

# Indigenous Sovereignty and Peaceful Co-existence

## Anzac Day Reflection 2020

by Peter Griffin

*What Aboriginal people ask is that the modern world now makes the sacrifices necessary to give us a real future. To relax its grip on us. To let us breathe, to let us be free of the determined control exerted on us to make us like you. And you should take that a step further and recognise us for who we are, and not who you want us to be. Let us be who we are – Aboriginal people in a modern world – and be proud of us. Acknowledge that we have survived the worst that the past had thrown at us, and we are here with our songs, our ceremonies, our land, our language and our people – our full identity. What a gift this is that we can give you, if you choose to accept us in a meaningful way.*

(Galarrwuy Yunupingu, '[Rom Watanqu](#)' in *Final Report of the Referendum Council*, 17 June 2017, p. 63)

*If you have come here to help me you are wasting your time, but if you have come because your liberation is bound up with mine, then let us work together.* (Quote from [Lilla Watson](#))

### Introduction

Every year, the Anzac remembrance gathering at the Marrickville Peace Park (Richardson's Lookout) in Sydney has always included the Frontier Wars. These wars refer to the violent conflicts between Indigenous Australians and white settlers from the earliest days of the colony. It is fitting on Anzac Day to look more closely at the significance of both the physical conflicts between Aboriginal and non-Aboriginal Australians and also their deeper, seemingly endless repercussions.

Acknowledgment of the Frontier Wars is associated with an ineradicable truth, namely that the wars, massacres (on both sides) and a whole gamut of genocidal practices (dispossession of land including sacred and hunting grounds, devastation from introduced diseases, food poisonings etc.) all occurred on Australian soil. The irony is that none of the wars into which Australia has been drawn via one or other alliance in the name of "defence" and "democracy" has occurred on mainland Australia. The fact that the Frontier Wars have been disputed and are still not officially recognised, only adds bitterness to the injustice of denial.

The primary focus of this essay will be on the difficult journey towards the recognition of Aboriginal sovereignty from the time of Captain James Cook's landing in Botany Bay on 29 April 1770 to the present.

### Indigenous versus British settler perspectives

Fundamental to Aboriginal and non-Aboriginal relations in Australia is the divisive issue between those who view the British Crown's claim to the eastern seaboard of Australia as an act of *settlement*, compared to the First Nations people who see it as an *invasion*.

The [Final Report of the Referendum Council](#) (the Final Report) refers to a division between "old" and "new" Australians. The invasion that started at Botany Bay is the origin of the fundamental grievance between the old and new Australians. This is a land that was colonised without the consent of its rightful owners. As the Final Report states, "their land

and sovereignty was annexed without consent and without treat(y) with the country's rightful owners."<sup>1</sup> This forms a part of the Truth so passionately called for in the [Uluru Statement From The Heart](#).

It is worth noting that the weaponised hostility from the colonial settlers toward the Indigenous people dates from the earliest contact in 1770. Peter Fitzsimons in his book *James Cook* reveals that in his own journal, Cook records that the entry of a strange vessel into Botany Bay received an agitated response from the local people. Cook states that he fired three musket shots and one of these shot wounded an Indigenous man in the leg. So, from the very first encounter of "discovery", the unannounced and mysterious visitors made their intentions known with the force of arms.<sup>2</sup>

Needless to say, none of this reaches beyond archival records to educate Australian children about their country's actual history.

### **The Frontier Wars**

Much evidence exists to back up the claim that this initial antagonism set the tone and the template for the fighting which first took place several months after the landing of the First Fleet in Botany Bay in January 1788 and ended with the last clashes which occurred as late as 1934. According to Henry Reynolds, a minimum of 40,000 Indigenous people and between 2,000 and 2,500 settlers died in these wars.<sup>3</sup>

The impact of colonisation on the Indigenous population is even more dramatic. Before 1788 there were an estimated 300,000 to 1 million Indigenous people in Australia. By 1920, this number may well have dropped to as low as 80,000.<sup>4</sup>

Bruce Elder, in the preface to his book *Blood on the Wattle*, states that "the massacres of Aborigines ... should be as much a part of Australian history as the First Fleet, the explorers, the gold rushes and the bushrangers."<sup>5</sup> Indeed for some years now a large and vigorous contingent of Aboriginal and Aboriginal supporters have been a frustrated (blocked) presence at the annual Anzac Memorial Service in Canberra. Australia is still not ready to accept the truth of its own colonial history.

Eventually the Frontier Wars came to an end around 1934. However as one form of violence and control subsided, governments employed new policies of control and discrimination. As stated in the Final Report, Aboriginal people were herded into missions and reserves on the fringes of white society and the Stolen Generations were taken from their families.<sup>6</sup> This was the policy of assimilation. As emphasised by *Australians Together*, the assimilation approach "proposed that "full blood" Indigenous people should be allowed to "die out" through a process of natural elimination, while "half-castes" were encouraged to assimilate into the white community."<sup>7</sup>

### **White Australia Policy**

Coinciding with the latter years of the Frontier Wars, non Aboriginal Australia had formed itself into a Federation under a Constitution which, among other things, was heavily influenced by the White Australia Policy. This policy, based upon the assumption of the superiority of whiteness over non whiteness, allowed for the passing of the *Immigration Restriction Act 1901* which effectively stopped all non-European immigration into the country and contributed to the development of a racially insulated white society.

While this legislation sought to protect whiteness from without, the Constitution sought to protect whiteness from within. From the beginning, white Australia believed that the

Aboriginal people were a dying race and the [Constitution](#) only made two references to them. Section 127 excluded Aboriginal and Torres Strait Islander people from the Census and Section 51 (xxvi) regrettably gave power over Aboriginal people to the States rather than to the Federal government.

It took 66 years and a referendum in 1967 requiring a majority of the voters in a majority of the States to include Aboriginal people in the Census of their own country.<sup>8</sup>

The Aboriginal people and their calls for recognition, in contrast to official and unofficial expectations, refused to go away. People of particular note who have fought for Aboriginal rights, include William Cooper who was one of eleven signatories to the Maloga Petition in 1887. During the 1930s, William Cooper and other leaders from the [Australian Aborigines' League](#) collected 1,814 signatures and petitioned Prime Minister Joseph Lyons and King George VI to intervene on behalf of Indigenous Australians "for the preservation of our race from extinction and to grant representation to our race in the Federal Parliament."<sup>9</sup>

Other Aboriginal activists such as Fred Maynard and Tom Lacey founded the Australian Aboriginal Progress Association in February 1925 which advocated for the right of Aborigines to determine their own lives.<sup>10</sup>

### **Lack of a Treaty**

Australia is the only Commonwealth nation where a treaty does not exist between the colonisers and the Indigenous people. An Indigenous Treaty was first promised by Prime Minister Bob Hawke back in 1988 after receiving the [Barunga Statement](#) from Aboriginal elders which called for such a treaty to be concluded. No treaty eventuated.<sup>11</sup>

The absence of a treaty is at the very heart of the historical injustice in Australia. The continued lack of a treaty with Indigenous Australians shows an ongoing denial of the prior occupation and dispossession of Indigenous people and a general disregard for their rights and aspirations. It is a reminder that oppressive colonial attitudes still have not been addressed.<sup>12</sup>

### **Sovereignty**

In the 1990s, Australia sought to redress its colonial origins by instituting a policy of reconciliation. Reconciliation processes are often criticized for demanding that the victims of state repression relinquish their legitimate claims to justice for the sake of national unity. One notable Indigenous spokesperson, Kevin Gilbert, expressed his view this way:

*What are we to reconcile ourselves to? To a holocaust, to a massacre, to the removal of us from our land, from the taking of our land? The reconciliation process can achieve nothing because it does not...promise justice. It does not promise a Treaty and it does not promise reparation for the taking away of our lives, our lands and our economic and political base. Unless it can return to us those very vital things...what have we? A handshake? A symbolic dance? An exchange of leaves and feathers or something like that?*<sup>13</sup>

For Gilbert and many others, the possibility of breaking with the colonial past depends on the recognition of Aboriginal *sovereignty*. But there is an elephant in the room, namely that the legitimacy of the Australian State rests on the presumption that there was no recognisable legal or political organisation on the continent prior to the arrival of the British Crown. Consequently, the insistence on Aboriginal sovereignty fundamentally contests the basis of the constitutional order i.e. it is the polar opposite of terra nullius.<sup>14</sup>

A common misunderstanding from a legal perspective is that the Mabo decision of 3 June 1992 recognised Aboriginal sovereignty. It did not.

*[While] the court demolished the concept of Terra Nullius in respect of property, it preserved it in relation to sovereignty ... For 200 years Australian law was secured to the rock of Terra Nullius. One pinioned arm represented property, the other sovereignty. With great courage the High Court recognized native title in the Mabo judgment and released one arm from its shackles. The other remains as firmly secured as ever and seems destined to remain there for some time but in the long run the situation will prove unstable. What is more, the resulting legal pose will become increasingly uncomfortable as time passes.<sup>15</sup>*

In Australia, critics claim that the formal reconciliation process was a further stage in the colonial project of assimilating the Aboriginal population into the colonizing society. Against reconciliation, many Aboriginal people insist that their sovereignty was never ceded. This claim represents both an assertion of the right to self determination and a refusal to recognize the legitimacy of the settler-colonial state that has incorporated them as citizens.<sup>16</sup>

Henry Reynolds claims that in any discussion about the ongoing evolution of Australian nationalism, the issue of sovereignty is inescapable. But this discussion comes with a caveat. This common word belies the fact that for each collective, Aboriginal and non-Aboriginal, sovereignty refers to a reality comprising different values. For Aboriginal Australia, sovereignty predates the arrival of the First Fleet and has never been ceded. According to the [Uluru Statement from the Heart](#), sovereignty is a spiritual notion, a concept that is unfamiliar to non-Aboriginal Australia. Rather than being a philosophical notion, it is the “ancestral tie between the land, or ‘mother nature’ and the Aboriginal and Torres Strait Islander peoples”. And again, as the Uluru Statement emphasises, Aboriginal sovereignty “has never been ceded or extinguished”.

### Postscript

Fiona Nicoll argues that Indigenous sovereignty claims “come less from a desire for European concepts, institutions and values than from a refusal to recognize the legitimacy of the sovereignty in the name of which (the British) invasion was and continues to be justified.”<sup>17</sup>

In other words, the quest for Aboriginal sovereignty challenges non-Indigenous Australia to let go of its right to define just what sovereignty is and for whom. This, I suggest, is the reason why the Uluru Statement includes the assertion that Indigenous sovereignty “co-exists with the sovereignty of the Crown.” Sovereignty then has a dual character: one that is non-Indigenous and another that is Indigenous. The search for liberation through sovereignty can only be achieved by both sides working together.

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<sup>1</sup> Commonwealth of Australia, [Final Report of the Referendum Council](#), 30 June 2017

<sup>2</sup> Stephen Gibbs, [‘Why the road to reconciliation is so tortured’](#), *Daily Mail*, 26 January 2020.

<sup>3</sup> Reynolds, Henry. *Forgotten War*, NewSouth, Sydney, 2013, pp. 121-134.

<sup>4</sup> Danny Gilbert, [Indigenous Constitutional Recognition Speech](#), Sydney Institute, YouTube, 23 October 2017 (accessed 23 April 2020).

<sup>5</sup> Bruce Elder, *Blood on the wattle: massacres and maltreatment of Aboriginal Australians since 1788*, Child & Associates, 1988. Refer also to the project led by Prof. Lyndall Ryan at the University of Newcastle called [Colonial Frontier Massacres in Australia, 1788-1930](#) (accessed 23 April 2020).

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- <sup>6</sup> *Final Report of the Referendum Council*, pp. 18-19.
- <sup>7</sup> [Australians Together](#) (accessed 23 April 2020).
- <sup>8</sup> Anita Heiss, '[Government policy in relation to Aboriginal people](#)', Barani, City of Sydney (accessed 24 April 2020).
- <sup>9</sup> National Treaties Summit, [Treaty in Australia](#), 2020 (accessed 24 April 2020). Due to the coronavirus, the National Treaties Summit scheduled for 16-18 April 2020 in Melbourne has been postponed.
- <sup>10</sup> Wikipedia, [Charles Frederick Maynard](#) (accessed 24 April 2020).
- <sup>11</sup> Wikipedia, [Indigenous treaties in Australia](#) (accessed 24 April 2020).
- <sup>12</sup> Australians Together, '[Something's not right](#)' (accessed 24 April 2020).
- <sup>13</sup> Kevin Gilbert, *Aboriginal Sovereignty: Justice, the Law and the Land*, Burrumbinga Books, Canberra, 1993, p. 2.
- <sup>14</sup> Fiona Nicoll, '[De-facing Terra Nullius and Facing the Public Secret of Indigenous Sovereignty in Australia](#)', *Borderlands eJournal*, Vol. 1, No. 2, 2002 (accessed 24 April 2020).
- <sup>15</sup> Reynolds, Henry, *Aboriginal Sovereignty: Three Nations, One Australia*, Allen & Unwin, Sydney, July 1996.
- <sup>16</sup> Paul Muldoon and Andrew Schaap, '[Aboriginal Sovereignty and the Politics of Reconciliation: The Constituent Power of the Aboriginal Tent Embassy in Australia](#)', *Environment and Planning D Society and Space*, January 2012 (accessed via ResearchGate on 24 April 2020).
- <sup>17</sup> Fiona Nicoll, *ibid.*