the United Nations to our peaceful and lawful right of occupation of our lands and territories.

27 January 1992

Authorised: National Aboriginal Islander Legal Services  
Secretariat (NAILSS) on behalf of the Aboriginal Nation.

28 January 1992: Declaration of Aboriginal Sovereignty is officially handed to the  
Commonwealth Government via Robert Tickner, Minister for Aboriginal Affairs

Thus by no Principle in Law has Australia a legal claim to the Sovereign Root Title over this land.

The British claim to acquisition of sovereignty has been based on an untenable fiction without legal authority, negotiation, instrument of acquisition, nor indeed, is the claim within the legal bounds of British or international law.

The acquisition of a legal position can only be maintained if it is firmly established, within the framework of legal standing, based upon both application of legal precedent and acceptable to the Law of Nations.

To acquire a sovereign legal position over a territory and its possessors and inhabitants, the legal instrument must be in the most precise and unequivocal terms, capable of clear intent and direction and, when translated, admit to no aberration, misconstruction or anomaly. The legal instrument must be incapable of causing omissions, negation of direction, nor abrogate the clear direction of right inherent in the party or parties specified in that instrument. In effect, unless and until natural rights are specifically circumscribed or abrogated in unequivocal terms, which agree to give land in return for rights, compensation or natural benefits, the rights remain.

The sovereign or legal personality perceived to reside in or enable the enforcement of a law has to take cognisance, in good faith, of the specific inherent right and, in strict conformity with lawful process of establishing a derivative root title of sovereignty to the standard of principle under the law of nations in order to establish a valid sovereign status for the coloniser.

When a sovereign nation legally claims ‘possession’ and sovereign root title over a territory, and afterward establishes a legal personality, that national personality becomes enshrined as the authoritative entity with all sovereign right intact and unassailable.

Where a national personality, however, has *illegally* assumed a possessory and sovereign right over an inhabited land by the unlawful means of terror, murder,



invasion and fraud, and without declaration of war, such as is instanced in Britain's claim to sovereignty over these our lands, the natural right of the original possessor and the Sovereign Aboriginal Estate thereon does in no way become erodible, nor does the original indigenous root title languish or become extinct. (If such were the case, then any robber or entity with criminal intent could well deprive a citizen or nation of a rightful possession, cut out the victim's tongue, claim a possessory right over those goods unlawfully obtained and claim the victim's right to redress has been extinguished, by removal of the ability to speak and status to representation is therefore lost according to international criteria.)

Despite the event of Britain's assumption of 'sovereignty' and 'possession' over our inhabited lands, this fraudulent claim and assertion as to its 'vacant' or 'unoccupied' condition does not and cannot give legal credence to the invader (Britain/Australia), nor can a legally constituted sovereign lawfully expand his territory by departure from the recognised legally binding practice of the day to embrace the role of the usurper and robber baron.

Where an act in good faith by a representative of the crown results in an illegal statute or act of state, the continuation of the anomaly can in no way regularise nor enshrine that anomaly as a legal act or position.

Where anomalies arise so as to deprive nations, People, or an individual of those inherent rights, then continuation of the anomalies do not, by the mere passage of time, erode the right that exists in law, nor enshrine the anomaly as an acceptable institution or article within the law.

Where the doctrine of *terra nullius*, has assertively been advanced as a reason to establish the claim of sovereignty over inhabited lands, or lands wherein Aborigines exercise a possessory and natural usufructary right in common, that assertion and claim of sovereignty, on the basis of *terra nullius* has been dismissed in contempt and in no way given legal credence.

Where the doctrine and assertion of '*peaceable settlement*' has been advanced, as a reason to establish the claim of sovereignty over lands, wherein the Aborigines

have suffered invasion, terror, annihilation of representative structure, group imprisonment, denial of human right, having their ancient and customary law overturned and outlawed by the oppressor, who refuses human right and protection within his own legal framework, such contra version of fact does not itself give credence to that assertion. In both the foregoing instance, Britain's claim to any 'legal' entitlement or 'sovereignty' is without legal foundation and cannot be presumed to hold any status or superior right over and above that right that is held as our inherent right as original indigenous possessors. In effect, all such ulterior claims as evinced in the British claim to 'sovereignty' over these our lands are without legal foundation and therefore *legally null and void*.

Aboriginal sovereignty and the substance thereof are both viable and exercisable. The fact that the 'ancient law of the kingdom' has never been legally extinguished means that it is still in force and that indigenous right takes precedence over all alien jurisprudence. The recognition of our inherent possessory and sovereign right does not rest solely upon our knowledge and the laws and traditions of our ancient culture. Rather, our rights rest upon international law.

In effect, the ancient ruling method by which we effected our government of peoples, defined our manner of land ownership and rights, exercised our executive controls in Nation State did not then, and does not now, require our laws to be akin to, nor decipherable to those of Britain nor Australia. The fact of Aboriginal Dominion, possession, usage, tradition and law was, and is, sufficient unto the facts at law in International Principle.





# SOVEREIGN TREATY TO ENSHRINE OUR RIGHTS



Aboriginal Sovereignty has never been extinguished by invasion, nor by time.

Aboriginal Sovereignty has never been ceded nor in any way compromised, nor inadvertently ceased to exist.

Aboriginal Sovereignty continues to this day inherent in our Aboriginal People.  
Our sovereign status remains unassailed.



We pursue proper recognition of our sovereign status by way of an enshrined sovereign Treaty, with the clear and precise direction that, should we so agree to enter such a Treaty with the Australian/British or some other Nation State, our Sovereign Treaty will not, and must not, extinguish our Sovereign Aboriginal Rights, but rather enshrine and protect our rights forever, under the Vienna Convention on the Law of Treaties.

Such a Treaty is to be cognisant of our original position as Sovereign Possessors of this land. All Rights and Principles of any Treaty we may so enter are to be:

- a) retroactive to our original position of Sovereignty, prior to invasion by the British Crown;
- b) to allow of no amendment or voiding or termination.

No other party but the fully Accredited Sovereign Representatives of the Aboriginal Nation shall enter into negotiation purported to be a Treaty. They shall be the Representatives chosen directly by the Aboriginal community groups and shall in no manner be selected by agents of the coloniser.

Grass roots representation, according to our way: each community elect by majority vote at a major notified meeting, two Sovereign Representatives. The community sends their Representatives to the Regional Sovereign Council of that area. Land Council and legal, medical service organisations send one Representative also to the Regional Sovereign Council. Each Regional Sovereign Council then elects from amongst themselves two Regional Sovereign Representatives, which go to form the state-area Sovereign Aboriginal Congress e.g. the Queensland Sovereign Aboriginal Congress. The state-area Sovereign Aboriginal Congress elects from amongst their members three Sovereign Congress Representatives, who then make up the Federated Sovereign Aboriginal Congress.



Non-elected community organisations comprising representative service bodies, such as legal service, medical service, child care etc. will directly form administrative bodies to implement functions in their capacity to provide overall community programmes of development. Elections to be by vote/consensus at a major community meeting. Each such national organisation to have two Representatives to serve as a duly elected Sovereign Representatives in the Federated Sovereign Aboriginal Congress.

Should such a Treaty be so entered into by any party other than the fully accredited Sovereign Representatives of the Aboriginal People, all such 'treaties' or negotiation are null and void.

Future clarification of entitlement or negotiation as to unfair consideration for future generations can only be made by the Accredited Sovereign Aboriginal Representatives at the direction and behest of the Sovereign Aboriginal Descendants.

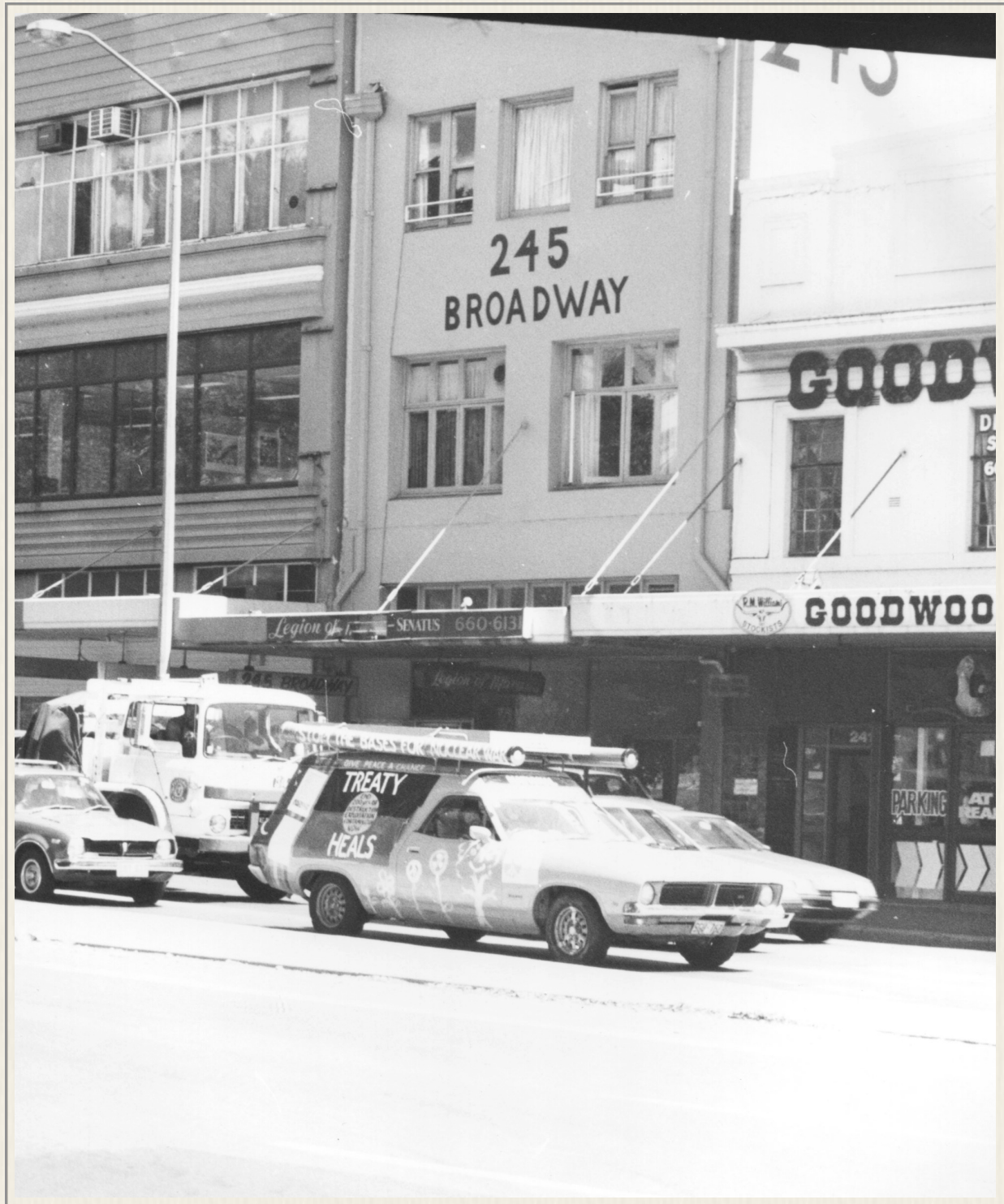
No other instrument or manner of amendment procedure or representation can in any way be construed to void, annul, change the precise rights and Sovereign role and entitlements as herein set down hereafter in this, our Sovereign Treaty which, in draft, amendment and ratification, circulates for discussion and clarification by Sovereign Aboriginal Consensus in the manner according to our ways.

**A SOVEREIGN TREATY MUST  
NEVER EXTINGUISH ABORIGINAL  
RIGHTS, BUT ENSHRINE AND  
PROTECT OUR RIGHTS FOREVER,  
UNDER THE VIENNA CONVENTION  
ON THE LAW OF TREATIES**

*K.G.*



# DRAFT SOVEREIGN TREATY



26 January 1988: Invasion Day, Sydney

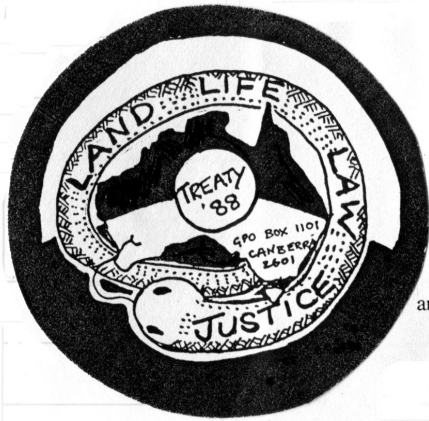
## INTRODUCTION:

Let it be clearly understood that the Aboriginal position on Land Rights is a Sovereign Aboriginal Position.



DISCUSSION PAPER:

# DRAFT TREATY



## ABORIGINAL SOVEREIGN POSITION AND LEGAL ENTITLEMENT

A Draft written at the direction  
and after consultation  
with the

### Aboriginal Representative Members of the

#### Sovereign Aboriginal Coalition

attended at Alice Springs on 19th to 21st June 1987  
and incorporating advice and direction by representative members of the Aboriginal  
Sovereign communities throughout these,  
our SOVEREIGN DOMAINS.

(c) Kevin Gilbert,  
for the Sovereign Aboriginal Nation.



From the Beginning of Time; time immemorial, our people, our culture, our land areas were clearly defined in the law and have so remained. The Aboriginal Law was not available to vagaries of change and 'amendment'. The Law was, and remains, a constant and unchanging law of rights, duties and responsibilities.

The Law governing our ownership and possession of land is such a constant Law and remains, in perpetuity, unchanged. Aboriginal Sovereign Rights in land covers the whole of this land on this continent of 'Australia'.

In 1770, our land was first invaded by Captain James Cook. As the Accredited, lawful representative of the Crown of England, Cook was legally bound by his Orders from the Admiralty to 'take Possession with the Consent of the Natives'. He failed to do so, and in so failing to act to that legally binding instrument of Orders, he acted in a criminal, unlawful manner which then allowed the terror and invasion, the massacre and theft of our land.

The instruments of law in Britain recognised Aboriginal Sovereign titles and rights in land. Such rights were an established fact of British and international law at

that time. Such recognition of native right was the very legal basis of Captain James Cook's instructions.

From the fact of the instruction, which was a legally and internationally binding order upon Cook, all subsequent duties and rights of a legal standing flowed. So too, the departure from this order, or use of fraud in act or claim by Cook, the Accredited agent of the Crown, made null and void any act or attempt to establish a legal position by the Crown.

The British and Australian 'Government' have no valid title to the Sovereign Root Title of Aboriginal land and cannot acquire a legal, valid title except by entering into a legal, binding TREATY of international status with Aboriginal People of this our country.

Our TREATY encompasses all the lands of this continent. Treaty shall insist upon these conditions:

- Recognition of our Sovereign Aboriginal Nation State;
- Recognition of Aboriginals as a People;
- Recognition that the 'Federal Government' and the 'State Governments' of Australia have no valid claim or right to title or compensation over those areas of land registered as 'Crown' lands, Crown parklands, forest, reserves, national parks, commons.

The Commonwealth and every State shall legally:



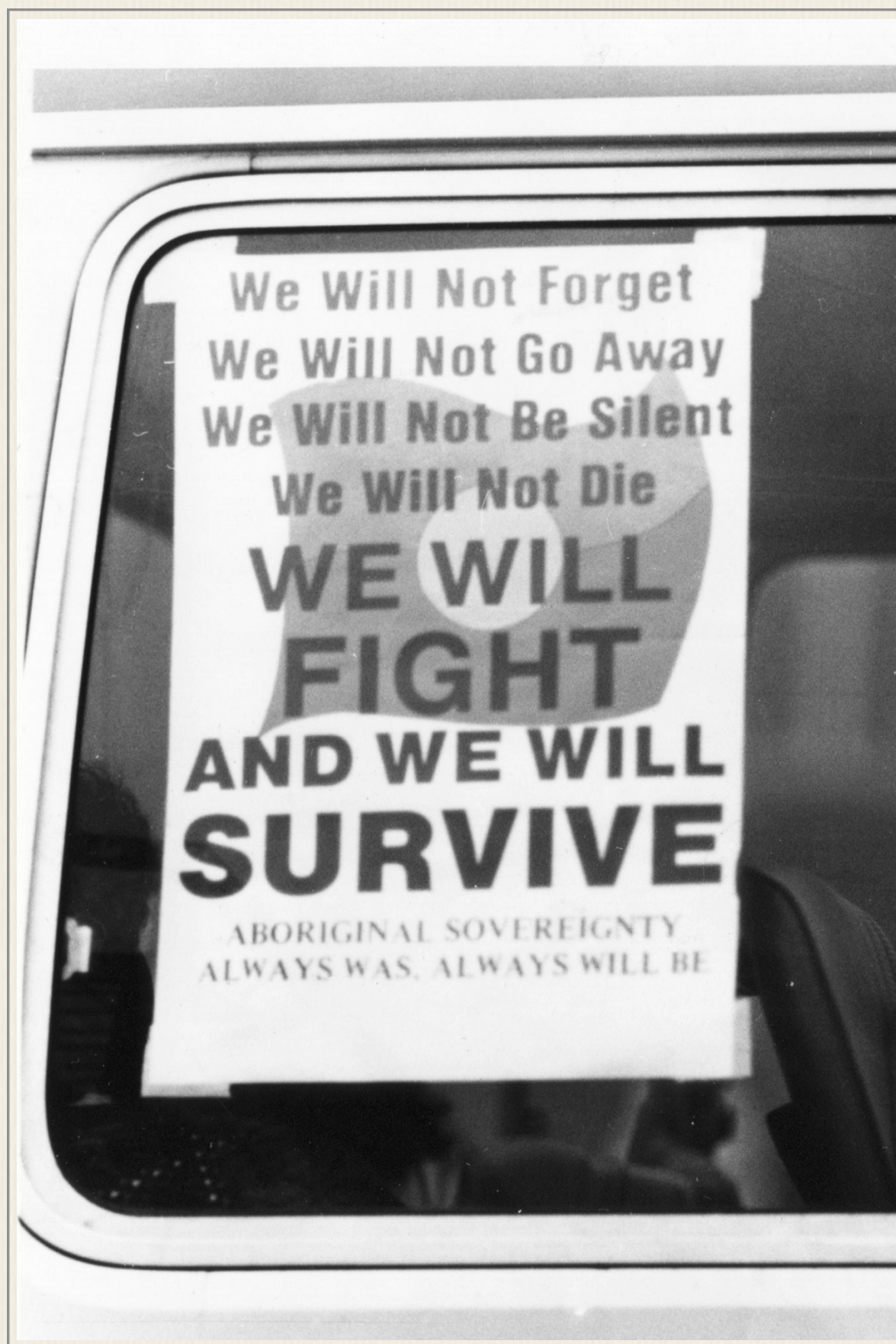
- recognise original ownership, possession and Root Title of Aboriginals to land;
- restore immediately all unalienated 'Crown' lands, including State and National Parklands, Aboriginal reserves, travelling stock reserves; negotiate Aboriginal State Boundaries;
- recognise that Aboriginal State Lands are Sovereign Aboriginal Lands with title in perpetuity and inalienable;
- agree that the Aboriginal land base be not less than 40% of the total land mass of each 'Australian State' land holding;
- agree that the Aboriginal land base be not less than 40% of the total land mass of each 'Australian State' land holding;

International Bill of Rights overrides all discriminatory laws and practices throughout the Commonwealth wherein those areas of State; and where Aboriginal traditional law applies that Aboriginal Law prevails.

All hunting, fishing, camping and usufructuary rights continue without constraint to Aboriginals.

A negotiated compensation fund (war reparation fund) be established from 7% of National Gross Product for the loss of the rest of the land and the social, physical, psychological ravages made upon us.

The 'Australian Government' to enter into a Treaty in good faith in the interest of the Aboriginal Peoples, the other people settled within our lands nationally, and the international community of which we all are a part.



26 January 1988: Bus window at Yarra Bay House, La Perouse, Sydney



# SOVEREIGN TREATY EXECUTED BETWEEN US, THE SOVEREIGN ABORIGINAL PEOPLE OF THIS OUR LAND, AUSTRALIA, AND THE NON-ABORIGINAL PEOPLES WHO INVADED AND COLONISED OUR LANDS:

## SOVEREIGN POSITION

### 1. GENERAL

1.1 We, the Sovereign Aboriginal People hold and maintain our Sovereign Root Title to these our lands now known as 'Australia'.

1.2 Our Sovereign Root Title inherent, has been held by our forebears since the Beginning, Time Immemorial, and has never passed from us in any way, nor have we lost our inherent Root Title of Sovereign Possession.

1.3 Our Sovereign Aboriginal Ownership, Possession and Sovereign Root Title to these our Lands and our People have never been lost, removed or ceded in any form or manner by any legal act or claim.

1.4 Our Sovereign Root Title is therefore intact and remains intact over all of these our Sovereign Domains of land, now known as 'Australia', and those areas of land offshore from the Mainland wherein reside Aboriginal People.

1.5 We are free to manage our own affairs both internally and externally to the fullest possible extent, in the proper exercise of our Sovereign Right as a Nation.

1.6 No other State shall assert or claim or exercise any right of jurisdiction over our Aboriginal Nation State, or People, or area of Land or Sea inherent to us as lands of our Sovereign Domains, unless pursuant to a valid treaty freely made with our lawful representatives accredited of our Nation.

1.7 Our Sovereign Aboriginal Nation, fulfilling the criteria of Statehood, having Inherent Possessory Root Title to Lands, a permanent population and a representative governing body according to our indigenous traditions, having the ability to enter into relations with other States, possesses the right to autonomy in self-determination of our political status, to freely pursue our economic, social and cultural development and to retain our rights in religious matters, tradition and traditional practice.

1.8 We, the Sovereign Aboriginal People are to be accorded our right and proper recognition as a People and a Nation State, subjects of international law.

1.9 Inherent in this Treaty is the immediate Proclamation of our Sovereign Aboriginal Rights of State.

1.10 The failure of Britain and subsequently the successional government, Australia, to enter a legally valid treaty with our Aboriginal Sovereign State has resulted in a position of national and international consequences which must be resolved in accordance with the proper standards of principle, good faith and requirements to international law as applies to the validity of States. Australia's claim to 'sovereignty' in root title is not a valid claim.

## **2. LAND**



## **2.1 GENERAL**

2.1.1 As root title to all such land and territory was unlawfully claimed and assumed as 'property of the crown', those colonial institutions known as 'State Governments of Australia', have no lawful basis of claim of right or compensation for such areas of these our territorial lands to be returned unencumbered to us.

2.1.2 Certain portions of lands will be cedable title under a fully accredited treaty enacted and executed at the direction of the Aboriginal People by and through our fully accredited Sovereign Representatives.

2.1.3 Aboriginal Sovereign Domain shall not be reduced in area at any time under any treaty to an area of the total landmass to a lesser degree or portions than 40%. The total landmass to be assessed on what is presently known and recognised as 'state' boundaries, i.e. New South Wales, Victoria, Queensland.

## **2.2 CROWN LANDS**

2.2.1 There shall be immediate restoration to us of those parts and parcels of land registered as 'crown lands'. These 'crown lands' have no legal justification to being so termed and bear no encumbrance or responsibility upon the local inhabitants or the international States with whom we are most concerned.

2.2.2 All those areas of land that have been gazetted as 'crown lands' such as those areas of our exile known as 'Aboriginal Reserves', state forests, travelling stock reserves, are to be returned forthwith in correct legal status as Sovereign Aboriginal Domain.

2.2.3 Aboriginal lands, now encumbered by the imposition of invalid title known as 'crown leasehold' and 'freehold' require consideration by us in any negotiating of such lands and any ceding, leasing or extending territorial right to any third party for the purpose of ceding jurisdiction or Statehood to those areas. All such leases and other title were illegally obtained and require legitimising by negotiation and legal endowing of title.

2.2.4 Where such excisable land is to be freed, exempted or ceded from Sovereign Aboriginal Domains for the purposes of compensation or sale, such exemption, freeing or ceding is by mandate treaty, fully accredited with the consensus of the Aboriginal people through our fully accredited representatives.

2.2.5 The Aboriginal Sovereign State shall legitimise the occupancy and formation of the Federated States of Australia by ceding of title to those areas of land not specified in the foregoing articles, in consideration for fair and equitable compensations for the loss of such lands, the damage done to the land and our cultural heritage, usurpation of our authority and the unlawful massacre of our people.

2.2.6 All Aboriginal sacred sites and sites of significance to be protected under the authority of the Aboriginal State and in ceded areas.

## **2.3 LEASEHOLD**

2.3.1 Where the 'leasehold' comes directly within the ambit of Aboriginal Sovereign Domain as a crucial portion of that claim, all rights resume to the Aboriginal State, with this proviso: Fair and equitable compensation is made at present market value. Lessee and Aboriginal State enter a negotiated use, lease or



joint venture arrangement for the remaining period of the lease before expiry; negotiated lease with Aboriginal State encompassing dual obligation and citizenship of lessee.

2.3.2 Where 'crown leaseholds' are held in rural areas, a leasehold arrangement shall continue, with these reservations: Where such 'leases' encompass traditional tribal lands and are central to cultural and religious observance, such lands are to be resumed, the lessee paid full compensation at market value, or where the lessee desires to exercise a residential lessee right of prior contract for the remaining period of that lease, the lessee may do so, with these reservations and optional development proposals.

## **2.4 FREEHOLD**

2.4.1 Freehold title, where residences and usages, with or without buildings, fences or improvements, a right shall retain in the 'proprietor', with this reservation:

2.4.2 Where such areas of land are market value.

2.4.3 If the 'proprietor' desires to retain residency on the claim of 'good faith' when obtaining the original transfer of deed and indicates the will to retain a right, such right may be so acknowledged and title registered in transfer accordingly under Aboriginal State law. Such transfer to give the equivalent right as due under the existing title.

2.4.4 All dues and responsibility as well as benefits will mutually apply to the Freehold proprietor under legitimate Aboriginal State title as would be forthcoming under the other title.

## **2.5 RIGHTS OF PASSAGE**

2.5.1 That rights of passage, air flight (pass over for peaceful purposes), and trade access between States will be without restraint, except where certain land entry restrictions apply in classified areas or near sacred sites.

## **3. GROUP CULTURE**

### **3.1 GENERAL**

3.1.1 Where so desired, Aboriginal groups, individuals or families are free to develop and practice their individual religious rights in accordance with the standards upheld by international charter of human rights.

3.1.2 Where, by reasons of previous disruptions, by massacre and dispersals from traditional areas, and in exercise of their inherent sovereign right, a group defining itself by the geographic borders, tribal areas such as Wiradjuri, Ngemba, Kamilaroi, etc, now may, if they will by free determination, choose to associate in regional autonomy, as self-governing units or associate Statehood. Exercising such inherent Sovereign Right of association, Aboriginal People in such definable areas may freely determine to enter into such relationships and to alter those relationships if they so choose.

3.1.3 The entering of such legal association or autonomous state does not and cannot extinguish or cede Sovereign Aboriginal Domain Lands which are inalienable, except in those categories already outlined in section notwithstanding that those Aboriginal Domain Lands are owned and in Possession thereof of the group so defined in inalienable title forever.



3.1.4 The Aboriginal National Coalition, bearing full representative sovereign accreditation, supports our diverse groups who so desire the full rights and obligations of internal self determination, including the right to control our own economies through accredited bodies of our elective choice, freely pursue our economic, social and cultural development in conformity with our traditions and social mores, restore, practice and educate our children to our cultures, languages, traditions and way of life.

3.1.5 We be accorded such degree of independence, right to determine the form, structure and authority of our institutions, in effect, to retain unto ourselves the prerogatives of freedom and sovereign choice as contained in our ancient culture, provided such customs and institutions retain equality of being and station and are not incompatible with those freedoms, responsibilities and duties as inherent in our ancient cultures and compatible to international charter of human rights.

3.1.6 No State, except the Sovereign Aboriginal State, shall assert any jurisdiction over our indigenous Nation, our People, our community or our territory except in accordance with the freely negotiated and enshrined instruments of treaty.

3.1.7 No State shall deny our indigenous People, residing within ceded borders, the right to participate in the life of the State in whatever manner and whatever degree they may choose. This includes the right to participate in other forms of collective action and expression, including community social, political, legal responsibility, participation and benefit. However, in defining the rights and duties, regard shall be had to our customary laws.

3.1.8 Such resident Aboriginal groups or populations shall be allowed to retain their own customs and institutions where these are not incompatible with the domiciliary State or nation's legal system.

3.1.9 The application of the preceding article shall not prevent members of our Aboriginal population from exercising, according to their individual capacity, the rights granted to all citizens of that State and from assuming the corresponding duties, to the extent consistent with the interests of the national community and municipalities or external ceded States and the legal systems therein.

3.1.10 Release Aboriginals/children from prisons and institutions.

## **3.2 RETURN OF CULTURAL ITEMS**

3.2.1 All human remains gathered and now held as collections in museums and galleries, etc are to be returned forthwith to our Aboriginal State.

3.2.2 All traditional artifacts and religious objects, including ceremonial bark paintings and tjchuringas are to be returned forthwith along with documents

3.2.3 Also to be returned include miscellaneous:

- pickled heads
- human gloves
- scrotum tobacco pouches
- dried scalps
- pickled foetus
- cicatured skins
- complete stuffed (mummified) children's bodies and women with child.



## **4. COMPENSATION**

### **4.1 GENERAL**

4.1.1 That jointly and through the accredited Representative Body of the 'Federal Government of Australia', the Australian people compensate the Aboriginal State and purchase the lands ceded by an annual payment of seven per cent of gross national income for the first ten years of this Proclamation; five percent of gross national product for the following ten years, and two and a half percent of gross national product thereafter.

4.1.2 The first initial payment of one billion dollars to be paid within one month of signing of this Treaty.

4.1.3 The 'Federal Government', 'State Governments' of Australia make available and without restriction to Aboriginals all those benefits, social, political and educational and legal, as enjoyed by their citizens, (welfare payments, pensions, health benefits). Such benefits are not to be deducted from, or assessed in the product sum of gross national product compensation percentage.

4.1.4 Those structures presently in place as public utilities servicing Aboriginal needs such as the Department of Aboriginal Affairs and the Aboriginal Development Commission or that joint body now assuming the role of those Departments, are to remain in place, be funded at the present level of funding, and be directed by an Aboriginal Bureau of Aboriginal State Affairs.

An appropriate Aboriginal Executive Commission will be set in place to direct the objectives and day to day administration of this body.

4.1.5 All towns and cities in the ceded areas shall set aside park lands with sea or river frontage where such sea or riverways exist and, in all instances in all towns and cities, nominate and preserve these areas as 'Aboriginal Domain'. Such areas to be no less than twenty acres in extent. These areas are to be made readily available to Aboriginals for purposes of gathering together for social or religious observance according to tradition and culture, and for camping at those times. At all other times, these 'domains' are to be for the enjoyment and benefit of the public, and maintained at municipal expense.

4.1.6 In urban areas where 'crown' lands are not available, suitable areas of land and housing shall be returned to Aboriginal population on a compensation and needs basis. All such lands are to be free of government or municipal 'land' rates, etc, but responsible for such service as provided in water or electricity supply and waste disposal.

4.1.7 Where desired by the urban Aboriginal population, certain areas will be set aside as 'Aboriginal Domain' territory, containing its own executive administration and funding and political control.

4.1.8 All houses previously supplied as 'Aboriginal Housing', allocated from funding under the Federal Budget Allocation for the purpose of housing Aboriginal families through the Housing Commission Department in each State of Australia, plus all housing allocated or purchased in provision specifically for Aboriginals, be returned to our Aboriginal State administration with deed title as part of State comprehensive housing initiative as part compensation.



## **4.2 COMPENSATION FOR LOSS OF USUFRUCTUARY HARVEST RIGHTS**

### **4.2.1 TOLLS:**

- a. All 'national' freeways and highways interconnecting cities and States to erect toll gates for vehicular traffic fees, based on the CPI index with a primary rate of two dollars per car, three dollars per vehicle with trailer, caravan or bus, 50 cents per motorbike;
- b. One third percentum of all monies raised by such toll to be paid to the Aboriginal Sovereign State;
- c. Where it is clearly established by registration of vehicle and residence that toll points are crossed daily for purpose of employment by local residents, an appropriate pass system is to be employed.

### **4.2.2 HARVEST RIGHTS:**

- a. All minerals including gold, diamonds, semi-precious metals and stones are to be levied by a tax of not less than three percent.
- b. All natural resources are to be taxed in a like manner.

4.2.3 Where commercial activity is engaged in for reasons of continuation and resource, a fair and equitable Royalty payment arrangement is to be entered into.

## **5. LAND MANAGEMENT**

### **5.1 ABORIGINAL MEMORIAL PARK LANDS**

5.1.1 The areas of our land proclaimed as 'National Parks', 'Nature Reserves', etc and now having a special significance, both within this country and in

international perceptions of continuing ecological heritage, are also Aboriginal State Domain. Conditions relating to such areas are:

- a. Aboriginal Sovereign title remains intact over these areas;
- b. the title is inalienable and inviolate forever;
- c. the areas of land known as "National Parks" are to be the common heritage for the benefit and enjoyment of all who reside in or visit these our lands;
- d. Aboriginals and our descendants forever hold the right to seek our herbs and foods with complete usufructary rights, including the right of hunting, fishing, camping unhindered in these our estates.

## **5.2 ABORIGINAL SOVEREIGN DOMAIN**

Administered under our internal law.

## **5.3 CEDED AREAS**

5.3.1 No felling of trees, land clearing, poisoning or ring-barking of trees will be permitted to occur without full authority and permit from a nationally constituted body of land and conservation management. No State shall permit the burning off or clearing of trees unless an erosion control plan has been entered into, and where the tree product is shown to be utilised, either as timber, firewood or woodchip.



5.3.2 All areas of land cleared for pastoral or agricultural use shall retain a minimum of no less than forty trees per acre average, either as boundary or shelter clumps.

5.3.3 All sheep and cattle grazing areas are to be replanted or otherwise contain adequate shelter belts of tree and shrubs sufficient for the holding capacity of the area.

5.3.4 All boundary line areas are to be replanted where possible with hardwood species of eucalypt, pine or acacia.

5.3.5 Where private boundaries, either singly or in common, fence off all public access to rivers, a public access road shall be provided at a distance of each fifteen kilometres, provided the river is not more than six kilometres from the highway or major road. Where the river is further inland, and not more than fifteen kilometres, access shall be at no more than forty kilometres apart.

5.3.6 Such access road will be not less than 7 metres wide and, at river frontage, no less than sixty metres across, (wide) by eighty metres deep. These access areas to serve as national heritage access areas and be readily available as campsite areas and this clause applies in ceded areas throughout the Australian continent.

5.3.7 Every township or city enjoying a river frontage shall make freely available areas for barbecues and campsites for travelers and holiday makers free of charge. Where special facilities such as toilets, water taps and showers have been provided at public cost a minimum surcharge may apply. All such areas shall be in perpetual title as Aboriginal Domain Common.

## **5.4 ANIMALS AND PLANTS**

5.4.1 No fauna culling or control program is to be entered into or executed without the prior permission of the Aboriginal State, or its executive arm controlling land management, flora and fauna.

5.4.2 No export of indigenous fauna shall be permitted for any reason without the prior and specific approval of the Aboriginal State.

5.4.3 The Aboriginal State holds, and reserves the right of all or any such export of indigenous flora for zoological or commercial purposes.

5.4.4 Where the Aboriginal State approves commercial exploitation a percentum royalty fee shall apply of no less than 4% of the wholesale market price in Australia. That fee shall be paid to the Aboriginal State clear of any administrative charges.

5.4.5 All permits issuing for the collecting of and sale of indigenous flora shall be increased by 30% of the total of the present fees now applying. Two thirds of all such permit fees shall be paid to the Aboriginal State clear of any administrative charges.

## **5.5 WATER**

5.5.1 All States throughout the continent shall effect water conservation management by developing sea channel inlets into arid zones such as the Nullabor region, and fresh water reticulation from inland rivers to agricultural and pastoral zones in conjunction with coastal river/inland reticulation systems.



5.5.2 All river-ways of consequence in water supply and irrigation are the responsibility of those States throughout the continent which those waterways serve, and shall be maintained, cleared of debris and sludge and, where required, trees replanted and regeneration works be established.

5.5.3 Dumping of sewerage into rivers, waterways or seas and pollution of air by burning of refuse, and use of hydrofluorocarbons in aerosols to cease.

## **5.6 RECYCLING**

5.6.1 All solid matter sewerage to be calcified, or reduced to ash by treatment and utilised as organic fertilizer.

5.6.2 All residual timber product such as bark and sawdust to be utilised as organic soil building substances, either in conjunction with treated sewerage ash, or urea based conversion and made available for agricultural and pastoral regenerative works.

5.6.3 All disposal of garbage and rubbish by burning must cease throughout this continent. It is mandatory that all organic materials be utilised in recycling process to conserve resources within the continent, including metals.

5.6.4 Methane extraction: household refuse, organic matter, grass clippings, etc, to be contained in large disposal pits, which are to be covered with tarmac when filled for possible future methane extraction.

## **5.7 REGENERATION**

5.7.1 There shall be joint States programs in arid and pastoral zone land management and regeneration practices.

## **6. LAW**

### **6.1 HUNTER-GATHERER RIGHTS IN LAW**

6.1.1 Aboriginal usufructuary and complete hunting and camping rights is a legally enforceable prerogative throughout the Australian continent territories, including leaseholds and pastoral areas.

6.1.2 Traditional camping places and sacred sites upon the leasehold land are to be protected, Aboriginals given full access at all times to such areas, including water rights.

6.1.3 Each camping place shall not be constrained in area nor fenced off.

6.1.4 All laws of Aboriginal State apply equally across all State borders where Aboriginal Domains extend over areas of land where a different jurisdiction may be in place.

6.1.5 The Aboriginal State will hold a right of extradition in criminal proceedings, and the right of deportation.

6.1.6 No infringement or trespass will be allowed by any legal enforcement agency upon sovereign territory without the express permission of Aboriginal State Legal Enforcement Office.



6.1.7 The methods of social control practised by the populations concerned shall be used as far as possible for dealing with crimes or offences committed by members of these population resident groups.

6.1.8 Where use of such methods of social control is not feasible, the customs of our external resident group shall be borne in mind by the authorities and courts exercising jurisdiction to ensure in every possible instance, examination and judgment is to be effected by our peers.

## **6.2 FIREARMS**

6.2.1 All firearms within the continent, in all states and territories, shall be registered separately and serial numbers taken. Each firearm shall incur a fee of five dollars per annum. One third of all such fees shall be paid to the Aboriginal State clear of any administrative charges.

6.2.2 All owners and bearers of firearms are to be licensed, including police, security guards, army personnel; and fingerprint records maintained.

6.2.3 All ammunition and firearms shall bear a sales tax of no less than a minimum increase of one hundred per cent of the tax these items now bear. One third of all such taxes shall be paid to the Aboriginal State clear of any administrative charges.

6.2.4 All non-compliance penalties shall be doubled in statute, and be mandatory in application by all States in situation within the Australian continent.

6.2.5 Permanent confiscation of firearms shall be the minimum penalty for acts of vandalism, discharging a firearm at a public property or sign, and within one kilometre of a town or private house. Such penalty in law to be mandatory in application by all States in situation within the Australian continent.

6.2.6 There shall be a complete three year moratorium on the shooting of ducks and there shall be a complete twelve month moratorium on kangaroo shooting pending enquiry.

6.2.7 Aboriginal People are to be exempt from all such licenses applying to our hunting equipment and in pursuit of our hunting and usufructary right. However, in terms of commercial application of pursuit, the commercial levy and normal procedures apply.

### **6.3 DOMESTIC ANIMALS**

6.3.1 All animals and birds used as 'pets' must be protected by uniform law throughout the continent by all States.

6.3.2 No residence to be permitted to own more than two dogs, except where in rural areas the dogs are working dogs, or the residence is registered for breeding purposes.

6.3.3. No household to be permitted to have more than two cats per residence.

6.3.4. Dogs are to be registered municipally.



6.3.5 These clauses to be strictly enforced so as to protect native birds and small animals. Fines for non compliance to be no less than five times the normal registration fee plus cost of proceedings.

## **6.4 UNIFORM CRIMINAL LAW**

6.4.1 In certain instances, a uniform criminal law shall apply to and be mandatory for all citizens in all ceded States in this continent Those laws shall be applied for the protection of humanity and preservation of life such as:

a. Premeditated murder - penalty: imprisonment for life, minimum sentence to be served before release, twenty one years; maximum, term of natural life.

b. Crimes of murder involving child rape, rape, robbery: mandatory sentence of death without reprieve; order to be executed at expiry of legal processes, appeal, etc. Execution by elective means, i.e. injection or cyanide.

c. Crimes of knowingly administering drugs, or infectious morbid disease such as AIDS, to so effect the death of a person; life imprisonment. Minimum period to be served, fifteen years.

d. Dealing in drugs such as cocaine and heroin; minimum period of imprisonment of five years for any quantity under a tenth of a gram. Any commercial quantity, or dealings involving a long period of time; minimum fifteen years, maximum death. In all cases, confiscation of property or properties including finances.

e. Crime of child rape; minimum sentence of fifteen years. Maximum death.

f. Crimes of incest involving children of pre-pubic age; five to fifteen years. In all other cases, two to fifteen years.

g. Criminal assault upon a child involving torture, flagellation beyond the interpretation of discipline, burning, starvation or imprisonment shall carry a mandatory sentence of no less than two to ten years imprisonment.

h. Administering cocaine, heroin, amphetamines, alcohol to a child under the age of fifteen; minimum imprisonment of five years.

i. Sodomy, oral or anal penetration or lesbian acts upon a child under the age of fifteen; minimum imprisonment of five years. Maximum ten years.

j. Robbery at night, burglary and robbery from an occupied place of residence; minimum fifteen years imprisonment. Robbery with violence; minimum period of imprisonment, five years.

k. Criminal assault upon a person without provocation; minimum three years. All such sentences stated as 'minimum' means the time to be served completely before any parole or other system of release be ordered.

l. Corruption in office, abuse of office: minimum five years. Maximum ten years.

m. Death of a citizen resulting from dangerous, negligent, reckless driving or driving while under the influence of intoxicating liquor or drugs; minimum seven years. Maximum life imprisonment.



## **6.5 DRIVERS LICENCE**

6.5.1 No licence to drive shall be issued unless the intending applicant has undergone a minimum period of sixteen hours of professional driver coaching from an accredited school of instruction. All instructors to be bearers of a C class licence.

6.5.2 Driving in a dangerous manner, exceeding the speed limit by 20km per hour, or drunk driving to be punishable by confiscation (impound) of vehicle, plus other appropriate legal actions.

## **6.6 REPRESENTATION IN PARLIAMENT**

6.6.1 Seven Aboriginal representatives are to hold full seats of representation in the Commonwealth Federal Parliament. Each of these representatives to maintain an objective and non aligned political position to obtain a balance of power in overall national and international concerns of nation continent.

6.6.2 These parliamentary positions to be enshrined.

6.6.3 Three Aboriginal seats will be held in the Senate and four in the House of Representatives.

6.6.4 Holders of these seats to be elected for office by those Aboriginals resident in the Aboriginal Nation State.

## **6.7. TRAINING PROGRAMS**

6.7.1 All people throughout the continent from age of 16 are entitled to nurture, social development and training in the acquiring of skills for a participatory place in the community to enable them to fulfill their aspirations.

6.7.2 It is mandatory for programs involving such employment or training or skill development to be instituted throughout the continent.

6.7.3 It is mandatory for all unemployed to receive training to equip them for situations of national emergency or disaster, either a catastrophic natural event such as uncontrolled fires, tidal waves or nuclear disaster, and where possible, all citizens throughout the continent will participate in land regeneration and reforestation.

6.7.4 All citizens throughout the continent, attaining the age of eighteen to thirty will undergo a period of no less than six weeks per annum of national emergency and para-military home defense training, including rudimentary first aid, traffic control, city evacuation, food supply and maintenance flow.

6.7.5 There will be ten thousand hectares of land set aside in each Commonwealth State, in perpetual title as Aboriginal Memorial Common Lands, free of imposition of any taxes or land rates. These Memorial Commons to be made available to lower income groups whose individual members receive a poverty level income, or no more than 25 per cent average weekly income above that income of welfare recipients. These lands to benefit those displaced, or impoverished section of the Euro Australian population.

6.7.6 Such groups will be able to develop sustenance economies, art/skills collectives and training programs.



6.7.7 In no instance will such lands be utilised for intensive agriculture or economic exploitation such as the planting of commercial crops, pastoral grazing ventures, or mining.

6.7.8 Alternative type buildings, cultural and group mores shall be permitted upon these lands, subject to controls of contagious diseases acts, and within the lawful bounds of these acts governing the quality of life for humankind.

6.7.9 Not any one area shall contain more than two thousand hectares in any one location. In effect, there shall not be less than ten such areas set aside in each State.

6.7.10 No area of Common Lands will be for the establishing of a religious organisation, but shall serve the social needs and aspirations of the financially impoverished and the socially deprived, and/or the creative and impoverished members of the community.

## **7. INTERNATIONAL**

### **7.1 EXISTING CONTRACTS, LEASE HOLDINGS AND INTERNATIONAL AGREEMENTS**

7.1.1 All existing international covenants binding on Human Rights shall remain in place.

7.1.2 All States shall accept the right of any other nation State to develop its own political philosophy and structure, and to maintain their cultural and traditional rights.

7.1.3 There shall be free and unhindered trade relations and cultural exchange with world nation States free of political and cultural bias, with special emphasis on human development, aid, and cultural exchange.

7.1.4 The 'Federal Government' to undertake, together with the Aboriginal State, to maintain the religious and spiritual philosophy of this our land to a commitment of humanity, life, justice and peace by negotiation and to make this, the spiritual base of our land and heritage, manifest in practical terms throughout the world.

## **7.2 WORLD PEACE**

7.2.1 All States shall develop a comprehensive role for world peace:

a. American satellite and army intelligence gathering facilities such as Pine Gap, North West Cape, etc, to be removed forthwith.

b. All defence matters shall be placed totally and in the most complete manner in the hands of the defence forces of States on this continent, completely independent and unassociated with any participation, commitment or joint sharing of information or commitment with any other external, foreign State.

c. This continent to remain a nuclear free continent.

d. Uranium mining to cease forthwith.



e. There shall be no rights of passage or port facilities throughout the continent to be made available to nuclear vessels.

f. No State on this continent shall contract with or make treaty with any external State to join in war or attack upon any other State or nation States.

g. All treaties that commit or promise to involve Australia with external warfare at the dictate or commitment of some other State external to Australia to be abrogated forthwith.

h. Active participation in world effective famine relief.

i. No overseas aid to be supported by funds from gross States revenue for the purposes of road making, municipal works or army supply in any form. All overseas aid to be in the form of supply of agricultural and farm produce, medical aid and personnel with development expertise.

7.2.2 Five percent of the 'Federal' Budget allocation for Defence, or the equivalent thereof, shall be allocated yearly for commitment to famine relief and purposes of humanity in overseas aid.

### **7.3 DIPLOMATIC RELATIONS AND DEFENCE**

7.3.1 As a consequence of attempting to gain and assume a legitimate title of State by acts of invasion, massacre, terror, genocide and exile of Aboriginal People, and by fraudulently establishing a profile of State, international States have entered in good faith into binding contracts and agreements with the

'Australian Governments' that involve Defence, Trade, Diplomatic relations and internal economies.

7.3.2 The assumption of European 'State' legitimacy has also enticed migrants to take up 'citizenship status' and has encouraged national and international investments and participation.

7.3.3 It is with these interests of State concern, especially in the area of economy and defence, that we must address the present and legal issues in contemporary Australia and meet the responsibilities and duties implied and undertaken internally and internationally in good faith.

7.3.4 All States to share in and develop the common objectives of defence and economy, individual and corporate rights as enjoined under the United Nations Bill of Human Rights and the International Labour Organisations Convention, and World Heritage Act.

7.3.5 All States within this continent will support a common policy of defence and self protection within the continent and with our immediate neighbour States in the Pacific region.

7.3.6 The Federal Government shall, in the interest of defence of the Continent of Australia, take full responsibility for effecting such defence systems, with the proviso: this continent to remain a nuclear free continent free of uranium mining.

## **8. DISPUTES**



## 8.1 GENERAL

8.1.1 Disputes regarding the jurisdiction, territories or institutions of our Aboriginal State and People are a proper concern of international law and must be resolved by valid treaty under the Vienna Convention on the Law of Treaties.

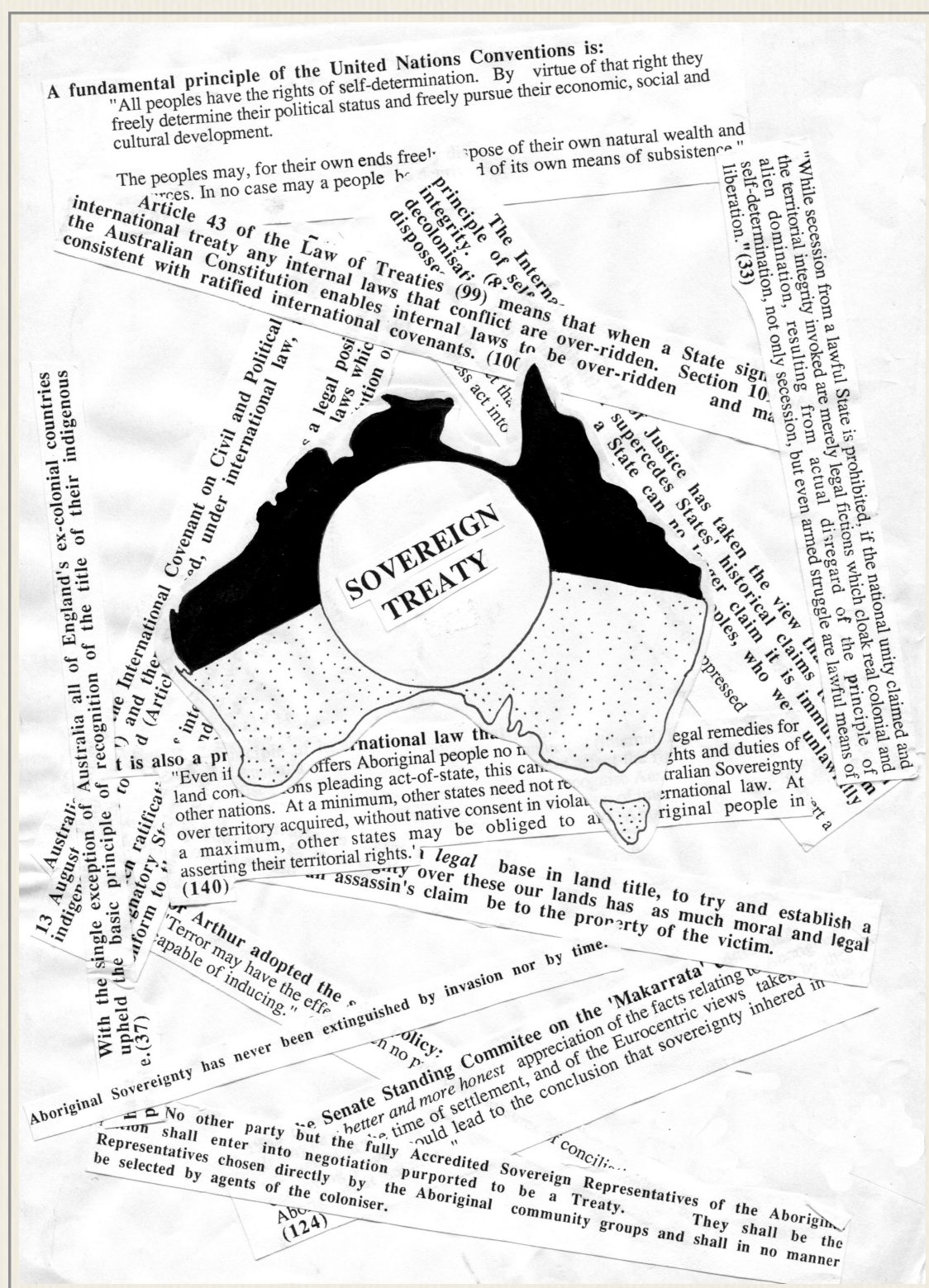
8.1.2 The tradition and customs of our Aboriginal Sovereign Nation Peoples must be respected by States and recognised as a fundamental source of law.

8.1.3 The laws and customs of our Aboriginal People must be recognised by States' legislative, administrative and judicial institutions and, in case of conflicts with State laws, Aboriginal laws and custom shall take precedence.

8.1.4 The Aboriginal Sovereign Nation State (Aboriginal Coalition Member States) shall establish an appropriate procedural instrument based upon accredited representational consensus according to custom for the binding settlements of disputes or claims or matters relating to such areas of concern.

8.1.5 All States bordering peripherally Aboriginal State Domains in the continent shall establish with us, through negotiation or other appropriate and mutual means, a binding procedure for the settlements of disputes, claims, or other matters relating to our respective nations or groups, provided such procedures shall be mutually acceptable to the parties, fundamentally fair, and consistent with international law. All procedures presently in existence, which do not have the endorsement of the Aboriginal Sovereign Nation State shall be ended and new procedures will be instituted consistent with the Treaty declaration.

8.1.6 It is the duty of States to engage in dispute resolution in good faith with respect to their differences and, where possible, resolve such differences by agreement or negotiation by fully accredited parties of State. Where resolution is unattainable by these processes, the matter is to be placed before an impartial third party according to the Law of Nations.



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Aboriginal Sovereignty, Justice, the Law and Land.





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# POSTSCRIPT

- A SOVEREIGN TREATY IS THE ONLY MECHANISM IN LAW BY WHICH OUR SOVEREIGNTY CAN BE RECOGNISED.
- A SOVEREIGN TREATY IS NEGOTIATED BETWEEN EQUALS.
- A SOVEREIGN TREATY IS AUTOMATICALLY IN THE CONSTITUTION.
- A SOVEREIGN TREATY OVER-RIDES STATE AND FEDERAL LAWS.
- A SOVEREIGN TREATY MUST NEVER EXTINGUISH ABORIGINAL RIGHTS, BUT ENSHRINE AND PROTECT OUR RIGHTS FOREVER, UNDER THE VIENNA CONVENTION ON THE LAW OF TREATIES.
- WITH ALL DOMESTIC OPTIONS EXHAUSTED, A SOVEREIGN TREATY IS OUR ONLY PEACEFUL WAY TO JUSTICE.
- THERE CAN BE NO RECONCILIATION WITHOUT A SOVEREIGN TREATY.



# 1988: MAKE A TREATY THIS TIME...

© BURRUMBINQA

BICENTENNIAL  
BOYCOTT

**IN ABORIGINAL AUSTRALIA 'DEED OF TITLE' IS HANDED ON THROUGH CEREMONY**

**THE PEOPLE GOVERN THE TRIBE AND THE LAND THROUGH ETERNAL IMMUTABLE LAW.**

**ABORIGINAL LAND USE MAINTAINS DIVERSITY...**

**MEANWHILE ON THE OTHER SIDE OF THE GLOBE CAPTAIN COOK SETS SAIL...**

**YOU ARE WITH THE CONSENT OF THE NATIVES TO TAKE POSSESSION.**

**ABORIGINALS DISCOVER CAPTAIN COOK AT KIOLLA, NSW, IN 1770**

**WHAT STRANGE BIRD IS THIS**

**I CAN SPEAK TO NO CHIEFS. NO TYRANTS. THERE IS NO GOVERNMENT**

**I DECLARE THIS LAND Terra nullius - A WASTELAND AND UNOCCUPIED.**

**THEY MAY APPEAR TO BE SOME OF MOST WRETCHED PEOPLE ON EARTH BUT IN REALITY THEY ARE FAR HAPPIER THAN WE EUROPEANS**

**LATER HE WRITES...**

**BY DENYING ABORIGINAL HUMANITY, TREATIES ARE AVOIDED AND HISTORIANS BEGIN THE FICTION THAT AUSTRALIA WAS PEACEFULLY SETTLED. THOUSANDS ARE KILLED ON BOTH SIDES.**

**MOORANGANUA AND MONGARAWATTA HUNG FOR MARIA KILLINGS OF 1840, AFTER GOVERNOR DECIDED TO TREAT AN OPENLY HOSTILE TRIBE AS A "FOREIGN ENEMY". SEVERELY REPRIMANDED BY HIS SUPERIOR GOVERNOR GAWLER HAS TO DECLARE...**

**I ACTED ON MARTIAL LAW WITHOUT PROCLAIMING IT.**

**ABORIGINALS HAVE TO BECOME BRITISH SUBJECTS TO MAINTAIN FICTION OF PEACEFUL SETTLEMENT.**

**WHILST ABORIGINALS ARE MASSACRED WITH GUNS AND POISON, AND DRIVEN FROM THEIR TRADITIONAL LANDS BATMAN DRAWS UP A TREATY FOR THE SITE OF MELBOURNE.**

**COMPENSATION, IN RECOGNITION OF PRIOR POSSESSION, IS LEGISLATED FOR, BUT STATES CONTUMPTUOUSLY IGNORE IT.**

**GOVERNOR ARTHUR REFUSED THE NECESSITY OF A TREATY.**

**REMAINING LAND OWNERS CAPTURED AND IMPRISONED IN CONCENTRATION CAMPS CALLED "ABORIGINAL RESERVES". CHILDREN REMOVED FROM FAMILIES. CULTURAL GENOCIDE ATTEMPTED.**

**OVER 90% OF AUSTRALIANS VOTE YES**

**IN 1967 REFERENDUM TO: INCLUDE ABORIGINALS IN THE CENSUS AND TO: ENABLE COMMONWEALTH GOVERNMENT TO MAKE LAWS FOR ABORIGINALS**

**IN MILIKRUP COURT CASE, AGAINST NABALCO MINING ON COVE PENINSULA JUSTICE BLACKBURN GAVE JUDGEMENT ON 25 APRIL '71**

**PRIME MINISTER BILLY McMAHON MAKES A CRUCIAL MISTAKE ON AUSTRALIA DAY 1972 (26TH JANUARY)...**

**"THE ABORIGINAL TENT EMBASSY IS ERECTED ON LAWS OF PARLIAMENT HOUSE, CANBERRA, INTERNATIONAL AWARENESS IS SUCCESSFULLY FOCUSED. ENTER HAROLD THOMAS**

**FIRST DEMANDS FOR A TREATY FROM LARRAKIA TRIBE, N.T. MARCH 1972**

**IN 1975 INTERNATIONAL COURT OF JUSTICE GIVES ADVISORY OPINION ON WESTERN SAHARA**

**IN 1944 WHEN SPAIN COLONISED WESTERN SAHARA IT WAS INHABITED BY NOMADIC PEOPLE ORGANISED IN TRIBES. IT WAS NOT TERRA NULLIUS. TERRA NULLIUS STANDS CONDEMNED**

**IF EVER A SYSTEM COULD BE CALLED 'A GOVERNMENT OF LAWS AND NOT OF MEN' IT IS THAT SHOWN IN EVIDENCE BEFORE ME... BUT THEIR LAND WAS ACQUIRED BY PEACEFUL SETTLEMENT... THE COMMON LAW DOES NOT REQUIRE COMMUNAL NATIVE TITLE TO BE RESPECTED**

**WE'LL GIVE YOU 50 YEAR LEASES ON RESERVE LANDS**

**THINKS: WE'LL HAVE THEM ASSIMILATED BY THEN**

**ABORIGINAL EMBASSY**

**YOU CAN'T HAVE AN EMBASSY WITHOUT A FLAG**

**ALL MEMBERS OF THE TRIBE SHALL COME TOGETHER TO VOTE AND DECIDE IF THE FINISHED TREATY IS FAIR**

**THE TREATIES WILL ALSO BE SIGNED BY PRIME MINISTER, HIS CABINET AND THE GOVERNOR-GENERAL.**

**THESE ARE THE DEMANDS OF QWALWA DARANKI. WE SHALL NOT STOP UNTIL THE TREATIES ARE SIGNED**

**CATCH-22 IN HIGH COURT OF AUSTRALIA: THE THIEF IS THE JUDGE. IN COE V. COMMONWEALTH OF AUSTRALIA AND ANOTHER...**

**ON CAPITAL HILL, SITE OF NEW PARLIAMENT HOUSE ABORIGINALS ASSERT SOVEREIGNTY AND CALL FOR A TREATY**

**BUT FEDERAL GOVERNMENT WILL ONLY CONSIDER A "MAKARRATA", A DOMESTIC AGREEMENT THAT CAN BE AMENDED OR REPEALED LATER. KEVIN GILBERT SOUNDS THE WARNING.**

**A LETTER FROM MALCOLM FRASER. HE'S WILLING TO DISCUSS A TREATY**

**DANGER!! DANGER!! MAKARRATA IS A SELL-OUT: A DEAL BETWEEN WHITE GOVERNMENT AND PEOPLE WITH NO STATUS**

**MAY 1985 SEES LARGEST MEETING OF ABORIGINALS, MANY SPEAKING IN THE LINGO ON THE STEPS OF PARLIAMENT HOUSE**

**GOVERNMENT DECEIVES UNITED NATIONS IN 1984 + 1985 BY REPORTING IT IS OBSERVING THE 5 PRINCIPLES OF LAND RIGHTS:**

1. INALIENABLE FREEHOLD TITLE FOR ABORIGINAL LAND
2. PROTECTION OF SACRED SITES
3. CONTROL OVER MINING ON ABORIGINAL LAND
4. ACCESS TO MINING ROYALTY EQUIVALENTS
5. COMPENSATION FOR LOST LAND TO BE NEGOTIATED.

**WE ARE A SOVEREIGN NATION**

**WE HAVE GOVERNMENT. WE HAVE THE LAW**

**WE HAVE A PERMANENT POPULATION**

**WE HAVE ABILITY TO ENTER INTO RELATIONS WITH OTHER STATES**

**WE FULFIL REQUIREMENTS FOR A TREATY**

**THE 1988 BICENTENNIAL APPROACHES AND WHITE AUSTRALIA PREPARES TO CELEBRATE 200 YEARS OF INVASION.**

**A FEATHERLESS HAWKE FRAYS...**

**THEY'VE GOT TO ME THIS TIME... AH! WELL, I HAVE TO ADMIT THEY'RE RIGHT**

**OK, I'LL SIGN. LET'S SEE... EXTERNAL AFFAIRS POWERS. SECTION 51 xxix**

**NOW'S OUR CHANCE - WE'VE GOT THE EYES OF THE WORLD WATCHING - WE NEVER CEDED SOVEREIGNTY - A SOVEREIGN TREATY - OR ELSE THE FIRES WILL BURN...**

**THE "LUCKY COUNTRY" BREATHES A SIGH OF RELIEF.**

**FEDERAL HOUSE OF REPS FINALLY HONOURS NEVILLE BONNER BILL PASSED UNANIMOUSLY BY SENATE ON 20 FEB 1975: "Aborigines + Torres Strait Islanders... were in possession of entire nation..."**

**Government to admit prior ownership... legislation to compensate the people for dispossession of their land... THEY DIDN'T WANT MY BACKYARD AFTER ALL**

**CEREMONIES SPREAD ACROSS THE LAND**

**NOW WE CAN HEAL OURSELVES AND THE LAND AND GROW EVERYONE UP PROPER WAY.**

**WE HOLD THE LAW FOREVER**

**TERRA NULLIUS DEPARTED FOR THE LAND ARCHIVES**

**THE 200 YEAR WAR ENDS...**

**A TREATY HAS CONSTITUTIONAL EFFECTS (OVER-RIDES MUNICIPAL LAWS) AND IS NULL AND VOID IF IT VIOLATES FUNDAMENTAL PRINCIPLES OF HUMAN RIGHTS - eg. RIGHT OF A PEOPLE TO SELF-DETERMINATION**



# ABORIGINAL SOVEREIGNTY

1992

© KEVIN GILBERT

FROM THE BEGINNING OF TIME ABORIGINAL LAW HAS GOVERNED THE PEOPLE OF THIS LAND...

THE DREAMING SUFFERS A DESTRUCTIVE INTRUSION BY A CRIMINALLY PSYCHOTIC INVADER...

THE OPPOSING HALF OF THE INVADER'S GOVERNMENT IS EVEN MORE CALLOUS

THE OLDEST CULTURE IN THE WORLD SENDS OUT DISTRESS CALLS TO THE REST OF THE WORLD

The ceremony has never stopped.

The Law bosses have always kept the Business going

Can't use terra nullius any more...

We've tried genocide, assimilation, integration... White washing what next?

When we gain power we will change the NT Land Rights Act

Reconciliation must not have a written instrument

Hey, World! These whitefellas keep on killing us

Sorry! Can't help

Sorry! Can't help. You are a domestic matter.

I know... RECONCILIATION in 10 years... a process

THE DISTRESS CALLS CONTINUE. GRADUALLY OTHER COUNTRIES HEAR THE MESSAGE.

WE ARE A SOVEREIGN NATION

We have been invaded

Our lands have been taken by massacre

We have never surrendered

OK. We'll sign

IF YOU DON'T SIGN THE optional protocol we'll investigate your Human Rights Record against Aborigines...

26th JANUARY 1992 'TENT EMBASSY' IS RE-ERECTED AFTER 20 YEARS...

IN FRONT OF NEW PARLIAMENT HOUSE ANOTHER DEMONSTRATION HERALDS THE EVENTS TO COME.

1972 to 1992

AN EN Political Agenda

NEXT DAY...

If nothing happens by 4 o'clock I'm going home!

THE ABORIGINAL EMBASSY TAKES OVER THE EMPTY OLD PARLIAMENT HOUSE. BARRISTER PAUL COE SEIZES THE MOMENT...

We are reoccupying land illegally taken by invasion and massacre

THE ABORIGINAL SOVEREIGN NATION DELIVERS ITS DECLARATION OF INDEPENDENCE TO COMMONWEALTH GOVERNMENT

INSIDE OLD PARLIAMENT HOUSE...

Mr Tickner, I wish to inform you that faxes of this Declaration have been sent to the Secretary-General of United Nations and all embassies.

DECLARATION OF ABORIGINAL SOVEREIGNTY STATES

"... WE INVOKE THE RULE OF INTERNATIONAL LAW THAT WE HAVE NEVER SURRENDERED NOR ACQUIRED IN OUR CLAIM TO THESE LANDS AND TERRITORIES..

28th January 1992

A STATEMENT IS GIVEN TO POLICE

BUT, AS ALWAYS, THE INVADER USES MIGHT, NOT RIGHT...

The cops are coming

Keep calm. We will arrange for 4 to be arrested. Now our chance... we have a dispute that will take us to the World Court in Holland

WHILST THE DIDGERIDOO ECHOES IN KING'S HALL...

We are Sovereign. We are here as Crow's guests. This is our first chance to overthrow the colonising power. The rest of us will leave peacefully but under duress.

WITH 500 POLICE ON ALERT, THE GUNAS COME TO MAKE ARRESTS. MADAM PUBLIC SERVANT READS...

Kids in the centre

"You are trespassing on your own land."

I deny the sovereignty of your parliament or any other person to evict me from my land.

SOVEREIGN REPRESENTATIVES ARRIVE FROM ALL STATES WHILST OTHERS SEND STATEMENTS OF SUPPORT

Greenpeace has come on side too!

They are going to launch their policy...

on Sovereignty

A PETITION TO THE UNITED NATIONS IS SENT OUT.

"We the people of the World, hereby petition the UN to recognise the legitimate & lawful sovereignty of the Indigenous Peoples of Nations of the Land now known as Australia..."

5000 MACEDONIANS HAVE THE WAY FOR ETHNIC GROUPS:

We support Aboriginal Sovereignty

BACK AT THE TENT...

What about our sisters and brothers in ATSIC?

While they are employed by the government they are Agents of the Coloniser.

They can never represent our Sovereign Rights

only 12% of our people voted for ATSIC

3rd FEBRUARY 1992 OUTSIDE ACT. MAGISTRATES COURT.

The case has been adjourned for 2 months so we can prepare our case for world court

Australian Courts can't judge our case. We are not Australians. We are ABORIGINALS

This is not only a political war, it's a spiritual war.

When we all fight together we'll win

WE ARE SOVEREIGN because we fulfil the requirements:

- WE OWN THIS LAND FROM CREATION DAYS
- WE'VE ALWAYS OCCUPIED IT
- WE'VE ALWAYS GOVERNED OUR GOVERNMENT IS OUR LAW, THE RULES
- WE CAN NEGOTIATE, TALK BUSINESS FOR OUR SOVEREIGN RIGHTS

• NOW OUR SOVEREIGNTY MUST BE RECOGNISED BY THE WORLD
- WE HAVE BEEN INVADIED
- ONLY A SOVEREIGN TREATY CAN PROTECT OUR SOVEREIGN RIGHTS