



# ‘Now more than ever’

## How Aboriginal nationalism defeats reconciliation

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## **Now More Than Ever is the theme of Reconciliation Week 2024. How long Reconciliation can stagger on under the weight of its contradictor, Aboriginal nationalism, is a serious question.**

During the Voice referendum campaign, Megan Davis, a leading ‘Yes’ campaigner, delivered the annual Mabo Oration in Townsville. Little noticed at the time, the speech contained an extraordinary repudiation of Australia’s decades-long ‘reconciliation’ process.

Davis dismissed the term as a ‘fad of the 1990s’, suggesting it was pressed into service to distract from Prime Minister Bob Hawke’s broken promise to negotiate a treaty with Aborigines<sup>1</sup>. She then revealed that ‘in the [2016–17] Uluru dialogues, our old people kept saying, unsolicited and organically, that reconciliation was the wrong process, that reconciliation was the wrong word.’<sup>2</sup>

In 2017, Davis and her Referendum Council colleagues suppressed any mention of such discontent in their 5,000-word *Uluru Statement from the Heart* and 180-page final report to the Prime Minister. Indeed, far from acknowledging

that reconciliation might have run its course, the final report explicitly recommended a new ‘expression of national unity and reconciliation’ in the form of a symbolic ‘Declaration of Recognition’.<sup>3</sup>

The Voice referendum can be seen as an end product of the formal reconciliation process that began with the passage of the *Council for Aboriginal Reconciliation Act* (Cth) in 1991. The Council’s successor, Reconciliation Australia, responded to last year’s 60.1 per cent ‘No’ vote and failed to carry any state, with the slogan ‘Now more than ever’.<sup>4</sup> Yet surely so emphatic a defeat of what advocates called ‘an act of reconciliation’<sup>5</sup> demands an objective assessment of the continued viability of that process.

This paper is an attempt to begin that assessment. It will argue that the referendum foundered on the fundamental contradiction that had lain, unacknowledged, at the heart of the reconciliation project for 32 years.

Reconciliation, as classically understood, is a process of building national unity. Whatever its risks or benefits, the Voice belonged to an altogether different tradition: Aboriginal nationalism. And while present purposes do not have to inquire into the justice of the Aboriginal nationalist cause, it must be stressed that it damages reconciliation.

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# 1. Aboriginal nationalism

In his general study of nationalism, Eric Hobsbawm remarked that regional and sectional interest groups in conflict with the state will, 'if they possibly can, put on the national costume'. Over the past half-century, many of the demands made on behalf of Aborigines have been dressed up in the language of statecraft: nations, treaties, embassies, sovereignty, and self-determination.

According to the Uluru Statement, Aboriginal 'tribes' were 'the first sovereign nations of the Australian continent'.<sup>6</sup>

In fact, Aboriginal 'nations' were initially the invention of early settlers, reflecting what Norman Tindale called a 'compulsion to try and find major units in Australia of the kinds familiar to the people of Europe'.<sup>7</sup> Something like that compulsion keeps alive the myth of pre-contact Aboriginal nationhood even today.

Views on the correct legal process for colonising occupied but uncultivated territory evolved over centuries of European expansion into the New World.<sup>8</sup>

Though British authorities typically preferred to sign them in the interests of peaceful relations, in colonial New South Wales, there were no national or tribal leaders with whom to negotiate.<sup>9</sup>

Instead, most Aborigines lived in hordes of around 25 individuals made up of the menfolk of a single clan, their wives and children. The clan held rights to land and other resources.

Several neighbouring hordes would together form a linguistic community of perhaps 450 members.<sup>10</sup> While anthropologists sometimes call these larger groups 'tribes', there were no common political institutions:<sup>11</sup> the senior man in each family acknowledged 'no higher political authority' than himself.<sup>12</sup>

The size of a cohesive linguistic community was limited to the number of people who could meet in one place—that is, be fed simultaneously in a single mutually accessible location, given technological and environmental constraints.<sup>13</sup> The tribe was therefore defined, to use Ernest Renan's phrase, by 'the configuration of the earth'.<sup>14</sup>

On the other hand, the nation is a human community that appeared first in late 18th- and early 19th-century Europe.<sup>15</sup> It addressed a strategic requirement of the dawning industrial age—internally peaceful, linguistically homogenous societies of unprecedented scale—and was made

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possible by its technology.<sup>16</sup> Ernest Gellner observed that the nations formed in response to industrialisation were not ancient polities reawakened, but entirely new units made 'suitable for the conditions now prevailing'.<sup>17</sup>

To meet industrial labour demands, the national learns a language unlike that of his ancestors. It extends a measure of in-group trust and loyalty to a mass of people larger than he can ever hope to know personally.

Therefore, the concept of the nation stands in explicit opposition to 'the various localisms of region, dialect, custom and clan'<sup>18</sup> that preceded it. Existing beyond the natural human scale, the nation is by necessity an 'artificial product'<sup>19</sup>, 'imagined community'<sup>20</sup> or 'ideological artefact'<sup>21</sup>.

A nation can only be constituted based on its members 'living and active corporate will'.<sup>22</sup> This goes beyond in-group preference or mere pride: truly national consciousness encompasses intolerance of rule by members of other groups<sup>23</sup>, 'supreme loyalty' to the group<sup>24</sup>, and ultimately 'the sentiment of the sacrifices one has made and of those one is yet prepared to make'.<sup>25</sup> '[T]he large majority of the people defined by whatever criteria must consider that putative nation their paramount form of identity, 'the source of all creative cultural energy and of economic well-being'.<sup>26</sup>

Inspired by the *Western Sahara* case and its meditations on *terra nullius*<sup>27</sup>, Paul Coe, a lawyer and activist, had begun promoting Aboriginal sovereignty sometime in mid-1977.<sup>28</sup> But the first authoritative declaration of the Aboriginal nation as such occurred only in 1979, when the elected National Aboriginal Conference (NAC) formally sought a treaty on its behalf.<sup>29</sup>

## 2. The *Makarrata* agenda

*Makarrata* is a Yolŋu term for a traditional ritual of public, retributive violence used in the hopes of settling disputes between members of different clans.<sup>30</sup> The essential characteristic of *makarrata* is that the offender or his kin are made to experience pain, loss and humiliation.<sup>31</sup> Neighbouring clans had extensive interaction with one another and shared language and customs. They did not have common tribal institutions to adjudicate disputes. Surprise reprisal raids were a typical response to attacks, but these ran the risk of perpetuating a cycle of revenge violence. *Makarrata* offered the possibility of concluding a given dispute through a planned and regulated battle.<sup>32</sup>

The NAC adopted *makarrata* as a synonym for ‘treaty’ in 1979 and it has since been disingenuously glossed as ‘a coming together after a struggle’.<sup>33</sup> Not only was the ritual inherently violent, but the hoped-for ‘coming together’ was not one of unity in resuming a common citizenship under shared institutions. As such, *makarrata* is inimical to a spirit of reconciliation.

The term does, however, neatly encapsulate the enduring agenda of Aboriginal nationalism. The present circumstances of the intergroup

relationship are considered untenable and require renegotiation, resulting in the ‘offender’, in this case, non-Aboriginal Australians collectively, enduring some form of pain and loss. Aboriginal claims having thus been satisfied, friendly relations might prevail after that, but with the two groups retaining their distinct political and legal identity.

These sentiments were first organised into a comprehensive programme following consultations by the NAC between 1979 and 1982. The proposed treaty would have punished the settler community by exacting payment of a certain proportion of gross national product to Aborigines for 195 years and conferred a distinct political identity through ‘self-Government in each respective tribal territory’. These territories would then be free to implement aspects of customary law.<sup>34</sup>

Table 1 (overleaf) shows that these demands have persisted unchanged, most recently finding expression in the Uluru Statement.

Table 1: Makarrata themes in Aboriginal advocacy, 1980–2017

	Pain and Loss	Legal and political distinctness
<b>'Makarrata Report'<sup>35</sup></b> 1980	'The MAKARRATA seeks COMPENSATION IN CASH: To recover our losses which are not recoverable in kind, paid at the annual rate of 1–1½ per cent of the Gross National Product ...'	'[T]he Aboriginal people enter this agreement and negotiate with the Australian Government as an equal party.'  'The MAKARRATA seeks ... that the tribal laws shall ... remain.'
<b>NAC Makarrata demands<sup>36</sup></b> 1981	'The payment of 5% of the Gross National Product per annum for a period of 195 years'	'The development of self-Government in each respective tribal territory'  'The recognition of Aboriginal customary law in those territories which deem it necessary.'
<b>Barunga Statement</b> 1988	Seeks recognition of Aboriginal right 'to compensation for the loss of use of our lands'	'We, the Indigenous owners and occupiers of Australia, call on the Australian Government and people to recognise our rights to self-determination'  'A national elected Aboriginal and Islander organisation to oversee Aboriginal and Islander affairs; A police and justice system which recognises our customary laws'
<b>'Social Justice Package' submission<sup>37</sup></b> 1995	Reports 'the issue regularly arose of a general claim for "compensation" or "reparations"', with suggestions including 'a fixed percentage of gross domestic product' or transferring stakes in Qantas and Telecom to 'indigenous ownership'	'appropriate recognition and status for customary law within the present legal framework'  'the reservation of [Aboriginal seats] in the national, State and Territory and municipal political structures.'  '[S]ignificant approval was expressed for ... a specific "Bill of Rights" for indigenous people.'
<b>Uluru Statement<sup>38</sup></b> 2017	'[A] Treaty could include reparations, [and] a financial settlement (such as seeking a percentage of GDP)'	'We call for the establishment of a First Nations Voice enshrined in the Constitution.'  'Treaty was seen as a pathway to recognition of sovereignty ... Treaty would be the vehicle to achieve self-determination, autonomy and self-government.'  '[A] Treaty could include recognition of authority and customary law'

### 3. Origins of reconciliation

Civil war, state terrorism, and other forms of collective trauma occurring within the borders of a single state present unique challenges. Peace cannot be achieved through an agreement by belligerents to withdraw behind mutually recognised borders. Instead, former combatants and their civilian sympathisers on each side must resume life as neighbours and fellow citizens, peaceably sharing resources and institutions.

This is the essence of reconciliation in the political sense: a process of coming back together, with the strong implication that the groups involved are ‘things that should be together’.<sup>39</sup>

Drawing on the Pauline texts of the New Testament,<sup>40</sup> John Paul II made reconciliation a particular focus for Catholics during his 1978–2005 pontificate. His 1984 exhortation *Reconciliation and Penance* addressed the ‘deep and painful divisions’ within humanity and a desire ‘to mend the divisions, to heal the wounds and to re-establish at all levels an essential unity.’<sup>41</sup> Crucially, ‘there can be no union among people without an internal change in each individual.’<sup>42</sup>

Inspired by such teachings, reconciliation became a major theme in conflict studies in the closing

decades of the 20th century. Long ago, John Stuart Mill called on mixed communities ‘to make a virtue of necessity, and reconcile themselves to living together under equal rights and laws’<sup>43</sup> —as Louis Kriesberg puts it, in a state of ‘mutually acceptable coexistence.’<sup>44</sup>

At the time of CARA’s passage in 1991, the term reconciliation had previously been employed in Zimbabwe (1980), Argentina and Uruguay (1986), Honduras and Nicaragua (1987), Lebanon (1989) and Chile (1990). The basis for reconciliation was generally a document or understanding between the leaders of the contending groups.

However, the success or failure of reconciliation was largely contingent on a spirit of compromise and accommodation on both sides of the social divide, underscored by a palpable fear of a return to tyranny and violence.<sup>45</sup>

The Australia of 1990 was not a post-conflict society, nor was it in the process of democratic transition. In each of the seven international examples of a formal reconciliation process, the ultimate vision was to cement a sense of a single, newly inclusive national identity under common national institutions.

Australia’s process, initiated in the context of social order and stable institutions, lacked any imperative to commit to such goals.

## 4. Treaty or compact, 1979–1990

While welcoming the NAC's *makarrata* initiative as 'something of very great value', Aboriginal Affairs Minister Fred Chaney made clear that it would not entertain the idea of 'more than one nation within Australia', a prerequisite Conference members were happy to concede at the time.<sup>46</sup> On this basis, the Government would 'willingly join any discussions as the proposal moves forward.'<sup>47</sup> In September 1981, the Senate tasked its Standing Committee on Constitutional and Legal Affairs with assessing the legal feasibility of 'a compact or *Makarrata* between the Commonwealth Government and Aboriginal Australians.'<sup>48</sup>

Yet the NAC's willingness to compromise, which had brought the government to the negotiating table, may not have reflected the majority Aboriginal opinion then.<sup>49</sup> Influential Aboriginal nationalist voices, including Pat Dodson, Kevin Gilbert, the Tasmanian Aboriginal Centre and the land councils, refused to countenance what they saw as a diminution of their sovereignty.<sup>50</sup> While the NAC hardened its negotiating position throughout 1979–81<sup>51</sup>, this only served to demonstrate how far apart the various camps remained.

Labor returned to office in 1983 on a platform of 'national reconciliation', though the term was not then specific to Aboriginal affairs.<sup>52</sup> In December, Aboriginal Affairs Minister Clyde Holding articulated the government's policy in greater detail. Though he called for 'a true reconciliation between Aboriginal and white Australians', he conceded that it would take years to establish the 'principles' thereof, and decades to achieve.<sup>53</sup>

Holding made no reference to a treaty, despite the Standing Committee having reported favourably on the feasibility of a 'compact' or *makarrata* two months previously.<sup>54</sup> He did, however, emphasise continuity with his predecessor on the issue of sovereignty:

**I have made it clear to Aboriginal people that neither the grant of land rights nor the recognition of Aboriginal prior occupation and ownership in any way puts Australian sovereignty in question. These matters are not in question.<sup>55</sup>**

In 1987, Labor turned its attention to recognising 'over 40,000 years of Aboriginal history' as part of preparations for the upcoming bicentennial celebrations.<sup>56</sup> Hawke and his new Aboriginal Affairs Minister, Gerry Hand, began to canvas

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what they tentatively called a ‘compact of understanding’ in this context.<sup>57</sup> In reviving the old treaty debate, Labor may have believed it could neutralise Aboriginal nationalism through engagement and co-option. The view that the government needed to make up for its ‘breach of faith’ in abandoning its land rights promises cannot be discounted.<sup>58</sup>

Some accounts from this period suggest that the Coalition’s ‘implacable opposition’ to the term treaty limited the government’s options.<sup>59</sup> In fact, both sides of politics have consistently rejected the Aboriginal sovereignty the term implies.

The Coalition’s position had remained unchanged since Prime Minister McMahon rejected the Larrakia petition in 1971. As John Howard said in 1988, ‘We repudiate the notion that a nation can make a treaty with itself.’<sup>60</sup>

Labor leaders shared the Coalition’s reluctance ‘to concede any inherent authority and status to the Aboriginal nation’. Despite this, Whitlam, Hawke and Keating all adopted the rhetoric of Aboriginal nationalism when speaking to receptive audiences.<sup>61</sup>

Hawke and Hand tried a range of names, including *makarrata*, agreement, compact, contract, document, instrument, settlement, treaty and ‘some sort of understanding’. ‘I don’t think we

should be hung up on words,’ Hawke said.<sup>62</sup> But, as the government later made clear, he ‘did not have in mind a treaty in the international sense but a general statement ... that would clarify how people should be thinking’ about Aboriginal affairs.<sup>63</sup>

However, the position of key Aboriginal leaders remained the same. The heads of the two major Northern Territory land councils presented Hawke with the Barunga Statement, which broadly affirmed the NAC’s 1981 treaty demands. Politically, this was a non-starter, yet Hawke told Barunga Festival attendees that a treaty would be negotiated between the Aboriginal people and the government on behalf of all the people of Australia, with consultation to begin before the end of the year.<sup>64</sup>

As Hand’s successor as minister later conceded, ‘there was no government strategy of any kind in place that could conceivably have led to a treaty’.<sup>65</sup>

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## 5. Towards reconciliation, 1988–1991

The term reconciliation has entered widespread use for two reasons. First, in October 1987, 14 Australian churches began lobbying on Aboriginal affairs ahead of the bicentenary. In particular, they wanted MPs to pass a bipartisan resolution as the first order of business when the new Parliament House opened.

They circulated a draft which called for the Commonwealth to ‘further promote reconciliation’ by negotiating a ‘compact’. At the Coalition’s insistence, the reference to a compact was removed, leaving reconciliation as the focus.<sup>66</sup>

That term particularly impressed Liberal Aboriginal Affairs spokesman Chris Miles. Minister Hand did not mention reconciliation in his December policy statement Foundations for the Future, but Miles used it several times in response:

**[I]t is interesting to note that there is no focus on reconciliation. It focuses on the past and then talks largely in terms of compensation.**

**... There are deep hurts, and there needs to be reconciliation. Before we start to address the needs of the Aboriginal community, which are indeed large, I believe that we should at least attempt a reconciliation at the hearts and minds level.<sup>67</sup>**

In January, church leaders pressed their case for a reconciliation resolution to coincide with the opening of the new Parliament House. Their joint statement called for land rights and political representation, though it did not mention a treaty.<sup>68</sup>

Second, whatever Hawke had meant by his Barunga promise, by 1990, it had failed to stimulate the needed compromises on either side. Following the election, discussions fell to a new minister, Robert Tickner.

Tickner conceived of reconciliation with three objectives: ‘to educate non-indigenous Australians’ about Aboriginal history, culture and disadvantage; ‘some formal document or agreement’; and building a ‘political movement’ to support ‘indigenous aspirations, human rights and social justice.’<sup>69</sup> The government would play ‘an educative and leadership role’ in seeking broad ‘endorsement of an instrument of reconciliation’.<sup>70</sup>

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This is different from suggesting that Labor was moving toward recognising Aboriginal sovereignty. The following year, the Department of the Prime Minister and Cabinet made clear that ‘successive Labor Ministers for Aboriginal Affairs had rejected the idea of a separate Aboriginal sovereign nation.’<sup>71</sup> As Gary Johns and Ron Brunton observe, ‘no Australian Government would ever accept the breach of sovereignty that a treaty implies.’<sup>72</sup>

Tickner issued a discussion paper in 1991. This set out the critical elements of what would become CARA and his hopes for ‘an instrument of reconciliation’ by 2001.<sup>73</sup> The timeframe was justified because further consultation with Aborigines was required to foster community support.<sup>74</sup>

Those ‘who opposed a treaty, or had misgivings about it’ could participate in the discussion, and even ‘such sensitive matters as sovereignty, land rights, customary law, and compensation’ could be discussed without preconditions.<sup>75</sup>

After consulting with the Opposition, State and territory leaders, the new Aboriginal and Torres Strait Islander Commission and civil society groups, Tickner was able to secure an agreement on CARA. While the Council would be tasked with improving race relations generally, it would also serve as a non-political forum for discussing the treaty issue.<sup>76</sup>

The meaning of reconciliation was deliberately vague. Angela Pratt has observed how various politicians employed it in fundamentally different ways, even in the CARA debate.<sup>77</sup> By selecting an umbrella term the Coalition had already shown some preference for, Labor could secure the appearance of consensus.

The Act was a win-win for all but the most extreme strands of opinion. Aboriginal nationalists, recognising that the community opposition remained strong, could have welcomed the opportunity to promote their agenda through the reconciliation process. Treaty opponents may have taken heart from the assurance that a decision on any such document had been pushed back by almost a decade.

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## 6. The Council for Aboriginal Reconciliation, 1991–2000

Like the government that created it, the Council attempted to walk both sides of the street on questions of Aboriginal nationhood. The members framed their vision in ‘a united Australia’ and defined reconciliation as a means by which ‘[d]isharmony and division can be overcome.’<sup>78</sup> Yet the Council also carefully cultivated Aboriginal nationalism.

This can be seen in Going Forward’s 1995 submission on a planned ‘social justice package’. This document launched the constitutional recognition debate, setting the stage for the 2023 referendum.<sup>79</sup>

Going Forward does not explicitly recommend Aboriginal nationalist initiatives such as reparations or recognising customary law. Instead, the submission notes that many Aborigines support them and urges ‘that these issues should not be removed from the agenda.’<sup>80</sup> Opposition to a treaty is delegitimised as a case of an unidentified ‘some’ choosing to perceive mere

‘questions’ as ‘threats to the fabric of Australia’s national structures’. Perhaps treaty opponents had fallen into error given the ‘[h]ighly emotive issues and difficult technical legal matters’ involved?<sup>81</sup>

Despite the treaty being a political non-starter,<sup>82</sup> the CAR sought to keep it on the agenda, assuring readers that ‘[b]y acknowledging such aspirations and accepting rights to their advocacy, the wider community would not necessarily be agreeing to the propositions so advance.’

This alone could ‘provide a basis for better understanding and negotiation on a wide range of issues’ and even ‘remove some of the more extreme passions from the debate’. Going Forward even warns that ‘how matters are resolved within the existing national structures will determine to a fair degree the adherence to views of separate indigenous sovereignty.’<sup>83</sup>

When the CAR ended in 2000, it used its final report to propose an *Australian Declaration of Reconciliation*. This document attempted to balance the contending visions of *makarrata* and national unity, pleasing no one.

The lack of a treaty is acknowledged, but the document does not resemble one; recognition of ‘continuing customary laws’ is conditional on Western human rights norms; self-determination is qualified as a right only exercisable ‘within the

life of the nation'.<sup>84</sup> The Council was particularly anxious that outstanding Aboriginal nationalist demands not be forgotten. Its report identified 'impediment[s] to achieving reconciliation' as the lack of agreement on, among other things,

**the recognition of Aboriginal and Torres Strait Islander customary law; a comprehensive agreements process for the settlement of native title and other land claims; regional autonomy; and constitutional recognition.**<sup>85</sup>

It even drafted legislation for a formal 'negotiation and agreement process' and triennial conventions to address the 'unfinished business' that remained.<sup>86</sup> In effect, the CAR left the Aboriginal affairs debate in almost precisely the same place it had been in 1991.

## 7. Conclusion

The Hawke Government's motivations for establishing an Aboriginal reconciliation process remain debatable. However, the divergent meanings ascribed to reconciliation even in 1991 make it clear that the consensus of that year was more apparent than real.

Reflecting this fundamental disagreement, the CAR spent nine years simultaneously calling for national unity and promoting the *makarrata* agenda of Aboriginal nationalism. One of its earliest recommendations, a referendum on constitutional recognition, was finally fulfilled on 14 October 2023.

The most significant act of reconciliation in Australian history remains the 1967 referendum. Royal Commissioner Elliot Johnston later observed that this vote 'demonstrated overwhelming acceptance for the view that Aboriginal people should be part of the national polity'.<sup>87</sup>

Given a choice between that vision of national unity and the Aboriginal nationalist demands of Barunga and Uluru, the Australian people made their preference clear. 'Now more than ever' is a wilfully blinkered response.

- 1 This paper is concerned with reconciliation as it relates to Aborigines and Australians generally. The Torres Strait Islanders' geographical, racial, cultural, historical and institutional distinctness make it impossible for present purposes to generalise with respect to all Indigenous Australians.
  - 2 Davis, 'Mabo Oration', 9.
  - 3 Referendum Council, 'Final Report of the Referendum Council'. The degree to which the concerns of dialogue participants were shaped and filtered to suit pre-determined outcomes has been noted previously. See Vanstone, 'Anger Will Drive down "yes" Vote'; Stella, 'Public Is Short-Shifted by the Long Statement'.
  - 4 Reconciliation Australia, 'National Reconciliation Week'.
  - 5 Australian Electoral Commission, 'Your Official Yes/No Referendum Pamphlet', 10.
  - 6 Referendum Council, 'Uluru Statement from the Heart', 1, 7.
  - 7 Tindale, *Aboriginal Tribes of Australia: Their Terrain, Environmental Controls, Distribution, Limits, and Proper Names*, 33, 156.
  - 8 Evatt, 'The Acquisition of Territory in Australia and New Zealand'.
  - 9 Evatt, 16–19; Coles, 'The International Significance of a Treaty', 32; Senate Standing Committee on Constitutional and Legal Affairs, 'Two Hundred Years Later: Report on the Feasibility of a Compact or "Makarrata" between the Commonwealth and Aboriginal People', para. 3.17.
  - 10 Tindale, *Aboriginal Tribes of Australia: Their Terrain, Environmental Controls, Distribution, Limits, and Proper Names*, 15–31.
  - 11 Tindale, 9–11, 30–31. In rare circumstances, these groups could include as many as 2,000 people.
  - 12 Sharp, 'People without Politics: The Australian Yir Yoront', 7; Radcliffe-Brown, 'The Social Organization of Australian Tribes', 37; Warner, *A Black Civilization: A Study of an Australian Tribe*, 35; Berndt and Berndt, *The World of the First Australians: Aboriginal Traditional Life Past and Present*.
  - 13 Tindale, *Aboriginal Tribes of Australia: Their Terrain, Environmental Controls, Distribution, Limits, and Proper Names*, 30–31.
  - 14 Renan, 'What Is a Nation?', 260.
  - 15 Kedourie, *Nationalism*, 9.
  - 16 Renan, 'What Is a Nation?', 248, 262; Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality*, 17–18; Gellner, *Nations and Nationalism*, 39–40.
  - 17 Gellner, *Nations and Nationalism*, 49.
  - 18 Smith, *Nationalism and Modernism: A Critical Survey of Recent Theories of Nations and Nationalism*, 1.
  - 19 Kohn, *The Idea of Nationalism: A Study in Its Origins and Background*, 8.
  - 20 Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, 14–15.
  - 21 Gellner, *Nations and Nationalism*, 47.
  - 22 Kohn, *The Idea of Nationalism: A Study in Its Origins and Background*, 13–15; see also Renan, 'What Is a Nation?', 257; Mill, *Utilitarianism, Liberty, and Representative Government*, 360.
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- 23 Gellner, *Nations and Nationalism*, 1; see also Smith, *Theories of Nationalism*, 164.
- 24 Kohn, *The Idea of Nationalism: A Study in Its Origins and Background*, 16.
- 25 Renan, 'What Is a Nation?', 261. Hobsbawm lists among the criteria for nationhood 'a proven capacity for conquest.' Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality*, 38.
- 26 Kohn, *The Idea of Nationalism: A Study in Its Origins and Background*, 16.
- 27 Senate Standing Committee on Constitutional and Legal Affairs, 'Two Hundred Years Later: Report on the Feasibility of a Compact or "Makarrata" between the Commonwealth and Aboriginal People', para. 3.26. A passage from one of the additional opinions in this case was later incorporated into the *Mabo* judgment and the Uluru Statement. Stella, 'Mobutu, Authenticité and the Dark Heart of the Uluru Statement'.
- 28 *Coe v. Commonwealth* [1979] 53 ALJR 403, 407 (Gibbs J); Turnbull, 'Lawyers Are a Law unto Themselves'; 'Aborigines Claim All Australia'.
- 29 Quoted in Senate Standing Committee on Constitutional and Legal Affairs, 'Two Hundred Years Later: Report on the Feasibility of a Compact or "Makarrata" between the Commonwealth and Aboriginal People', para. 2.14; see also Hagan et al., 'Makarrata Report', 3. The basis for Coe's entitlement to act on behalf of Aborigines collectively had been obscure. *Coe v. Commonwealth* [1979] 53 ALJR 403, 409 (Gibbs J).
- 30 A detailed account of the ritual can be found in Warner, *A Black Civilization: A Study of an Australian Tribe*, 163–65.
- 31 Hiatt, 'Treaty, Compact, Makarrata ...?', 142–43; Warner, *A Black Civilization: A Study of an Australian Tribe*, 35; Williams, *Two Laws: Managing Disputes in a Contemporary Aboriginal Community*, 97.
- 32 Berndt, 'Law and Order in Aboriginal Australia', 196–97.
- 33 Hagan et al., 'Makarrata Report', 7; Referendum Council, 'Final Report', i.
- 34 Quoted in Wright, *We Call for a Treaty*, 324–27; Senate Standing Committee on Constitutional and Legal Affairs, 'Two Hundred Years Later: Report on the Feasibility of a Compact or "Makarrata" between the Commonwealth and Aboriginal People', 177.
- 35 Hagan et al., 'Makarrata Report'. Original emphasis.
- 36 Senate Standing Committee on Constitutional and Legal Affairs, 'Two Hundred Years Later: Report on the Feasibility of a Compact or "Makarrata" between the Commonwealth and Aboriginal People', 177–78.
- 37 Council for Aboriginal Reconciliation, 'Going Forward: Social Justice for the First Australians', 41, 43, 46, 82.
- 38 Referendum Council, 'Uluru Statement from the Heart', 1, 18–19. Also quoted in Referendum Council, 'Final Report', i, 31.
- 39 Daly and Sarkin, *Reconciliation in Divided Societies: Finding Common Ground*, 4–5.
- 40 Kim, '2 Cor. 5:11-21 and the Origin of Paul's Concept of "Reconciliation"'; Schreier, *Reconciliation: Mission and Ministry in a Changing Social Order*; Volf, 'The Social Meaning of Reconciliation'.
- 41 John Paul II, *Reconciliation and Penance*, 4–9.
- 42 John Paul II, 13–14.
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- 43 Mill, *Utilitarianism, Liberty, and Representative Government*, 363.
- 44 Kriesberg, 'Reconciliation: Aspects, Growth and Sequences', 1–2.
- 45 Daly and Sarkin, *Reconciliation in Divided Societies: Finding Common Ground*, 5.
- 46 Commonwealth, *Parliamentary Debates*, Senate, 19 November 1979, 2427 (Fred Chaney, Minister for Aboriginal Affairs).
- 47 Chaney, 'Aboriginal Initiatives Welcomed'.
- 48 Senate Standing Committee on Constitutional and Legal Affairs, 'Two Hundred Years Later: Report on the Feasibility of a Compact or "Makarrata" between the Commonwealth and Aboriginal People', para. 1.1.
- 49 Fenley, 'The National Aboriginal Conference and the Makarrata: Sovereignty and Treaty Discussions, 1979–1981', 381–86; Department of the Prime Minister and Cabinet, 'Annual Report 1990–91', 147–48.
- 50 Senate Standing Committee on Constitutional and Legal Affairs, 'Two Hundred Years Later: Report on the Feasibility of a Compact or "Makarrata" between the Commonwealth and Aboriginal People', paras 3.18–9; Fenley, 'The National Aboriginal Conference and the Makarrata: Sovereignty and Treaty Discussions, 1979–1981', 373; Rowse, *Obliged to Be Difficult: Nugget Coombs' Legacy in Indigenous Affairs*, 180–85.
- 51 Senate Standing Committee on Constitutional and Legal Affairs, 'Two Hundred Years Later: Report on the Feasibility of a Compact or "Makarrata" between the Commonwealth and Aboriginal People', appendix 3; Hagan et al., 'Makarrata Report'.
- 52 Tickner, *Taking a Stand: Land Rights to Reconciliation*, 28; Pratt, 'Practising Reconciliation? The Politics of Reconciliation in the Australian Parliament, 1991–2000', 4–5.
- 53 Commonwealth, *Parliamentary Debates*, House of Representatives, 8 December 1983, 3487–8 (Clyde Holding, Minister for Aboriginal Affairs).
- 54 Senate Standing Committee on Constitutional and Legal Affairs, 'Two Hundred Years Later: Report on the Feasibility of a Compact or "Makarrata" between the Commonwealth and Aboriginal People', xii.
- 55 Commonwealth, *Parliamentary Debates*, House of Representatives, 8 December 1983, 3489 (Clyde Holding, Minister for Aboriginal Affairs). Emphasis added.
- 56 Commonwealth, *Parliamentary Debates*, Senate, 14 September 1987, 6, 10 (Governor-General).
- 57 Quoted in Pratt, 'Practising Reconciliation? The Politics of Reconciliation in the Australian Parliament, 1991–2000', 11; Commonwealth, *Parliamentary Debates*, House of Representatives, 10 December 1987, 3154 (Gerry Hand, Minister for Aboriginal Affairs).
- 58 Brennan, 'Land Rights and Broken Promises'.
- 59 Tickner, *Taking a Stand: Land Rights to Reconciliation*, 28; Brennan, 'Waiting for the Resolution', 243–44.
- 60 Pitty, 'The Political Aspects of Creating a Treaty', 51–52; Brennan, 'Waiting for the Resolution', 243.
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- 73 Tickner, 'Aboriginal Reconciliation: A Discussion Paper'.
- 74 Tickner.
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- 76 *Council for Aboriginal Reconciliation Act 1991* (Cth), s. 6(1)(g).
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- 78 Council for Aboriginal Reconciliation, 'Addressing the Key Issues for Reconciliation', v.
- 79 Council for Aboriginal Reconciliation, 'Going Forward: Social Justice for the First Australians', 35–38.
- 80 Council for Aboriginal Reconciliation, 47–8, 82–3.
- 81 Council for Aboriginal Reconciliation, 39–41.
- 82 Research from the ANU's 'Rights in Australia' project suggested that 43 per cent of Australians supported a treaty and fewer than six per cent supported indigenous self-government. Brennan, 'Key Issue Paper No. 7: Agreeing on a Document', 12.
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