



Sovereign Union of First Nations and Peoples in Australia
Asserting Australia's First Nations Sovereignty into Governance
www.sovereignunion.mobi

*Delivered to the United Nations in by Ghillar, Michael Anderson,
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Dare to be wise:

**Decolonisation underpins the Sovereign Treaties processes
in contrast to 'Recognise' which fosters assimilation**

Summary:

The UN Special Committee of Decolonisation has now set its sights on including Australia in the revised decolonisation list, partly influenced by our recent Unilateral Declarations of Independence (UDIs) and our continued communications with the United Nations and other international bodies with like-minded Aboriginal political thinkers and advocates for "The International Sovereignty Movement", who fight to overcome the consequences of the papal 'Doctrine of Discovery'.

The imperative for Australia to decolonise was subtly concealed in the High Court *Mabo (No. 2)* judgment, instead the Court repeatedly supported its colonial foundation, rather than bringing Australia into line with the contemporary rule of international law. The Court itself, having realised the problems, failed its fiduciary obligations to proclaim the urgent need to decolonise in accordance with modern decrees of international law.

When the judges used the phrases 'skeletal principle', 'fracturing the skeleton of principle' and 'skeleton of principle', the Court is screaming for a political solution. The Court's only recourse in this case was to make a political decision to uphold its own colonial foundation, in preference to admitting it is time to bring Australia into the modern era, in which colonisation, in all its manifestations, is condemned. The 1960 United Nations General Assembly resolution on the Granting of Independence to Colonial Countries and Peoples:

... Solemnly proclaims the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations;

And to this end

Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and

is an impediment to the promotion of co-operation and world peace ... all peoples have an inalienable right to complete freedom, the exercise of their Sovereignty, and the integrity of their national territory.

[UN General Assembly Resolution 1514 [xv] *The Declaration on the Granting of Independence to Colonial Countries and Peoples*, 947th plenary meeting, 14 December 1960]

In order to break the impasse, it is not a necessary requirement that First Nations and Peoples in Australia be 'recognised' in the Australian Constitution. To pursue the 'recognise campaign' through Constitutional recognition will only serve to totally diminish our rights as the sovereign First Nations and Peoples of the soil with the right to our own identity. I am Euahlayi and Gomeroi, not Australian. It is my inherent sovereign right to express who I am. The desired ambition of the Australian Government is to completely assimilate the First Nations and Peoples into a non-Aboriginal Australia. The success of such a campaign completely obliterates any notion of the independence of the First Nations and Peoples and would end our right to retain our independent national identities such as Gomeroi, Yidinji, Mbarbrum, Murrawarri, Wiradjuri, Euahlayi, and Yorta Yorta.

If First Nations and their Peoples fail to ward off the assimilationist recognition in the colonial Constitution, First Nations and their Peoples will be subsumed into this illegal structure derived from Britain. The more First Nations and Peoples make Unilateral Declarations of Independence (UDIs), the clearer our sovereign position becomes to the international community. Supported by pressure from the international community, Australia, in right of the Crown, will finally be forced to decolonise, as all other former British colonies have done.

Australia's fear of being decolonised was expressed in 1998 by the Samuel Griffith Society of Constitutional lawyers when Dr Stephen Davis delivered his paper *Native Title: A Path to Sovereignty* to former Prime Minister John Howard:

The issue of domestic sovereignty is set to dominate future international discussion of indigenous rights, and discussions made by the United Nations, together with precedents in other countries, could potentially change the map of this country. Land rights and native title in Australia are examples of a very dynamic debate which is open ended, and which can be simply linked to international conventions and trends to develop a credible basis for a range of outcomes with far reaching irreversible consequences.

Australians tend to take their sovereignty for granted. That sovereignty is now being contested. We must become more aware of the issues, the players and be prepared to defend our sovereignty if we are to maintain it.

[Davis, Stephen 1998, *Native Title: A Path to Sovereignty*,
<http://samuelgriffith.org.au/docs/vol9/v9chap11.pdf>]

The Australian government in right of the Crown is working feverishly to deceitfully acquire the total patrimony of Aboriginal and Torres Strait Islander Peoples without them knowing of the profound consequences that will befall all First Nations and Peoples, a disaster with much more devastation than the original invasion.

Constitutional recognition is the Federal government's move to shut down the Sovereignty Movement, for Australia now fears for its own existence.

The recent legal argument from a senior lawyer runs like this:

The Constitution of the Commonwealth of Australia establishes the Commonwealth of Australia as a Colony of Britain. Colonialism is an international Crime Against Humanity. This Constitution was a Bill of the British Parliament, never signed by the Monarch. Instead, the monarch signed a separate document, referring to the Parliament's Bill. The Constitution was a mere appendix to this British Bill. Thus, the Constitution has the legal status of Letters Patent from the Crown.

Although the Constitution itself provides that it can be amended only by a process of referendum, in fact it has been amended many times by Letters Patent of the Crown. For example, when Australia was to have a female Governor-general, the gender words were amended without referendum to include a female occupant of the post of Governor-General. Thus, it is not a constitution of the people of Australia. It is a Royal Decree of another country.

The Constitution refers to the appointment of people as Ministers, but nowhere does it refer to, express, or provide, for the appointment of any person as Prime Minister. It does vest the Executive Power in the Queen, to be exercisable by the Governor-General. Monarchs customarily have a Prime Minister, a Chancellor, or similar high Ministerial official. Thus, there is an ambiguity in the Constitution as to whether or not it provides for the position of Prime Minister. Since there is an ambiguity, the rules of construction may be used to interpret the document. The rule of construction *expressio unius personae vel rei est exclusio alterius*, (The express mention of one person or thing is the exclusion of another - Coke Litt. 210a), applies in this case. Thus, the express mention of the position of a person as minister, without any mention of a person appointed as prime minister, means that according to this Constitution there is to be no person appointed as Prime Minister of Australia.

The concluding argument is best illustrated by the Lord Chancellor of the UK's answer to a question on Australia in the British parliament in 1995:

The British Constitution Act 1900 was for self government. It was never intended to be and is not suitable to be the basis for independence. The right to repeal this Act remains the sole prerogative of the United Kingdom. There is no means by which under United Kingdom or international law this power can be transferred to a foreign country or Member State of the United Nations. Indeed, the United Nations Charter precludes any such action.

PART ONE: Dare to be wise:

Understanding how the High Court perpetuates judicial bias and denial

The desperation of the Australian colonial State can be seen after a detailed examination of the reason why Reconciliation Australia's 'Recognise Campaign' is spending an undisclosed amount—believed to be millions of dollars—of Commonwealth funding, together with undisclosed sponsorship money from entities such as BHP Billiton, Rio Tinto and Arnold Block Liebler, while the recent Federal Budget cut \$4.5 million from legal services and did not restore the Aboriginal services funding that former Prime Minister Abbott had cut back. It was announced in the 2016 Federal Budget that a further \$160 million was allocated as 'provision in the Contingency Reserve of \$160 million for the referendum'.

NITV News reported on 20 May 2016 that:

Budget Papers also revealed nearly \$15 million in funding for the Prime Minister's Referendum Council and the Recognise campaign to share.

It means since the creation of the Recognise campaign in 2013, nearly \$200 million has been committed towards activism, policy and campaigning for the necessary referendum to change the Constitution.

Not one cent has been made available for an opposing viewpoint through the 'No' case. The government hides behind its Constitution to deny funding for a 'Vote No' campaign. By contrast, for the 2013 proposed local government referendum for recognition in the Australian Constitution, the government proposed to give the 'Yes' campaign a budget of \$10 million and the 'No' campaign \$500 000..

By denying the voice of Aboriginal opposition from being heard in the mainstream media, our patrimony is being stolen, because the government is aware that the total national Aboriginal and Torres Strait Islander vote represents less than 1 per cent. Social media, however, has made big inroads into advocating the 'No' case. But it is far more difficult to reach the majority of the 22 million non-Aboriginal people, who we fear may vote in favour of the 'Yes' vote, thus giving the government the right to continue ruling over Aboriginal and Torres Strait Islander Peoples without their free prior and informed consent. It will be absolutely necessary for Aboriginal Nations and Peoples announce publicly and demonstrate against their inclusion, by making a public decree prior to and during the whole referendum campaign. Their independent stance must be obvious and it must be announced that Australia is in violation of international law by forcefully exercising power over sovereign independent States without their consent.

It is important to understand that since the High Court of Australia ruled that contested sovereignty is not justiciable in the domestic municipal courts, then the question that must be asked here is how can a referendum be put to the people to incorporate sovereign First Nations into an alien and occupying power without their free prior and informed consent.

The Federal Government is again coercing the people's service organisations to promote the Recognise Campaign by illegally making it conditional that successful applications for organisations to offer Aboriginal service provisions must support and promote the 'Recognise' Campaign for Constitutional recognition. This dictatorship denies Aboriginal people and their supporters a democratic right to express an opposing view.

It is important to understand the fundamental reasons why the government is so desperate to include Aboriginal and Torres Strait Islander Peoples in the colonial and racist 1901 Constitution after centuries of an agenda that included annihilation, extermination, genocide and assimilation of First Peoples. [\[http://sovereignunion.mobi/content/opposition-australia-gaining-seat-un-human-rights-council-recognise\]](http://sovereignunion.mobi/content/opposition-australia-gaining-seat-un-human-rights-council-recognise)

The Recognise Campaign is about the Australian government attempting to gain legitimacy from the very people they locked away on mission stations where they were all expected to die out. The mission stations were set in place, not to protect the First Peoples but rather to 'smooth the dying pillow of a dying race'. This policy agenda was confirmed at the 1937 *Aboriginal Welfare* conference in Canberra when Dr Cook, Chief Protector of Aboriginals, Northern Territory, summed up the genocidal intent:

If we leave them alone, they will die, and we shall have no problem apart from dealing with those pangs of conscience, which must attend the passing of a neglected race.

[Aboriginal Welfare: Initial Conference of Commonwealth and State Aboriginal Authorities, Canberra, 21–23 April 1937, Commonwealth Government Printer, Canberra, 1937]

In leading the debate on the future of Australia's Aboriginal Peoples, the Commissioner of Native Affairs, Western Australia, AO Neville, argued:

An important aspect of the policy is the cost. The different States are creating institutions for the welfare of the native race and, as a result of this policy, the Native population is increasing. What is to be the limit? Are we going to have a population of 1 000 000 blacks in the Commonwealth, or are we going to merge them into our white community and eventually forget that there ever were Aborigines in Australia?

Concerning the 'destiny of the race' the 1937 *Aboriginal Welfare* conference resolved:

That this Conference believes that the destiny of the natives of Aboriginal origin, but not of

the full-blood, lies in their ultimate absorption by the people of the Commonwealth, and it therefore recommends that all efforts be directed to that end.

No.

Instead Aboriginal people survived the most evil of human intent to wipe out the First Peoples of Australia. It was a government policy and active plan to effect total and complete genocide. Even if some survived the Commonwealth and State governments included a social engineering program to breed out the colour of those remaining, as the colour gene is not genetically dominant.

UDIs versus Constitutional Recognition, the deceitful act

Now, they want us to legitimise their miserable existence as a Nation State through this deceitful act of Constitutional Recognition.

No way.

We are pre-existing and continuing sovereign Nations and Peoples. We cannot give this up for free.

This is a complex issue that needs to be examined in detail. To find a way through this impasse we need to be clear. To be 'recognised' in the Australian Constitution is to assimilate Aboriginal people, into an illegal structure derived from Britain, against their will. The more our individual Nations make Unilateral Declarations of Independence (UDIs), the clearer our sovereign position becomes to the international community. Supported by pressure from the international community Australia in right of the Crown will finally be forced to decolonise, as all other former British colonies have done.

Prime Minister Sir Robert Menzies and Kim Beasley Snr focused on the fact that 'Aborigines' were *not* Australians. Their frustration was: How do we make 'Aborigines' Australians?

A Commonwealth debate on 1 April 1965 resonates in the same manner as the current Constitutional debate.

On 1 April 1965, former Prime Minister of Australia, Sir Robert Menzies, addressed the Commonwealth Parliament drawing attention to the recurring issue of 'Aborigines' and the Constitution. Menzies was telling the people of Australia that:

... if the word 'Aborigines' is taken out of the Constitution the Parliament would have no specific constitutional powers to pass laws for Aborigines.

[533 & 534 *Hansard* No. 13, Thursday, 1 April 1965 25th Parliament, 1st session, 3rd period]

He admitted that the *only way* in which the Parliament could make a law for Aboriginal Peoples was to treat them as aliens, that is non-citizens. Section 51 (xxvi), the race power, of the Australian Constitution is the only way the Commonwealth government can pass laws on and for Aboriginal and Torres Strait Islander Peoples. Menzies was saying:

We as a parliament would have to use this section to pass laws for the Aboriginal race. This is what eventuated.

[*ibid*]

This meant that any Federal legislation specifically directed at providing a Commonwealth service for Aboriginal Peoples must have as part of its definition an Act for the people of the 'Aboriginal race'. Without this definition all Commonwealth legislation relating to Aboriginal Peoples would be invalid, e.g. the Commonwealth *Aboriginal and Torres Strait Islanders Act* 1998 as amended 2005.

In the same debate Mr. Beasley Snr, a former Member Fremantle Western Australia (Kim Beasley's father) further clarified the position of Aboriginal people being outside the Australian Constitution.

... but I do suggest that a whole series of discriminatory laws with respect to Aborigines is necessary. We say that we do not intend to discriminate. What rubbish! Aborigines have

been occupying land in various parts of Australia since time immemorial. Yet we deny them the slightest entitlement to one square inch of that land and push them off it as soon as anything of value to a European is discovered on it. At the same time, we content ourselves with this mealy mouthed statement that we do not discriminate against Aborigines. I think that, in the sense of material standards, we have almost the worst native policy in the world. I can never join in the righteous denunciations of South Africa that we hear in this House, because, from what I have seen in South Africa, the material conditions of the natives there are immeasurably higher than the material standards of the Aborigines of Australia. There is a case for the Commonwealth Parliament to have power in relation to Aborigines. Those of us who traveled over much of Australia and studied the conditions of Aborigines as members of the Select Committee on Voting Rights of Aborigines realise that anyone who would say that the States have been doing a marvelous job is either very blind or very complacent. I do not want to dwell on the matter any more except to say: For heaven's sake, if we in this Australian Parliament cannot guarantee citizenship, let us accept the fact that our Constitution acknowledges only the status of subjects of the Queen and that, no matter how many acts of Parliament we pass, we cannot reach into the States and create any form of meaningful citizenship. Until placitum (xxvi.) of section 51 of the Constitution is amended, Aborigines can have no effective Australian citizenship.

As can be seen from this, Aboriginal people have been lied to and deceived.

The deceit that continues to this day permits the Commonwealth government employees, modern-day Black trackers, to keep the dust flying to conceal the truth and the Recognise Campaign is the giant smokescreen of deceit, aka 'spin'.

To bring Australia into the modern era, it is essential to understand how the international community is working towards addressing colonial wrongdoings and the methods to redress these wrongdoings through international instruments such as UN General Assembly Resolution 56/83 *Responsibility of States for internationally wrongful acts*:

UN Res 56/83 Responsibility of States for internationally wrongful acts

PART ONE THE INTERNATIONALLY WRONGFUL ACT OF A STATE

Chapter I General principles

Article 1 Responsibility of a State for its internationally wrongful acts

Every internationally wrongful act of a State entails the international responsibility of that State.

Article 2 Elements of an internationally wrongful act of a State

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

1. (a) Is attributable to the State under international law; and
2. (b) Constitutes a breach of an international obligation of the State.

Article 3 Characterization of an act of a State as internationally wrongful

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

...

PART TWO CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF A STATE

Chapter I General principles

...

Article 30 Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

- (a) To cease that act, if it is continuing;
- (b) To offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31 Reparation

- 1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
- 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

...

Chapter II Reparation for injury

Article 34 Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

Article 35 Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- 1. (a) Is not materially impossible;
- 2. (b) Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 36 Compensation

- 1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
- 2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

Res 56/83 is an extension of Theo van Boven's work *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

[UN A/C.3/60/L.24]

Despite acceding to international law, the Australian government in right of the Crown is working feverishly to deceitfully acquire the total patrimony of Aboriginal and Torres Strait Islander Peoples without them knowing of the profound consequences that will befall all First Nations and Peoples, a disaster with much more devastation than the original invasion.

In terms of the assertion of First Nations Peoples' pre-existing and continuing sovereignty, the UN Special Committee of Decolonisation has now set its sights on including Australia in the revised decolonisation list, which we believe is partly influenced by the recent Unilateral Declarations of Independence (UDIs) and our continued communications with the UN Secretary-General, Ban Ki-

moon. I believe that the recent UDIs by various First Nations together with the Sovereign Union's briefing papers to the UN have helped to influence this initiative.

The imperative for Australia to decolonise becomes obvious when it is realised that the *Mabo (No. 2)* judgment was not just about true legal definitions and conclusions, but rather about maintaining the political *status quo*. The Court repeatedly supported its illegal colonial foundation in respect of our land to the degree that the judgment in *Mabo (No. 2)* was based on an outdated feudal land tenure system that is no longer part of the common law of England, having become obsolete in 1660. The judges in *Mabo (No. 2)* failed to bring Australia into line with contemporary international law by refusing to overturn these legal fictions that exist in Australian law. The Court also failed in its international legal obligations under UN General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 *Basic Principles on the Independence of the Judiciary*.

Fracturing the skeleton of principle

When judges of the High Court of Australia used the phrases 'skeletal principle', 'fracturing the skeleton of principle' and 'skeleton of principle' in *Mabo (No. 2)*, the Court was making a political decision to uphold its own colonial foundation in preference to admitting it is time to bring Australia into the modern era, in which colonisation in all its manifestations has been condemned by the international community for decades.

[<http://nationalunitygovernment.org/content/decolonisation-be-or-not-be-included-constitution>]

The true nature of First Nations' sovereign rights within Australia is superior to the colonial claim. When the *Mabo (No. 2)* case is read carefully, one can see that the judges knew this, but could not admit it, because the High Court knew that a superior court of a foreign state (England/Britain) has no right whatsoever to make determinations about the sovereignty of another state, as confirmed in the USA Supreme Court decisions in *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823) and *Underhill v. Hernandez*, 168 U.S. 250 (1897) No. 36. In latter matter Chief Justice Fuller stated the opinion of the Court:

Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such an act must be obtained through the Means open to be availed of by sovereign powers as between themselves.

This is why the High Court of Australia held that sovereignty is not justiciable in a domestic court.

Britain created an occupying power, known as the 'federated colonies' of Australia, which is a child of the British Crown that has not yet grown up enough to be independent. The 'federated colonies' can never become legitimate because its parent state, Britain, had to legislate in the British parliament for Australia to be legitimate. Take away the British parliament's Acts that relate to Australia e.g. the *Commonwealth of Australia Constitution Act 1900* (UK) and the *Australia Act 1986* and there would be no Nation State known as Australia.

Australia's position as a Nation State within the United Nations is not founded on a secure position of statehood, in fact, it is a well established legal fact that Australia has its position within the UN by virtue of it being a signatory to the Treaty of Versailles and being a signatory to the founding documents of the United Nations, when it changed its position from the League of Nations.

[*Joosse v Australian Securities and Investment Commission* [1998] HCA 77; (1998) 159 ALR 260; (1998) 73 ALJR 232 (21 December 1998)]

Australia has not yet attained its own independence as most other former British colonies have done.

The late Professor G. Clements, an eminent English QC and Emeritus Professor in Law at Cambridge, summed up the situation of Australia's status as a self-governing colony of the United

Kingdom:

The continued usage of the Australian Constitution Act (UK) by the Australian Governments and the judiciary is a confidence trick of monstrous proportions played upon the Australian people with the intent of maintaining power. It remains an Act of the United Kingdom. After joining the League of Nations in 1919 Australia became a sovereign nation. It had no further legal power to use, alter or otherwise tamper with another nation's legislation. Authority over the Australian Constitution Act lies not with the Australian government nor with the Australian people, it rests solely with the UK. Only they have the authority to repeal this legislation ...

In mid-July 1995 the Lord Chancellor of the United Kingdom, in answer to a Parliamentary question asked in the British Parliament about the Australian Constitution, stated:

The British Constitution Act 1900 was for self government. It was never intended to be and is not suitable to be the basis for independence. The right to repeal this Act remains the sole prerogative of the United Kingdom. There is no means by which under United Kingdom or international law this power can be transferred to a foreign country or Member State of the United Nations. Indeed, the United Nations Charter precludes any such action.

[\[https://endoppressioninoz.wordpress.com/valid-government-does-not-exist-in-australia/\]](https://endoppressioninoz.wordpress.com/valid-government-does-not-exist-in-australia/)

Admissions against interest

It is essential to take a closer look at the 1992 High Court *Mabo (No.2)* judgment, for instance what was said at paragraphs 29, 43 and 49, go to the heart of a judicial system trying illegally to protect itself from the consequences of a known fraud in right of the Crown. Australia, as a Nation, now bears this legacy and is doing all that it can to avoid having to deal with the original fraud, rather than attempting to locate just solutions. Oddly enough, Australia appears to be willing to accept all of the burdens of the original fraud and thereby free Britain of any liabilities.

It is important to remember that the highest form of evidence in a lawsuit is an admission against interest, which is generally defined as 'an admission of the truth of a fact by any person, but especially by the parties to a lawsuit, when a statement obviously would do that person harm, be embarrassing, or be against his/her personal or business interests.' [http://legal-dictionary.thefreedictionary.com]

The core of the High Court's admissions against interest in *Mabo (No. 2)* is stated at paragraph 49:

It is not surprising that the fiction that land granted by the Crown had been beneficially owned by the Crown was translated to the colonies and that Crown grants should be seen as the foundation of the doctrine of tenure which is an essential principle of our land law. **It is far too late in the day to contemplate an allodial or other system of land ownership.** Land in Australia which has been granted by the Crown is held on a **tenure of some kind** and the titles acquired under the **accepted land law cannot be disturbed.** [emphasis added]

This is an extraordinary statement considering the High Court is founded on the need to deal with justice. Here the Court is showing its apprehended bias and immaturity in attempting to locate solutions in respect to Aboriginal and Torres Strait Islander Peoples' inherent sovereign rights. It is not acceptable for the Court to excuse the actions of fraud that were committed in the name of the King. Koiki Mabo was not just asking about whether he had rights, he was seeking solutions and this is a sad indictment against a judicial system that makes political decisions to avoid justice and the consequences/reparations that flow from the original frauds.

Before Captain James Cook departed from England on his epic voyage in 1770, Lord Morton, President of the Royal Society in London, presented him with a relatively humane philosophy under the international law of the time:

Hints offered to the consideration of Captain Cooke, Mr. Banks, 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*. [added emphasis] 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.'

[Beagleholes, J. *Journals of Captain Cook*, vol. 1, App. ii, p. 514, MS in National Library of Australia, Canberra, p. 514]

Clearly international law in operation at the time, recognised Aboriginal Nations and Peoples as holders of the sovereign title to land. Lieutenant James Cook's secret official Admiralty Orders were issued on 30 July 1768:

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; or, if you find the country uninhabited, take possession for His majesty by setting up Proper marks and Inscriptions, as first discoverers and possessors.'

[<http://www.foundingdocs.gov.au/item-did-34.html>]

The first aggressions

To understand the fraud, it must be recalled that the recent Commemoration of Australia's Killing Fields, also known as the Frontier Wars, unofficial march by Aboriginal people and supporters on Anzac Day, 25 April 2016, highlights the fact that Australia is yet to come of age as a Nation State for several reasons. Australia was invaded. The killings with the intent of extermination were deliberate actions to 'clear the land' of Aboriginal Nations and Peoples. There was *no* peaceful settlement. Australia is *not* a settler society. This is confirmed by the actions of Lieutenant James Cook when he fired at the first group of Aboriginal people he came in contact with. Cook records in his journal:

SUNDAY 29TH APRIL:-... we then threw them some nails beads & Ca a shore which they took up and seem'd not ill pleased with in so much that I thout that they beckon'd to us to come a shore but in this we were mistaken for as soon as we put the boat in they again came to oppose us upon which I fired a musket between the two which had no other effect than to make them retire back where bundles of thier darts lay and one of them took up a stone and threw at us which caused my firing a second Musquet load with small shott and altho' some of the shott struck the man yet it had no other effect than to make him lay hold of a ^Shield or target ^to defend himself emmediatly after this we landed which we had no sooner done than they throw'd two darts at us this obliged me to fire a third shott soon after which they both made off, but not in such haste but what we might have taken one, but Mr Banks being of opinion that the darts were poisoned made me cautious how I advanced into the woods -

[<http://southseas.nla.gov.au/journals/cook/contents.html>]

Joseph Banks confirms this incident in his journal entry of 29 April 1770:

In this manner we parleyd with them for about a quarter of an hour, they waving to us to be gone, we again signing that we wanted water and that we meant them no harm. They remaind resolute so a musquet was fird over them, the Effect of which was that the Youngest of the two dropd a bundle of lances on the rock at the instant in which he heard the report; he however snatchd them up again and both renewd their threats and opposition. A Musquet loaded with small shot was now fird at the Eldest of the two who was about 40 yards from the boat; it struck him on the legs but he minded it very little so another was immediately fird at him; on this he ran up to the house about 100 yards distant and soon returnd with a sheild. In the mean time we had landed on the rock. He immediately threw a lance at us and the young man another which fell among the thickest of us but hurt nobody; 2 more musquets with small shot were then fird at them on which the Eldest threw one more lance and then ran away as did the other.

When the British Museum's recent *BP Exhibition: Indigenous Australia: Enduring Civilisation* toured to the National Museum, Canberra, it insensitively displayed the Gweagal Shield that Cook had taken back to England on the Endeavour. This shield is now subject to an ownership dispute between the British Museum and the Aboriginal people from whom Cook and his pirates stole it, having first shot at the people.

Cooman was the man shot in the leg and he dropped the Gweagal Shield, which Cook took back to London. For a long time the shield has been housed by the British Museum. Rodney Kelly is a sixth generation descendant of Cooman, whose family has passed on the story over the generations. On Anzac Day, Rodney Kelly proudly marched in the Commemoration of Australia's Killing Fields also known as the Frontier Wars. He carried a photograph of his ancestor's shield complete with musket bullet hole, which is a testament to the piracy of the British and their knowledge that the land was inhabited. This clearly set up the mode for the way in which Australia was further invaded. An inspection of the back of the shield clearly shows the splintering of the wood from the 'small shot'. The latest insult by the British Museum is their offer to loan the shield to the National Museum for show only. Clearly the British are very slow learners, to think that we are so forgiving is their greatest mistake.

Initial fraud

The initial fraud began in 1770 when Lieutenant Cook failed to take possession with the 'consent of the natives':

Notwithstand[ing] I had in the Name of His Majesty taken possession of several places upon this coast, I now once more hoisted English Coulers and in the Name of His Majesty King George the Third took possession of the whole Eastern Coast . . . by the name New South Wales, together with all the Bays, Harbours Rivers and Islands situate upon the said coast, after which we fired three Volleys of small Arms which were Answerd by the like number from the Ship.

[22 August 1770 <http://www.foundingdocs.gov.au/item-sdid-67.html>]

Furthermore, despite Cook's claim of planting his flag on Possession Island in the Torres Strait on 22 August 1770, the oral history of the local people casts doubt that this event ever happened. This is supported by the fact that Joseph Banks, the botanist, who was trained in detailed and precise observations and made detailed records, is curiously silent on this supposedly momentous event.

For the journal entry of 22 August 1770 Banks merely records:

In the morn 3 or 4 women appeard upon the beach gathering shellfish: we lookd with our glasses and to us they appeard as they always did more naked than our mother Eve. The Ebb ran out so strong that we could not weigh till near noon. We had the Wind variable from N to W, the first time since we got the trade. Before we had proceeded far we met with a shoal which made us come to an anchor.

Banks does, however, record on the previous day:

22 August 1770 ... we saw 10 Indians standing on a hill; 9 were armed with lances as we had been used to see them, the tenth had a bow and arrows; 2 had also large ornaments of mother of Pearl shell hung round their necks. After the ship had passed by 3 followed her, one of whom was the bow man. We soon came abreast, from whence we concluded we might have a much better view than from our mast head, so the anchor was dropped and we prepared ourselves to go ashore to examine whether the place we stood into was a bay or a passage; for as we sailed right before the trade wind we might find difficulty in getting out should it prove to be the former. The 3 Indians placed themselves upon the beach opposite to us as if resolved either to oppose or assist our landing; when however we came about Musquet shot from them they all walked leisurely away.

Land theft by universal terror

Governor Phillip's Commission in 1787 was to engage Aboriginal people and to 'conciliate their affections' but, instead, he committed gross and inhumane crimes against the 'sovereigns of the soil'. These atrocities are described in Watkin Tench's journal entry December 1790:

... That we were to cut off, and bring in the heads of the slain, for which purpose, hatchets and bags would be furnished. — And finally, that no signal of amity or invitation should be used, in order to allure them to us; or if made on their part, to be answered by us: for that such conduct would be not only present treachery, but give them reason to distrust every future mark of peace and friendship on our part.

... His excellency was now pleased to enter into the reasons which had induced him to adopt measures of such severity. He said that since our arrival in the country, no less than seventeen of our people had either been killed or wounded by the natives: — that he looked upon the tribe known by the name of Bid-ee-gal, living on the beforementioned peninsula, and chiefly on the north arm of Botany Bay, to be the principal aggressors: — 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, which might operate to prevent farther mischief.

Watkin Tench, Detachment leader, December 1790

[A narrative of the expedition to Botany Bay: with an account of New South Wales, its productions, inhabitants, &c. : to which is subjoined a list of the civil and military establishments at Port Jackson by Watkin Tench (1758 – 1833)]

Just before Anzac Day, *The Australian*, dated 23-24 April 2016, published the atrocities perpetrated by the 'Butcher of Gippsland', Angus McMillan, in a story written by his descendant, Cal Flynn.

[\[http://www.theaustralian.com.au/life/weekend-australian-magazine/cal-flynn-the-terrible-truths-in-my-family-history/news-story\]](http://www.theaustralian.com.au/life/weekend-australian-magazine/cal-flynn-the-terrible-truths-in-my-family-history/news-story)

The deeds of the 'Butcher of Gippsland', told in detail by PD Gardner in *Our founding murdering father: Angus McMillan and the Kurnai tribe of Gippsland 1839–1865*, and The Appin Massacre in the Camden area of western Sydney [<http://home.dictionaryofsydney.org/the-appin-massacre-200-years-on/>] are admissions and additional public disclosures of the horrors and atrocities perpetrated against Aboriginal people throughout Australia. A work in progress on the extensive list of the killings that took place across the continent is to be found on www.australianfrontierconflicts.com and confirms the lack of 'peaceful settlement'.

The land fraud continued after Governor Phillip returned to England in 1792.

ACV Melbourne traces the correspondence between Britain and the colony of New South Wales, which shows that when the Rum Corps rose up in 1792 against Governor Bligh, who escaped from New South Wales and returned to England, the new colony was left without a Governor for three years. During this time the Rum Corps leader, Major Francis Grose, led his men into the Hunter Valley region and took possession of all the land as their own and they became the 'landlords' of this region:

... The government of the colony devolved upon Major Francis Grose, the officer who commanded the New South Wales Corps by virtue of the commission which he had received appointing him Lieutenant of the colony on November 2nd 1789.

[H.R.A. i.I. 405 as quoted in ACV Melbourne *Early Constitutional Development in Australia*, UQP, 1963 page 16]

For nearly three years the New South Wales Corps (known as the Rum Corps) was in full control:

The accession of Major Grose to power marked the beginning of a period of unscrupulous exploitation. Taking advantage of the opportunity, the officers of the corps built up a power which was strong enough to withstand the attacks of Captain Hunter and his successor, Captain King, and which was sufficient to expel from New South Wales, by force, the succeeding Governor, Captain Bligh. It would be unprofitable to enter upon a description of the behaviour of these men who built up large estates and founded fortunes on illicit trade. By 1795, when Hunter reached the colony, scarcely a trace remained of Phillip's work.

[H.R.A. i.I. 405 as quoted in A.C.V. Melbourne *Early Constitutional Development in Australia*, UQP, 1963 page 16]

'(T)he behaviour of these men' who 'cleared the land' of Aboriginal people in the Hunter region is recorded in the colony's military records. It is later recorded that some of the illegal occupiers of the Hunter Valley experienced retaliation from Aboriginal people at what is now known as Jerrys Plains. Those under attack, however, had the audacity to seek military intervention to protect their ill-gotten gains.

After Lachlan Macquarie arrived as the next governor of the new colony, he disbanded the Rum Corps, but did not reclaim the land that they had taken possession of. This set the trend for 'free settlers' to go beyond the colony's Limits of Location and, forcibly seize land. These illegal acts and land grabs forced the Governor to recognise the claims to the seized lands. Governor Macquarie validated these seized lands by setting up a rental payment regime, which allowed the invaders to remain on the illegally occupied lands by paying a quit rent.

In the Biggs formal reports dated 6 May 1822, 31 August 1832 and 2 October 1822 and 10 January 1823 he expressed concern about legalities of present and past acts in respect to the development of the colony of New South Wales. ACV Melbourne at page 89 records that the governor

... in his executive capacity, the actions of the governor could be regulated by instructions, although the complications introduced by time and distance could not be ignored. In legislation, [British Parliament] however, while it was necessary to give a legal force to the governor's orders and proclamations, it was necessary, as well, to be assured that the governor should remain within the law.'

[ACV Melbourne *Early Constitutional Development in Australia*, UQP, 1963 page 89]

But the land laws and governor's grants were not regulated by British legislation. These frauds are now being covered up by the introduction of the Torrens Title land system. Torrens Title is yet again another fraud in an attempt to validate past wrongful acts. Any modern Australian parliament's attempts to cover this up can only be described as another fraud in an attempt to legitimise the original fraud and wrongdoings.

There can be no meaningful talk of reconciliation or Constitutional recognition without someone taking responsibility for the original and continuing fraud along with the known genocide and murders that have been perpetrated against First Nations and Peoples in Australia. There were no 'accidents'. What was done was murder. Many free persons, the soldiers and other government officials gained land as socage – a tenure of land by a tenant in return for agricultural or other non-military services or for payment of rent. Thus the current 'landholders' have benefited from the proceeds of major crimes.

The original land tenures granted, along with the proclamations issued by the governors, were illegal and outside British law. The correspondence between the colonial secretaries during the

1700s and 1800s clearly demonstrate the extent of the wrongdoings, which have been covered up and are now being exposed and unlocked.

Importing colonial laws

The historical communiqués and despatches show that many of the Australian governors appointed by Britain had transgressed their powers as detailed in their commission as governors of the colony.

Presently Australian courts appear to recite a mantra that all the laws of England came in 1788 with the invaders, euphemistically called the 'settlers', but this is not true. The laws that governed the colony of New South Wales from its inception and for 35 years thereafter were ones of absolute confusion and frustration. It was Admiralty Law that prevailed and confusion came from other law that was transported at the time—laws that governed the penal colony under the rules of English penitentiaries/gaols. The only people who originally occupied the New South Wales penal colony were men in uniforms and their prisoners. Their situation was that Governor Phillip only brought with him a Charter of Justice. In respect to the judicial system, Phillip was to operate a judicature based upon the 1787 Act titled *An Act to enable His Majesty to establish a Court of Criminal Judicature on the eastern coast of New South Wales, and parts adjacent*.

[AC.V Melbourne *Early Constitutional Development in Australia*, UQP, 1963 p. 11]

Originally much of the discontent in the colony centred around trade and taxes. Documents reveal that governors ruled vigorously to ensure stability and order within the colony and in doing so their authority was questioned by major colonial figures, such as the first Deputy Judge Advocate and Jeremy Bentham, who on two occasions, 2 November and 17 December 1802, told Lord Pelham that he was critical of the experiment of penal colonisation. He spoke of the illegalities which characterised the administrative system, because of the oppression of British subjects (convicts and free people) who he said were denied all the rights of the Magna Carta, the Petition of Rights, the Habeas Corpus Act and the Bill of Rights. Further, Lord Pelham questioned the validity of governors' proclamations in Australia. Having made these criticisms he was also careful to say that while denying their legality, they were expedient. This can be no justification for the tyrannical rule that set up an illegal regime and an oppressive occupying State.

Before Governor Macquarie arrived in Australia, he had questioned the system of governance and on 4 May 1809 JW Plummer replied to Macquarie's request:

... the defects which are apparent in the system of government hitherto prevailing in that colony, and the ill consequences which have resulted from them, and especially from the absolute omission of parliamentary sanction to the greater part of the colonial government.

[HRA i . 7.197 as quoted in ACV Melbourne *Early Constitutional Development in Australia*, UQP, 1963]

It was not until Lachlan Macquarie became Governor of New South Wales on 28 December 1809, that he brought with him two brothers, Ellis Bent, Deputy Judge Advocate and the judge JH Bent. These were the first two English-trained attorneys to arrive in the colony. They continually argued about the illegalities operating in the colony, which they said needed to be addressed.

These two lawyers, Ellis Bent in particular, communicated with England expressing concern about the legalities of the court system that had been introduced in the colony and the power of the governor to issue proclamations and other orders. He complained that the governor could act with impunity and was without any restraint.

The increasing concern in Britain about the autocratic powers exercised by the governor revealed that what Macquarie had done was *ultra vires* (outside the law). Other senior officials in England also expressed further concern about the application of English law, particularly as it related to the colony of New South Wales.

In fact, it is clearly not true that civil and criminal law came with the colonialists at the start,

because Governor Phillip came with a mere Charter of Justice. Up until 1811 the Charter of Justice had never been amended and so questions and confusion reigned in relation to the nature and type of judicial system that was operating in the colony of New South Wales in those first 35 years. There were three levels to the justice system that were uncertain. The only certainty that existed was the Admiralty Court relating to Admiralty and Military Law. The problem was, however, that the Admiralty Court only applied to members of the military and those in uniform. After this was realised, Governor Macquarie began to appoint some of the British subjects present in the colony to be magistrates in different regions. This included, in some cases, ex-convicts who, prior to Macquarie's governorship, had been part of a corrupt and lawless society after Captain Bligh had earlier been removed from office as governor of New South Wales. Captain Bligh's departure led to military personnel, their friends and counterparts taking up large parcels of land without authority. These illegal actions continue to haunt Australia today as these early families and their descendants continue to benefit from the proceeds of horrendous crime.

Illegality of various Governors' proclamations

Correspondence between Britain and Australia reveal that the English parliament was the only authority that could validate the laws of the governor. In fact much of the correspondence related to the powers of the governors to issue proclamations. In particular, on 2 October 1815 judge J.H. Bent questioned Governor Macquarie on the validity of the governors' orders.

I am required to admit that to be legal and founded on due authority ... which I know to be otherwise; and to acknowledge that your Excellency's will, expressed by proclamation, by what is termed a government order, or a government notice, has the force and validity of law, a proposition so startling that I cannot conceive any person in England, much less any lawyer, could have the slightest notion that it would be maintained even in argument, far otherwise that it would be attempted to be carried out to its fullest extent in practice.

[ACV Melbourne *Early Constitutional Development in Australia*, UQP, 1963 p. 33]

In effect, Judge Bent had expressed an admission against interest, since he explained that he had found in the Governor's orders much that appeared to him to be 'directly adverse to the laws of England.' Governor Macquarie despatched this complaint to Lord Bathurst on 20 February 1816.

In response to Judge Bent's complaint:

He [Lord Bathurst] added that his [Governor Macquarie] sense of duty had forbidden him to give legal form to regulations which seemed to be illegal, nor would he admit the existence of any local necessity which seemed to justify departure from the law.

[*ibid*]

Then Judge Bent later confided in a letter to Lord Bathurst dated 1 July 1815:

It never could be intended that so vast a power should be placed in the hands of any one man without the smallest provisions against its abuse.

Judge Bent then added in the same letter:

... that it was a power which set the governor of New South Wales above the legislature of the United Kingdom, which resolved the rule of action in the colony into the mere will of the governor, a will not subject to any previous advice or control.

[*ibid*]

Evidence shows that Lachlan Macquarie's autocratic and tyrannical rule was of enormous concern:

It has been observed that Macquarie was rescued from a difficult position when the Secretary of State decided to recall the brothers [Ellis Bent-Deputy-Judge-Advocate and J.

H. Bent – judge]
[ibid]

On the departure of the Bent brothers, John Wylde became Deputy Judge Advocate. This commission was dated 1 January 1816 and on May 14 1816 Barron Field was appointed judge. Field also had difficulty in admitting the illegality of Macquarie's proclamations, so much so that Field suggested that the solicitor for the Crown in New South Wales should be warned not to proceed in legal suits. Barron Field said:

... the defences to which will probably involve the legality of the imposition of duties in this colony without an act of Parliament.

[ACV Melbourne *Early Constitutional Development in Australia*, UQP, 1963 p. 34]

Field's concern in the correspondence suggested an anxiety to prevent public discussion on the question of legalities and he quoted various authorities, which had arisen as a result of the rebellion in the American colonies. In relation to proclamations regarding duties and taxes he wrote:

The position was more difficult and more objectionable in New South Wales. The American colonies had rebelled, because they had been taxed by Parliament; New South Wales was being taxed by the King alone. [ibid]

In relation to the legalisation of the Governor's powers and authority, it was necessary to determine the terms of his Instructions when appointed, because it appears from the records that the English authorities were increasingly concerned about the legal ties and connection to the land known at that time to be New South Wales. In this regard the questions that were becoming very evident were the powers to govern on these lands, because as ACV Melbourne wrote at page 34:

The Governor as a legislator

In the event of negative answers being given to these questions (I.e. the power of the Governor to make proclamations) counsel was asked to suggest a method by which existing and future duties could be legalised (This included all other proclamations issued by governors). The opinions given on this occasion are important. Counsel, having explained that New South Wales had been acquired by occupation, and not by conquest or by cession, went on to say:

We apprehend His Majesty by his Royal Prerogative has not the right either by himself or through the medium of his Governor to make laws for levying of taxes in such colonies; such taxes can only, under the present circumstances of that colony, be imposed by the Parliament of the United Kingdom. Even if the power of imposing such taxes were in the King, or in those to whom he should delegate his power, the imposition of them by the Governor (in this case) was not warranted because his Commission did not invest him with any such authority. If, however, His Majesty had a right by virtue of his prerogative to impose taxes in a colony of this sort, the defect in the present imposition might speedily have been remedied by an Order of His Majesty in Council and future taxes (when thought advisable) might be imposed by a similar order. But we think, as we might have before observed, that the only mode of legalising the taxes in this colony is by an act of the united Parliament and that future taxes can only be imposed by the same authority, as the law now stands, the colony have no representative assembly of its own by which such taxes can be imposed.

Barron Field wrote to both Goulburn on 13 November 1818 and to Thomas Biggs on 23 October 1820:

It is necessary to observe that the Act of 1787 gave authority for the erection of a Criminal Court, it made no mention of a Civil Court. The Civil Court, consequently, enjoyed no legislative sanction, and, on this account, although long afterwards, doubts were raised concerning its legality.

As A.C.V. Melbourne writes in *Constitutional Development in Australia*, one of the original proposals for representative government was to establish a Council:

... of seven members, five of them officials being members of the Council on that account. This would give a complete majority and pre-ponderating influence to the colonial government.

The remaining two, he thought, should be ‘principle inhabitants’, whom the author interprets as the Aboriginal Nations of Peoples, the sovereigns of the soil, if it was the Indian precedent they were following as their choice. He suggested ‘it would be wise to avoid all popular elections.’

This model was promoted because this was the method adopted to establish a legislature in India. The inclusion of two representatives from the native population was to establish legitimacy for the Legislative Council to operate on and within these foreign territories. This never came to pass.

Since these laws, proclamations and governance were *ultra vires*, the question arises for us as Aboriginal people: Did the British Parliament legalise proclamations of Martial Law within the colony, which gave the military, the military police and the civil community the right to slaughter with impunity Aboriginal Peoples across this country?

It is now very clear why former New South Wales Premier, Kristina Keneally, inserted into the *New South Wales Constitution Act 1902* as amended, an indemnity clause against any wrongdoings against the Aboriginal people of New South Wales, while at the same time recognising ‘Aboriginal people’ in the New South Wales Constitution:

New South Wales *Constitution Act 1902*

... As at 27 May 2014

2 Recognition of Aboriginal people

(1) Parliament, on behalf of the people of New South Wales, acknowledges and honours the Aboriginal people as the State's first people and nations. (2) Parliament, on behalf of the people of New South Wales, recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales:

(a) have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and (b) have made and continue to make a unique and lasting contribution to the identity of the State.

(3) Nothing in this section creates any legal right or liability, or gives rise to or affects any civil cause of action or right to review an administrative action, or affects the interpretation of any Act or law in force in New South Wales.

Clearly there are deep issues afoot. Denial can only last so long, as truth has a life of its own.

Governor Macquarie seeks indemnity from prosecution

Governor Macquarie realised that the restrictions of the British parliament to validate his actions were a great deal of concern for him, because the sanctions did not deal with the whole of the problem. Macquarie was very disturbed about these decisions and he was forced to make admissions regarding the dangers of his position and his lack of authority. In this regard, Governor Macquarie wrote to Lord Bathurst on 23 February 1820:

Your Lordship may deem the time suitable..., to obtain an act of indemnity for the levying of duties for the time past, I trust your Lordship will embrace it; as however supported I have been by the authority of His Majesty's Government who levied the duties in question, yet, as they appear to have been not strictly warranted in law, I have no doubt personal

actions will be instituted against me, as soon as I have returned from this government, unless protected against them by such acts.

Governor Lachlan Macquarie's land grants, proclamations of martial law against First Peoples and other proclamations of governance in the colony of New South Wales, along with other actions of the Governor, must now be scrutinised very closely. These illegal acts of the past are fraudulent acts and there is no statute of limitation on fraud.

Attempts to validate illegal colonial laws

The *Colonial Law Validity Act 1865* only dealt with certain types of legislation of the colonial Legislative Councils. Close study of the *Colonial Law Validity Act* does not provide for the legalising of the land grants and/or proclamations of martial law against the Aboriginal populations.

The British Parliament failed to admit this and erroneously suggested from the outset that the Australian continent never had already existing settled populations, with settled Laws and customs of their own. The Aboriginal defiance and resistance were indeed Acts of State based on pre-existing and continuing sovereignty.

The frauds have never been addressed, instead are now illegally embedded in Australia's land tenure system. The High Court in *Mabo (No. 2)*, incorrectly and for convenience, concluded that these fraudulent acts extinguished First Nations Peoples' inherent rights on all but what is now called 'Crown land'. This raises the obvious question: Does the Australian legal system have the capacity to stand up and admit the wrong doings? As there is no statute of limitation on fraud it is not for the High Court to suggest that it is 'too late in the day' to correct these wrongs, as this is criminally unjust and shows the immaturity of the legal system that exists in Australia today.

The *Mabo (No. 2)* case confronted the High Court with an almost impossible task. The problems were created by governments of the past, including those of Britain, which never addressed the original fraud. They had the opportunity to respond to Governor Gipps's inquiries in the 1840s, but chose to ignore his request, that the rights of the Aboriginal 'natives' must be addressed along with the question of jurisdiction. The issues that now pervade this moment in history can no longer be ignored. Therefore, in *Mabo (No. 2)*, the High Court of Australia was confronted with the need to answer the haunting history while, at the same time, realising that the Court's decision could possibly trigger a mass compensation payout by today's governments for the illegal and extensive theft of land, not to mention the killings and theft of children, which were created by the failure of colonial administrators to adhere to King George III's Proclamation of 1763, which laid the foundation for his colonies to only take land through negotiations and peaceful settlements.

This reinforced the original Secret Instructions to Captain James Cook, when he was instructed in his commission to undertake a scientific expedition.

When the original application went before the High Court in *Mabo (No. 2)* there were a number of significant questions that were omitted. This is why the Court was unable to deliberate on specific points of law that remain unanswered. One such issue is, in fact, the laws established by the *Pacific Islanders Protection Act 1875*. Here the question of land ownership, in respect to the Orders-in-Council, that related to Queen Victoria confirming that she did not claim sovereignty and dominion over the rulers and chiefs and their places. It must be remembered that these Orders-in-Council established absolute law and for the High Court to hide behind a statement that the questions were never asked is incorrect and an abuse of the Court's authority. The fact that the Orders-in-Council relate to the rulers and chiefs' 'places' is an issue at law that should have been dealt with as a natural process of the Court's deliberations on when determining the issue of land ownership.

The Keating government realised the consequences that were created by the *Mabo (No. 2)* judgment and Keating quickly created, again by fraud, a method by which the governments could perpetuate their illegal regimes. By legislating for the *Native Title Act 1993*, the illegal land tenure system was

covered up by the suggested notion, that freehold title, perpetual leasehold titles and other known leases extinguished, either in whole or in part, Aboriginal rights and interests, thus avoiding the need to pay massive compensation to the various First Nations impacted. By agreeing to this, the chosen 'Magnificent Seven' (the treasonous Aboriginal collaborators) negotiated away Aboriginal and Torres Strait Islander Peoples' rights and interests and thereby settled for the crumbs that fell from the table. It must be said at this point, that the 'Magnificent Seven A-team' and their shadow 'B-team' had no idea of the substantive matters in which they were involved. They were restricted to negotiate only what the oppressing government had proposed as agenda items, because they did not have broad knowledge of this history, while the government did.

The current *Native Title Act* 1993 now gives rise to another fraud. The 1998 amendments created a vehicle to disguise the fraudulent acts of the past. This vehicle of convenience is called an Indigenous Land Use Agreement or ILUA. As part of a Native Title settlement, the applicants on behalf of the claimants, are required to sign an Indigenous Land Use Agreement, which authorises governments, local, State and Commonwealth, to conduct plans for development on all lands within the area that is classified the 'Surrender Area' and thereby give a *carte blanche* open seal of approval to do whatever they want without having to negotiate any further. This in itself will deny the claimants future rights to negotiate and to seek compensation for acts done, because governments see Native Title as an inferior title and only a 'bundle of rights'. First Peoples are not seen as being equal in status to the colonial invaders. Furthermore, there is always a clause in the Indigenous Land Use Agreement that requires the claimants to authorise and thereby legalise all past acts, without any knowledge or full disclosure by the Native Title lawyers of what the claimants are legalising as past acts. These include the invalid acts, amongst other things, the massacres and forced removal of Peoples from their lands. This is a criminal fraud and as a contract Indigenous Land Use Agreements can and should be voided.

'Tenure of some kind'

First Nations and Peoples are now faced with decisions of choice: either enter into Indigenous Land Use Agreements or stand and fight for their sovereign inherent rights. It appears that current trends suggest that some of our people are choosing not to think about their grandchildren and their children's future, but to take the cash and run, thereby satisfying their own personal needs and in the process validating the illegal acts of the British invaders. In fairness, many of our people do not know what they are doing and do not understand the true implications of their actions, because they lack a fundamental understanding of their true sovereign inherent legal rights. Their native title lawyers are bound to the Crown and are now implicated in the perpetuation of the original fraud, by not being honest, nor discussing full disclosure.

The High Court, by its own admission, cannot confirm the true legal nature of land tenure, because it admits to its own dilemma where, in paragraph 49 *Mabo (No. 2)*, the best the Court could do was to say, in respect of the colonial land grab, they (colonialists) gained the land by a **'tenure of some kind'**.

It is not acceptable in law that the Court can draw conclusions without being able to cite any legal precedent, or a piece of legislation, for its ruling. Also, by the Court's own admissions, the true sovereign inherent rights of First Nations Peoples have never been an issue for the occupying colonial power. In the 1836/7 *Report of the Select Committee of the House of Commons on Aboriginal Tribes (British settlements)*, the first Attorney-General of the colony of New South Wales, Saxe Bannister, described the colony's governance as corrupt from the top down.

The conclusions of the 1836-7 British Select Committee's Report state:

... it [Britain] will tolerate no scheme which implies violence or fraud in taking possession of such a territory; that it will no longer subject itself to the guilt of conniving at oppression, and that it will take upon itself the task of defending those who are too weak and too ignorant to defend themselves.

... no national interest, even in its narrowest sense is subserved by encroachments on the territory or disregard of the rights of the aboriginal inhabitants of barbarous countries; but they feel it their duty to add, that there is a class of motives of a higher order which conduce to the same conclusion.

[1836–7 Report the Select Committee on Native Inhabitants of British Settlements, p.76]

These instructions did not include the recognition of the Aboriginal rights to our own cultural norms, despite the propositions of Saxe Bannister, who advocated to the Select Committee's inquiry on 14 March 1837 that treaties be transacted with Aborigines, as well as reform of the instructions to governors. In particular he advocated to 'prohibit governors from exciting enmities between different tribes, in order to weaken them for their benefits, and to prohibit wars being made without manifestoes of the cause.'

Bannister also advised that governors should 'cause collections of the native laws to be made in concert with political agents'. In relation to other legal aspects Bannister suggested that: 'when judgments cannot be executed against oppressors of the natives, the governors should indemnify the oppressed; and all judgments against white men, for injuring the natives, should be executed as those judgments are which condemned natives for injuring white people. Bannister's reasoning exposed an incident where:

... in 1826, the governor of New South Wales spared the most atrocious murderers of natives, after the court condemned them.'

He advanced his advice to the Select Committee by saying:

... as to courts of justice; laws of evidence; collections of native laws to be cited; circuits beyond the colonial frontiers; appeal to the Privy Council; equality of the natives ... Independently of placing natives on the bench as judges so soon as fit candidates appear, the chiefs should be invited to attend as assessors and visitors, and facilities should be given for the admission of all the native people, as spectators, into the courts ... Interpreters should be provided for the courts of justice ... If we do not accommodate our laws to the natives, they must remain averse to our whole system; and without this change, it is impossible to do justice.

The High Court did not place any weight on the findings of the 1836/7 British Select Committee parliamentary inquiry and, by ignoring it instead protected their own powerful status, which can be seen at paragraph 43 of *Mabo (No. 2)* when the High Court ruled:

However, recognition by our common law of the rights and interests in land of the indigenous inhabitants of a settled colony would be precluded if the recognition were to fracture a skeletal principle of our legal system.

When we accept that this is part of the judgment in *Mabo (No. 2)* we actually witness political decisions being made in order to secure the invaders' occupancy rights, despite admissions of wrongdoings and illegal invasion. A further admission against interest is also in paragraph 43 of *Mabo (No. 2)*:

The proposition that the Crown became the beneficial owner of all colonial land on first settlement has been supported by more than a disregard of indigenous rights and interests.

The colonial wrongdoings are amplified when we read other segments of the *Mabo (No. 2)* judgment where, again, the High Court itself admits to its own frailty and subjectivity, when handing down its decision in this case. This judicial and political bias is found at paragraph 29:

In discharging its duty to declare the common law of Australia, this Court is not free to adopt rules that accord with contemporary notions of justice and human rights if their adoption would fracture the skeleton of principle which gives the body of our law its shape and internal consistency.

... Here rests the ultimate responsibility of declaring the law of the nation. Although this

Court is free to depart from English precedent which was earlier followed as stating the common law of this country (21) *Cook v. Cook* [1986] HCA 73; (1986) 162 CLR 376, at pp 390, 394; *Viro v. The Queen* [1978] HCA 9; (1978) 141 CLR 88, at pp 93, 120-121, 132, 135, 150-151, 166, 174, it cannot do so where the departure would fracture what I have called the skeleton of principle. The Court is even more reluctant to depart from earlier decisions of its own (22) *Jones v. The Commonwealth* (1987) 61 ALJR 348, at p 349; 71 ALR 497, at pp 498–499; *John v. Federal Commissioner of Taxation* [1989] HCA 5; (1989) 166 CLR 417, at pp 438–439, 451–452; *McKinney v. The Queen* [1991] HCA 6; (1991) 171 CLR 468, at pp 481–482.

These are clearly admissions against interest by the High Court itself. These rulings demonstrate that there is something very wrong at the core of Australia's claim. The United Nations must review the true political status of Australia as a legitimate State. It is very evident that full recognition of First Nations Peoples' pre-existing and continuing sovereign rights take precedent over the colonisers' fraudulent claim to statehood. In paragraph 29 of *Mabo (No. 2)* the Court further stated:

The peace and order of Australian society is built on the legal system. It can be modified to bring it into conformity with contemporary notions of justice and human rights, **but it cannot be destroyed**. It is not possible, a priori, to distinguish between cases that express a skeletal principle and those which do not, but no case can command unquestioning adherence if the rule it expresses seriously offends the values of justice and human rights (especially equality before the law) which are aspirations of the contemporary Australian legal system. If a postulated rule of the common law expressed in earlier cases seriously offends those contemporary values, the question arises whether the rule should be maintained and applied. Whenever such a question arises, it is necessary to assess whether the particular rule is an essential doctrine of our legal system and whether, if the rule were to be overturned, the disturbance to be apprehended would be disproportionate to the benefit flowing from the overturning. [Emphasis added.]

This means that the High Court acknowledges that there was a fraud and wrongs done and the Court is admitting that, if the Court acknowledges that this as a fact, then the Australian legal system and political system will be found to be built on a fraudulent and false foundation. This then challenges the validity of the colonial Australian State itself and affirms all of the sovereign ownership is in the hands of the Sovereign First Nations Peoples.

The Court also demonstrates its concern that, had they known where this case would lead, they may not have accepted to hear this case in the first place, when it stated in paragraph 29:

... It is not possible, a priori, to distinguish between cases that express a skeletal principle and those which do not,

Decolonisation

It will therefore become incumbent upon those who are currently in power in the Commonwealth and State parliaments to negotiate, by way of Treaties, the legitimising of the Australian State. It is imperative that Australia goes through the process of decolonisation, in order to bring itself into line with other former British colonies, that now make up a significant proportion of the United Nations' member States. In the process, the Commonwealth of Australia must decolonise the Australian State through sovereign Treaties with the First Nations, by jointly negotiating with the British Parliament and the Crown. Then Australia can call itself a republic in its own right and would be totally independent from Britain. To have complete separation of Australia from the motherland will require a *new constitution* for a decolonised republic, founded on First Nations' pre-existing and continuing sovereign rights through a successfully negotiated outcome.

This will never be achieved if Australia continues its denial of its past and present wrongdoings. In our favour is the fact that the UN is steadily moving on UN General Assembly resolution 67/175 *Promotion of a democratic and equitable international order* dated 20 December 2012 and is

revisiting the decolonisation list through the UN Special Committee on Decolonisation. Recent deliberations of the Special Committee of Decolonisation have now set its sights on including Australia in the revised decolonisation list.

On 7 August 2013 the Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas, presented his recommendations '*Promotion of a democratic and equitable international order*' in accordance with UN General Assembly resolution 67/175. Alfred-Maurice de Zayas is a Cuban-born American lawyer and leading expert in the field of human rights and international law. He has a favourite quote '*sapere aude!*' 'dare to be wise'. At paragraph 69 (n) he recommended:

(n) The General Assembly may consider revisiting the reality of self-determination in today's world and refer to the Special Committee on Decolonization and/or other United Nations instances communications by indigenous and unrepresented peoples wherever they reside, inter alia, in Alaska, **Australia**, Canada, Chile, China, the Dakotas, French Polynesia, Hawaii, Kashmir, the Middle East, the Moluccas, New Caledonia, Northern Africa, Sri Lanka and West Papua, with reference to Chapter XI of the Charter of the United Nations. The General Assembly may also consider amending its rules and procedures to allow for the participation of indigenous and non-represented peoples. Meanwhile, the Assembly should urge States to implement the Declaration on the Rights of Indigenous Peoples. It should ensure that indigenous, non-represented peoples, marginalized and disempowered peoples, and peoples under occupation have a genuine opportunity to participate in decision-making processes; [Emphasis added.]

[\[https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/421/23/PDF/N1342123.pdf?OpenElement\]](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/421/23/PDF/N1342123.pdf?OpenElement)

NAC's 1979 prerequisite: Aboriginal Nations never ceded their sovereignty

Not many of our Aboriginal advocates understood the pathway that was being framed by the National Aboriginal Conference (NAC) from 1979 to 1984. The negotiations with the Fraser government were to establish a national framework, from which sovereign treaties of the individual sovereign Nations could commence. The national framework priority was to focus on the terms of reference for the individual Nations to negotiate their own Treaty with the Commonwealth, State and Territory governments as one. The national framework was being developed from NAC community consultations around the country. When it was realised how far the NAC had come, Prime Minister Malcolm Fraser in 1984 increased the NAC's community consultation budget on the Treaty framework to \$3 million. But after the Hawke Labor government was elected all funds to the National Aboriginal Conference were withdrawn by the late Minister for Aboriginal Affairs, Clyde Holding, which seemed ironic and contradictory given Prime Minister Hawke's statement at Barunga where he indicated that his government would negotiate a treaty.

In later years, Galarrwuy Yunupingu realised the emptiness of these promises and traveled to Canberra where he threatened to retrieve the well-publicised Barunga Statement.

It is not a well-known fact that former Australian Prime Minister Malcolm Fraser, prior to calling the 1984 election, convened a full Cabinet meeting to meet with the National Executive of the National Aboriginal Conference. At this meeting Mr. Lyall Munro, Chairman of the National Aboriginal Conference, provided a draft 27-point outline of key issues that had been gleaned from three years of community consultations. Having discussed these points, the Prime Minister commented that many of the issues identified in the draft list could be implemented by the Commonwealth government without the need of a Treaty, while the others were subject to future negotiations.

Included in the draft Charter were methodologies by which a national framework and Treaties could

have a constitutional base. The first one was that the national framework Charter could be put to a referendum in the form of Section 105 of the existing Australian Constitution. This Section relates to Commonwealth and State arrangements, in particular, budgetary matters. It was the National Aboriginal Conference's proposal that an additional Section, 105A, be inserted by way of a referendum incorporating the national framework Charter, which would then form the basis of negotiations between the Commonwealth, State and Territory and Aboriginal Nations for Treaties.

The alternate approach was that the existing Section 51(xxvi) could be used in its existing form by the Commonwealth government, which could pass a special legislation incorporating into Australian law the Charter of the national framework and that the terms of the Treaties within Australia be bound by international laws that have been accepted by the international community through the United Nations and that the international legal norms of the Vienna Convention on the Law of Treaties would underpin the Treaties as Sovereign Treaties by using Section 51(xxix) External Affairs power, which permits the Commonwealth government to incorporate international law into the Australian legal system thus underpinning the Treaties.

The National Aboriginal Conference's conclusion was that his latter pathway was the preferred model, while knowing full well that a Constitutional referendum would be extremely difficult, given the opposition from those who believe in Australia being preserved for the Aryan race, the fine arts and the Christian faith.

The discussions then turned to one of the prerequisites agreed upon between the National Aboriginal Conference and the government, that was the continuing sovereignty of First Nations and Peoples within Australia. Having pursued a series of discussions on that point it was concluded that, yes, this is the most important issue at stake, but the complications were aired in the following terms:

If the Commonwealth government were to recognise the pre-existing and continuing sovereignty of the First Nations and Peoples in Australia, the Prime minister then asked: Where does that then leave us, the non-Aboriginal people?

Mr. Lyall Munro Snr responded by saying with words to the effect:

We must recognise and accept that your government, at the insistence and approval of Britain, created an occupying power asserting your own sovereignty for those who came, and the subsequent laws created, were laws to govern that occupying State for its constituency. We were never included in that. On the other hand, we have maintained our own independent identity and sovereignty under our own laws and customs. It is these two competing factors which we must carefully preside over and negotiate.

Prime Minister Fraser, while sliding a paper across the table, responded with words to the effect:

Mr. Munro, here are signatures of the Executive Government members of the Commonwealth of Australia's, recognising the pre-existing and continuing sovereignty of Aboriginal Nations across Australia and the unifying of the two sovereignties to become one international State, in the same form as the original agreement that created the United Kingdom. But let's say, now that you have our signatures, you decide not to sign, what then?

Mr. Munro replied:

Well, now the boot is on the other foot and you can call me Prime Minister!

It is important to understand that the National Aboriginal Conference had reached a point of historic significance, which was never understood. The politics of the day prevented the coming together of like minds, because there was much interference by senior bureaucrats and others, who for their own ends made sure that there was no unity at this point. Now the wheels have turned full cycle and if we are to look back at all those promises that were made to those in opposition to the National Aboriginal Conference, we now find a trail of shattered dreams, false promises that have led to the

decline in the advancement of our Peoples. Now both sides of the political spectrum are looking beneath the covers to locate where it all went wrong. Through a program identified as *Closing the Gap* solutions seem to be much further away than being realised.

The National Aboriginal Conference ensured, as a priority to any agreement or negotiations, that Aboriginal Nations and Peoples were equal parties and were in no way subordinate to the occupying power. They knew full well that any negotiations on the part of the National Aboriginal Conference as a subordinate power would be subject to the offers of crumbs. Sure, in all the workshops and research, the Treaty Sub-Committee understood the complexities of the issues at hand, but did not shy away from the task that lay before them. They were real leaders with true and determined intent and at no time faltered in the face of impossibility. They all agreed that this is a task that they had been set by their people and, for them, there was no going back. Such is the nature of true conflict and resistance.

In the same period, 1983, the Senate Standing Committee on Legal and Constitutional Affairs released its report *Two Hundred Years Later ...*, in which it admitted:

It may be that a better and more honest appreciation of the facts relating to Aboriginal occupation at the time of settlement, and of the Eurocentric view taken by the occupying powers, could lead to the conclusion that sovereignty inhered in the Aboriginal people at that time

[The Report by the Senate Standing Committee on Constitutional and Legal Affairs on the feasibility of a compact, or 'Makarrata', between the Commonwealth and the Aboriginal people entitled *Two Hundred Years later ...*, Australian Government Publishing Service, Canberra, 1983, p. 50]

The Senate Standing Committee's final statement, however, on the question of continuing Aboriginal sovereignty erroneously concluded that:

As a legal proposition, sovereignty is not now vested in the Aboriginal peoples except in so far as they share in the common sovereignty of all peoples of the Commonwealth of Australia. In particular, they are not a sovereign entity under our present law so that they can enter into a treaty with the Commonwealth.

[ibid p. 50]

The *Mabo (No.2)* ruling irreversibly changed this forever, because as stated above competing sovereignty is not justiciable in domestic courts.

Solutions can only be found if each party is willing to talk as equals. To do otherwise is a compromise of devastating proportions.

PART TWO: ‘The yoke of error’

High Court ignores key legal precedents

‘The fair and lovely face of justice, if urged beyond her legal boundary...’

With the High Court stating in *Mabo (No. 2)* that ‘no case can command unquestioning adherence if the rule it expresses seriously offends the values of justice and human rights (especially equality before the law)’ the Court shows its apprehended bias again when it totally ignored three New South Wales Supreme Court cases of the 1800s, in which Aboriginal defendants were refusing their allegiance to the monarch as British subjects. Instead the accused articulated that they had their own Law which was their own Law of the land.

In *R. v. Ballard or Barrett* [1829] [New South Wales Sup C 26; sub nom. *R. v. Dirty Dick* (1828) New South Wales Sel Cas (Dowling) 2] the *Sydney Gazette* of 16 June 1829 reported that Chief Justice Forbes stated that Aboriginal people did not come under British law:

In occupying a foreign country, the laws that are imported have reference only to the subjects of the parent state; I am not aware that those laws were ever applied to transactions taking place between the original natives themselves. This is founded on a wise principle.

In *R v Murrell* [R v Murrell and Bummaree (1836) 1 Legge 72; [1836] New South Wales SupC 35] Rev Threlkeld, a Missionary, read an affidavit on behalf of Jack Congo Murrell, who was accused of a tribal killing under the payback rule:

It was laid down in 1st Blackstone, 102, and in fact in every other work upon the subject, that land obtained like the present, were not desert [sic] or uncultivated, or peopled from the mother country, they having originally a population of their own more numerous than those who have since arrived from the mother country. Neither could this territory be called a conquered country, as Great Britain never was at war with the natives; it was not a ceded country either; it, in fact, came within neither of these, but was a country which had a population having manners and customs of their own, and we had come to reside among them, therefore in point of strictness and analogy to our law, we were bound to obey their laws, not they to obey ours.

In the February 1836 report of New South Wales Supreme Court in *R v Murrell*, Chief Justice Forbes had said that ‘... if the English laws were to protect the Aboriginal people, then surely the Aborigines must be subject to those laws. ...’ Then Murrell's defence lawyer, on the question of equality, proposed to the court that, ‘... if Murrell was a subject of Britain with the same rights as an Englishman, then he and his people should be compensated for the land that was taken from them.’

To avoid compensating Aboriginal Nations and Peoples for the loss of their lands, Justice Forbes concluded, misguidedly, that:

... in the absence of any demonstrable settled law, of any villages or of any apparent Aboriginal belief in a higher God similar to their Christian religion, of any tilled soil, the country can be called *terra nullius*.

It is from this judgment that all colonial and modern law entrenched the concept of *terra nullius* as the foundation that provides for their fraudulent claim to statehood, feudal land tenure and so the

notion of *terra nullius* was born (and the elephant is still in the room!) The recent publications, *Dark Emu* by Bruce Pascoe and the *Biggest Estate on Earth* by Bill Gammage, confirm the degree to which the invading power tried to cover up the extent and nature of First Peoples' settled and diverse societies.

Aboriginal people were never considered human beings by the authorities of the invader societies. Initially, in 1770, the east coast was claimed in the name of King George III by Captain James Cook. Then the eastern half of the continent was claimed by the Crown in Phillip's Instructions of 1787 and all things on that land became the property of the Crown of England, as the High Court ruled in *Mabo (No. 2)* Australia's 'settlement' was under the feudal land tenure system. But there is no evidence of any written instructions or proclamations that support this High Court ruling. This assertion by the High Court establishes the framework which permitted Aboriginal people to be placed in the realm of the natural fauna and flora based on the archaic feudal land law system. That is, all that was inside the land mass became the property of the King as owner. Thus Aboriginal and Torres Strait Islander Peoples became the property of the King.

At no time thereafter is there any evidence of the King, or any of his successors in title, making Aboriginal and Torres Strait Islander Peoples denizens, nor is there any British legislation or approved Australian legislation that can be produced to show that Aboriginal and Torres Strait Islander people became citizens.

It is important to note that in the absence of a war and the people being conquered, they, the conquered, become part of the conquerers' society through a treaty process (peace pact). Until such times as a peace Treaty is signed to bring an end to the conflicts, the laws of the ancient kingdoms remain in force, and the conquered are still subject to those ancient laws, which, until a Treaty is signed are the Law of the Land.

The conquered's allegiance remains solely to that of their own ancient Law of the land and their patrimony cannot be gained by any unlawful act or fraud by the conquering power without a peace pact or Treaty being concluded. In the modern era, under international law, a Treaty is now an agreement between Sovereign Nations and affirms the sovereignty of the signatory parties.

In the *R v Bonjon* Case of April 1841, Bonjon asserted his position as a non-British subject, but rather a subject of his own People's Law, governance and with his own identity. His position was later affirmed when Justice Willis of the New South Wales Supreme Court asked the following:

... the question now is, whether the Supreme Court in a case like this has any jurisdiction? Are in fact the aborigines (except with reference to aggressions on their part against the colonists, and with regard to that *protection from the aggressions of the colonists which the aborigines are indisputably entitled to*), subject to the law of England as it prevails in this Colony? ... can I legally exercise any jurisdiction, with reference to any crimes committed by the aborigines against each other?

Justice Willis added a concept that is still very relevant today:

The fair and lovely face of justice, if urged beyond her legal boundary, assumes the loathsome and distorted features of tyranny and guilt.

Justice Willis quotes at length from the *Report of the Select Committee of the House of Commons on Aboriginal Tribes (British settlements)*, which included an 1834 address to the King by the British House of Commons:

It might be presumed that the native inhabitants of any land, have an *incontrovertible right to their own soil*; it is a plain and sacred right which seems not to have been understood. *Europeans have entered their borders uninvited, 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. If they have been found upon their own property (and this is said with reference to the Australian Aborigines)

they have been hunted as thieves and robbers – they have been driven back into the interior as if they were dogs or kangaroos ...

Justice Willis also relied on the New South Wales Attorney-General Saxe Bannister's advice to the Select Committee regarding the Swan River in Western Australia that they:

... Make treaties with the natives before proceeding farther.

Justice Willis summarises:

Thus, according to these statements respecting the aborigines, it appears that they are by no means devoid of capacity - *that they have laws and usages of their own* - that treaties should be made with them - and that they have been driven away, from Sydney at least, by the settlement of the colonists, but still linger about their native haunts. ...

This colony then stands on a different footing from some others for it was neither an unoccupied place, nor was it obtained by right of conquest and driving out the natives, nor by treaties. Indeed, as M. Vattel very justly says, "whoever agrees that robbery is a crime, and that we are not allowed to take forcible possession of our neighbour's property, will acknowledge 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."...

Therefore, if this colony were acquired by occupying such lands as were uncultivated and unoccupied by the natives, and within the limits of the sovereignty asserted under the commission, the aborigines would have remained unconquered and free, ...

But the frequent conflicts that have occurred between the colonists and the Aborigines within the limits of the colony of New South Wales, make it, I think, sufficiently manifest that the Aboriginal tribes are neither a conquered people, nor have tacitly acquiesced in the supremacy of the settlers. ...

In this instance however the colonists and not the aborigines are the foreigners; the former are exotics, the latter indigenous, the latter the native sovereigns of the soil, the former uninvited intruders. ...

I repeat that I am not aware of any express enactment or treaty subjecting the Aborigines of this colony to the English colonial law, and I have shown that the Aborigines cannot be considered as Foreigners in a Kingdom which is their own. ...

If this be so, I strongly doubt the propriety of my assuming the exercise of jurisdiction in the case before me. ...

I desire to see the state of the Aborigines of Australia improved, I desire to see them freed from the yoke of error; to see the duties of humanity amply and practically fulfilled; to see all due protection extended to this unhappy race - the protection of their rights by laws adapted to their capacity and suited to their wants - the protection of all equal and all powerful justice.

Justice Willis adjourned the matter for further consideration, which Governor Gipps did pursue at the time, but received no response from Britain. Then in 1872 and again in late 1875 the British Parliament legislated the Pacific Islanders Protection Acts. In 1875 Queen Victoria issued an Order-in-Council. This Order-in-Council was incorporated into the *Pacific Islanders Protection Act 1875* at sections 7 and 10:

7. Saving of 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 or places, or of chiefs or rulers thereof, to such sovereignty or dominion, and a copy of every such Order in Council shall be laid before each House of Parliament within thirty days after the issue

thereof, unless Parliament shall not then be in session, in which case a copy shall be laid before each House of Parliament within thirty days after the commencement of the next ensuing session. [2243] ...

10. Proclamation of Act. - This Act shall be proclaimed in each Australasian colony by the governor thereof within six weeks after a copy of it has been received by such governor, and shall take effect in the said colony from the day of the proclamation. [2246]

[<http://nationalunitygovernment.org/content/australia-using-superior-force-suppress-movement>]

Government gazette notices of this time show that none of the Australian colonies adhered to the Pacific Islanders Protection Acts and Orders-in-Council. Failure to do so on the part of the colonies and the rulers of these colonies were, in fact, treasonous acts. The laws of England relating to Orders-in-Council issued by the monarch are absolute law of England, its colonies and dominions. These laws can only be repealed by a subsequent Order-in-Council by the reigning monarch in succession and not by Letters Patent or an Act of the British Parliament. In respect of the *Pacific Islanders Protection Act 1875* this has never been done. Lawyers today cannot win the argument that the *Pacific Islanders Protection Act 1875* did not relate to the mainland of Australia and its islands, because the 1875 Act had to be read as one with the *Pacific Islanders Protection Act 1872* which defined the reach of the act as:

The term: “Australian Colonies” shall mean and include the colonies of New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, and Western Australia ...

The Howard government's pathetic attempt to repeal the imperial *Pacific Islanders Protection Act 1875* in the Commonwealth of Australia *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* was a sloppy act of legislative draughtmanship. Moreover, the Howard government knew full well that the law established by the *Pacific Islanders Protection Act 1875* remained in force then as it does into the present.

It is significant that the High Court in *Mabo (No. 2)* never referred to any of the three New South Wales Supreme Court cases of the 1800s. Had the High Court had the courage to take these cases into consideration, they would have had to admit that, despite Governor Gipps's endeavors to have this matter settled by the British Parliament. England never responded with any solutions to the dilemma in governance, thus denying justice from the very start of the British occupation of eastern Australia. On the other hand, the High Court completely ignored sections 7 and 10 of the *Pacific Islanders Protection Act 1875* and did not comment in any way shape or form about the law that was established by the *Pacific Islanders Protection Act 1875*.

In regards to this truth, Pope John Paul II found reason to apologise to the people of Oceania, especially Aboriginal Peoples in Australia, for the effects of the Doctrine of First Discoveries as established by the Papal Bulls in the 1500s.

Indigenous Peoples

28. Unjust economic policies are especially damaging to indigenous peoples, young nations and their traditional cultures; and it is the Church's task to help indigenous cultures preserve their identity and maintain their traditions. The Synod strongly encouraged the Holy See to continue its advocacy of the United Nations Declaration on the Rights of Indigenous Peoples.

A special case is that of the Australian Aborigines whose culture struggles to survive. ... The Church expresses deep regret and asks forgiveness where her children have been or still are party to these wrongs. Aware of the shameful injustices done to indigenous peoples in Oceania, the Synod Fathers apologized unreservedly for the part played in these by members of the Church, especially where children were forcibly separated from their families.

[see attachment 1 for full transcript]

Clearly, M Vattel echoes the Judeo-Christian biblical teaching of the boundary stones from Proverbs 23 verse 10:

Don't move ancient boundaries
or invade fields belonging to orphans;
[International Standard Version of Bible]

Feudal basis and judicial bias

The High Court continued the colonial wrongdoings in the *Mabo (No. 2)* judgment itself. The High Court clearly describes Aboriginal Peoples' rights and interests as only a bundle of rights. The Court failed to put Aboriginal and Torres Strait Islander people on an equal footing to all other Australian landowners, thereby perverting the course of justice. The Court's priority was to adhere to the 'skeletal framework' of the occupying colonial power and thereby override any compliance with international laws that may disrupt the head of power of the illegal State.

The High Court continued its bias against the First Nations Peoples when it referred to the status of the Murray Islands. The judgment made the following ruling regarding the sovereign acquiring absolute beneficial ownership of all land:

In the first place, it is said that the Crown is absolute owner because "there is no other proprietor". This basis denies that the indigenous inhabitants possessed a proprietary interest. The negative basis is then buttressed by three positive bases to **show why it is necessary to attribute absolute beneficial ownership to the Crown**. One basis is that, when English law was brought to Australia with and by British colonists, the common law to be applied in the colonies included the feudal doctrine of tenure. Just as the Crown acquired or is deemed to have acquired universal ownership of all land in England, so the Crown became the owner of all land in the Australian colonies. **We may call this the feudal basis.**
[paragraph 3 - Emphasis added.]

This judgment is not supported by any substantive British legislative or legal authority, but it was applied anyway. The Court failed to admit that the feudal land system in England was made obsolete in 1660 and feudal law was no longer a legal consideration within the English legal system in respect to land.

It beggars belief as to why the High Court should now borrow from the medieval feudal land system and thereby create some fictional legal notion associated with a land tenure system within Australia, in order to justify the Crown's seizure of land. This also contradicts section 39 of the original *Magna Carta* established in 1215:

(39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

[<https://www.bl.uk/magna-carta/articles/magna-carta-english-translation#sthash.4bJtWNRX.dpuf>]

In the most recent version of the Magna Carta, dated 1297, the original clause 39 has become clause 29 and still underpins British law:

• XXIX [29] NO Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the land. We will sell to no man, we will not deny or defer to any man either Justice or Right.

[<https://enfranchise.wordpress.com/magna-carta-liberatum/content-of-the-magna-carta-2/>]

The High Court failed to admit that the Australian colonial system benefits from the proceeds of

horrendous crimes against First Nations Peoples, including inhumane and criminal acts of murder, rape, poisoning and pillaging, described in the modern language as genocide. Some will argue that genocide is an approved intention of the State to deliberately destroy the population in whole or in part. In the case of Australia it is more likely for First Peoples to argue that the imposed authorities from Britain, at the time, failed in their commissions to take possession with consent of the native and to conciliate the affections of the natives (to what end no-one knows), but in the main the colonial authorities perpetrated the wanton crime of murder with its colonial military forces and the free ‘settlers’ and their pardoned convicts. England must bear the blame for these crimes and the cost for the reparation of these crimes.

The *Mabo (No.2)* judgment failed to even consider the murderous traits of the ‘settler’ society. They did this so as to avoid having to refer to Australia as a crime scene and the Crown’s assertion of its rights to the land, which is founded on the proceeds of crime. The Court incorrectly resurrected the obsolete feudal system purely to justify the monarch’s fictitious right of claim, believing no-one would ever challenge this fraudulent edict, especially us, the Euahlayi and other First Nations Peoples.

The Court then listed the other two bases to show ‘why it is necessary to attribute absolute beneficial ownership to the Crown:

Another basis is that all land in a colony is “the patrimony of the nation” and, on this basis, the Crown acquired ownership of the patrimony on behalf of the nation. A third basis is the prerogative basis mentioned by Stephen J. in the *Seas and Submerged Lands Case*. In order to determine whether, on any or all of these bases, the Crown acquired beneficial ownership of the land in the Murray Islands when the Crown acquired sovereignty over them, we must first review the legal theories relating to the acquisition of sovereignty and the introduction of the common law. [at paragraph 31]

Regarding the third basis, the High Court relied on the *Seas and Submerged Lands* case in which Chief Justice Stephen ruled that there was no issue with regards to the acquisition of land, because ‘there were no other proprietors’, and as a consequence there had been ‘no conveyance of land’. This case is now key in the legal authority for the Crown’s claim to have extinguished all First Nations Peoples rights.

In the 2010 correspondence between Neville ‘Chappy’ Williams, a Wiradjuri Elder, who was fighting in the courts to protect sacred Lake Cowal from a cyanide leaching gold mine, the former Governor of New South Wales, Professor Marie Bashir, clearly demonstrates the deceitful legal argument relied upon by the State of New South Wales and the Commonwealth to justify their claims of right over Wiradjuri lands and waters. Governor Bashir referred Neville Williams’ questions to the New South Wales Attorney-General. On 15 September 2010 Neville Williams wrote the same request to the Queen, the Governor-General and the Governor of New South Wales among others:

Re: Request for certified copies of documents establishing the Crown’s alleged head of power over the wiradjuri nation.

On behalf of the wiradjuri peoples, I, Neville Chappy Williams, am asserting our right to have such documents that you may possess, which establish your right to rule over wiradjuri and seize our Country.

We declare and affirm that wiradjuri has never ceded our sovereignty to the colonising British, their successors the Australian Government and the Government of New South Wales, or any other power.

We declare and affirm that wiradjuri has never ceded our lands, territories and natural resources, including our waters and the air space above our Country.

If, by 31 October 2010, you do not provide certified copies of the documents proving wiradjuri has ceded sovereignty, we will take this to affirm wiradjuri's continuing sovereignty.

We reserve our right.

All but one of the letters of reply failed to address Neville Williams' demands. The Queen forwarded his letter to the Governor-General for a response and the Governor-General directed him to the National Native Title Tribunal website. The only response of substance was received on 13 October 2010 from the New South Wales Governor's Official Secretary and Chief of Staff, Noel Campbell, who forwarded the Crown Solicitor's advice:

The courts have consistently held that the sovereignty of Australia and New South Wales over Australia is something which cannot be considered or challenged in the courts of Australia. The courts have also confirmed that sovereignty over Australia was validly acquired at colonisation and the common law of England properly received at that colonisation applies to and binds equally all those in Australia, including colonists, later immigrants and indigenous people. In the light of that, it is neither necessary nor appropriate to provide you with any documents as to the so-called ceding of sovereignty by any people.

Dissatisfied with this answer, Neville Williams pursued the matter further and replied to the Governor of New South Wales in a letter dated 25 October 2010:

Dear Governor

Re: Request for certified copies of documents establishing the Crown's alleged head of power over the wiradjuri nation.

Thank you very much for your letter of 13 October 2010. I have read your reply carefully and, in particular, the advice of the Crown Solicitor that:

"The Courts have also confirmed that sovereignty over Australia was validly acquired at colonization and the common law properly received at that colonization applies to and binds equally all those in Australia, including colonists, later immigrants and indigenous people."

To settle this matter for our people, I would like you to send me the evidence and judgments of the Courts that could affirm this statement.

Could you also inform me of the exact date at which the alleged valid acquisition of sovereignty of the wiradjuri took place and who was present?

We reserve our right.

It is clearly not true that the common law 'binds equally all those in Australia, including colonists, later immigrants and indigenous people', as Aboriginal people are not in the Constitution as citizens and therefore, by definition, are aliens. The Governor referred Neville Williams's second request to the New South Wales Department of Justice. The Director-General wrote back in a letter dated 10 December 2010:

The incontestability in the Australian courts of the fact of sovereignty was confirmed by the High court in *Mabo v Commonwealth* [No. 2] (1992) 175

CLR 1 at 31-34. That position was confirmed in *Commonwealth v Yarmirr* (2001) 208 CLR 1, which cited *New South Wales v Commonwealth* (1975) 135 CLR 337.

The common law became the common law of all subjects within the colony of New South Wales on colonization. This position was confirmed by section 24 of the *Australian Courts Act 1828 (Imp)* (9 GEO IV c83).

This paper trail exposes the lack of truth and a number of misrepresentations made by the New South Wales Attorney-General. Evidently he is unable to identify a date when Wiradjuri ceded sovereignty and failed to recognise that there is a pre-existing continental common law belonging to the land of the continent that pre-dates the British invasion. His reasoning reflects what has become a mantra in the legal circle to avoid First Nations Peoples' assertions of sovereignty and self-determination.

It is evident from this correspondence, that the High Court of Australia has confirmed the incontestability of sovereignty in the municipal courts of Australia. This means that Aboriginal Nations and Peoples who make and declare their Unilateral Declarations of Independence from the known Australian State dictate the rights of every first Nation State and their Peoples, who are within their own jurisdiction, and are themselves governed by their own ancient laws and customs and not by the laws of the invader State. First Nations, who establish governance and authority to govern their own lands, territories and waters, cannot be interfered with by any part of the political or legal structures or authorities that are foreign to them. This includes the Australian States, Territories and the Commonwealth government.

In asserting their sovereignty and right to govern their own territories, lands and waters within their Nation boundaries, they cannot legally be interfered with in any way by the occupying power, to do so is an act of war by the occupying foreign power.

It is no wonder that the High Court cannot provide certainty of argument or consistency of thought. Instead the Court continues to rely on judicial bias and legal myths, supported by superior force.

It is evident that Australia and its courts are struggling with Aboriginal Peoples' assertion of sovereignty and demands of their rights as the First Nations and Peoples of this land. Their concern cannot be more amplified than in the 2014 New South Wales Supreme Court case *Ngurampaa Ltd v Brewarrina Shire Council & Katrina Hodgkinson, Minister for Primary Industries and Small Business*, when I subpoenaed New South Wales government records, in order to determine the Crown's right of claim over the Euahlayi Nation and Peoples, our land, our airspace, our waters and our natural resources. The subpoenas are as follows:

1. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council claim to be the proprietor of the ancient Allodial Title from time immemorial of the lands over which it claims it lawfully operates a Shire Council.
2. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council claim as the source of their alleged head of power, through which they are entitled to rule over the Euahlayi Peoples and their lands, waters and natural resources and thereby entitling them to charge rates on the said lands of the Euahlayi.'
3. All original documents including but not limited to deeds, file notes, contracts, re-

records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council claim title and right to operate a Shire Council, by which they each claim their title is superior to the ancient Allodial Title of the lands owned in Allodial Title by Euahlayi Peoples Republic, and the Euahlayi Peoples from time immemorial.

4. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by which the Crown, the New South Wales Government and the Brewarrina Shire Council claim they operate a Shire Council with the express permission, through the free, prior and informed consent of the Pre-existing and Continuing Euahlayi Nation State or, in the alternative, the free prior and informed consent and rights conferred by the authorised Elders of the Euahlayi.
5. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by which the Crown, the New South Wales Government and the Brewarrina Shire Council operate a Shire Council by virtue of their succession in Crown title from a military occupation (initiated by the British Admiralty) of the ancient lands of the Euahlayi held in Allodial Title from time immemorial.
6. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by which the Crown, the New South Wales Government and the Brewarrina Shire Council claim to operate a Shire Council by virtue of an expressed and public social compact published to all the nations of the continent of Australia on the ancient Lands of the Euahlayi who hold Allodial Title from time immemorial.
7. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council claim they are not continually and flagrantly committing criminal trespass and/or crimes against humanity on the ancient lands of the Euahlayi who hold Allodial Title from time immemorial.
8.
 - a. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council relating to the massacre of the Euahlayi people and others in or around the summer of 1848 at Hospital Creek 9 miles (14.5 kms) northeast of Brewarrina.
 - b. All original documents including but not limited to deeds, file notes, contracts, records of conversations, instructions and orders by virtue of which the Crown, the New South Wales Government and the Brewarrina Shire Council of all children removed under the 1909 Aboriginal Protection Act NSW [25] from Angledool and the Brewarrina Aboriginal government mission station.

Justice Campbell, who heard the case, agreed with the Crown's argument that the subpoena was a 'fishing expedition' for 'collateral purposes' and was 'oppressive' for the Minister. He also said that the subpoena was an abuse of process. In summarising his judgment on the subpoena His Honour stated that, on the issue of Euahlayi sovereignty, this matter is not justiciable within this Court. Once again it is clear that the courts in this country accept the fact that the continuing sovereignty of Aboriginal Nations, whether right or wrong in their view, is not justiciable in their courts, confirming what was held in the *Mabo (No.2)* judgment.

The High Court in *Mabo (No. 2)*, however, suggests the need for a seemingly just outcome, while at the same time attempts to secure the illegal British occupation of our lands, when it ruled:

It is necessary to consider these other reasons for past disregard of indigenous rights and interests and then to return to a consideration of the question whether and in what way our contemporary common law recognizes such rights and interests in land ... [paragraph 47]

The *Mabo (No. 2)* judgment adds:

47. A basic doctrine of the land law is the doctrine of tenure, to which Stephen C. J. referred in *Attorney-General v. Brown*, and it is a doctrine which could not be overturned without fracturing the skeleton which gives our land law its shape and consistency. **It is derived from feudal origins.** [paragraph 47 - Emphasis added.]

The High Court of Australia has perpetuated a fraud against First Nations and Peoples by concluding that the basis of their legal land tenure within this country '... is derived from feudal origins', while knowing that historically the feudal land system of England was abolished in 1660, one hundred and eighteen years prior to Phillip's invasion of Australia. This obvious apprehended bias clearly reflects that the judicial system in Australia is indeed making political decisions and not just legal determinations. This fraud against the First Nations and their Peoples in the *Mabo (No. 2)* judgment is in serious breach of the separation of powers – the foundation of the Westminster system of democratic governance.

To find a way through this impasse, we need to be clear that to be 'recognised' in the Australian Constitution is to be assimilated into an illegal structure from Britain; to avoid this, more of our individual Nations need to make Unilateral Declarations of Independence (UDIs), then the clearer our sovereign position becomes to the international community. In the absence of armed struggle, it is only from pressure by the international community that Australia will finally be forced to decolonise as all the former British colonies have done. We also need the Australian society to demand Australia decolonizes so that the population can finally hold its head up proud when we have our true and long-awaited Day of Independence.

People need to take off their blinkers. Then it will be revealed that everything done by the State, Territory and Federal governments is not in the name of Australia and its people. Everything done by the governments in Australia is in the name of the Crown of England.

Conclusion

Aboriginal or Torres Strait Islander Nation or Peoples cannot negotiate for Sovereign Treaties because the colonial States within Australia, and the Federal government are only a federation of colonies, now known as the Commonwealth Government of Australia in right of the Crown, which was established by an Act of the British Parliament. Thus First Nations can only conclude comprehensive Sovereign Treaties for Settlement with the British Parliament representing the Crown. The British Parliament is the parent body and head of power of the Crown for Australia. The specific reasons are as follows:

1. Under the *Commonwealth of Australia Constitution Act* 1900 (UK), together with the existing Australian Constitution, legally the Commonwealth of Australia and its colonial States and Territories are a construct of the British parliament and as described by the Lord Chancellor of the UK in 1995: 'The British Constitution Act 1900 was for self government. It was never intended to be and is not suitable to be the basis for independence. ...' but rather the Federal government only has the right to be self-governing and not truly independent from Britain. This means that Aboriginal and Torres Strait Islander Peoples will be failing themselves, if they do not negotiate their freedoms and nationality with the British parliament, as Australia is only its child. Clearly the head

of power of the Australian self- governing territory remains with Britain.

2. It would be foolish and immature for First Nations Peoples in Australia to negotiate with an illegal entity. Our case must be made to Britain. It is from this mission that a diplomatic and legal solution can be forged.

3. It is recommended that First Nations and Peoples unite as a union of Nations Australia-wide, coming together to develop a framework from which this union of Nations can collectively set the foundations for a comprehensive settlement of claims against the British Crown for colonial wrongdoings and continuing consequences, by way of agreed terms for Sovereign Treaties.

4. Australia and its States and Territories do not fit within this international framework of addressing past and continuing wrongful acts in the name and right of the Crown. The Commonwealth of Australia, State and Territory colonial governments can and will no doubt become official parties to these negotiations, because it is only the British parliament, who can deal with First Nations' sovereignty in Australia, because it is the Crown who authorises, through the *Commonwealth of Australia Constitution Act 1900* (UK), the occupying power. There is no legitimacy to forcefully occupy all our territories, loot and pillage our natural resources, steal our biodiversity and pillage our seas for their economic sustainability and the well-being of their occupying population.

5. It is only the UK Parliament, in right of the Crown, who can bring an end to this illegal occupation and theft of continental proportions.

16 June 2016

Ghillar

Michael Anderson

Convenor of Sovereign Union of First Nations and Peoples in Australia

Head of State of the Euahlayi Peoples Republic

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BACK GROUND:

POPE'S APOLOGY TO OCEANIA

POST-SYNODAL APOSTOLIC EXHORTATION *ECCLESIA IN OCEANIA* OF HIS HOLINESS
POPE JOHN PAUL II TO THE BISHOPS PRIESTS AND DEACONS

MEN AND WOMEN IN THE CONSECRATED LIFE AND ALL THE LAY FAITHFUL ON
JESUS CHRIST AND THE PEOPLES OF OCEANIA: WALKING HIS WAY, TELLING HIS
TRUTH, LIVING HIS LIFE

Indigenous Peoples

28. Unjust economic policies are especially damaging to indigenous peoples, young nations and their traditional cultures; and it is the Church's task to help indigenous cultures preserve their identity and maintain their traditions. The Synod strongly encouraged the Holy See to continue its advocacy of the United Nations Declaration on the Rights of Indigenous Peoples.

A special case is that of the Australian Aborigines whose culture struggles to survive. For many thousands of years they have sought to live in harmony with the often harsh environment of their "big country"; but now their identity and culture are gravely threatened. In more recent times, however, their joint efforts to ensure survival and gain justice have begun to bear fruit. There was a saying from Australian bush life heard in the Synod Hall: "If you stay closely united, you are like a tree standing in the middle of a bush-fire sweeping through the timber: the leaves are scorched, the tough bark is scarred and burned, but inside the tree the sap still flows, and under the ground the roots are still strong. Like that tree you have survived the flames, and you have still the power to be born. The time for rebirth is now". The Church will support the cause of all indigenous peoples who seek a just and equitable recognition of their identity and their rights;() and the Synod Fathers expressed support for the aspirations of indigenous people for a just solution to the complex question of the alienation of their lands.

Whenever the truth has been suppressed by governments and their agencies or even by Christian communities, the wrongs done to the indigenous peoples need to be honestly acknowledged. The Synod supported the establishment of "Truth Commissions", where these can help resolve historical injustices and bring about reconciliation within the wider community or the nation. The past cannot be undone, but honest recognition of past injustices can lead to measures and attitudes which will help to rectify the damaging effects for both the indigenous community and the wider society. The Church expresses deep regret and asks forgiveness where her children have been or still are party to these wrongs. Aware of the shameful injustices done to indigenous peoples in Oceania, the Synod Fathers apologized unreservedly for the part played in these by members of the Church, especially where children were forcibly separated from their families. Governments are encouraged to pursue with still greater energy programmes to improve the conditions and the standard of living of indigenous groups in the vital areas of health, education, employment and housing.

Development Aid

Given in Rome at Saint Peter's, 22 November 2001, the twenty-fourth of my Pontificate.

JOANNES PAULUS PP. II

Prof Marie Bashir AC, CVO
Office of the Governor of NSW
Level 3, Chief Secretary's Building
121 Macquarie Street, SYDNEY NSW 2000.

15 September 2010

Dear Governor

**Re: Request for certified copies of documents establishing
the Crown's alleged head of power over the wiradjuri nation.**

On behalf of the wiradjuri peoples, I, Neville Chappy Williams, am asserting our right to have such documents that you may possess, which establish your right to rule over wiradjuri and seize our Country.

We declare that wiradjuri has never ceded our sovereignty to the colonising British, their successors the Australian Government and the Government of New South Wales, nor any other power.

We declare that wiradjuri has never ceded our lands, territories and natural resources, including our waters and the air space above our Country.

If, by 31 October 2010, you do not provide certified copies of the documents proving wiradjuri has ceded sovereignty, we will take this to affirm wiradjuri's continuing sovereignty.

We reserve our right.



Neville Chappy Williams
Elder within the wiradjuri nation
PO Box 70
COWRA NSW 2794



OFFICE OF THE GOVERNOR

SYDNEY 2000

13 October 2010

Mr Neville Chappy Williams
Elder within the Wiradjuri Nation
PO Box 70
COWRA NSW 2794

Dear Mr Williams

I refer to your letter dated 15 September 2010 to Her Excellency the Governor in which you raised a number of points, and requested certain documentation, concerning the sovereignty of Australia and New South Wales.

As your letter raises important legal issues it was referred to the New South Wales Crown Solicitor for consideration and advice. The Crown Solicitor has now replied to the points you have made in the following terms:

"The courts have consistently held that the fact of the sovereignty of Australia and New South Wales over Australia is something which cannot be considered or challenged in the courts of Australia. The courts have also confirmed that sovereignty over Australia was validly acquired at colonisation and the common law of England properly received at that colonisation applies to and binds equally all those in Australia, including colonists, later immigrants and indigenous people. In the light of that, it is neither necessary nor appropriate to provide you with any documents as to the so-called ceding of sovereignty by any people.

Of course you will know that the Government of New South Wales and other Governments of Australia have actively undertaken steps in order to recognise the rights and interest of indigenous people, both through the Native Title Act 1993 (Commonwealth) and otherwise. I am informed that the New South Wales Government will continue to actively pursue the protection and clarification of those rights and interests through discussion and negotiation".

Yours sincerely

Noel Campbell
Official Secretary and Chief of Staff

Prof Marie Bashir AC, CVO
Office of the Governor of NSW
Level 3, Chief Secretary's Building
121 Macquarie Street, SYDNEY NSW 2000.



25 October 2010

Dear Governor

Re: Request for certified copies of documents establishing the Crown's alleged head of power over the wiradjuri nation.

Thank you very much for your letter of 13 October 2010. I have read your reply carefully and, in particular, the advice of the Crown Solicitor that:

"The Courts have also confirmed that sovereignty over Australia was validly acquired at colonization and the common law properly received at that colonization applies to and binds equally all those in Australia, including colonists, later immigrants and indigenous people."

To settle this matter for our people, I would like you to send me the evidence and judgments of the Courts that could affirm this statement.

Could you also inform me of the exact date at which the alleged valid acquisition of sovereignty of the Wiradjuri took place and who was present?

We reserve our right.



Neville Chappy Williams
Elder within the wiradjuri nation
PO Box 70, COWRA NSW 2794



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Mr N C Williams
PO Box 70
COWRA NSW 2794

File No: 10/004934
Matter No: 10/007879
Contact: Bernhard Ripperger
Phone: (02) 8224 5481

- 2 DEC 2010

Dear Mr Williams

I refer to your letter dated 25 October 2010 to Her Excellency, the Governor, which has been referred to this Department for reply, concerning a request for documents establishing the Crown's sovereignty over Australia.

The incontestability in Australian courts of the fact of sovereignty was confirmed by the High Court in the decision *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 31-34. That position was confirmed in *Commonwealth v Yarmirr* (2001) 208 CLR 1, which cited *New South Wales v Commonwealth* (1975) 135 CLR 337.

The common law became the common law of all subjects within the colony of New South Wales on colonization. This position was confirmed by section 24 of the *Australian Courts Act 1828 (Imp)* (9 GEO IV c.83).

The judgments of the High Court referred to above can be found on line at <http://www.austlii.edu.au/au/cases/cth/HCA>.

A transcription of the *Australian Courts Act 1828* can be found on line at http://www.foundingdocs.gov.au/resources/transcripts/nsw4_doc_1828.pdf.

I trust this information is of assistance.

Yours faithfully

for Director General