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Theme: Treaty – Let's Get It Right
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Articles:

From Here to A Treaty

Geoff CLARK – is Chairman, Aboriginal and Torres Strait Islander Commission

Reconciliation is on everybody's lips. That much is obvious from the outstanding turnout at the reconciliation walk in Sydney. There have been equally significant walks for reconciliation in other capital cities and regional areas. But how do we achieve reconciliation? Some argue it is enough if the goodwill expressed by walkers for reconciliation is captured in a document of reconciliation. For them it is the show of public support that is both the beginning and the end. I disagree.

Reconciliation must have more substance. The goodwill expressed provides the mandate to achieve reconciliation. It virtually begs for some strategy to translate the goodwill into something tangible – something that will bring about reconciliation as a result of the strategy. I said at the Sydney walk for reconciliation that a treaty was the appropriate vehicle, and I am even more convinced about it now.

Sovereignty

Michael DODSON – is Chairperson of the Australian Institute of Aboriginal and Torres Strait Islander Studies.

This paper seeks to explore some of the historical and persistent questions surrounding the British assertion of sovereignty over Australia. The paper, while not purporting to answer these questions in a definitive way, is intended to stimulate discussion and further research by those associated with, and interested, in the promotion of dialogue and debate on the issue of whether there should be a treaty, or treaties, between Indigenous and non-Indigenous Australians.

The Link Between Rights and a Treaty "Practical Reconciliation"

Larissa BEHRENDT – is the Professor of Law and Indigenous Studies and the Director of the Jumbunna Indigenous House of Learning at the University of Technology, Sydney.

At Corroboree 2000, an event sponsored by the Council for Aboriginal Reconciliation in Sydney on 27 May, 2000, ATSIC Chairperson Geoff Clark put Indigenous claims for a treaty between the Australian government and Aboriginal and Torres Strait Islander peoples back on to the Indigenous rights agenda. Clark was reintroducing an issue that had been a strong part of the Indigenous rights strategy for decades.

In 1983, the Senate Standing Committee on Constitutional and Legal Affairs in its report, *Two hundred Years Later*, stated:

> "…, the Committee is of the view that if it is recognized that sovereignty did inhere in the Aboriginal people in a way not comprehended by those who applied terra nullius doctrine at the time of occupation and settlement, then certain consequences flow which are proper to be dealt with in a compact between the descendants of those Aboriginal peoples and other Australians."

The timing of Geoff Clark's comment was not coincidental. Clark was making a strong statement that the aspirational Statement for Reconciliation, the focus of the Corroboree 2000 event, did not go far enough in articulating the rights of Indigenous people. Clark was also calling for legal, rather than merely aspirational, recognition. Although Clark received criticism on the day for his call for a treaty, the Council for Aboriginal Reconciliation would later include the concept of a treaty within its Final Report and viewed a treaty as part of a broader rights framework.

The Nations of Australia

Marcia LANGTON – is Foundation Chair of Australian Indigenous Studies, University of Melbourne.

Great claims have been made of the creation of the Commonwealth of Australia, such as the establishment of a peaceful democracy at the time of Federation. The principal objection to that proposition is that it is historically incorrect to claim that the nation was born of a peaceful process: in the late nineteenth century when white colonial men met at the constitutional conventions seeking to federate the six colonies into a single commonwealth, their brothers were still engaged in savage frontier campaigns to take territory from Aboriginal peoples. The background to the apparently parliamentary manner of the conventions was a world of violence – racist violence.

Reconciliation and Native Title

***Jacki HUGGINS* –** is Board Member, Reconciliation Australia and Deputy Director, Aboriginal and Torres Strait Islander Studies Unit, University of Queensland. Co-Chairman, Reconciliation Australia.

Today, I have been asked to honour a remarkable Australian in this Judith Wright Address by talking about reconciliation, an ideal, and a process to which she contributed much.

As it has become defined over the last decade, true reconciliation is a mosaic of many strands, including social justice and equity; recognition of Indigenous peoples' cultures, traditions and rights – including Native Title; mutual respect and a shared common future; and formal settlement of 'unfinished business' through negotiation of a treaty or agreement.

Today, I want to mainly discuss the treaty issue as this was especially close to Judith Wright's heart and was the focus of much of her work. My fellow Board member and Co-Chair of Reconciliation Australia, Fred Chaney, will comment later on the relationship of these issues to Native Title.

Locating the Constituting Elements of Justice in Our Everyday Discourse

Martin NAKATA – Aboriginal Research Institute, University of South Australia.
And Robert WINDSOR - Aboriginal Research Institute, University of South Australia.

In European law a treaty is an object somewhat analogous to a business contract, but is this contractual model what is commonly understood (outside of the "interpretive community" of legal experts) to be a treaty? That is, is this the model that the ever-increasing numbers of Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians who devote time to the concept of a treaty are thinking of? In other words, are those who call for a treaty calling simply for a business contract, for legislative action, or are they calling for justice, improved justice, reparative justice, and the subsequent development and maintenance of respectful relations? While law is ostensibly an attempt to deliver justice, the question as to whether law can guarantee justice or if laws is the only avenue (or even the primary avenue) through which justice is achieved needs to be considered. Because justice is not the sole property of legal discourse this paper attempts to clarify the concept of a treaty (a fundamentally legal construct) outside of the parameters of legal discourse.

In other discursive fields (popular discourses or discourses of the everyday) legal mechanisms of justice, such as a treaty, may be variously understood, on the one hand, as an opportunity for amends to be made, for new beginnings, and on the other hand (from more conservative sections of the population) as a threat to the security of non-Indigenous Australia. These discourses find expression in many forms: in the realms of the anecdotal; in commentary and conversation; in all manner of cultural objects (films and songs, essays, stories, poems, etc): and most noticeably, and significantly, in the news media. It is important to recognise that these popular discourses do not simply accompany the legal dimensions of compacts and contracts but precede, inform and shape the ground from which legislative change can spring forth. Law, bound by the role of the legal interpretive community to visualise change. It is in these descriptions of the societies we (re)create – begin to shift: it is here that the constituting elements of change lie.

(Old Lore, New Law): A Noongar Woman's Perspective on the Treaty Process

Kooraar BEERTWAH –
Kaaralyung BEEDIYAR –
And Wadjella KUDAGINY –

There are some risks associated with taking on the concept of a treaty from a Noongar women's perspective. I respect the diversity of Indigenous peoples in this country and their voices have as much right to appear within these documents as my own. It is my intention to contribute to the treaty debate to ensure that Indigenous knowledges are made visible, especially from the perspective of a Noongar Indigenous woman. The opportunity privileges me to contribute to this debate and I do it with the utmost honour and respect for all Indigenous women and men in this country.

This paper will deal with the proposal of a treaty or treaty processes in relation to three aspects of contemporary Indigenous society. These being:

- Indigenous Women's life experiences and knowledge;

- The potential for legitimising clan based models of internal governance and knowledges; and
- An embassy function as a parallel between two political traditions.

The Past and Future of Land Rights and Native Title

Jenny PRYOR – Commissioner, Aboriginal and Torres Strait Islander Commission.

What I want to talk to you about today is the relevance of developments in Native Title to the current treaty process and also the possible relationship between the treaty process and future directions for Native Title.

Related to the cental theme, I also want to share some thoughts on the increased visibility and empowerment of Indigenous people, which I see as being crucially linked to the developments we've seen occur in the context of Native Title and land rights. To start, I want to briefly take you back to 1979. Just as every action has a reaction, so it was that the genesis of Nuggett Coombs' involvement with the Aboriginal Treaty Committee can be found in the attitude of the federal government to Aboriginal land rights in the Northern Territory.

Native Title, Sovereignty and Treaty – Do They Mix

Glen SHAW – Member of the Treaty Think Tank.

Since the topic of a proposed treaty was firmly placed on the political agenda by the Aboriginal and Torres Strait Islander Commission (ATSIC) Board of Commissioners, Chairperson, Mr. Geoff Clark, there has been much deliberation as to processes and procedures on the development of a treaty between Indigenous peoples and the governments of Australia.

Indigenous people have, since the statement by the Chairperson, been looking at the various scenarios on a possible Treaty as well as studying Treaties between Governments and Indigenous peoples across the world, particularly those negotiated and established in Canada, and we feel that there are lessons to be learned from those processes.

As part of the treaty process there are several factors that need to be considered, and they all relate to the future political direction Indigenous people wish to follow. Up until now the debate has been centred on the premise of equality, when in fact it should be based on equity. As citizens of this country with access to the same benefits as all other citizens, it can easily be argued that we already have equality and any specific domestic policy or legislation which provides specific rights to us can be seen as a "special measure", which provides specific benefits over and above non-Indigenous citizens. When we look at the gross inequity, particularly in the areas of discrimination, fairness (including procedural fairness), impartiality and justice, as they relate to Indigenous peoples and the ability for a free and unfettered ability to exercise our rights.

Indigenous Education and Treaty: Building Indigenous Management Capacity

Lester-Irabinna RIGNEY – is a Narungga man. He is Senior Lecturer in Indigenous Education at Yunggorendi First Nations Centre, Flinders University, Adelaide, Australia.

In the midst of writing this paper our eldest daughter demanded my immediate attention. Dressed in her uniform and with a beautiful smile, it was to be her first day at a white controlled school. As a family we have equipped her with a Narungga education since birth. This education develops qualities and values such as respect for Elders, care for country, love and compassion for others and all things, and a strong sense of pride and respect for Narungga community, culture and family. This education involves marinating the child in her ancient Narungga language, customs and culture, which brings cultural responsibility and obligation. It is equally important for her to develop the skills of dominant education to understand the technical complexities of a globalised world in which we Narungga now live. However, the tendency in dominant white schooling is to educate Narungga children out of a Narungga education. Leadership in building Indigenous management capacity will be essential over the next few decades and academic excellence in the dominant white culture's text is fundamental. However, the magnitude of the barriers still faced by Indigenous Australians in schooling terrifies me and all other parents of Indigenous children. Our children are statistically:

- Are less likely to get a preschool education;
- Are well behind in literacy and numeracy skills development before they leave primary school;
- Have less access to secondary school in the communities in which they live;
- Are less than half as likely to proceed through to year 12;
- Are far less likely to get a job even when they have the same qualifications as others:
- Will earn less income; and
- Experience more grave health problems and have higher mortality rates than other Australians.

Finding the Foundation for a Treaty with the Indigenous Peoples of Australia

Michael Mansell – Chairperson, Aboriginal Provisional Government, Tasmania. Member of the National Treaty Think Tank.

The call for a treaty suggests that the benefits of Native Title and ATSIC, and having the occasional Aboriginal federal politician, are not enough for Aborigines or Torres Straits Islanders. Something more than CDEP, anti-discrimination commissions, or promises (or the lack of them) by governments are called for. The call implies an impatience with the existing political arrangements. No longer, it seems are Indigenous peoples prepared to accept only token social change. Political change is on the agenda. Otherwise why call for a treaty?