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# Reconciliation, Assimilation, and the Indigenous Peoples of Australia

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Reconciliation as a peacemaking paradigm emerged as an innovative response to some of the horrendous mass atrocities and human rights violations that marked the twentieth century. It was to provide an alternative to traditional state diplomacy and realpolitik that would focus on restoring and rebuilding relationships. To that end, reconciliation processes have set themselves the difficult task of 'balancing' and accommodating the often competing notions of truth, justice, vengeance and forgiveness that animate societal responses to atrocities and human rights violations.

In 1991, the Australian government instigated a process of 'reconciliation' between the indigenous peoples and wider society. Yet, as this paper will show, the notion of 'justice' was deemed inappropriate from the start, and the resulting process was framed in an Australian nationalist discourse that placed a definite ceiling on indigenous aspirations. This paper seeks to demonstrate that, far from being a genuine attempt at 'atonement' that is responsive to indigenous aspirations, Official Reconciliation exhibits a subtle, yet pervasive, assimilationist agenda, and consequently the process should be understood as but the latest phase in the colonial project. The paper will conclude by suggesting an alternative approach to 'reconciliation' that addresses the problem of internal colonisation and which more closely reflects indigenous aspirations.

## ***Introduction - From a Treaty to Reconciliation***

Unlike the US, Canada and New Zealand, the colonisation of Australia did not entail any formal settlements, involving dialogue and treaties, between the European invaders and the indigenous people. Throughout the last two hundred years Australia's Aboriginal people have been the victims of appalling injustice and racism that was compounded and legitimised by, among other things, the coloniser's conviction that the Aborigines did not deserve a negotiated settlement, a position that also helped sustain the belief of *terra nullius* (that Australia, before conquest, was an 'empty land').

In the early 1980's, there emerged a concerted campaign for a treaty, spearheaded by the white Australian 'think tank' the Aboriginal Treaty Committee.[1] It 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;
- The right to control their own affairs and to establish their own associations for this purpose.[2]

The primary motivations behind such modern day calls, by the non-indigenous, for a treaty in Australia appeared to be two-fold. In the first instance there seemed to be the desire to right the wrongs of the past and to re-examine fundamental assumptions such as *terra nullius* in light of modern historical and anthropological knowledge.[3] Secondly, a proper settlement was considered necessary to address the *legacy* of past injustice, which seriously tarnishes the relationship between Aboriginal people and wider society and in turn hinders efforts to effectively address present day Aboriginal disadvantage.[4]

Politicians, did not like the 'word' treaty, however, as it implied two sovereign nations, preferring instead the equivocal, more open ended terms, 'compact' or 'agreement'..'[5] With no favourable response forthcoming from the government, the campaign for a treaty gradually faded. The debates around the idea, however, produced a new 'spin' that was instantly more attractive to politicians who were keen to be seen to be addressing the 'issues'. A 1983 Senate Standing Committee report entitled '*Two Hundred Years Later',* dismissed the treaty idea, concluding that societal 'attitudes' lay at the heart of the 'Aboriginal problem'..[6] The 'attitude' theme subsequently became increasingly popular in political speeches that began to emphasise, in vague terms, the importance of education, attitudinal change and *reconciliation*, at the expense of detailing commitments to substantive redress measures, such as those recommended by the Aboriginal Treaty Committee above. This is not to suggest that education and attitudinal change do not have roles to play in redressing injustice, only that their emergence as a policy initiative in political speeches coincided with a shift away from the treaty idea towards a *'reconciliation'* initiative that made no firm commitments to address historic and contemporary injustice.

Despite the 'reconciliation' minister, Robert Tickner, steadfastly asserting 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 to be. As if to emphasise this point, the full 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 Ministers' advisors as excessive and subsequently axed from the final version.[7]

In 1991, the *Council for Aboriginal Reconciliation Act* established a reconciliation process led by a *Council for Aboriginal Reconciliation* (hereafter – 'the Council') that was to last ten years. The official aim was to improve race relations and increase understanding of Aboriginal culture and history, whilst redressing their persistent political and social disadvantage. An examination of key Council texts, however, elucidates a subtle framework that appears harmless and well intentioned, but which ultimately acts as a bar to

genuine and appropriate reconciliation.

## The Rhetoric of Official Reconciliation

### "A United Australia"

The *Council for Aboriginal Reconciliation Act 1991* gradually emerged from the ashes of the campaign for a treaty, however the demands of the treaty movement were far removed from the commitments eventually detailed in the *Act*. The *Act* did not contain a commitment to addressing the injustice of the past with the aid of a legally binding treaty; rather its central emphasis was on the *educational* benefits of *having* a reconciliation process. The only remnant of the treaty idea that appears in the *Act* is the vague notion that the Council, being the co-ordinating body created by the *Act*, should seek to instigate community-wide consultations on the desirability of a *'document or documents of reconciliation'*..[8]

Initially, an entirely indigenous Reconciliation Council was proposed but the eventual format favoured by the Government 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 church.[9] The council primarily had a dual role that involved devising community wide education initiatives, whilst 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 to produce a 'vision statement'. The result reads,

> "A united Australia which respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all."[10]

It is interesting that the vision statement, being the first thing the Council had to produce, did not seek to emphasise the importance of addressing Aboriginal disadvantage and aspirations, as stressed in the preamble of the *Act*. Rather, the Council appeared to want to expand its remit to the impossible and seek to provide 'justice and equity for *all*'. It is unlikely that this wording grew out of some benevolent utopian inspiration; rather, perhaps it was the product of a Council that would have to balance indigenous and non-indigenous interests and thus sought to begin the process with a 'formal equality' slant. Moreover, given that the government blocked the proposed 'and justice' from the Council's name on the grounds that it was 'too strong', a moderate vision statement from a government appointed

Council was to be expected.

The '*united Australia*' theme was to become *the* central theme of Official Reconciliation. Interestingly it was not dissimilar in sentiment to the views espoused by Pauline Hanson and the now infamous ultra right wing 'One Nation' party. Indeed, the 'Social Justice' section of the Council's annual report for 1994 exhibits this overtly nationalist agenda, stating that:

> "Indigenous peoples are central and *integral* to the cultural fabric of *this nation*" and that the government should acknowledge the true place of indigenous peoples *within the nation*.."[11]

Thus, social justice for indigenous peoples appears to be tied to a nationalist framework and as such, places a ceiling on indigenous aspirations. Nationalist rhetoric since the nineteenth century has always defended the 'one nation and one state, in one territory' formula of nationhood. Official Reconciliation, it seems, is no different as it embraces the assumption that the Australian nation is '*one* nation'. Yet, many indigenous people have claimed that they belonged to 'sovereign nations' [12] at the time of invasion, and despite two hundred years of colonialism, continue to do so,[13] whilst others suggest that they belong to a 'unified' Aboriginal nation today.[14] A preoccupation with what does or does not constitute a 'nation' in this context, however, obscures the issue of *consent*, perhaps the most important 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 to that of voluntary immigrant minorities, a fact often ignored by many settler states and academics from the liberal tradition that attempt to combine discussion of indigenous peoples with other minorities.[15] 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."[16]

The initial refusal of British and Australian Governments to consider indigenous communities as distinct political entities, and thus worthy of treaties, is compounded when Official Reconciliation rhetoric fails to adequately address the distinction between minorities and indigenous peoples. Thus, if reconciliation is truly concerned with addressing past injustice 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.[17]

One possible causal explanation of the desire to be 'one nation' through reconciliation is to address what might be considered Australia's national identity deficit.[18] The gradual deterioration of the link with the British colonial headquarters perhaps necessitated a reorientation of Australian national identity that has been aided by the appropriation and

commodification of Aboriginal spirituality. Indeed, in contrast to the pre-1960 era, where settler identity was ostensibly developed in a manner that completely excluded all traces of Aboriginality, in the present we see extensive symbolic use of Aboriginality as an integral part of Australian identity. One only had to watch the opening ceremony of the 2000 Olympics in Sydney to see the extent of the appropriation or visit any of Australia's international airport arrival lounges where a visitor's first steps are frequently taken on carpets patterned with 'Aboriginal' mosaics.

This new breed of nationalism is in evidence in many Council documents. The Key Issues Paper, *Sharing History*, is perhaps the clearest example.

> A shared sense of history has the potential to be an influential agent of reconciliation...By actively sharing Aboriginal and Torres Strait Islander peoples' history and culture, non-indigenous Australians are able to lengthen and strengthen their association with this land. Any immigrant peoples will, for a time, experience a degree of historical discomfort in a 'strange' and 'new' land, and one way of coming to terms with an adopted country is to view the land through the eyes of its indigenous owners. In forging a new identity, the immigrant peoples in Australia have sought to share with, and often appropriate, indigenous symbols, motifs, phrases, and place names -defining Australia's distinctiveness by seeking to share Aboriginal and Torres Strait Islander peoples' culture and history.[19]

It seems that a more accurate title for this strand of Official Reconciliation rhetoric should be 'Appropriating History'. It is not just the Council that calls for the indigenising of settler culture, such sentiments are prevalent amongst many supporters of indigenous rights. Father Frank Brennan, for example, links the nationalist 'one nation' agenda to the desire for a strong national identity. He states that,

> "it would be better for *all* Australians…if we could go into the next millennium committed to the legacy of *"one land, one nation"*.. Our shared commitment to *the* nation would forge a strong *identity* and secure a place for all who belong on this continent".[20]

The unidirectional flow of the 'sharing' of history rhetoric hints at selfish settler motivations. Again, the Council's Key Issue Paper is illuminating when it states:

> The reconciliation process seeks to encourage non-indigenous Australians to deepen and enrich their association with this country by identifying with the ancient Aboriginal and Torres Strait Islander presence in Australia. A common misconception is that Australia is the youngest continent - only 206 years old - whereas in reality it is one of the oldest: both in terms of geology and continuous human history. It is only through indigenous Australians that non-indigenous Australians can claim a long-standing relationship with and deeper understanding of Australia's land and seas, in a way possible to other nations who have occupied their

native soil for thousands of years.[21]

This strategy appears to have a dual function. Firstly, via the full incorporation of indigenous people, it aims to enrich a historically immature settler culture with symbols of Aboriginal spirituality, which highlight their deep cultural and historical connection with the land. Secondly, incorporating Aboriginality into the cultural fabric of the nation inherently weakens Aboriginal claims based on their traditional *'separateness'* from settler culture. Indeed, claims for recognition of sovereignty and meaningful self-determination do not sit at all easily with this element of Official Reconciliation rhetoric, which is more in keeping with the blatant assimilation policies of the pre-1960 era. To compound matters, the incorporation of Aboriginality is asserted in the language of positive rights. In the Council's Annual Report of 1994-5, the *social justice* section states, "indigenous peoples are central and integral to the cultural fabric of this nation. Their place is one of right, not privilege or patronage."[22] Thus, it is indigenous peoples 'right' to be incorporated into the Australian nation.

In addition to the quest for national unity, another illuminating thread of Official Reconciliation was its notion of 'social justice', which appeared to represent its attempt to address historic injustice and its legacy.

Social Justice as Assimilation

During the preliminary cross party discussions on the reconciliation process, Robert Tickner was apparently at pains to stress that there can be 'no reconciliation without justice'.[23] One of his non-negotiable aspirations for the process was that it "address indigenous aspirations, human rights and *social* justice." The distinction between human rights and *social* justice in this context is important as the notion of *social* justice usually articulates, amongst other things, the need to secure citizenship rights, whilst human rights in this context refers to the far more substantial human rights of indigenous peoples, specifically those rights defined by the UN Draft Declaration on the Rights of Indigenous Peoples.

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.[24] 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 the citizenship rights imposed on them by the settler state.[25]

Official Reconciliation's notion of *social* justice, however, attempted to go beyond the standard conception and include *indigenous* rights. The *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." Whilst this goes further than the traditional view 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."[26]

Curiously, this restrictive articulation of 'indigenous rights' makes no mention of perhaps the two most important rights in the UN Draft Declaration, the rights to self-determination (Article 31) and land (Article 26- covering the right to ownership and Articles 27 and 28 that cover restitution and compensation), which would also be accorded them as the "first peoples of Australia".[27] 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".[28]

A point echoed by the late Kevin Gilbert who, in the classic text '*Because a White Man'll never Do It*', stated that "If there is to be a regeneration of blacks, it must come through self-determination, however hesitant the first steps."[29]

Official Reconciliation's emphasis on *social* justice would not be so problematic if it were merely part of an accepted broader notion of justice that sought also to address historic injustice via *appropriate* forms of reparation, restitution and compensation.[30] As Gilbert states,

> "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."[31]

The addition of the word ‘social’ limits the notion of justice to a superficial attempt at addressing present social disadvantage without dealing with its *underlying* structural causes, and without acknowledging the need for appropriate forms of redress for historic injustice and its legacy.

The Council’s attempted solution to structural inequality is to be found in perhaps the two most important ‘*national strategies to advance reconciliation*’ recommended by the Council. The "economic independence" and "redressing of disadvantage" strategies talk in terms of attempting to achieve better outcomes in health, education, employment, housing, law and justice, whilst leaving unaddressed the fact that such areas are almost entirely administered by non-indigenous organizations including State and Territory government departments. Moreover, the economic independence strategy makes no mention of the importance of self-determination and land rights to indigenous well-being. In many ways the strategy not only avoids the issue of land, but is assumptive and inherently assimilationist. Below is an illuminating extract: -

> *National Strategy for Economic Independence* - This strategy recognizes that economic empowerment will not occur through welfare programs. The strategy will achieve its greatest success when it is built on partnership between all sectors. This strategy would include:
>
> - 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.[32]

In focusing on business and the like, rather than land and the right to self-determination, the Council is essentially assisting the continued imposition of an alien vision of the good life that first began in 1770. As Aboriginal leader Ray Jackson 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."[33]

Even though Official Reconciliation’s notion of social justice includes indigenous rights

recognition, given the centrality of land to indigenous culture and the contemporary importance of self-determination, the Council's 'flora and fauna' conception of *indigenous rights*, even if fully realised, would offer 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*, not from 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.[34]

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 colonisation.[35] Indeed, the Council's approach is entirely in keeping with that favoured by the Australian and Canadian courts and governments, the underlying premise being that Aboriginal rights are not to be defined on the basis of the philosophical precepts of the liberal enlightenment, 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.[36]

Official reconciliation's 'social justice' approach was largely embraced by a Howard[37] government that sought to divert attention away from talk of indigenous rights toward, what it termed, a more pressing 'practical' approach that would provide for 'self empowerment'.[38]

***'Practical Reconciliation' and 'Self-Empowerment'***

Around the same time as the Howard government set about 'extinguishing' the land rights granted by the High Court in the historic cases of *Mabo* and *Wik*,[39] it began to advocate a notion of 'practical reconciliation'. Former Senator for Aboriginal Affairs John Herron described this directional 'shift' at the United Nations Working Group on Indigenous Populations, stating that the Australian Government over the past three years had sought to change the direction of indigenous affairs away from welfare dependency but that did not mean any lack of compassion…

> It means 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.[40]

This speech demonstrates the motivations behind this new 'practical' approach, namely the desire to 'go beyond' the ‘catchcry’ of key indigenous aspirations concerning land rights, sovereignty and self-determination.

In addition, the notion of 'practical reconciliation' served to justify the Governments stance on the findings of the ‘Stolen Generations’ National Enquiry.[41] 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.[42] Not surprisingly, Aborigines, in general, consider the stolen generations as one of the most serious issues in their lives and consequently one would expect acknowledgement, apology and reparations to figure in any 'reconciliation' process.[43] Nevertheless, John Howard has persistently refused to give a formal apology on behalf of the government for the shameful acts that were outlined in the National Enquiry. In his speech to the Australian Reconciliation Convention he justified his stance on the apology issue via the new focus on 'practical' measures, stating that,

> "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*."

In the same speech he reinforced Herron's earlier position on Self Determination in his statement to the UN, stating that 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."

He went on to link the inherently assimilationist policy of 'practical reconciliation' with the now familiar notion of 'social' justice, stating that,

> "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."

***Towards 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*..[44]

This indictment of Australian reconciliation, whilst correct in terms of its chronic failure to address the problems faced by Aboriginal communities, is perhaps misguided in terms of the potentialities of reconciliation *as a concept*. In theory, reconciliation, whilst concerned with 'forgiveness' and 'moving on', is also concerned with notions of 'truth' and 'justice'.[45] 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.[46] It is conceded, however, that in *practice* many of the processes have been bound up with, and often subsumed by, religious and political agendas that often assumed the form of a concerted political campaign against popular notions of retributive justice in favour of some form of restitutive justice.[47]

Yet, whilst 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*.. Indeed, the concept may, in some circumstances, require a restriction of retributive justice, to avoid cycles of revenge, but it will be an empty vessel if no restitutive atonement is forthcoming. This is certainly a charge Australian reconciliation would have difficulty defending and, consequently, the concept is seriously out of step with indigenous aspirations.[48] Even though 'moderate' indigenous leaders seldom speak in such terms, 'grass roots' leaders at the community level seem convinced that the ills of their communities will not be resolved by white people.[49]

'Self-determination' in this regard is a key aspiration of many Aboriginal and Torres Strait Islanders and whilst some groups might consider a solution within the confines of the settler state, others, such as the Sovereign Union of Aboriginal Peoples of Australia and the conveners of the Aboriginal Embassy in Canberra, do not recognise the authority of the Australian nation state and aspire to nothing less than recognition of their un-ceded and continuing sovereignty. [50] Whilst, there exists, at least conceptually, a coherent and just solution to the 'sovereignty' challenge, analysis of the language of Australian reconciliation demonstrates that the rhetorical framing of the concept, in terms of the desired outcome, unduly restricts the application of a morally appropriate notion of justice. This problem can be highlighted by looking at three broad 'meanings' of reconciliation *as an outcome* that range from 'thinner' to 'thicker' conceptions…

i. ‘Simple co-existence’, whereby former enemies merely cease hostilities.

ii. ‘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.[51]

iii. The third ‘more robust’ conception is often attributed to the South African and Chilean processes that attempted to reach a *shared comprehensive vision of mutual healing and restoration, and mutual forgiveness.*[52]

In terms of an indigenous/settler state reconciliation process, there are both practical and moral reasons to favour the first conception over the second and third. Since citizenship rights do not do justice to the unique position of indigenous people, and as such are inherently assimilationist in nature, the second conception would be problematic, as it tends to suggest a citizenship-based solution. The third conception’s emphasis on a *shared comprehensive vision*, I would suggest, is closely related to the ‘one nation’-‘single moral vision’ approach of Australian reconciliation and, as already discussed, is unacceptable as it is not valid to assume that Australia comprises ‘one nation’ or that indigenous people would want to be considered as ‘part of’ the settler state.[53] The problem of indigenous ‘nationhood’ and sovereignty can not be ignored in any sincere attempt to correct the historic injustice of colonisation and its legacy, not just because many communities and organisations from the ‘victim group’, such as those mentioned above, 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.[54] To legitimise the exercise of settler sovereignty in Australia the government has to gain the consent of indigenous people. To do this it will be necessary to hold negotiations with indigenous peoples that bear little resemblance to those that have gone before. Indeed, the requirement would be that such negotiations are held ‘nation’ to ‘nation’, with indigenous peoples being treated 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 emerging indigenous academics, political scientist James Tully suggests that this approach would constitute a genuine resolution of the problem of internal colonisation so long as it was 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.[55]

John Paul Lederach has suggested that reconciliation, to be successful, requires 'innovation'..[56] I would suggest, in the context of indigenous-settler state relations, that this 'innovation' involve moving beyond the assumption of legitimate settler state sovereignty and embracing the legitimising nation-to-nation negotiation approach that Tully suggests, as the assumption of legitimate settler sovereignty merely serves to reinforce the problems created by internal colonisation.[57]

In contrast to Official reconciliation, Tully's approach is sensitive to the fact that indigenous peoples were 'independent political entities' at the time of colonisation, a status that has not been legitimately surrendered, and consequently the continuing imposition of settler state sovereignty is illegitimate. Moreover, Tully's approach replaces the false assumption that jurisdiction must be exclusive with two (indigenous) principles: free and equal peoples on the same continent can mutually recognise the autonomy or sovereignty of each other in certain spheres and share jurisdictions in others without incorporation or subordination.[58] Essentially, this form of *treaty federalism* recognises 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.[59]

## ***Conclusion***

Official Reconciliation emerged out of the campaign for a treaty to right the wrongs of the past, but once up and running it was to use language far removed from that of the treaty movement. Far from providing the basis for negotiating a 'settlement' with indigenous peoples on equal terms, the process was framed in restrictive nationalist language from the outset. Despite the minister responsible, Robert Tickner's, assertion at the outset, that 'there can be no reconciliation without justice', Official Reconciliation soon became little more than an assimilationist nation building exercise. The Council's own rhetoric and the Howard government's 'practical' policy emphasis places a ceiling on indigenous aspirations, offering only assimilationist initiatives primarily framed in the language of citizenship rights. In short, the process seeks to incorporate all that settler society sees as valuable in indigenous culture whilst offering no redress for the situation that, according to the preamble of the act, necessitated the process in the first place. As Colin Tatz points out, this must be the best possible 'bargain' for settler society.[60]

The pursuit of the 'bargain' with the new body, Reconciliation Australia (founded in 2001 to continue the work of the Council), which is now supporting the Howard Government's latest insult to Aboriginal peoples, the construction of Reconciliation Place, a monument to be erected to celebrate Australia's reconciliation 'achievement'.. The plan is to replace the unsightly Aboriginal Tent Embassy with a non-protest, tourist friendly site, complete with a coffee shop and sanitised 'gas burning' fire in place of the traditional 'sacred fire' that has been burning as a continuous symbol of protest for many years. As Darren Bloomfield, an Embassy spokesperson, informed me last year, "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."[61]

The ills of the Australian process are not the fault of the 400,000[62] people that walked across Sydney Harbour Bridge in support of the process in May 2000, nor is it the fault of some 10,000 people that regularly attended their local reconciliation meetings across the country,[63] but equally it is not the fault of reconciliation *as a concept* as such. In theory, reconciliation, in the Australian context, should attempt to achieve a simple cessation of hostilities, as opposed to the arbitrary imposition of a 'single unifying moral vision' implicit in a 'one nation' strategy, via appropriate forms of redress, which fully acknowledge and redress the harms that flow from internal colonisation. To this end, Tully offers a possible conceptual solution to the problem of internal colonisation that could provide the foundation for a more appropriate and genuine reconciliation process. A reconciliation initiative based on Tully's settler state legitimacy formula, however, would require the 'innovation' that Lederach speaks of, in order to move beyond the entrenched colonial assertion of legitimate sovereignty, and seek the consent of the colonised via nation-to-nation negotiation. Yet, this innovation is unlikely to come from a Howard government that wants to 'move beyond' the 'distraction' of indigenous rights, preferring to continue its 'practical' assimilation policy. As Ray Jackson stated, the "Federal Government continues to insult our Elders and Leaders. They continue to malign our true history. They continue to steal the land. All with impunity. Yet they talk of Reconciliation."[64]

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[1] The modern day call for a treaty did in fact originate with indigenous groups – the National Aboriginal Conference, the National Aboriginal Government and Kevin Gilbert's Treaty 88 campaign groups. However, it was the more 'respectable' white think tank, the Aboriginal Treaty Committee, which gained the most press coverage.

[2] Stuart Harris, *It's Coming Yet* Aboriginal Treaty Committee, Canberra, (1979), p12

[3] Such sentiments were expressed not only in academic circles, for instance see Tatz, C, Reflections on the Politics of Remembering and Forgetting *Centre for Comparative Genocide Studies*, Macquarie University, North Ryde, NSW (1995) p.16. But also in white 'think tanks' such as the Aboriginal Treaty Committee in the late 1970's, see Harris *ibid*..

[4] This 'social justice' rationale was frequently cited by the minister for Aboriginal Affairs at the outset of the Australian Reconciliation process. See Tickner, R, *Taking a Stand: Land Rights to Reconciliation*, Allen and Unwin, (2001), p29

[5] Senate Standing Committee on Constitutional and Legal Affairs, *Two Hundred Years Later* AGPS, Canberra, (1983), p50. The terms 'compact' or 'agreement' were more attractive as they did not commit the government to any pre-negotiation assumptions, such as having to deal with indigenous groups as equal sovereign nations, the implication of the 'treaty' idea.

[6] Senate Standing Committee on Constitutional and Legal Affairs, *Two Hundred Years Later* AGPS, Canberra, (1983), p50.

[7] See Tickner, R *Taking a Stand: Land Rights to Reconciliation* Allen and Unwin (2001), p29.

[8] The resulting document that emerged in May 2000 had no legal force and was not handed to the Prime Minister as a symbolic gesture, as originally planned by the Council,

due to various incidents that demonstrated a lack of good faith on the part of the government.

[9] For a full list of the original members see http://www.austlii.edu.au/au/other/IndigLRes/car/2000/16/appendices/02.htm

[10] *Council For Aboriginal Reconciliation Annual Report*, 1994-5, Canberra, Australian Government Publishing Service, (1995).

[11] *Council For Aboriginal Reconciliation Annual Report*, 1994-5, Canberra, Australian Government Publishing Service, (1995), p.5

[12] For a discussion on Aboriginal 'nationhood' and the misconception that Aboriginal groups were not 'distinct political entities' at the time of conquest, see Reynolds, H, *Aboriginal Sovereignty*, Allen and Unwin, (1996).

[13] For example, but for the imposition of settler jurisdiction, the Yolnu people of Arnhem land would be able to govern themselves according to traditional laws that have survived to this day. See Trudgen, R, *Why Warriors Lie Down and Die* Aboriginal Resource and Development Services Inc, Darwin, (2000).

[14] See for example Gilbert, K, *Aboriginal Sovereignty: Justice, The Law and Land* 3rd Edition (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. See also Kelly, L, 'Reconciliation and the Implications for a Sovereign Aboriginal Nation' *Aboriginal Law Bulletin*, Vol 3: 61, April (1993), p11

[15] A prime example of such can be found in Kymlicka, W, *Liberalism, Community and Culture*, Clarendon Press, Oxford, (1991), where he equates "the special status" of aboriginal peoples with that of French-Canadians (p156) and when he states 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". p157.

[16] Robertson, G *Crimes Against Humanity: The struggle for Global Justice* Allen Lane, Penguin Press (1999) p138.

[17] For a good discussion of this and related issues see Moran, A, 'Aboriginal Reconciliation: Transformations in Settler Nationalism' *Melbourne Journal of Politics Special Reconciliation Issue,* University of Melbourne Press, (1999).

[18] For a defence of this argument see Moran *Ibid*.

[19] Clark, I, D, "Sharing History: a sense for all Australians of a shared ownership of their history" *Council For Aboriginal Reconciliation Key Issue Paper No.4*, Canberra, Australian Government Publishing Service, (1994), p.1. I am indebted to Anthony Moran's very insightful MJP paper (*op cit*) for highlighting this point.

[20] Brennan, F, *One Land One Nation: Mabo: Towards 2001*, Queensland University Press (1995), pXV, (emphasis added)

[21] Sharing History, *op cit* p.28.

[22] Council for Aboriginal Reconciliation *Annual Report 1994-5* 'Social Justice' section, Canberra, Australian Government Publishing Service (1995).

[23] Tickner, R, *op cit*, p29.

[24] Turner, B, S, "Outline of a Theory of Human Rights", *Sociology*, Vol.27, No.3 August (1993).

[25] For an overview and discussion of these rights see, Pritchard, S, *Indigenous Peoples, the United Nations and Human Rights*, The Federation Press, (1998).

[26] Council, Annual Report, Chairperson's introduction, *op cit.*

[27] Over the years indigenous rights to land and self-determination were occasionally mentioned in various Council documents, but they never assumed a central place within the notion of *social* justice.

[28] Personal communication June 2000.

[29] Gilbert, K *op cit*, p163.

[30] In Professor Colin Tatz's terms, white Australia should "give back the giveable - such as available land, restore the restorable - such as culture and language centres. And then when we have given back the giveable and restored the restorable, we can give money as reparation and restitution. This will not revive the dead or relieve past pain, but it will do some real good in the present and future – excerpt from Colin Tatz's speech, Reconciliation Week, Sydney, at http://vicnet.net.au/~aar/welcome.htm

The land rights recognised thus far under the *Native Title Act 1993* (NTA) have failed to provide indigenous people with a 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, are 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 criticised, on no less than 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.

[31] *Ibid*, p161

[32] See Council for Aboriginal Reconciliation *National Strategies for the Advancement of Reconciliation*, available online at www.austlii.edu.au/au/other/car

[33] Jackson, R, 'Socialist Worker- Special Reconciliation Meeting', Sydney, June 2000.

[34] This grounding of indigenous rights is similar to that favoured by the Supreme Court of Canada in the 1996 Van der Peet judgement. For a discussion of this point see Tully, *op cit*, p46.

[35] Tully, J, citing the central thesis of Asch, in Havemann *op cit*.

[36] For a discussion of this conception see, Asch, M, "From Calder to Van der Peet: Aboriginal Rights and Canadian Law, 1973-96", in Havemann, P, (Ed) *Indigenous Peoples Rights in Australia, Canada and New Zealand* Oxford University Press (1999), p436.

[37] Liberal leader John Howard came to power in 1996, thereby inheriting the reconciliation process from Paul Keating. Almost immediately Howard demonstrated his lack of desire for a genuine 'reconciliation' by cutting the Aboriginal affairs budget by AUS$ 400 million.

[38] The notion of 'Self-Empowerment' represents the governments 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 publicly at the United Nations Working Group on Indigenous Populations, Palais De Nations, 2000.

[39] In *Mabo and Others V Queensland (No 2)* (1992) 175 CLR 1 F C 92/014, the Court held that the Crown extinguished native title in a piecemeal fashion over many years as the wave of settlement washed over the continent However, native title had survived on the Murray Islands as the Meriam people maintained their connection with the land and the Queensland government had done nothing between 1879 and 1992 to extinguish it. It held that the Meriam people were "entitled as against the whole world to possession, occupation, use and enjoyment of (most of) the lands of the Murray Islands. In *Wik Peoples V Queensland (1996)* 141 ALR 129, 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 before the answer can be known.

[40] Taken from an address by Aboriginal and Torres Strait Islander Affairs Minister John Herron at the 17th Session of the Working Group of Indigenous Populations (WGIP) on 29 July 1999 from: UNWGIP Palais de Nations, Geneva (emphasis added).

[41] *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, generally known as the “stolen children” report. Available from the Human Rights and Equal Opportunity Commission, GPO Box 5218, Sydney 2001, and online from the Commission's website at http://www.hreoc.gov.au

[42]The policies and practices of removal were in effect throughout this century until the early 1970s. There are many Indigenous people, now in their late twenties and early thirties, who were removed from their families under these policies. Although the official policies and practices of removal have been abandoned, the *Bringing Them Home* report reveals that the past resonates today in Indigenous individuals, families and communities.

[43]Tatz C, *Genocide in Australia* AIATSIS research discussion paper No 8, GPO box 553 Canberra ACT 2601 p43.

[44] Tatz, C, “The Dark Side of Sport”, in Grattan, M, (Ed) *Essays on Australian Reconciliation* Black Inc. Melbourne, (2000), p77.

[45] See the wealth of material on this, which includes practical assessments and theoretical pieces such as Minow, M, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Beacon Press, Boston 1998), Roteberg, I, & Thompson, D, (Eds) *Truth V Justice: The Morality of Truth Commissions* Princeton University Press (2000), Allen, J, “Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission,” *University of Toronto Law Journal* XLIX (1999), Lederach, J.P *Building Peace, Sustainable Reconciliation in Divided Societies*, United States Institute of Peace Press Washington DC (1999).

[46] Adapted from a conceptualisation provided by John Paul Lederach. I emphasise the word *paradigm* as this is a normative theoretical position and not a reflection of past practice. I deviated from Lederach’s conceptualisation with the inclusion of 'vengeance' and the omission of ‘mercy’, as I felt that his conceptualisation was unduly restricted to the elements identified in Psalm 85 and felt that a more accurate exposition of human responses to ‘harm’ is provided by Minow, M, *op cit* p. 29.

[47] The South African Truth and Reconciliation Commission is a prime example of this approach. For a discussion of this approach see Minow *op cit* and Wilson, R, *The Politics of Truth and reconciliation in South Africa: Legitimising the Post Apartheid State*, Cambridge University Press, (2001).

[48] This is an opinion that I have formed as a result of fieldwork interviews and participant observation at reconciliation events.

[49] This view has been articulated by many Aboriginal leaders over the years, including

Kevin Gilbert, in his book *Because a White Man'll Never Do It*, Angus and Robertson Third Edition (1994), and by members of the Sovereign Union of Aboriginal Peoples of Australia, and is the central conclusion reached by Trudgen, R, in his book *Why Warriors Lie Down and Die* Aboriginal Resource and Development Services Inc, Darwin, (2000), although he sees a solution ultimately lying *within* the Australian State as currently defined.

[50] This is key to both groups' demands for justice. An opinion conveyed during fieldwork interviews conducted July 2001.

[51] Crocker, D, A, *Truth Commissions, Transitional Justice, and Civil Society* in Roteberg, R, I & Thompson, D, (Eds) *Truth V Justice: The Morality of Truth Commissions* Princeton University Press (2000) p. 108.

[52] See Shriver, D, *An Ethic for Enemies : Forgiveness in Politics*, New York, (1995), cited in *ibid*.

[53] It is also unclear what settler society should *forgive* Aboriginal people for - their existence perhaps?

[54] A foundational principle of international law - see the *International Court of Justice Advisory Opinion Concerning the Western Sahara* (1975)

[55] Tully, J, 'The Struggles of Indigenous Peoples for and of Freedom' in Duncan Iverson, Paul Patton and Will Sanders (Eds) *Political Theory and the Rights of Indigenous Peoples* Cambridge University Press, (2000), p53.

[56] Lederach, J, P, *Building Peace, Sustainable Reconciliation in Divided Societies*, United States Institute of Peace Press ,Washington DC, (1999), p 24.

[57] The relevant views of Australian politicians are evidenced above. For examples of the assumption prevalent in the works of academics, see Kymlicka, W, *Liberalism Community and Culture*, Clarendon Press, Oxford, (1991), and Kukathas, C 'Are there any Cultural Rights?' *Political Theory*, Vol 20 No 1 February Sage Publications, Inc, (1992)

[58] Tully, *Ibid*.

[59] *Ibid* p54.

[60] Tatz, C, "The Reconciliation Bargain" *The Reconciliation Issue, Melbourne Journal of Politics* Vol 25 (2000), p2.

[61] Interview with respondent 10th June 2001.

[62] Official Government calculations put the number nearer 200,000, but estimates by the transport authorities and participant organisations suggested a figure at least double the official estimate. As a participant myself, that witnessed a very strong continuous flow of people over a period of seven hours, I would have to concur with a figure much nearer the un-official estimates.

[63]Council for Aboriginal Reconciliation, *Weaving the Threads - Progress Towards Reconciliation*, second term report to parliament 1995-97, press release Dec 1997.

[64] Jackson, R, *Socialist Worker Special 'Reconciliation' Meeting*, Sydney, 9th June 2000.