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Reconciliation, Assimilation, and the Indigenous Peoples of Australia

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ABSTRACT. Reconciliation as a peacemaking paradigm emerged as an innovative response to some of the mass atrocities and human rights violations that marked the 20th century. It provided an alternative to traditional state diplomacy and *realpolitik* that focused on restoring and rebuilding relationships. To that end, reconciliation processes have set themselves the difficult task of laying the foundations for forgiveness through the establishment of truth, acknowledgment of harm, and the provision of appropriate forms of justice. In 1991, the Australian government instigated a process of reconciliation between the indigenous peoples and wider society in order to "address progressively" colonial injustice and its legacy (Council for Aboriginal Reconciliation Act 1991, 1991: Preamble). This article seeks to demonstrate, however, that restrictive policy framing and a lack of political will has severely hindered the progress of the Australian reconciliation process. An alternative conceptual approach to settler state and indigenous reconciliation is suggested.

Keywords: • Australia • Indigenous rights • Internal colonialism • Reconciliation • Self-determination

Introduction

The first fleet of European colonizers arrived on *Gamaraigal* land on 26 January 1788. The early reports of William Dampier, the English pirate/explorer, and Captain Cook and others, generally portrayed the "natives" of New Holland, as the continent was then called, as small in number, wandering nomadically with no fixed territory and with no recognizable system of laws and customs (see Dampier, 1927: 312). Subsequently, the colonizers applied the legal doctrine of *terra nullius*, meaning "land of no one," to the Australian continent. The philosophical Eurocentric underpinnings of this assertion were based on John Locke's 17th-

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century notion of property ownership. In his *Two Treatises of Government*, Locke proposed that property in land originated from tilling the soil, in "mixing labour with land" (1970). The apparent absence of such activities led to the colonizers' conviction that the natives had no investment in the soil and hence no legitimate claim to it. This outlook served to legitimize the widespread use of the *terra nullius* concept in 18th-century international law, facilitating colonial expansion and the dispossession of native peoples.

The application of the *terra nullius* doctrine in uninhabited lands was clear; a European power that discovered a new *uninhabited* territory was entitled to claim the land for its empire. However, where lands were inhabited by "uncivilized natives," the British adopted Lockean ownership principles to discount the moral claims of the indigenous inhabitants. In other parts of the British Empire, where the inhabitants were not regarded as quite so "uncivilized," the Crown claimed sovereignty, but not ownership of the land.

In an attempt "legitimately" to gain land, the Crown would ordinarily enter into treaties with the indigenous inhabitants. To be sure, in many cases such treaties merely reflected the unequal bargaining position facing the indigenous peoples and were often violated in practice. Nevertheless, in the USA and Canada, for example, the British recognized and treated with the natives. In Australia, however, the *terra nullius* doctrine prevailed.

The reality was quite different. When European colonizers first arrived it is estimated that there were between 300,000 and 1 million Aborigines in Australia, and around 500 different regional groups.[1] The culture of traditional Aboriginal people was diverse in terms of language, totems, food, and daily routine, but with a communality of territoriality, kinship, spirituality, "Dreaming," art, family structures, education, initiation, and ceremonies. Moreover, anthropological and historical studies of Australian Aborigines have demonstrated that they, over tens of thousands of years, developed complex forms of social organization, including laws relating to land use and management (Greer, 1993).

The *terra nullius* doctrine formed the basis for European settlement along the coast and gradually penetrated into the farthest reaches of the continent. The often unauthorized settler "squatting" of herds and flocks on areas well beyond established settlement boundaries led to inevitable, and frequently disastrous, conflict with the indigenous peoples (see Reynolds, 1983). As Charles Rowley states, the native inhabitants of Australia did not "melt away magically before the tide of European settlement like fairy floss . . . the hard reality is that we killed them" (1970: 154). Between 1788 and 1884 the indigenous death toll in the conflict is estimated to be around 20,000. In addition to the physical killing, the dispossession from their lands and destruction of the natural environment also destroyed the basis of indigenous peoples' spiritual, cultural, and legal systems. Aborigines have a spiritual attachment to the land. They consider themselves as belonging to the land. It is an integral part of their mythology as well as being their home, hunting ground, recreation place, cathedral or temple, court of law, cemetery, and the place their spirits return to after death (Greer, 1993).

In a bid to regulate uncontrolled occupation of vast tracts of land by squatters, and minimize conflict with the Aborigines, the colonial authorities introduced a system of "pastoral leases," a form of tenure tailored for the peculiar conditions of Australia. The squatters were allowed to use the land only for grazing, while the Aborigines had access to the land for their traditional practices and certain other permitted activities. The new legal arrangement, however, did not stop the

conflict. Massacres, poisoning of flour and waterholes, and the banishment of Aboriginal people from traditional sources of food and water were used by pastoralists and others as "dispersal" measures (Rowley, 1970: 154).

Aborigines were tolerated when they could act as a pool of cheap labor for the emerging pastoralists (see May, 1996; Reynolds, 1983). Given their intimate knowledge of the land and ability to survive under harsh conditions, the Aborigines made excellent stockmen and became the backbone of the livestock industry. Yet their wages were usually around half those of white workers and such employment did little to halt the general trend of dispossession accelerated by government resettlement programs and assimilation policies (see Haebich, 2001). The general settler view by the end of the century was that there was a direct relationship between colonial progress and the destruction of Aboriginal society (Johnston, 1992: section 10, p. 4).

The loss of their lands and autonomy, and the resultant cultural erosion and welfare dependency, led to a startling decline in the health and well-being of many indigenous groups. Faced with such a position and coupled with the failure of violent resistance, indigenous groups began to mobilize politically. The modern movement for indigenous rights began in the 1920s with the formation of several Aboriginal political organizations.[2] They focused their attentions on government "protection" polices that were effectively destroying their communities and cultures. They campaigned for justice, citizenship rights, land rights, and freedom from the restrictions imposed by discriminatory state legislation.

In the mid-1960s, inspired by the civil rights movement in the USA, Charles Perkins and a group of Aboriginal and white students conducted "freedom rides" throughout the northwest of New South Wales (NSW). The rides brought an end to many discriminatory practices and a new awareness of the power of active protest (see Curthoys, 2002). The success of the freedom rides, coupled with frustration at failed attempts by the Gurindji and Yirrakala people to protect their traditional lands from mining exploration, led to a new, more forthright direction in Aboriginal activism.

In 1966, the poor working conditions and low wages of indigenous pastoral workers prompted the Wave Hill strike, which eventually led to the Commonwealth Conciliation and Arbitration Commission decree for equal wages. The decision led pastoralists to mechanize stock management, employ European stockmen, and sack indigenous workers on a large scale. Since Aboriginal people were no longer a cheap "on-site" labor pool, there was increasing pressure to move Aboriginal communities off the land.

On Australia Day 1972, four Aboriginal activists, with the aid of the Communist Party of Australia, traveled to Canberra to establish the Aboriginal Tent Embassy in protest at their continuing dispossession and severely disadvantaged status. Such forthright protests gradually began to draw attention to the plight of indigenous groups whose focus was firmly on regaining their political autonomy and a land base from which to regenerate their culture.

Since Australia, unlike Canada, North America, and New Zealand, had no history of treating with the indigenous population, political mobilization gradually began to focus on the necessity for a treaty or treaties.[3] The notion of a treaty had significant potential. While many indigenous groups had been totally dispossessed of their traditional lands and relocated to government-designated "reserves," there still existed the possibility of returning land and political autonomy to those who *had* managed to maintain a traditional connection to their land. Significant tracts

of vacant "crown" land and indigenous-occupied reserve land could also be returned to indigenous ownership and control.

While it is correct to say that there were significant political and cultural differences among indigenous groups in the 1970s, there was a growing consensus that the restoration of land and political autonomy was key to indigenous cultural survival.[4] Indigenous leaders and spokespersons were becoming increasingly convinced that the ills of their communities could not be resolved by "white people."[5] In 1974, Kevin Gilbert stated that "if there is to be a regeneration of blacks, it must come through self-determination, however hesitant the first steps" (1994: 163). Many so-called "urban" Aboriginal people, including those who had lost all connection with the traditional way of life, still sought greater autonomy in all aspects of their lives. Furthermore, the concept of a treaty or treaties that could return land and political autonomy to "traditional" remote communities had *symbolic* significance for "urban" Aborigines.1 As Gilbert suggested:

> I don't know of any part-Aboriginal who is not in some way, however assimilated he may be, affected by what is behind him. The direction my own life has taken and the things that have happened to my own family are in no small measure a result of the black blood in our veins and all the implications that that black blood had for us. That is why land rights as *symbol* is so important. Land rights as symbol and substance of the fact that some amends to that black blood are due. (1994: 161; emphasis added)

From a Treaty to Reconciliation

In April 1979, the National Aboriginal Conference (NAC)[7] instigated a concerted campaign for a treaty between indigenous people and the Australian state. The campaign gained a degree of legitimacy when it was adopted by the Aboriginal Treaty Committee (ATC), a respectable "think tank" of white academics (Attwood and Markus, 1999; Harris, 1979). The group proposed a treaty that would provide Aboriginal peoples with:

- The protection of identity, languages, law, and culture
- The recognition and restoration of rights to land
- Compensation for the loss and damage to traditional lands and to their traditional way of life, and
- The right to control their own affairs and to establish their own associations for this purpose (Harris, 1979).

The stated motivations of the ATC were two-fold. In the first instance, they desired to right the wrongs of the past and to reexamine fundamental assumptions such as *terra nullius* in light of modern historical and anthropological knowledge (Harris, 1979). Second, they considered a proper settlement necessary to address the legacy of past injustice, which continued to tarnish the relationship between Aboriginal people and wider society.

Politicians did not like the word treaty, however, as it implied two sovereign nations, preferring instead the more equivocal terms "compact" or "agreement" (Senate Standing Committee on Constitutional and Legal Affairs, 1983: 50). In the face of such opposition, the treaty campaign gradually faded, but the debates around the idea produced a new "spin" which was instantly more attractive to politicians. A Senate Standing Committee report entitled *Two Hundred Years Later*

(1983) concluded that societal "attitudes" lay at the heart of the "Aboriginal problem." This theme subsequently became increasingly popular in political speeches that began to emphasize, in vague terms, the importance of education, attitudinal change, and reconciliation. The emergence of education and attitudinal change as policy initiatives in political speeches coincided with a shift away from the treaty idea toward a "reconciliation" initiative that made no firm commitments to address any of the ATC's key priorities.

Even though the Minister for Aboriginal and Torres Strait Islander Affairs, Robert Tickner, steadfastly asserted that "there can be no reconciliation without justice," the need for cross-party consensus made sure that "education" rather than "justice" emerged as the dominant focus of the process. Indeed, the original title for the official reconciliation body was to be the Council for Aboriginal Reconciliation and Justice, but the "and Justice" was viewed by the prime minister's advisors as excessive and was subsequently axed from the final version (Tickner, 2001: 29).

In 1991, the Council for Aboriginal Reconciliation Act established a 10-year reconciliation process led by a Council for Aboriginal Reconciliation (hereafter, "the Council"). The preamble to the Act outlined the rationale for the process:

> - because Australia was occupied by Aborigines and Torres Strait Islanders who had settled for thousands of years, before British settlement at Sydney Cove on 26 January 1788 and,
> - many Aborigines and Torres Strait Islanders suffered *dispossession and dispersal from their traditional lands* by the British Crown and,
> - to date, there has been no formal process of reconciliation between Aborigines and Torres Strait Islanders and other Australians and,
> - as part of the reconciliation process, the Commonwealth will *seek to address progressively Aboriginal disadvantage and aspirations in relation to land, housing, law and justice, cultural heritage, education, employment, health, infrastructure, economic development* and any other relevant matters in the decade leading to the centenary of Federation, 2001. (Council for Aboriginal Reconciliation Act 1991, 1991: Preamble; emphases added).

While the preamble does not commit to any of the specific measures, it clearly identifies the injustice that is considered to necessitate a formal process, that is, the original act of colonial dispossession and its legacy of Aboriginal social and political disadvantage, which it then seeks to "address progressively."[8] The process of identification of wrong and subsequent (often innovative) attempts at redress are now standard practice for reconciliation projects (see Roteberg and Thompson, 2000; Lederach, 1999). Reconciliation as a peacemaking paradigm suggests that appropriate forms of redress should follow the identification of injustice (Lederach, 1999). Such redress should involve mechanisms that facilitate, as far as is possible, the aims of restorative justice and, beyond that, the aims of reparative justice so that a post-conflict state can achieve legitimacy in the eyes of the victims (see Minow, 1998).

In the Australian case, however, restrictive policy framing and a lack of political will have severely hindered the effectiveness of this process, as I seek to demonstrate in the balance of this article.

The Rhetoric of Official Reconciliation: "A United Australia"

Early ministerial discussions on the reconciliation process focused on the possibility of an entirely indigenous reconciliation council (Tickner, 2001). The eventual format, however, was a 25-person council consisting of businessmen, government employees, academics, and high-profile Aboriginal people, most of the latter having a background in the churches. The council primarily had a dual role that involved devising community-wide education initiatives and advising the minister on possible policies that might further the reconciliation process. In keeping with the goal-oriented approach required by the legislation, one of the first tasks of the council was the production of a vision statement:

> A united Australia which respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all. (Council for Aboriginal Reconciliation, 1992)

The "united Australia" theme became the central pillar of official reconciliation rhetoric. The "Social Justice" section of the Council for Aboriginal Reconciliation's *Annual Report* for 1994 is a prime example:

> Indigenous peoples are central and integral to the cultural fabric of *this nation* and . . . the government should acknowledge the true place of indigenous peoples *within the nation.* (1995a; emphasis added)

By tying social justice for indigenous peoples to a nation-building framework the council effectively places a ceiling on indigenous aspirations. Australian nationalist rhetoric since the 19th century has always defended the "one nation and one state, in one territory" formula of nationhood (Moran, 1999). Official reconciliation continues in this mode, positively promoting the construction of Australia as "one nation." Yet many indigenous people have claimed that they belonged to "sovereign nations" at the time of colonization (Reynolds, 1996), and despite 200 years of colonialism, continue to do so. Others suggest that they currently belong to a unified Aboriginal nation.[9] Most scholarly definitions of nations tend to support the view that Australia has at least three nations.[10] As Professor Henry Reynolds states, Australia "has never been one nation, popular rhetoric notwithstanding. We share a country, a continent and a state, but not a nation" (1996: 178).

The crucial point to note here is that while there are many "assimilated" urban indigenous people who may regard themselves as belonging to an "Australian nation," there are still many groups living in remote communities that do not.[11] For this reason, the counterfactual construction of a singularity of nationhood seems inimical to the spirit of the enabling legislation's preamble.

Perhaps even more important than the issue of indigenous nationhood, however, is the issue of consent. This is possibly the most significant and unique aspect of indigenous-settler state relations, in that it clearly distinguishes indigenous people from other ethnic groups in the settler nation. If indigenous communities did not consent at any time to become members of the settler nation-state, then their position is fundamentally different from that of voluntary immigrant minorities. This fact is often ignored by many settler states as well as academics from the liberal tradition, who frequently conflate discussion of indigenous peoples with other minorities.[12] However, indigenous peoples hold distinct moral claims as dispossessed first nations, whose "forbears will usually have been

massacred or enslaved by settlers, or at the very least cheated out of their land, to which they will often retain a quasi-spiritual attachment" (Robertson, 1999: 138).

The initial refusal of the British and Australian governments to consider indigenous communities as distinct political entities, and thus worthy of treaties, is compounded by official reconciliation rhetoric that fails to address adequately the distinction between minorities and indigenous peoples. Thus, if Australian reconciliation is to be consistent with the aims of the enabling legislation's preamble (by addressing the injustice of colonization and its legacy), it should proceed, in principle, by correctly distinguishing between minority groups and indigenous peoples *and* without the assumption that settler and indigenous communities comprise one nation (see Moran, 1999).

A further problematic function of the "one nation" nation-building rhetoric is that it reduces the strength of Aboriginal claims based on their traditional "*separateness*" from settler culture. In the next section, I discuss perhaps the most significant claim of this nature, namely, indigenous native title to land, the emergence of which placed indigenous groups in direct competition with powerful commercial interests.

Native Title and Commercial Interests

In 1992, the High Court handed down its landmark *Mabo* judgment (*Mabo and Others* v. *Queensland* (No. 2), 1992) which exposed the myth of *terra nullius* and held that in certain situations indigenous groups *might* have rights to land or "native title" that had survived colonization.

The burden of proof for native title fell on indigenous groups. In order to acquire this group-specific right, they have to demonstrate their "distinctiveness" by proving their "traditional, and continuing, physical and spiritual connection" to their land. The laws and customs of the indigenous peoples provided the content of native title. Justice Brennan stated:

> Native title has its origin in and is given its content by the traditional laws acknowledged by and the traditional customs observed by the indigenous inhabitants of a territory. The nature and incidents of native title must be ascertained as a matter of reference to those laws and customs. (*Mabo and Others* v. *Queensland* (No. 2), 1992: 42)

While the court implicitly recognized the continuance of traditional laws and customs, it did not recognize any concomitant political autonomy or sovereignty or value such laws and customs might have in their own right. Native title is merely a right of occupation. Dispossessed indigenous groups stand no chance of regaining lost land. Even if they can prove "traditional connection," they are required to still be in occupation.

Following the *Mabo* decision the Prime Minister, Paul Keating, stated his desire to enact legislation to give legislative effect to the landmark decision (see Keating, 2000). In response, commercial interests began the construction of a public "debate" that largely focused on hypothetical and counterfactual concerns, but which nonetheless successfully shaped the subsequent legislation. Indeed, the court's legal reasoning with regard to the limited nature of native title was intentionally ignored by commercial interests that sought advancement of their cause via a public-relations campaign that constructed a "national crisis" out of a relatively minor private concern.

Industry groups, and in the particular the mining lobby, were threatened by the case, as it was conceivably possible that some of their existing land titles could be invalid since no compensation had been paid to resident Aboriginal groups at the time of purchase. Industry groups were also threatened by the possibility of future grants of native title hindering their hitherto unbridled claims for development of vacant Crown land. It is worth noting, however, that given the extremely limited nature of native title as defined by *Mabo*,[13] and the poor financial status of indigenous groups, there was no significant danger to corporate interests. The worst-case scenario for industry involved the possibility of compensating *proven* native titleholders for titles acquired prior to *Mabo* and after the enactment of the Racial Discrimination Act 1975 (RDA),[14] and negotiating with them over future developments.

Essentially, the concept of native title posed a minor problem for an enormously affluent industrial lobby, in that it had the potential to make a slight dent in profits. Given the inherent desire of commercial interests to maximize profits, however, it was economically rational to lobby the Commonwealth to validate commercial titles by extinguishing native title and paying "just compensation" on their behalf. The primary lobbying tactic for this was the construction of a national crisis of "uncertainty" of land title. The media, as one of the key institutions that can promote misinformation (see Edelman, 1967; 1998; Chomsky and Herman, 1994), took a lead role in aiding this construction. As Robert Tickner (2001: 94) commented:

> the reporting of the native title debate was . . . abysmal. It reached its lowest point when the front page of a Sydney Sunday paper seriously reported a *Mabo* land claim over Sydney Opera House, which was without legal foundation of any kind.

One of the major tools of the press was the "opinion" poll, and in most cases, the contextual framing of questions and propositions resonated with mining rather than with Aboriginal interests (Goot, 1994). As Goot (1994: 134) suggests:

> The explanation for much of this is not far to seek. Over 60% of the poll items which the press paid for, or were invited to report, were sponsored by the mining industry's peak council or produced at the initiative of an organisation with direct mining links. Surveys commissioned by AMIC [Australian Industry Mining Council] in association with the Chamber of Mines and Energy in Western Australia accounted for just over a third of the questions to which journalists had open access; while polls conducted by the Roy Morgan Research Center—whose managing director had invested heavily in mining in Western Australia—accounted for another quarter. No polls were paid for or conducted by Aborigines or by those whose fortunes were linked to Aboriginal interests.

The construction of a national crisis was further aided by the implication that there was a threat not just to corporate property titles, but to the property titles of "other Australians." This inference became known as the "backyards threat." As Goot (1994: 145) points out:

> the (opinion poll) finding that 89 per cent of the electorate "would be . . . concerned" if the property titles of "other Australians" were "put at risk" is of little value—except of course, for the purposes of propaganda. Since threats to homes would be unpopular (an obvious point, for which one hardly needed a

> poll), getting people to fear for their homes because of *Mabo* would leave any party that backed *Mabo* with a large electoral liability.

Due to the exceedingly limited nature of the *Mabo* case, the threat to private "backyards" was entirely without legal foundation. Yet it was frequently cited in the press and gained further credence when Coalition leader John Hewson utilized the erroneous argument in his *Mabo* address to the nation in the run up to the general election. The industry lobby and the Coalition seemed well aware that "dubious allegations about the dangers or threats a situation poses are potent avenues for influencing public opinion" (Edelman, 2001: 91).

The campaign eventually led the government to legislate to provide "certainty" for the commercial lobby—certainty that they would remain virtually unhindered by Aboriginal interests. Indeed, the resulting legislation, the 1993 Native Title Act (NTA), was a product of the balance of power between political interests that merely confirmed the dispossessed and subordinated status of Aboriginal people (see Coombs, 1994: 210). The mining lobby pressure ensured that the taxpayer bore the compensation bill for past compulsory acquisitions and that only a right to negotiate, rather than to veto, was granted native titleholders over future developments on their land (Tickner, 2001). The government attempted to assuage indigenous discord with a "land fund" to enable dispossessed indigenous people to purchase land in traditional "western" fashion and a vague commitment to a "social justice" package.[15]

The legislative package was not based on widespread consultations with indigenous peoples, but was negotiated with the input of a select few moderate leaders.[16] This aided the smoother passage of legislation that would obviously fail to produce a significant land base for indigenous peoples, even though a central conclusion of the Royal Commission into Aboriginal Deaths in Custody (1991) had been that the root cause of current structurally entrenched social inequality[17] was the dispossession of land.[18] Despite its huge shortcomings, however, this legislation served the purpose of allowing the council to divorce the issue of land rights from its subsequent "social justice" agenda.

Social Justice

During the preliminary cross-party discussions on the reconciliation process, Robert Tickner stressed that there can be "no reconciliation without justice" (2001: 29). One of his nonnegotiable aspirations for the process was that it "address indigenous aspirations, human rights and social justice." His distinction between human rights and social justice in this context is important as the notion of social justice usually articulates, among other things, the need to secure citizenship rights, whereas human rights refers to the far more substantial human rights of indigenous peoples, specifically those rights defined by the United Nations Draft Declaration on the Rights of Indigenous Peoples (see Pritchard, 1998).

The extension of citizenship rights to peoples that have been dispossessed and subsumed by the very states that are granting these rights is simply a form of internal colonialism. Indeed, citizenship is often associated with nation building and state legitimacy and, in fact, makes no sense outside of the framework of the nation-state. Human rights, on the other hand, are extra-governmental and have been traditionally used to counteract the repressive capacity of states (Turner,

1993). It is for this reason that indigenous peoples have accepted the UN Draft Declaration on the Rights of Indigenous Peoples as an articulation of their rights, as opposed to settler state citizenship rights.

Official reconciliation's approach to the injustice of colonization and its legacy was dominated by the notion of "social" justice. The council, however, attempted to go beyond a purely citizenship-based approach to social justice by including a notion of indigenous rights. The council's social justice issue paper defines the term as having three dimensions: "the securing of citizenship rights, of specific indigenous rights, and constitutional acknowledgment of these rights." While this goes further than the standard conception, its articulation of indigenous rights is severely limited. For the council, indigenous rights include:

> cultural and intellectual property rights, covering such things as the protection of indigenous art, music, stories and dance, and rights related to indigenous knowledge of the medicinal and food values of native flora and fauna . . . These rights should be enforceable for indigenous peoples as the first peoples of Australia. (Council for Aboriginal Reconciliation, 1995a).

This restrictive articulation of "indigenous rights" ignores perhaps the two most important rights in the UN Draft Declaration, the rights to self-determination (Article 3) and land (Article 26 concerning the right to ownership and Articles 27 and 28 concerning restitution and compensation), which would also be accorded them as the "first peoples of Australia."[19] The same report states that "a common view expressed during the extensive consultation process was: 'There can be no reconciliation without social justice.'" This is in stark contrast to the sentiments expressed in the fieldwork interviews I conducted with indigenous leaders and spokespersons, where the word "justice" was never preceded by the word "social." Michael Anderson of the Sovereign Union of Aboriginal Peoples of Australia was categorical when he stated:

> there can be no reconciliation without justice that recognises continuing Aboriginal Sovereignty and brings meaningful self-determination to Aboriginal peoples . . . talk of just social justice insinuates that such issues have been dealt with . . . they have not. (author interview, 12 December 2002)

Official reconciliation's emphasis on social justice would be less problematic if it were merely part of an accepted broader notion of justice that was more in keeping with the spirit of the enabling legislation's preamble. The addition of the word "social" in this context limits the notion of justice to a superficial attempt at addressing present social disadvantage without dealing with the underlying structural causes.

The council's suggested solution to structural inequality is contained in their national strategies document (Council for Aboriginal Reconciliation, 1995b). The "economic independence" and "redressing of disadvantage" strategies are intended to produce "better outcomes in health, education, employment, housing, law and justice." Yet, the strategies fail to address adequately the fact that such areas are almost entirely administered by nonindigenous organizations, including state and territory government departments. This point was underlined by the Royal Commission:

> The great lesson that stands out is that non-Aboriginals, who currently hold all the power in dealing with Aboriginals, have to give up the usually well

> intentioned efforts to do things for or to Aboriginals, to give up the assumption that they know what is best for Aboriginals . . . who have to be led, educated, manipulated, and re-shaped into the image of the dominant community. Instead Aboriginals must be recognised for what they are, a peoples in their own right with their own culture, history and values. (Royal Commission into Aboriginal Deaths in Custody, 1991)

Moreover, the "economic independence" strategy does not mention the importance of self-determination and land rights to indigenous well-being. It reads:

> *National Strategy for Economic Independence*—This strategy recognizes that economic empowerment will not occur through welfare programs, but rather through:
> - Better access to capital, business planning advice and assistance.
> - Better access to training and development opportunities.
> - Promotion and encouragement of Aboriginal and Torres Strait Islander small business.
> - Fostering partnerships with the business community. (Council for Aboriginal Reconciliation, 1995b)

In prescribing a focus on business the council is acquiescing in the continued imposition of an alien vision of the good life that first began in 1788. As Aboriginal leader Ray Jackson (2000) commented:

> our economic independence is based in and on and with our lands. We do not all aspire to becoming a Packer or a Murdoch, nor do we all aspire to be shop owners. Independence and our lands are as one, indivisible one from the other.

Given the centrality of land to indigenous culture and the contemporary importance of self-determination, the council's social justice "flora and fauna" conception of indigenous rights offers little more cultural protection than basic citizenship rights.

An important point to note here is that the council's conception of indigenous rights derives exclusively from the distinctiveness of Aboriginal peoples *as Aborigines*. It does not ground these rights in any "universal principles, such as the freedom and equality of peoples, the sovereignty of long standing, self-governing nations, or the jurisdiction of a people over the territory they have occupied and used to the exclusion and recognition of other peoples since time immemorial" (Tully, 2000: 46).

This now common grounding of Aboriginal rights, in the politics of difference, may have ushered in a somewhat higher degree of internal autonomy for indigenous peoples within colonial systems, but it denies indigenous peoples the right to appeal to universal principles of freedom and equality in struggling against injustice—precisely the appeal that would call into question the basis of internal colonization (Tully, 2000: 46). The council's approach is entirely in keeping with that favored by the Australian and Canadian courts and governments. Their underlying premise is that Aboriginal rights are not to be defined on the basis of the philosophical precepts of the liberal enlightenment. They are not general and universal, and thus categorically exclude any fundamental political right, such as a right to self-determination, that could be derived from such abstract principles (Asch, 1999: 436).

Indigenous rights issues slipped further from the reconciliation agenda when John Howard became prime minister in 1996. His government diverted attention way from indigenous rights toward what it termed a more pressing "practical" approach that would provide for "self-empowerment."[20]

"Practical Reconciliation" and "Self-Empowerment"

In 1996, the High Court handed down the *Wik* decision, which held that a pastoral lease did not necessarily extinguish native title and that the two interests could coexist as they had done historically.[21] The debate that ensued pitted Aboriginal interests against those of the pastoral lobby. The main problem for Aboriginal interests was the political power of the pastoral lobby. Pastoral leaseholders are some of the most powerful members of the Australian and international establishment and have strong links with the Howard government. Large companies such as Desai Pty Ltd and the Glencoe group (both owned by the Sultan of Brunei) control vast areas of Australia's land mass[22] via pastoral leases, as do private individuals such as Kerry Packer and Rupert Murdoch.[23] Hugh McLachlan, Australia's largest private landowner, was the cousin of the first defense minister in the Howard government and no fewer than 26 major landowners are government MPs (Pilger, 1998: 238).[24]

The Howard government responded with the Native Title Amendment Act 1998, which substantially extinguished native title. The United Nations Committee for the Elimination of all forms of Racial Discrimination has subsequently condemned the Act (as racially discriminatory) on three separate occasions.[25] Following the *Wik* case, the Howard government sought to shift the reconciliation discourse away from rights issues by promoting a "practical reconciliation" agenda that focuses on "individuals" (see Howard, 2000). Former Senator for Aboriginal Affairs John Herron described this directional "shift" at the United Nations Working Group on Indigenous Populations. He stated that over the past three years the Australian government had sought to change the direction of indigenous affairs away from welfare dependency toward:

> policies that facilitate and promote genuine economic independence for indigenous people, policies that go beyond the "catchcry" of land and mining royalties and encompass both individual-skills development and productive business enterprises. There have been . . . assertions that the solution ultimately lies in the direction of forms of Aboriginal sovereign self-government as contemplated by the "self-determination" provisions of the Draft Declaration of the Rights of Indigenous Peoples. The Draft Declaration itself is at risk of becoming a distraction from the real tasks and priorities before us. The Australian Government rejects "the politics of symbolism." We believe in practical measures leading to practical results that improve the lives of individual people where they live. (Herron, 1999)

Underpinning the new "practical" approach, then, is a desire to "go beyond" the "catchcry" of key indigenous aspirations concerning land rights, sovereignty, and self-determination.

The notion of "practical reconciliation" also served to justify the government's stance on the findings of the "stolen generations" national enquiry. The "stolen generations" is the common term for possibly the worst injustice perpetrated on Australian soil during the 20th century: the systematic and forcible removal from

their mothers, families, and communities of thousands of Aboriginal babies and children of mixed descent (see Haebich, 2001). Aborigines in general consider the stolen generations as one of the most serious issues in their lives and, consequently, that acknowledgment, apology, and reparations should feature in any "reconciliation" process (Tatz, 1999: 43). Yet, John Howard has persistently refused to give a formal apology on behalf of the government. In his speech to the Australian Reconciliation Convention in 1997, he justified his stance on the apology issue via the new focus on "practical" measures:

> We must be realistic in acknowledging some of the threats to reconciliation. Reconciliation will not work if it puts a higher value on *symbolic gestures* and overblown promises rather than the *practical* needs of Aboriginal and Torres Strait Islander people in areas like health, housing, education and employment. It will not work if it is premised solely on a sense of *national guilt and shame.* (Howard, 1997; emphasis added)

In the same speech, he invoked the rhetoric of formal equality in order to reinforce Herron's earlier position on self-determination:

> [Reconciliation will not work] effectively if one of its central purposes becomes the establishment of different systems of accountability and lawful conduct among Australians on the basis of their race or any other factor. (Howard, 1997)

He then linked the inherently assimilationist policy of "practical reconciliation" with the notion of social justice:

> this practical, on-the-ground approach will remain a primary focus of our policy making. This is because we believe it will bring about true social justice for indigenous Australians. (Howard, 1997)

The practical reconciliation "initiative" ignores key indigenous aspirations such as land rights and self-determination and fails to offer any form of cultural protection. As Professor Larissa Behrendt (2002) states:

> the clear agenda (of "practical reconciliation") is one of assimilation and integration. This of course, is not a new ideology, but a throwback to the paternalistic days when Welfare Boards and Aboriginal Protection Boards dictated the lives of indigenous people and their children. It is an ideology that has been used in the past, did not work then, and has not only been rejected by indigenous people, but has left a lasting legacy of disadvantage, trauma and family breakdown that is still plaguing indigenous communities and families today.

Toward an Appropriate Reconciliation

> For the vast majority of Aborigines and Islanders, the past is not a foreign country. What governments concede Aborigines may have endured in the past, they are still enduring—namely, wholesale imprisonments, removal of children to institutions of various kinds, gross ill health, appalling environmental conditions, unemployability, increasing illiteracy, family breakdown, internal violence, and almost unbelievable levels of youth suicide. *Neither in theory nor in practice does, or can, the concept of reconciliation, as variously interpreted, address these issues.* (Tatz, 2000: 77; emphasis added)

Though official reconciliation has failed to address the problems faced by Aboriginal communities since colonization, we should not disregard the *concept* of reconciliation. In theory, reconciliation, while concerned with "forgiveness" and "moving on," is also concerned with notions of "truth" and "justice" (see Roteberg and Thompson, 2000; Minow, 1998; Lederach, 1999; Allen, 1999). Indeed, reconciliation as a peacemaking paradigm involves the creation of a social space where truth, justice, vengeance, and forgiveness are validated and joined together, rather than being forced into a confrontation where one must win out over the other (Lederach, 1999).[26] To be sure, in practice, many reconciliation processes have been bound up with, and often subsumed by, religious and political agendas that frequently assume the form of concerted political campaigns against popular notions of retributive justice in favor of some form of restitutive justice.[27]

While Australian reconciliation also partakes in a dilution of justice, ignoring retributive justice altogether and reducing "restitutive justice" to the notion of "social" justice, this is not a requirement of reconciliation *as a concept*. The concept may, in some circumstances, require a restriction of retributive justice, to avoid cycles of revenge, but it would be an empty vessel if no restitutive atonement is forthcoming.

As stated earlier, restitution of political autonomy is considered key to indigenous survival. While some groups desire greater self-determination within the confines of the settler state, others do not. The Sovereign Union of Aboriginal Peoples of Australia and the conveners of the Aboriginal Embassy in Canberra, for example, do not recognize the authority of the Australian nation-state and aspire to nothing less than recognition of their unceded and continuing sovereignty.[28] However, the rhetorical framing of Australian reconciliation not only assumes the legitimacy of the settler state, but promotes an "internal" nation-building solution to colonial injustice and its legacy. This problem can be highlighted by looking at three broad "meanings" of reconciliation as an outcome:

1. "Simple coexistence," whereby former enemies merely cease hostilities.
2. "Liberal social solidarity" or "democratic reciprocity," which refers, not just to an end to hostilities, but to a situation where citizens respect each other and seek to create space to hear each other out, enter into a give-and-take on public policy, build on areas of common concern, and forge mutually acceptable compromises (Crocker, 2000: 108).
3. A "shared comprehensive vision of mutual healing, restoration and mutual forgiveness." This "more robust" conception is often attributed to the South African and Chilean processes (Shriver cited in Crocker, 2000).

In terms of an indigenous-settler state reconciliation process, there are both practical and moral reasons to favor the first conception over the second and third. The second conception is problematic as it tends to suggest a citizenship-based solution which would not do justice to the unique position of indigenous people. I suggest that the emphasis on a "shared comprehensive vision," in the third conception, is closely related to the highly problematic one-nation approach of Australian reconciliation.

A sincere attempt to address the historical injustice of colonization and its legacy cannot logically ignore indigenous "nationhood" and sovereignty, not just because many communities and organizations from the "victim group" cite recognition of continuing sovereignty as one of their key aspirations, but also because the exercise of sovereignty must be based on the consent of those affected

by it (Fadel, 1999). In order to legitimize the exercise of settler sovereignty in Australia, the government needs to gain the consent of the indigenous peoples. This will necessitate nation-to-nation negotiations which treat indigenous peoples as nations equal in status to the settler state. By definition, the resultant treaties would be international treaties and, as such, would possess inherent international infringement redress possibilities.

Drawing on the works of indigenous academics, political scientist James Tully (2000: 53) suggests that this approach would constitute a genuine resolution of the problem of internal colonization if based on the following conditions:

- Indigenous peoples continue to exercise, without interference, their own stateless, popular sovereignty on the territories they reserve for themselves.
- In return for non-interference on indigenous territories, the settlers can establish their own governments and jurisdictions on unoccupied territories given to them by indigenous peoples.
- Indigenous peoples agree to share jurisdiction with the settlers over the remaining overlapping territories, treating each other as equal, self-governing, and co-existing entities and setting up negotiating procedures to work out consensual and mutually binding relations of autonomy and interdependence . . . subject to review and renegotiation where necessary, as circumstances change and differences arise.

John Paul Lederach has suggested that successful reconciliation will require "innovation" (1999: 24). In the context of indigenous-settler state relations, this "innovation" might well require a "de-colonisation of the imagination" (Parekh and Pieterse, 1995) in order to move beyond the assumption of legitimate settler state sovereignty toward a validating nation-to-nation negotiation approach.

In contrast to official reconciliation, Tully's approach is sensitive to the fact that indigenous peoples were "independent political entities" at the time of colonization. Further, it acknowledges that this status has not been surrendered, and that, consequently, the continuing imposition of settler state sovereignty is illegitimate. Tully's approach also replaces the false assumption that jurisdiction must be exclusive with two (indigenous) principles: free and equal peoples on the same continent can mutually recognize the autonomy or sovereignty of each other in certain spheres and share jurisdictions in others without incorporation or subordination (2000: 53). Essentially, this form of "treaty federalism" recognizes prior and existing sovereignty not as state sovereignty, but, rather, a stateless, self-governing, and autonomous people, equal in status, but not in form, to the (settler) state, with a willingness to negotiate shared jurisdiction of land and resources (Tully, 2000: 54).

Given the outcome of the negotiations over native title, it would seem that there is little likelihood of such treaty federalism in Australia. Yet after 10 years of official reconciliation, political debates have come full circle, returning once again to the question of a treaty or treaties. Although there is significant disagreement among indigenous leaders over what exactly represents the best way forward for the treaty campaign, the reports of recent treaty and governance conferences (Indigenous Governance Conference, Canberra, April 2002 and National Treaty Conference, Canberra, August 2002) have tended to favor a localized "treaties" approach in order to accommodate better political and regional differences. This would localize negotiations and decision-making along indigenous national lines, thereby reducing the possibility of unattainable federal-level consensus.

Political differences among indigenous leaders should not diminish the case for the return of available land and political autonomy via a treaty or treaties. Disagreement, compromise, and negotiation are central and not inimical to the political endeavor. Indeed, despite such strategic differences, there is now a growing movement for a treaty or treaties. Regular meetings have been held between academics, indigenous people, church groups, and local politicians.[29] Even though the current government will not entertain the idea, provided the movement's momentum continues, there is a genuine possibility that at some point a new government will be more amenable.

The eventual possibility of a treaty or treaties becomes more plausible when one considers the population explosion currently affecting the indigenous population. Demographer John Taylor estimates that by 2010 there will be one million self-identified indigenous people in Australia (Langton, 2001). As Professor Marcia Langton (2001) notes, "whereas presently, most Australians are able to dismiss Aboriginal demands for justice as the complaints of a miniscule minority, their children will not be so able to avoid the problem." For Langton (2001):

> the calls for a treaty go to the heart of juridicial denial, in Australian case law, of the existence of Aboriginal nations in Australia prior to the seizure of the land and consequent dispossession of indigenous peoples by the British Crown. This denial has in effect accorded our nations the status of an anomaly among the settler colonial states. The monstrous injustice of the seizure of and establishment of dominion over Aboriginal lands by the crown, and the lack of agreements and treaties, remains a stain on Australian history and the chief obstacle to constructing an honourable place for indigenous Australians in the modern nation state. That place must now be found both through, and beyond, the limits of a legal discursive framework that dehumanises and de-historicises Aboriginal people, rendering us as mere wondering brutes of Hobbesian and Rosseauvian mythology.

Conclusion

Official reconciliation emerged out of the campaign for a treaty to right the wrongs of the past, but once under way it used language far removed from that of the treaty movement. Instead of laying the foundations for negotiating a settlement with indigenous peoples on equal terms, the process was framed in nation-building language which implicitly refused to accommodate indigenous aspirations of difference. The minister responsible, Robert Tickner, asserted at the start of the process that "there can be no reconciliation without justice." Official reconciliation, however, soon became little more than an assimilationist nation-building exercise. Both the Keating and Howard governments had the opportunity to give legislative effect to common law indigenous rights gains. Yet they bowed to the pressure of commercial interests, producing legislation that severely limited and reduced the gains. Subsequently, the Howard government's "practical" policy emphasis offered only assimilationist initiatives primarily framed in the language of citizenship rights. In this regard, the Australian reconciliation process is significantly out of step with the aspirations of many indigenous groups.[30]

The work of the council is now being continued by Reconciliation Australia, which was founded after the end of the council's term in 2001. The foundation, along with mining giant Rio Tinto, is now supporting the Howard government's

latest reconciliation initiative, the construction of Reconciliation Place. According to the Minister for Immigration and Multicultural and Indigenous Affairs, Philip Ruddock, the monument will "tell stories of hurt and hardship and, *importantly, achievements*, and aspects of our history that are cause for celebration" (2002; emphasis added). The plan involves replacing the unsightly Aboriginal Tent Embassy with a sanitized, tourist-friendly site complete with coffee shop. A gas-burning fire will replace the traditional sacred Fire for Peace and Justice that has been continuously burning for many years as a symbol of protest. As Darren Bloomfield, an embassy spokesperson, informed me, "one of the many problems the government had with the Tent Embassy was the overly authentic sacred fire and the lack of a decent espresso machine for the tourists" (author interview, 10 June 2001).[31] The plans originally went ahead without any consultation with indigenous groups and only recently has the government been persuaded to receive the input of "stolen generations" representatives.[32]

The blame for the failure of the Australian process does not lie with the 400,000[33] people who walked across Sydney Harbour Bridge in support of the process in May 2000. Nor does it lie with some 10,000 people who regularly attended their local reconciliation meetings across the country (Council for Aboriginal Reconciliation, 1997). Equally, it does not lie with reconciliation as a concept. Restrictive policy framing and lack of political will have ensured that official reconciliation is significantly out of step with indigenous aspirations.

If Australian reconciliation is to be consistent with the spirit of the legislation's preamble, it should not promote the single unifying moral vision implicit in the "one nation" strategy. Rather, it should seek to achieve a simple cessation of hostilities, while addressing the harms that flow from internal colonization. To this end, Tully offers a possible conceptual solution to the problem of internal colonization that could provide the foundation for a more appropriate and genuine reconciliation process. A reconciliation initiative based on Tully's formula, however, would require a measure of Lederach's "innovation" in order to move beyond the entrenched colonial assertion of legitimate sovereignty toward nation-to-nation negotiations. Past and current Australian practice may seem to offer little hope that such a suggestion will be followed. However, on the global level, nation-state sovereignty is frequently shared with international organizations such as the United Nations and the European Union. It is becoming increasingly recognized that the claims of smaller peoples around the world could, and in many instances should, be met with forms of political power sharing not dissimilar to such pan-national structures. Global peace and security may indeed depend upon such recognition.

Ethno-cultural conflict has become the main source of political violence worldwide, and perhaps the single most important cause of such conflicts is struggles over land and settlement policies between states and "nations within" (Gurr, 1993). Placed in this light, the problem of how states deal with "nations within" is not a marginal issue: it is one of the key issues, perhaps even the central issue, for states in the 21st century (Kymlicka, 2000).

Notes

1. The upper estimate of one million was made by Noel Butlin and has not been endorsed by anyone else. Nevertheless, it is frequently cited as the estimated upper limit (for example, see Manne, 2001: 103).

2. For example, the Australian Aborigines Protection Association, the Association for the Protection of the Native Races of Australia and Polynesia, and the Aboriginal Union were all formed around this time.
3. The fact that the continent has many indigenous groups who, although they share many commonalties, utilize significantly different languages, laws, and customs, suggests that a treaty between the settler state and *each group* would be more appropriate. Discussions around the concept tend not to rule out the possibility of many treaties, with supporters citing Canada as an example of such practice.
4. Such differences have continued to this day, but as the Aboriginal and Torres Strait Islander Commission (ATSIC) has recently highlighted, the existence of regional differences between groups can be accommodated by the concept of "self-determination," which is itself concomitant with the notion of regional treaties. ATSIC suggests that self-determination can be achieved *through* "regional autonomy." See http://www.atsic.gov.au/issues/indigenous_rights/regional_autonomy/Discussion_Paper_Sept_1999/default.asp.
5. This view has been articulated by the likes of radical leaders such as Kevin Gilbert, Charles Perkins, Michael Anderson, and Patrick and Mick Dodson. For a strident articulation of the argument, see Gilbert (1994). It is also the central concern of the Aboriginal and Torres Strait Islander Commission's recent report on the ATSIC funding structure available at http://www.atsic.gov.au/issues/Indigenous_Rights/resourcing_self_determination/Default.asp. For an example of the negative effects of a lack of political and social autonomy, see Trudgen (2000).
6. According to the Australian Bureau of Statistics, it is estimated that today around 40 percent of Australia's indigenous population fall into this bracket, while the remaining majority live in rural or remote communities. Information is available at www.abs.gov.au. Moreover, many such "urban" Aboriginal people whom I have spoken to while conducting fieldwork have expressed a longing to "reconnect" with their culture. For example, a self-professed "urban" Aboriginal woman, Audrey Ngingali Kinnear, stated in interview: "I may live in a town house in Canberra, but I would love to be able to return to my community in the holidays and reconnect with my roots, culture and country without the feeling of immense sadness I get as I see their way of life gradually eroding through lack of autonomy and control of their traditional lands" (author interview, September 2001).
7. The NAC was established by the federal government in 1977 to provide a forum for the expression of Aboriginal views. A resolution from the Second National Conference in April 1979 requested the execution of a Treaty of Commitment between the Aboriginal nation and the federal government. For the NAC discussion documents, see http://www.aiatsis.gov.au/lbry/dig_prgm/treaty/nac.htm.
8. There are serious scholarly debates surrounding the issue of contemporary moral obligation for the wrongs of the past. Perhaps the most significant contribution arguing against such contemporary obligation is by Jeremy Waldron. Via the somewhat dubious tool of hypothetical counterfactuals, he suggests that historical injustice has been largely "superseded" by the wave of subsequent good-faith transactions of the settlers (Waldron, 1992/93). A counterargument, with which I concur, can be found in Poole (2000). For the purposes of this article, however, I assume that the cross-party support for the instigation of the reconciliation process demonstrates a widespread acknowledgment of contemporary responsibility while the original "wrong" and its legacy remain unaddressed.
9. See, for example, Gilbert (1993), although for Gilbert, talk of a single nation was a strategic move, as he thought it a difficult enough task to persuade the Commonwealth of the need for one treaty let alone dozens (I thank Ellie Gilbert for this clarification). See also Kelly (1993).
10. These minimum three would be Aborigines, Torres Strait Islanders, and the wider Australian community. For scholarly definitions of "nationhood," see Mill (1963). For more modern definitions, see, for example, Smith (1981) and Kellas (1991).

11. To name but a few, the *Yolnu* of Arnhem Land (see Trudgen, 2000) and the *Meriam* people from Mer (Murray Island as the British named it), who were the peoples involved in the *Mabo* case, and the *Wik* and *Thayorre* peoples who brought the *Wik* case to the High Court. There are also many groups in Western Australia that continue to practice traditional laws and customs and consider themselves as constituting their own nations.
12. See Kymlicka (1991: 156), where he equates "the special status" of aboriginal peoples with that of French Canadians. He also suggests that: "the issue of minority rights is raised in many countries by the presence of aboriginal peoples . . . the rights of Canada's aboriginal peoples are, therefore, representative of a major class of *minority rights* questions" (Kymlicka, 1991: 157; emphasis added). The conflation is also in evidence in more recent work, for example, see Kymlicka (2000).
13. Claimants would have to prove traditional and continuing connection to the land to be successful.
14. The concern for industry focused on the interplay of the Racial Discrimination Act 1975 and the doctrine of native title. The Australian Industry Mining Council (AMIC) led the charge for "certainty." AMIC's legal argument was that post-1975 all transactions in land had to be nondiscriminatory and since many potential native titleholders would not have been treated the same as other titleholders during that time (for example, they would not have had advance notice of impending government appropriation of their land for a mining grant and would certainly not have received compensation), they were treated in a discriminatory manner. Thus, the only way to remedy the situation, so the argument contended, was to introduce retrospective legislation to override the RDA, Australia's only antidiscrimination legislation. Yet, underlying AMIC's position was the erroneous assumption that a defective title could not be legitimated by the payment of just compensation. Eventually, the government recognized the error, but under continued pressure from the mining lobby, it agreed to pay most of the compensation itself. For a rather one-sided, but nonetheless insightful account of the debates around this point, see Tickner (2001: 85–220).
15. However, 10 years further on and this package has yet to materialize, although perhaps this had more to do with a change of government than bad faith on the part of Paul Keating.
16. The government effectively isolated one group of more radical indigenous spokespeople (the so-called "B-Team" including people such as Michael Mansell and Aden Ridgeway) in favor of another group (the "A-Team," which included Lois O'Donaghue) that seemed more inclined to begin negotiations with a basic acceptance of the legitimacy of the mining lobby's concerns (Tickner, 2001).
17. Indigenous Australians have the worst rank in every social indicator available. They have the highest incidences of disease and respiratory infections (see US State Department, 1998) and the lowest life expectancy. Indigenous men aged 35–44 die at a rate 7.9 times higher than other Australian men, while indigenous women in the same age group die at a rate 8.2 times the average for Australian women (see Australian Bureau of Statistics, 1997).
18. The land rights recognized thus far under the NTA have failed to provide indigenous people with the land base that is so central to their culture. So far, there have been just 30 determinations of native title, most of which are in the form of "Land Use Agreements," which do not amount to anything like freehold title (they do not even convey a right of veto on future land "use"), are certainly not accompanied by political autonomy, and are largely off mainland Australia. Furthermore, the 1998 amendments to the NTA have weakened indigenous land rights to the extent that they are now almost meaningless. Consequently, Australia has been severely criticized, on four separate occasions, by the United Nations Committee on the Elimination of all forms of Racial Discrimination (see, for example, Decision 1(53); CERD/C/53/Misc.17/Rev.2, 11 August 1998).
19. Over the years indigenous rights to land and self-determination were occasionally

mentioned in various council documents, but they did not assume a central place within the notion of social justice.

20. The notion of "self-empowerment" represents the government's preferred option to self-determination. It involves the promotion of economic independence through traditional western financial methods, with no "special" rights to land permissible under its strict formal equality approach. This position has been stated at the United Nations Working Group on Indigenous Populations in 2000 and more recently at the United Nations Working Group on the Draft Declaration in 2002.
21. In *Wik Peoples* v. *Queensland* (1996), contrary to the belief of the government and industry, it was held, by four of the seven High Court judges, that a pastoral lease did not necessarily extinguish native title, as in some cases native title rights can survive the grant of the lease. The particular rights of leaseholders and native titleholders must be identified and proved in each case.
22. They currently possess 8 million hectares, according to figures obtained from the Australian Surveying and Land Information Group (AUSLIG) at http://www.ga.gov.au/.
23. Kerry Packer is Australia's seventh largest landowner and owner of the channel nine television network. Rupert Murdoch is owner of vast quantities of land and controller of three-quarters of the Australian press. For further details, see Pilger (1998: 237).
24. For a full list of pastoral landholdings, see the *Australian Farm Journal* (1996).
25. See Decisions 1(53); CERD/C/53/Misc.17/Rev.2, 11 August 1998/99/00.
26. This is adapted from John Paul Lederach's conceptualization. I emphasize that this is a normative theoretical position and not a reflection of past practice. I have deviated from Lederach's conceptualization with the inclusion of "vengeance" and the omission of "mercy," as I consider his conceptualization to be unduly restricted to the elements identified in Psalm 85. Indeed, he fails to accord "vengeance" any substantive significance to the reconciliation paradigm. For the opposite view, see Minow (1998: 29).
27. The South African Truth and Reconciliation Commission (TRC) is a prime example of this approach. For a discussion of this aspect of the TRC's approach, see Wilson (2001) and, more generally, Minow (1998).
28. This is key to both groups' demands for justice (author interviews, July 2001). Furthermore, the need for recognition of indigenous sovereignty emerged as a dominant theme in the recent ATSIC-sponsored National Treaty Conference, Canberra, 27 August 2002 (see http://www.atsic.gov.au/events/National_Treaty_Conference/papers.asp).
29. For example, the Indigenous Governance Conference, Canberra, April 2002 and the ATSIC-sponsored National Treaty Conference, Canberra, 27 August 2002. There have also been several local conferences each year since 2000 in New South Wales and the Australian Capital Territory (ACT).
30. For example, during the Coroboree 2000 "walk for reconciliation" many politically active indigenous groups, who were concerned with more than just gaining an official apology for the stolen generations, chose to boycott the walk in favor of protesting at the finish line. I spoke with several leaders of such groups on the day and their general concern was that not nearly enough has been done by governments over the years to deliver restitutive justice to indigenous peoples. Their primary concerns were over the "unfinished business" of sovereignty, self-determination, and land rights.
31. After many years of relatively stable leadership, the Aboriginal Embassy is currently undergoing an upheaval with several groups vying for control. The division has largely concerned response strategies to the government plans around "Reconciliation Place" and to the removal of vehicles from the site by the state authorities without the consent of the owners.
32. The wider concerns of "justice" in this context are unlikely to be reflected in the monument as the only indigenous people to be consulted thus far are the stolen generations' support groups (see Aboriginal Tent Embassy, 2002).
33. Official government calculations put the number nearer 200,000, but estimates by the transport authorities and participant organizations suggested a figure at least double the official estimate.

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