Unfinished Business! The Myth That The Settler Government Has Lawful Transnational Jurisprudence Sovereign Authority

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Abstract

As a First Nations person belonging to the Bulluk-Willam people of the Woiwurrung nation from the Coranderrk Aboriginal Station, Wadawurrung in Geelong, and Monaro peoples in Cooma, I'm a duty-bound to educate not only the First Nations peoples, but the wider community of the 60,000 plus years history of the continent now known as Australia. The former British Empire and successive settler governments failed to recognise the truth, the whole truth, and nothing but the truth of the colonisation of Australia, its unlawfulness and the injustices that had been created. For the benefit of the reader, I have chosen to use the term "First Nations peoples" rather than "Indigenous people and Aboriginal and Torres Strait Islander people".

I argue that First Nations peoples had lawful transnational sovereign authority, which included being the holders of citizenship rights and having a system of jurisprudence self-governance where they had entered into legally binding treaties and land rights agreements prior to the arrival of Lieutenant James Cook on 29 April 1770 (de Costa, 2006; Diamond, 1997; Kenny, 2008; Presland, 1994; Trudgen, 2000). The *Act of Settlement* 1700 (UK) denounced the monarch's lawful right to be a sovereign ruler over citizens, which means it was also applicable to their vice-regal representative. I argue that same lawful sovereign authority had been given to each person from each language belonging to the First Nations peoples residing on the continent of Australia and its surrounding islands. Even the first convicts and "free settlers" held lawful sovereign rights and not their monarch.

The *Law of Nations* under European law (de Vattel, 1844) concluded that the First Nations peoples had lawful sovereignty, a civil society, and a political system of independent self-governance. However, the unlawful acquisition of Australia was to provide both an international trading base for the United Kingdom after the end of the American Civil War and

a convict outpost (Blainey, 1966; Dallas, 1978; Frost, 2011, 2013; Hawkesworth, 1774). Thus, an extinguishing of the lawful determinations of transnational jurisprudence sovereign authority (B. McKenna & Wardle, 2019) validated a self-governing colony of Australia.

The extinguishment of the First Nations peoples' lawful transnational jurisprudence sovereign authority continued when Australia became a federated nation with its United Kingdom Constitution, *An Act to Constitute the Commonwealth of Australia* (UK). Yet, it was, and still remains, a *quasi*-system of governance (Quick & Garran, 1902).

However, after the end of the First World War when Australia joined the League of Nations in 1920, all levels of the parliamentary systems, the Constitution and the judiciary became null and void (G. Butler, 1925). The *Mabo v. Queensland* (*No. 2*) HCA 23; 175 CLR 1 (3 June 1992) decision refuted the myth that the continent, now known as of Australia, was previously *terra nullius*, a land belonging to no one. Since the 1980s, federal governments, via a system of defensive nationalism and popular sovereignty (de Costa, 2006), had gifted themselves an unlawful sovereignty and nation-state independence (B. McKenna & Wardle, 2019).

Finally, since 26 January 1788, Australia has had an ongoing independent sovereign nation-state identity crisis and has been suffering from internal and external haemorrhaging. Appendix A details the first action needed by going outside all domestic parliaments and courts to the Government Legal Department in London to rectify the unlawful system of governance, judiciary, and regal representatives. This was first suggested by John Newfong in 1972 at the Aboriginal Tent Embassy (Newfong, 1972). The second action lies in Appendix B, the *Sovereign Australia Constitution Act* (Aus).

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I then sourced a new supervisory team in the School of Arts with Dr Beth Edmondson becoming my chief supervisor and Dr Threasa Meads the associate supervisor. The change in supervisory team commenced in May 2017, which was within the first 12 months of the masters candidature. It was the same allowable time frame to submit a Candidature for PhD. However, at one point during my candidature with Dr Edmondson and Dr Meads, the submission of change of supervision forms took eight months to be finalised. During this eight-month period, those signed forms had been submitted on three occasions. In January 2018, I was informed that the Candidature to PhD had been refused as my application had not been submitted within the first 12-months' time frame; however, it had been but, due to administrative errors, the application had been misplaced. Therefore, I had to continue with a masters research project, which was due to be submitted in January 2018. Owing to various misfortunes and challenges, I continued this research as a masters thesis.

In June 2019, I had another change of supervisory team, with Professor Erik Eklund and Dr Dan Tout becoming my supervisors. The previous supervisory team had been fantastic and had aided me in my own growth and development. The most recent supervisory team of Prof Eklund and Dr Tout gradually assisted me in the shaping of my research statement/question. Their astute advice during supervisory meetings provided me with the growth and development required to shape the six chapters of this thesis.

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Declaration

This is to certify that

A. the thesis comprises only my original work, except were indicated

B. due acknowledgement has been made in the text to all other material used.

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Introduction

As a First Nations person, I consider the claims of lawful sovereignty over this land to be spurious. The act of claiming such authority is an act of colonial arrogance. In this thesis, I demonstrate that the legal instruments of conquest and control were flawed and invalid. I also show that sovereignty was never ceded, and that real sovereignty was, and still is, held and exercised by First Nations peoples. I state that when imperial sovereignty was claimed it was done so unjustly and illegally. The key argument is that the British Empire's claim of *terra nullius* denied the First Nations peoples their lawful transnational jurisprudence sovereign authority. Subsequent chapters build more detail and evidence into this initial survey or overview of the argument.

Research Design

Although the research design of this thesis was purely theoretical, it involved an analysis of primary sources that included constitutions, legislation, legal opinions and texts of treaties made or proposed. Secondary sources ranged across multiple disciplines that included history, legal theory, political science, First Nations peoples studies, and anthropology. The results from the historical evidence illustrate a number of claims and arguments. Those claims and arguments are a reflection of the thesis title – Unfinished Business! The Myth that the Settler Government has Lawful Transnational Jurisprudence Sovereign Authority.

First Nations Methodologies

A First Nations person's perspective in discussing the methodologies comes from a decolonised standpoint noted by Linda Tuhiwai Smith (1999) in her book *Decolonizing Methodologies*. The reasoning held by William Blackstone (1765) that inheritance of sovereignty for the First Nations and Peoples in Australia, and other First Nations peoples

world-wide, was not a concept accepted by the Judaeo-Christian beliefs (L. Smith, 1999). However, that was inconsistent with *The Law of Nations* by Emerich de Vattel (1758/1844).

The methodologies of this research deconstruct colonialism, as well as First Nations peoples' communities, cultures, languages, and social practices. The sum of these may be positioned in the bays of marginalisation, yet they have developed into openings of resistance and hope (L. Smith, 1999). I have applied a First Nations person researcher's view to create a new contemporary critical First Nations scholarship inside the Western academic sphere (Rigney, 2001). Furthermore, I want to introduce a First Nations pedagogical teaching standpoint that would prevent the slippage of "truth telling" inside the modern world of Western academia (Nakata et al., 2012). I have applied a decolonised theoretic equation that explains the cultural and political integrity required in contemporary Western academia (Rigney, 2006). This research project notes as a total sum the survival of colonialism; the histories of colonisation; the stories both local and global; and the past and present impacts of colonisation.

Terminology Used and Title of Thesis

For the reader, I have used terms such as *terra nullius*, *quasi*, *modus operandi*, *ultra vires*, *usurping*, *quid pro quo*, *jurisprudence*, and *complicitous*. The precise meanings of these terms is explained out throughout the thesis. In addition, I shall provide lawful determinations to the word "sovereignty". The title of the thesis has been changed during its progression. When editing this thesis, my supervisors suggested I read *A Higher Authority*: *Indigenous Transnationalism and Australia* by Ravi de Costa (2006). After reading it, I changed the thesis title to its current iteration: Unfinished Business! The Myth that the Settler Government has Lawful Transnational Jurisprudence Sovereign Authority.

In addition, I have applied numerous spellings to language groups belonging to First Nations peoples. The reason for this was that different researchers spelt the name differently of the same language group. For example, Ian Clark(1995) spells Wathaurong as Watha Wurrung in his book, *Scars in the Landscape: A Register of Massacre Sites in Western Victoria, 1803–1859*. Charles Manning Hope Clark (1973) spells Watha Wurrung the same as Ian Clark. However, the Victorian Aboriginal Corporation for Languages (2016) spells Watha Wurrung as Wadawurrung and Woiwurrung for Wurundjeri. I have spelt *Gunai Kurnai* as *Ganai Kurnai*, which accords with Colin Thomas's (2008) Masters by Research project: *Reviving History of Ganai Families and Resounding Ganai Language Through the Creative Arts for Future Generations*. I have written *Cumeroogunga* as cited by Bain Attwood (2003) and as *Cumeragunja* as cited by Gary Foley (2003).

Cultural and Political Integrity Determinations for the Use of Colonial Government Terminology

As a First Nations person academic, I believe I am duty bound to break down "the wall" of colonialism determination as to what constitutes a colonial government. Additionally, I provide a First Nations academic critique of contemporary Western scholarship (Rigney, 2001) as a form of pedagogical teaching as well as a means of preventing the slippage of truth telling in Western academia and enlightening the Australian population (Nakata et al., 2001; 2012). A colonial government is a government that does not have lawful transnational jurisprudence sovereign authority.

For example, when Batman's Treaty was being negotiated with the two First Nations language groups in the Port Phillip District, the Colony of New South Wales Government had jurisdiction of what is now the state of Victoria. Governor Richard Bourke was the British Empire's royal monarch representative at the time. However, as a result of the *Act of Settlement* 1700 (UK), the monarch relinquished their lawful right to be a sovereign ruler of

subjects/citizens (Quick & Garran, 1902). Under the *Demise of the Crown Act* 1702 (UK), the future monarch was appointed by the United Kingdom Parliament. Also, a future monarch could only reside in the United Kingdom of Great Britain and Ireland. More to the point, at the time of Lieutenant James Cook's arrival, the Eora Nation had possession of lawful sovereignty in accordance with Emerich de Vattel's (1758/1844) *The Law of Nations*. A government that had independent status would have possession of lawful sovereignty and would not be under the authority of a foreign power. I argue that a vast majority of the entire Australian population believes that the federal government presides over an independent sovereign nation. Section 8 in the Preamble of An Act to Constitute the Commonwealth of Australia 1900 (UK) states that Australia is a self-governing colony. Thus, I have used the term "Colony of Australia Government".

First Nations Peoples' Lawful Transnational Jurisprudence Sovereign Authority

I have used the term *transnational* as a caveat that explains political and cultural integrity and to educate Western scholarship (Nakata et al., 2012; Rigney, 2006, 2011). Global transnational higher sovereign authority has been known for some time, yet it has been failed by many settler colonial governments and the later Colony of Australia Government (Pritchard, 1997). In applying this to a contemporary context, to deconstruct the history of colonisation (Goodall, 1996; M. McKenna, 2018) and to prevent a slippage into a modernised curriculum (Nakata et al., 2012), the Yolŋu peoples from the Northern Territory had transnational trade agreements with the Macassans of northern Indonesia going back to the early 1400s, long before Lieutenant James Cook's arrival (Trudgen, 2000). The Kulin nation had lawful ownership of the stone axe quarry in Mt William and had lawful national trade agreements as far as New South Wales and South Australia (Diamond, 1997; Kenny, 2008; Presland, 1994).

I have applied a decolonised application (Nakata et al., 2012; Rigney, 2001) to the word "jurisprudence" (a system of legal norms and values) used in the Westminster parliamentary system and what is the current situation in "Australian jurisprudence". As a First Nations researcher, I have done this to embed cultural and political integrity (Rigney, 2006) into what a typical Westminster system notion of jurisprudence incorporates. Henceforth, the context to which I have applied the word jurisprudence is to refine the First Nations peoples' knowledge of lore systems. More so, I have applied a First Nations jurisprudence (peoples' knowledge of lore systems) that was lawful underneath inherited British Law in the pre-colonisation and post-colonisation periods.

I have also applied a First Nations academic integrity standpoint regarding the usage of two Latin terms: *modus operandi* and *usurp*. I have used *modus operandi*, a Latin term meaning "method of operation", to describe the colonisation of Australia by the United Kingdom Government. The wording in Lieutenant Cook's diaries states that the land was inhabited and not *terra nullius*, a Latin term meaning "land belong to no one". Yet I argue later that the United Kingdom Government's acquisition of the continent now known as Australia for the establishment of a penal system to which prisoners from the United Kingdom's overcrowded jails were transported was superficial. Furthermore, the United Kingdom Government *usurped* the legal position of the determination of *terra nullius*. *Usurp* means to take illegally as per the United Kingdom's claim of *terra nullius* and by force noted later in Chapter 3. Overall, I have selected seven sovereignty wars, which are in a chronological order but not connected to a singular First Nations language group. One of those is the Ganai Kurnai massacres that occurred in Gippsland. As I am researching on the land belonging to the Braiakaulung nation in Churchill, Gippsland, I believe I should include Ganai Kurnai's story. The Colony of Australian Government has failed to recognise these wars because they didn't involve the

Australian Army (Hayman-Reber, 2018); at the time of the wars it was a national army that had been inherited from the United Kingdom.

Self-governance and lawful jurisprudence were in existence for a millennium, with each language belonging to the First Nations peoples in accordance with de Vattel's, (1844) *Laws of Nations*. In 1758, 12 years prior to Lieutenant Cook's arrival, de Vattel wrote the *Law of Nations,* but it was not published until 1844. He said, "a land base where a Nation inhabits, regardless of if a Nation located to it as a body, or *whether the families scattered over the territory came together* to create a civil society, constitutes a national settlement, in as so much as, the Nation has a private and exclusive right". I have argued that lawful sovereignty is directly connected to lawful jurisprudence and self-governance. The 38 clans based in Victoria would have had lawful sovereign jurisprudence for the past 60,000 plus years. These 38 clans, who are the possessors of lawful sovereign jurisprudence, are also the possessors of the lawful entitlement of land ownership and self-governance (Ivison et al., 2000).

Western scholarship has a legal interpretation of sovereignty, which, from an international perspective, is a political body that is acknowledged under international law as having national and international sovereignty over a designated area of land (Scruton, 1982). As indicated by his diary entries, Lieutenant Cook acknowledged that after having had contact with the Eora Nation peoples located on their real estate, he considered them to be the local residents (Project Gutenberg Australia, 1893). No language group belonging to the First Nations peoples on the continent of Australia, or its islands surrendered their sovereignty upon the arrival of Lieutenant Cook on 29 April 1770 (K. Butler et al., 1995). The late Kevin Gilbert (2015) concurred with the same evidence. Furthermore, the Colony of Australia only had possession of *quasi*-governance (Simpson, 1968). This was supported by Quick and Garran (1902). I further argue that quasi-governance does not provide autonomous lawful sovereignty.

I have already stated that Australia was and remains a self-governing colony of the United Kingdom.

A nation that holds lawful sovereignty is permitted to enter lawful binding treaty negotiations as sovereignty remains the essential principle permitting treaty negotiations (Scruton, 1982). Angela Pratt (2003) agreed with Scruton (1982). Evidence collected has shown that at least 300 years prior to the arrival of Lieutenant Cook, the Yolŋu peoples from the Northern Territory had held treaty negotiations with the Macassans of northern Indonesia (Trudgen, 2000).

Notwithstanding, sovereignty provides a lawful entitlement to land ownership and self-governance. Each language group was the holder of its own self-governance, economies and trade, and practised its own system of customary lore. This would be consistent with the arguments presented by Ivison et al. (2000) and Scruton (1982). Additionally, lawful sovereign owners held the legal means to enter into lawful binding treaty negotiations (Scruton, 1982). Additionally, I have used the term “imprisoned” for treason of sovereignty using a previous Westminster law term of treason. I have applied that term to what occurred after the arrival of Lieutenant Cook by the United Kingdom Government, its colonial governments in Australia, and the United Kingdom monarch.

The truth of the matter remains that First Nations peoples held ultimate lawful jurisprudence sovereign authority, which has eluded most non-First Nation people and the Colony of Australia’s government’s mindset. Sievwright (1842) confirmed pre-colonisation food hunting and gathering; teaching children to provide for themselves; health and ceremony initiations of pubescent-aged males; food collection practices; food collection types, locals, and preparation methods used; and food consumption eaten per day. The food bowl was known by the land, which formed the boundaries to tribal territory (Sievwright, 1842). More so, each

language group had a system of lawful self-governance that replicated the true definition of democratic rule by the people (Simpson, 1968). This evidence supports my argument that each language group that belonged to the First Nations peoples has possession of lawful self-governance because it had possession of lawful sovereignty.

I argue that Sievwright (1842) supported the evidence that prior to colonisation, a system of self-governance (Christie, 1979) and economics (Butlin, 1993) were in existence before Cook's arrival in 1770. Sovereign rights, land lore (law) and property rights, customary practices, and protecting the environment and eco-systems had been under the auspice of the First Nations peoples at that time. In the pre-1770 period, the First Nations peoples had possession of the land and were astute business managers of their economies and their customary systems of lore as well as being self-governing. They also had processes where their leaders were elected (C. Clark, 1973; I. Clark, 1995; Massola, 1971). First Nations peoples had lawful possession of treaty and trade negotiations both nationally and internationally long before Cook's arrival (Marks, 2018).

Pre-1770 Applications of *Terra Nullius*

The claiming of the south-east coast of Australia as *terra nullius* was based on the application noted by Blackstone (1765) that the continent, later referred to as Australia, was either uninhabited or inhabited by peoples deemed to be of a primitive nature whose customs were not equal as a civilised race. The myth of *terra nullius* was further perpetuated by the perceptions of the first colonisers of Australia. William Pascoe Crook and other nineteenth-century European missionaries stated that Aboriginal societies lived an unintelligent lifestyle, had no cutlery skills, and led a hand-to-mouth existence (Crook, 1803).

Not surprisingly, the first colonisers were part of a world-wide movement of Christianity to force their practices on First Nations peoples as the latter were seen as pagans

(McAlister, 1984). As a result, they created missions and slavery (McAlister, 1984). The Catholic Church was a key stakeholder that overwhelmingly sponsored the industry of discovery and conquest, whereby it enforced its Christian beliefs on First Nations peoples (McAlister, 1984). I argue that the Catholic disgracefully ignored the lawful standpoints of sovereignty. Furthermore, the *Act of Settlement* 1700 (UK), a United Kingdom legislative instrument, removed the monarch's lawful sovereign right to rule over its subjects/citizens.

Royal Monarch Has No Sovereign Authority

I argue that the *Act of Settlement* 1700 (UK; Quick & Garran1902) provided lawful sovereignty to the First Nations peoples, whereby those same sovereign rights that were in accordance with British parliamentary law had been transferred to each language group belonging to the First Nations peoples living in Australia and its surrounding islands (Institute of Constitutional Education and Research, 1999; Vol. 1). Disturbingly, the *Act of Settlement 1700* (UK) had failed to be applied before Lieutenant Cook's arrival as did later de Vattel's (1758/1844) *Laws of Nations*.

Coinciding with the *Act of Settlement* 1700 (UK) the *Demise of the Crown Act* 1702 (UK), provided the United Kingdom Parliament with the authority to approve the incumbent monarch. It has been demonstrated that each ruling monarch, commencing in 1461 with King Edward IV, has been an illegitimate heir to the Crown (T. Robinson, 2004), which meant that Queen Victoria's Royal Assent to the United Kingdom Constitution was null and void. In addition, Queen Elizabeth II has never been the lawful monarch because she is a German descendant from Princess Sophia, Electress of Hanover (Institute of Constitutional Education and Research, 1999; Vol. 2). Furthermore, *the Demise of the Crown Act* 1702 (UK) gave the United Kingdom Parliament the sole authority to approve who the future monarch would be.

The Queen of Australia is also unlawful as the government of the day was acting *ultra vires* (Winterton, 1993).

Royal Monarch's Instructions to Lieutenant James Cook

In 1768, prior to Lieutenant James Cook's arrival in Australia on 29 April 1770, he received three instructions from the British Admiralty, in the name of King George III, regarding the continent of Australia. If the continent of Australia was uninhabited, then he could claim possession on behalf of the British Empire. If the land was inhabited, he would have to seek permission from the Eora Nation peoples to share some of their land by purchasing it; he could not steal their land. If the land was inhabited, then after a successful conquest, he would have to have accept the rights of the Eora Nation peoples (K. Butler et al., 1995). As the monarch had no lawful foundation to provide Lieutenant Cook with instructions, the British Imperial Government, in turn, could ignore the fact that the Eora Nation peoples held lawful sovereign rights to their real estate and system of self-governance.

British Empire Ignores the Sovereign Citizenship Rights of the Eora Nation Peoples

I have applied a caveat to the term "sovereignty wars" to mean "frontier wars". Although these wars were of an internal nature, I ague that they were, in fact, violent confrontations to steal the lawful sovereignty of the First Nations peoples. Additionally, the use of the term sovereignty wars was to embed into Western scholarship a First Nations academic's determination of what occurred when foreign "newcomers" arrived on the continent and the surrounding islands now known as Australia. Although in the history of colonisation there had been numerous sovereignty wars, in Chapter 5 I have carefully selected seven sovereignty wars. As I am undertaking my research on the Braiakaulung Nations land, one of five language groups belonging to the Ganai Kurnai, I selected the Ganai Kurnai massacres in Gippsland.

Lieutenant Cook acknowledged that the Eora Nation peoples held possession of their real estate (Project Gutenberg Australia, 1893). Second, as per King George III's instructions to Lieutenant Cook, as Cook had been unsuccessful in defeating the Eora Nation peoples in a sovereignty war, according to his diaries, he failed to receive consent to purchase a portion of their real estate. More to the point, the United Kingdom Government ignored the rights of the Eora Nation peoples after losing this conquest (Project Gutenberg Australia, 1893). During the War of Independence in America, the deportation of British convicts by the United Kingdom Government to its then American colony ceased. Thus, the government's heads of plan was the *modus operandi*, and by doing so, extinguished the legal determination of *terra nullius*. Evidence I have provided illustrates how the United Kingdom Government acquired the south-east coast of Australia unjustly and illegally.

The United Kingdom Government's Unlawful Transnational Jurisprudence Sovereign Authority

The United Kingdom Government's colonisation of Australia was purely for the establishment of a penal colony, which was supported by the then British monarch, King George III. Evidence posits that the colonisation of the continent of Australia was to establish a new international trading base. Consequently, the United Kingdom Government embarked on unlawful means to acquire the land (Blainey, 1966; Dallas, 1978; Frost, 2011; Hawkesworth, 1774) for the construction of an international trading base. Furthermore, the United Kingdom Government acted in an unlawful takeover (K. Gilbert, 2015), ignoring the three instructions that King George III had given to Lieutenant Cook regarding the fact if the continent was inhabited (K. Butler et al., 1995). Consequently, the United Kingdom Government commenced a slow process to colonise Australia using the façade of *terra nullius* to cover for a mere land grab that would secure it world-wide prosperity (Reynolds, 2013).

The claim that the United Kingdom's settler government held possession of lawful sovereignty had no foundation in law. The ruling monarch, in accordance with United Kingdom *Act of Settlement* 1700 held no lawful authority as a sovereign to control the United Kingdom's citizens as sovereignty had been transferred to the citizens (Quick & Garran, 1902). Also, the *Demise of the Crown Act* 1702 had conferred to the United Kingdom Parliament the authority to approve whom the future heirs and successors of a monarch would be (UK).

As it stands, no language group belonging to the First Nations peoples had ever ceded its lawful sovereignty to a foreign authority, in this instance being the United Kingdom Government nor the British monarch. The non-First Nations peoples need to understand that the Colony of Australia Government only holds a system of quasi-governance. The *Mabo v. Queensland (No. 2;* 1992) HCA 23; 175 CLR 1 (3 June 1992) ruling determined that the Queensland Government only held possession of quasi-governance.

26 January 1788: Commencement of the United Kingdom's International Trading Base

I have argued that the First Nations peoples held possession of lawful sovereign jurisprudence, self-governance, sovereignty and treaty negotiation nationally and globally. However, the former United Kingdom Government has failed to acknowledge these lawful facts within its own legislation, being An Act to Constitute the Commonwealth of Australia Act 1900 (UK). Consequently, by utilising the myth of *terra nullius*, as it grappled with the American War of Independence between 1775 and 1783, the United Kingdom Government had to secure another international trading base.

More so, the United Kingdom Government commenced plans to establish a colony on the real estate belonging to the Eora peoples (Frost, 2013), relying on a pre-1770 application of *terra nullius*. The United Kingdom Government's *modus operandi* was to illegally

extinguish the determinations of *terra nullius*. In addition, at the time of colonisation, it was done so by force.

Royal Monarch Support for International Trading Base

Letters Patent, either written or printed, is an instrument exercised by a sovereign ruler that within a limited time confirms to the patentee has some obtainment to exclusive rights to land and/or the use of that land, and to be able to sell that land. In 1784, the United Kingdom Parliament was provided with *Royal Assent* for the statute, 24 Geo III. c. 56: "An Act for the effectual transportation of felons and other offenders, and to authorise the removal of prisoners in certain cases, and for other purposes therein mentioned." By giving his assent, King George III had approved the deportation of felons and other offenders to Australia. This law effectively established His Majesty's "prison camp" in New South Wales, which at that time was known as New Holland (Quick & Garran, 1902). In effect, the British Empire had established an unlawful settler colonial government that was supported by a monarch with no sovereign authority. Yet, the United Kingdom Government still ventured on mission to take over another lawful sovereign nation. His Majesty King George III had authorised Letters Patent for the purposes of having a vice-regal representative.

Following this, in accordance with *Letters Patent* of 2 April 1787, the United Kingdom Government commissioned Captain Arthur Phillip to be the vice-regal representative, whereby he held the dual appointment of both Governor and Vice-Admiral. He enacted laws for crimes and offences that had been previously unknown to British law. However, despite Captain Phillip's commission as Governor holding no constitutional authority (Quick & Garran, 1902), he was appointed the Governor for the Colony of New South Wales.

To maintain its unlawful authority, the United Kingdom Government instituted legislation for King George III to establish his own Court of Criminal Jurisdiction located on

the east coast of Australia. This was in accordance with the procedures given that Australia was primarily established as a penal colony not a “free community”. Furthermore, no statute authority existed for the establishment of the Courts of Civil Jurisdiction. However, on 2 April 1787 by *Letters Patent,* the Crown inducted a Court of Civil Jurisdiction to hear similar civil actions under British Empirical laws (Quick & Garran, 1902). The *Letters Patent* approved by King George III were actually in conflict with two United Kingdom legislative instruments: the *Act of Settlement* 1700 (UK) and two, the *Demise of the Crown Act* 1702 (UK).

United Kingdom Government Rectifies Unconstitutional Frameworks

John Batman’s treaty was an acknowledgment that the Iransnoo and Geelong people from Watha Wurrung and the Yarra Yarra peoples belonging to the Kulin nation in Melbourne held land ownership and property rights (C. Clark, 1973). Most notable was the fact that the United Kingdom Parliament had stated that private citizens, such as John Batman, and the Port Phillip Association (PPA) did not have the required licence or authority to negotiate a treaty. Thus, the ruling monarch’s government had considered them trespassers. Governor Richard Bourke of the Colony of New South Wales Government refused to grant John Batman and his PPA authority because they were private citizens encroaching on Crown land (Reynolds, 2003).

The settler government was auspice under the authority of Governor Bourke who had relied on a legislative statute from the United States of America. That statute was the Johnson & Graham’s *Lessee v. McIntosh* 21 U.S. 543 (1823) case, which stated that only the government had the authority to purchase land from First Nations peoples, not by private citizens (United States Supreme Court, 1823). However, the settler governments in Australia acquired real estate from each language group that belonged to the First Nations peoples under the falsehood that the Crown had the lawful sovereignty to acquire the land

After the establishment of the United Kingdom International Trading Base on 26 January 1788, the United Kingdom Government rectified any unconstitutional frameworks. First, King William IV acknowledged the First Nations peoples of South Australia through the *Letters Patent* establishing the Province of South Australia 1836 (UK). This Letters Patent issued by King William IV, however, had no lawful standing. The then monarch held no sovereign authority over citizens in the United Kingdom nor any nation that the British Empire had colonised. Therefore, the United Kingdom Parliament and its settler Colony of South Australia Government had the right to ignore the monarch's Letters Patent.

In 1837, the House of Commons and the "Aborigines Protection Society" produced a report that noted their displeasure of the treatment of First Nations people by various colonial governments. The report also commented on the injuries that First Nations peoples had received all in the name of settler governments acquiring real estate perpetrated under the guise of vicious and/or mistaken legislative instruments (The House of Commons & The "Aborigines Protection Society", 1837). The most damning point of displeasure was that the British Empire had violated a plethora of rights that the First Nations peoples held dear (The House of Commons & The "Aborigines Protection Society", 1837).

Two Acts were introduced, one being the *Protection of Pacific Islanders (Kidnapping Act)* 1872 (UK) followed by the *Pacific Islanders Protection Act* 1875 (UK). These Acts recognised First Nations peoples as people on their own land and that they should be allowed to constitute their own affairs without hindrance. These two legislative instruments were acknowledged in *Mabo v. Queensland* (*No. 2*;1992) HCA 23, 175 CLR (3 June 1992) where it had been determined that the Queensland Government held a system of quasi-governance. Therefore, Queensland was and remains the Colony of Queensland Government.

The Unlawful *Aboriginal Protection Act 1869* (Vic)

The commencement of the removal policies and practices began in 1860 with the Central Board for the Protection of Aborigines producing seven reports. In 1869, the *Aboriginal Protection Act 1869* (Vic) commenced (Colony of Victoria, 1869). The use of the word "Protection" was highly misleading given that its actual meaning in that context could be described as being "dictatorial control". The Act's sole purpose was to "round up" First Nations peoples to westernise them as domestic slaves. It also required children to be fostered into "newcomer" settler families or at worst be institutionalised. This was the beginning of eugenics by social Darwinian thinkers from the United Kingdom Government that was in the form of social engineering that resulted in the loss of First Nations peoples' cultural practices, social understandings, language and Country, which affected their personhood, and community.

Astonishingly, the *Protection of Pacific Islanders (the Kidnapping Act)* 1872 (UK) and the *Pacific Islanders Protection Act* 1875 (UK) did not overrule the *Aboriginal Protection Act* 1869 (Vic). These two protection Acts were acts of parliament that had been prepared by the Home Office in London. I argue that at that time, the Home Office was deemed to be the federal legislature overarching the individual colonial state governments, as per Captain Phillip's commission having no constitutional authority.

Punitive Land Rights and Trade Agreements

On one hand, the United Kingdom Government had rectified unconstitutional frameworks with the First Nations peoples. Evidence suggests that the rectification of those unconstitutional frameworks had been a mere token gesture. At the time of Batman's treaty, he and the PPA were aware of a flourishing trade business that had been in existence prior to colonisation. An axe stone quarry had been established at Mt William, located in the north-western part of

Melbourne, whereby trade agreements had been in existence with other language groups as far as New South Wales and South Australia (Diamond, 1997; Kenny, 2008; Presland, 1994).

On the other hand, the Colony of New South Wales Government had concluded that Batman and the PPA were trespassers and therefore they could not buy any land that was owned by the Crown, However, the Colony of New South Wales Government, under the pretence of *terra nullius* with the acquisition of "Crown land" had no foundation according to First Nations peoples' lawful transnational jurisprudence sovereign authority and land lore instruments that pre-dated Lieutenant Cook's arrival. The Colony of New South Wales Government had a non-negotiable means-test application to the term trespassers in as much as it was a trespasser itself.

The Yolŋu peoples held international trade agreements with the Macassans dating back at least 300 years prior to the arrival of Lieutenant Cook (Trudgen, 2000). However, there was an additional instance where the Colony of South Australia Government had introduced punitive measures against the Yolŋu people. Between 1894 and 1903, the Balanda (European) Government introduced tariff charges for all goods brought in by the Macassans (Trudgen, 2000). In addition, the Macassan ships' captains who had docked at the Port of Darwin had been notified by the balanda Government of South Australia that they would not be permitted entry. Not surprisingly, in 1906, the South Australian Government had rescinded all licences given from the Yolŋu to the Macassans to fish for trepang (Trudgen, 2000).

First Nations peoples exercised their self-governance and political rights at their established stations or missions. Between early 1843 and 1863, the Woi Wurrung and Taungurong peoples established their sovereignty on the Coranderrk Station located at Badgers Creek outside Healesville in Victoria (W. Thomas, 1847, 1848, 1849, 1859, 1861; Attwood, 2003; Leader Newspaper, 1876). The land was fully self-sufficient with the support of Rev John Green who gave the landowners full autonomy over their own affairs. This was a thriving

business until 1874 when Rev John Green was removed (Colony of Victoria, 1882). Thus, this self-sustainable thriving business economy slowly faded away when the Colony of Victoria government took control. I would describe it as a modern-day form of neoliberalist government policy.

In 1881, William Cooper, along with his associates, sent a petition to the Governor of New South Wales protesting the Maloga Station owner's autocratic system and demanded that the same system of landownership that the Coranderrk people had be applied to Maloga. "Cumeroogunga" is a Yorta word meaning "our home" (Attwood, 2003). The politically savvy Yorta Yorta peoples, through their insistence, demanded 100 acres for each family. Henceforth, they utilised their real estate for the economic benefit of being self-sufficient and self-governed (Riverine Herald, 1887). Superficially, it would appear that the settler governments were honouring the First Nations peoples' lawful possession of their land and rights and supporting their economic business acumen. However, underneath the surface, the interpretations of *terra nullius* were creating an indissoluble Colony of Australia Government.

In fast-forwarding to the Federation period, the very same applications of *terra nullius* control had been implemented by successive colonial governments who had been overseeing punitive land rights. As a result of the successful *Mabo v. Queensland (No. 2*; 1992] HCA 23, CLR 175 (3 June 1992) ruling, the Labor federal government legislated the *Native Title Act 1993*. This Act, however did not provide land rights; it introduced punitive control measures, such as establishing the Native Title Tribunal, to oversee native title agreements between a language group belonging to the First Nations peoples and non-First Nations peoples' organisations such as mining companies.

The Beginnings of the Colony of Australia Government

Before the individual colonies initiated the concept to establish a federated union and a federal constitution, discovery has shown that in a *Letters Patent* dated 15 June 1839, the Colony of New South Wales had taken possession of New Zealand. The territorial claim coordinates of New Zealand were latitude 34° South to 47° 10' South and from longitude 166° 5' East to 179° East. In addition, George Gipps had the dual role of being the Governor for New South Wales and New Zealand (National Australasian Convention, 1891) and on 6 February 1840, he signed the legally binding Treaty of Waitangi that was recognised by the United Kingdom and New Zealand governments (Ministry for Culture and Heritage, 2017).

A federal constitution commenced in 1891 to unify the existing seven colonies. Effectively, these colonies denounced First Nations peoples' self-governance and customary lore. The colonies were New South Wales, which included New Zealand; Victoria; Queensland; South Australia, which included the Northern Territory; Tasmania; and Western Australia (National Australasian Convention, 1891; Quick & Garran, 1902). The first draft of the Australian Constitution failed to include a Bill of Rights (Magna Carta), which the United States of America had (National Australasian Convention, 1891). Between 1897 and 1899, New Zealand chose not to join a federated Australia (Reaves, 2001; Roper, 1899). Queen Victoria gave *Royal Assent* to the proposed constitution that was encapsulated in the Second Draft of the Bill (Second Draft of the Bill, To Constitute the Commonwealth of Australia, 1897), even though she was the unlawful ruling monarch (T. Robinson, 2004). Deceivingly, the Constitution accepted by the constituents was ratified by the United Kingdom Government (Colony of New South Wales, 1899). However, what is more disturbing is that there is no evidence to indicate that the First Nations peoples had been included in the drafting of the Constitution or had been consulted (Dodson et al., 2102).

9 July 1900: Colony of Australia Government's United Kingdom Constitution

The "newcomer" governments used their own interpretation of national and international sovereignty via their non-negotiated settler contracts. The Colony of Australia's system of governance was created using these unlawful contracts. The British Empire's legislated settler contract was title as the Act to Constitute the Commonwealth of Australia 1900. *Commonwealth of Australia Constitution Act* [63 & 64 Vict] (1st Ed.). However, the monarch held no lawful sovereignty to rule over citizens in accordance with the United Kingdom legislation (Quick & Garran, 1902), which also meant that the colonised government's vice-regal representative was undertaking illegal duties in the name of the monarch.

False Claims in the Preamble

The settler contract in the opening statement of the Australian Constitution's Preamble indicates that all citizens of the former six colonies had agreed to become one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland. During the referendums of the six colonial governments in the 1890s not all adults who were of a voting age participated in the conventions nor did they have any input into the drafting of the constitution (Dodson et al., 2012; Irving, 2001). Notwithstanding, the approval for the settler contract received a mere 7 per cent of the adult Anglo-Saxon male vote during the pre-Federation 1899 state colony referendums (Institute of Constitutional Education and Research, 1999; Vol. 1). The suffrage of women and non-Anglo-Saxon males had been excluded from consultation and voting processes. That opening statement has been shown to have been based on a lie.

Despite Queen Victoria having provided her royal assent to the Australian Constitution on 9 July 1900, unconstitutional matters remained. The Preamble has unconstitutional matters such as New Zealand being included as a state of Australia. Additionally, it includes the

statement: “Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established”. However, the Irish War of Independence had separated Ireland into the two nations of Northern Ireland and the Republic of Ireland (Dorney, 2012). No lawful instrument has been enacted to repeal this inaccurate statement.

Consequently, the United Kingdom Government has the sole lawful authority to alter, amend, or repeal any part of the constitutions entirety. The United Kingdom Government has been ruling as a foreign authority (Institute of Constitutional Education and Research, 1999; Vol. 2). Coincidently, the United Kingdom Parliament is the lawful authority to alter, amend or repeal its settler contract. No other government has the lawful right do so (Institute of Constitutional Education and Research, 1999; Vol. 1). Therefore in relation to the successful result of the 1967 Referendum, only the United Kingdom Parliament had the lawful foundation to alter Section 51 (xxvi) and repeal Section 127 of the Australian Constitution.

Section 8 in the Preamble of the Constitution indicates that the settler government was a self-governing colony of the United Kingdom. This fact remains in the current political climate. Henceforth, all previous federal governments, as well as the current one, have been holders of quasi-governance. Quick and Garran (1902).

Negative Impact of Section 51 (xxvi) – The Powers of the Parliament

Section 51 of the Constitution states that the federal parliament has the authority to enact laws for the peace, order, and good government of the Commonwealth of Australia according to the forty subsections within. Initially, Section 51 (xxvi) excluded First Nations peoples from having special laws made for them. Its purpose has not been for the peace, order, and good government of the Commonwealth; it has been used by successive federal governments to enact

their racist, segregative and assimilative policies without consideration of human and citizenship rights.

The 1967 Referendum relating to Section 51 (xxvi) was supposed to rectify those matters and Section 127 was repealed in its entirety. Since that referendum, a vast majority of federal government policies relating to the amended Section 51 (xxvi), have not been used for the betterment of First Nations peoples. The *Native Title Act 1993* (Cth) was legislated after the *Mabo v. Queensland* (*No. 2;* 1992) case but it only provided punitive instruments whereby successful claims by language groups belonging to the First Nations peoples did not include land rights. Further discontent arose after the *Wik Peoples v. Queensland ("Pastoral leases case";* 1996*)* HCA 40; (1996) 187 CLR 1; (1996) 141 ALR 129; (1996) 71 ALJR 173 (23 December 1996) case. The *Native Title Amendment Act 1998* (Cth) enshrined further extinguishments, with the former Howard government implementing an increase in the extinguishment of native title.

Colony of Australia Government Has No Lawful Constitution

After the signing of the Treaty of Versailles in 1919 by the Colony of Australia Government, under international law, the United Kingdom Parliament no longer had control over Australia. Therefore, the Australian Constitution became unlawful (Levick, 2019). Former solicitor Wayne Levick (2019) said that unlawfulness had been extended to all levels of government and the judiciary operating in Australia's states and territories, as did barrister David Fitzgibbon in the case of *David Claude Fitzgibbon v. HM Attorney General* (2005),.

Former prime minister William Hughes made several attempts to remove the now null and void Australian Constitution Act; however, he failed not by his own doing (Referendum [Constitution Alteration] Bill, 1919). Two actions were required: (a) to notify the United Kingdom Parliament of a new Constitution for Australia after Australia had received its

independence from the United Kingdom; and (b) to peacefully maintain the status quo by retaining the United Kingdom Constitution. Additionally, to unlawfully extinguish sections within the Preamble and Constitution so as to alter Australia's status from Colony of Australia to that of an independent sovereign nation state. The fact of the matter, however, is that Australia still remains the Colony of Australia. The United Kingdom Parliament and the monarch have knowledge of this as do successive colonial governments in Australia as well as the judiciary. The Queen of Australia is one instrument to create independence from the United Kingdom-legislated Preamble and Constitution.

Colony of Australia Government Enacts Its Own Unlawful Nation-State Independence

In 1953, former prime minister Robert Menzies introduced the enactment for a Queen of Australia to be the Australian monarch. Then in 1973, former prime minister Gough Whitlam made that official. The monarch's original title was Queen of the United Kingdom and Great Britain and Ireland as noted in the opening statement in Chapter Twelve of the Preamble. At the end of the Irish War of Independence in July 1921 (Dorney, 2012), her Royal Style and Titles were required to be changed as the nation of Ireland had been divided into two separate nations: the Republic of Ireland and Northern Ireland. Northern Ireland remained as part of the British Commonwealth.

Also, the title of the Colony of Australia Government, as of 9 July 1900, was the Parliament of the Commonwealth of Australia. Instead of altering the title of the federal government via a referendum and then seeking approval from the United Kingdom, the former Whitlam Government legislated the *Statute Law Revision Act 1973,* Act No. 216 of 1973. On 19 December 1973, this Act received royal assent. This legislation removed the word "Commonwealth" and replaced it with the name of the territory that being Australia. This alteration was in line with the creation of the Queen of Australia in the *Royal Style and Titles*

Act 1973. The enactment for a Queen of Australia was followed by a legislative instrument known as the *Australia Act 1986* (Cth). These legislative acts were *ultra vires* as governments had acted beyond their powers.

Altering Section 44 of the Australian Constitution

There are two key instruments that have aided and abetted all levels of government and all political parties in Australia. The first instrument is Section 42 of the Constitution, which demands that each member or senator subscribe to an oath or affirmation to the ruling monarch of Australia, that the current Queen, who has no lawful sovereignty to rule over subjects/citizens (Institute of Constitutional Education and Research, 1999; Vol. 1 & 2; Quick & Garran, 1902). Section 44 (Disqualification) of the Australian Constitution states that federal members and senators cannot hold dual citizenship or have rights of citizenship in a foreign country; nor hold any acknowledgement of allegiance, obedience, or adherence to a foreign power and/or authority; nor shall they be entitled to the rights and/or privileges as a subject and/or citizen of a foreign power.

Several members and senators, including former prime ministers, altered the Oath or Affirmation subscribed in the Schedule of the United Kingdom Constitution (Channel Ten News, 2010; McKeown, 2013; Smith, 1996). No challengers have been presented; nor has the Governor-General refused a member or senator from taking their place in the Australian Parliament for failing to comply with the oath and affirmation requirements. However, the dual-citizenship interpretation has not been extinguished. Yet, the co-dependent key stakeholders' non-disqualification is now based on *quid pro quo* as these co-dependent key stakeholders have an allegiance and obedience to neoliberalist foreign authorities, such as the Business Council of Australia (Pusey, 2006) and the Western Mining Corporation (Foley, 2013). Michelle Innes (2016) has also supported the views of Gary Foley.

Post-Colonisation First Nations Peoples' Lawful Transnational Jurisprudence Sovereignty Authority

Terra nullius control has been an enduring and painstaking process. Each language group of the First Nations peoples who own the continent of Australia has always been a politicised group nation by nation. Two key events occurred in 1937 and 1938 that challenged the Crown and the Colony of Australia Government. In 1937, William Cooper from the Yorta Yorta clan, together with the Australian Aborigines' League, prepared a petition to be sent originally to King George V. The petition stated that the British monarchy had acquired Australia's land mass unlawfully and that therefore the British were not lawfully entitled to claim it thereby resulting in all First Nations peoples' lawful status being rescinded. Additionally, it requested that all racism against First Nations peoples cease immediately and for First Nations peoples to have their own political representation (Australian Aborigines' League, 1937).

On 26 January 1938, the Australian Aborigines Conference, held on the sesquicentenary (150 years) anniversary of European settlement in Australia, occurred at the Australian Hall in Sydney and was titled Day of Mourning and Protest. The conference had been organised by the Aborigines Progressive Association. The crux of this conference illustrated the uncivilised treatment that the First Nations peoples had been receiving since colonisation. Most importantly, the conference implored a statement of rights, whereby an additional appeal demanded the enactment of better laws for the betterment of the First Nations peoples.

The conference was adamant that the Crown and the British Empire had no right to seize property that they had no lawful possession of. Most importantly, the conference resolved that the First Nations peoples receive full citizenship status rights and equality Australia wide (Aboriginal and Torres Strait Islander Commission, 2001; Patten & Ferguson, 1938). Culminating in the Day of Mourning and Protest conference, William Cooper had commenced

the process with protestations of his life on the Cumeroogunga Mission under the auspices of the Aborigines Protection Board (APB) in New South Wales. He made an honest claim that mission life for the residents and himself replicated that of a Nazi concentration camp (Foley, 2003).

Rectifying these inconsistencies occurred on 16 August 1975 at Daguragu, where former prime minister Gough Whitlam returned the land to Vincent Lingiari and the Gurindji people (Whitlam, 1985). The exodus from the colonial system of governance dates back to 1999 with a presentation to the United Nations that illustrated the First Nations peoples' sovereignty and independence (National Unity Government, 1999). However, seeking assistance from the United Nations was a fruitless tactic, just as the Aboriginal Genocide Prosecutors case was, as Australia does not have legitimate membership of the United Nations.

Other First Nations people language groups had followed suit, such as the Murrawarri Republic (2013), Northern Basin Aboriginal Nations (2017), the National Unity Government (2013), and the Sovereign Yidindji Government (2013).On 10 June 2010, the Ngarrindjeri people from South Australia had possession of the Writ of Privy Seal issued by King William IV. The claimants sought remedies, fighting for land and social justice. This case shows that it was important to the argument presented in this thesis because it had the potential to rectify the unfinished business that had been in place prior to Federation. In 2006, during the 10th Chronic Disease Network Conference held in Darwin, I alluded to the audience just after another presenter had spoken of the unlawfulness of the government and the judiciary and that the current monarch had no lawful sovereignty over any citizen here in Australia (Crane, 2006).

The Significance of *Mabo v. Queensland* (*No. 2*) HCA 23 (1992)

Prior to *Mabo v. Queensland* (*No. 2*), one previous Northern Territory Supreme Court case and three previous High Court of Australia cases had adjudicated on evidence regarding whether

the Colony of Australia Government held any lawful rights to land tenure and property rights. The *Milirrpum v Nabalco Pty and the commonwealth of Australia* (*Gove Land Rights Case*) NTSC 17 FLR 141 (27 April 1971), *Coe v Commonwealth of Australia and the Government of Great Britain and Northern Ireland* HCA 68; 53 ALJR 403 (5 April 1979); *Koowarta v. Bjelke-Petersen* HCA 27; 153 CLR 168 (11 May 1982), and *Mabo v. Queensland* (*No. 1*) HCA 69; 166 CLR 186 (8 December 1988). Mabo (*No. 1*), the claimants were successful in pursuing their claim that Australia was not *terra nullius*, that the Queensland Government's *Queensland Coast Islands Declaratory Act* 1985 invalid Under Section 109 of the Constitution and inconsistent *Racial Discrimination Act* 1975 (Cth). Therefore, the claimants case was able to continue *Mabo v. Queensland* (*No. 2*) HCA 23; 175 CLR 1 (3 June 1992).The second Mabo case determined that lawful sovereignty cannot be decided in any domestic law court.

Furthermore, all levels of government in Australia and their judiciaries hold no basis in law (Levick, 2019). Any Acts of parliament by the Colony of Australia Government since at least the signing the *Treaty of Versailles* in 1919, remain null and void, due to the Colony of Australia Government having no lawful standing nationally and internationally. Ghillar Michael Anderson (National Unity Government, 2016) supported the standpoint of the Mabo case ruling, where he highlighted the fact that sovereignty could not be dealt with in municipal domestic courts.

Healing the Nation-State of Australia

The First Nations peoples, prior to the unlawful acquisition of land by the former British Empire, had a transnational higher jurisprudence sovereign authority (M. Smith, 2001). This afforded them lawful jurisprudence self-governance, citizenship rights and land property ownership, and the right to enter into lawfully binding treaties (de Costa, 2006). After the 1967 Referendum, and up to the end of the Whitlam Government on 11 November 1975, there was

a period of progressive nationalism (de Costa, 2006; Whitlam, 1985). That era was a healing process, whereby I argue that in that short period the Australian nation-state had begun to heal after the suffering that had occurred since 26 January 1788 when the British Empire had acquired the Eora Nation peoples' land as well as the entire continent and its surrounding islands.

Not to be deterred, Paul Coe and two other men in 1978 re-enacted the taking of England by using a boat to land on the shore of England and claim it for Australia (de Costa, 2006). Ten years later, Burnum Burnum (Harry Penrith) repeated the act in England near the cliffs of Dover where he inserted an Aboriginal flag (Norst, 1999). A new lawfully legislated constitution, being the *Sovereign Australia Constitution Act*, would define a sovereign independent nation-state that would unite a nation and mark the cession from the United Kingdom, its monarch, and the Commonwealth.

Chapter 1
United Kingdom Government's Support for *Terra Nullius*

Summary of Argument

This chapter argues from a First Nations person perspective, where I posit a hypothesis that the British Empire applied an unlawful interpretation of sovereignty. There are three major parts to the hypothesis. First, that the colonisers only established domestic sovereignty with no independent nation-state status (Benton, 2008). Second, I argue that the colonisers had not yet achieved any international sovereignty recognised by any international laws, nor had they sought that request (Irving, 2001). In addition, the colonisers also had not considered how sovereignty would directly connect to legally binding treaty negotiations. Third, I argue that under the mythical pretence of *terra nullius*, the United Kingdom Government's modus operandi was to dispose the First Nations peoples of their sovereign rights to their real estate. Moving on to the fourth aim, this chapter outlines, in the introduction through a wide review of the evidence, that the process of colonisation involved the occupation of land and the violation of First Nations peoples' sovereignty. The United Kingdom Government, by unconstitutional means, had established a new colonised international trade base all in the name of international recognition and prosperity. Finally, the fifth aim is concerned with the ongoing unlawful interpretation of *terra nullius* that has been orchestrated by successive state colonial governments and their foreign authority as well as the United Kingdom Government and its monarchs having denied the First Nations peoples their lawful sovereign rights, self-governance, trade and economies that had survived for a millennium.

Central Arguments of Chapter 1

Prior to colonisation, the United Kingdom Government had enacted legislative instruments that had been pertinent to the sovereign rights of the United Kingdom. These instruments were directly relevant to the subsequent experience of the colonisation and acquisition of the

Australian continent. The first instrument was the *Act of Settlement* 1700 (UK), whereby the ruling monarch had transferred their sovereignty to all citizens of the United Kingdom. The second instrument was the *Demise of the Crown Act* 1702 (UK), which stated that the succession of a future monarch's appointment was under the authority of the British Parliament. Both had not been applied prior to the arrival of Lieutenant Cook on the east coast of Australia in April 1770.

A further three legal instruments – the *Letters Patent* establishing the Province of South Australia 1836 (UK), *Protection of Pacific Islanders* (*the Kidnapping Act*) 1872 (UK), and the *Pacific Islanders Protection Act* 1875 (UK) – all recognised the First Nations peoples' sovereignty, property ownership and rights, and their system of independent self-governance. The sequence of historical events discussed in this chapter set in place the ongoing system of oppression that has been orchestrated by the United Kingdom Government and continued by its successive colonial governments; yet, from an international perspective, the British monarch held no lawful rights to claim sovereignty over the First Nations peoples of Australia. Thus, any monarch since has been nothing more than a public servant, who belongs to a foreign authority. This was decided in the *Sue v. Hill & Anor; Sharples v. Hill & Anor* HCA 30; 199 CLR 462 (23 June 1999) High Court case.

Concepts of Sovereignty

I have connected the concepts of sovereignty with a late eighteenth-century international law in Europe and its determination regarding what constitutes a lawful sovereign body. The *Law of Nations* by Emerich de Vattel (1844) outlines the premises whereby a nation whose members are a collective within their real-estate borders and contribute to a civil society lawfully constitutes a national settlement. Therefore, prior to the arrival of Lieutenant Cook, the Eora Nation peoples were a lawful sovereign body who held passion of their real-estate borders.

Before 1770, the real estate owned by the Eora Nation peoples consisted of Daruk/Gittigitti; Tharawal; Gweagal; Kamy (Botany Bay); Kadigal (Sydney); Warrun and Tuhowgule (Sydney Harbour); Kayumy (Manly); Kamergal, Balgowla, and Karegal (Balgowlah); Goman (Castle Hill); Eora (Lane Cove); Bidjigal (Toongabbie); Wanegal (Prospect Hill); and Parramatta/Waun (Parramatta) (Willmot, 1988).

Furthermore, during the pre-colonisation era, the First Nations peoples of Australia, such as the Eora Nation, had occupied their land and exercised their sovereign rights, which manifested in the form of systems of self-governance, economies and trade, and in the practice of customary lore. In pre-colonial history, sovereignty was recognised by two means: first, in an external sense, whereby a political body is recognised under international laws; second, whereby a political body holds ultimate authority internally (Scruton, 1982,). Those who held legal rights to sovereignty also held the rights to enter legally binding treaty negotiations. Sovereignty is the essential principle that permits treaty negotiations. Sovereignty (Ivison et al., 2000) is the legal entitlement of land ownership by a self-governing body, whereby, in regard to previous Australian treaties, it involved the consent to share land and its resources with the British settlers. These viewpoints are consistent with that of Benton (2008) and Irving (2008).

Additionally, as First Nations peoples held possession of lawful sovereignty, land ownership and were a recognised civil political body, these attributes provided them with the lawful means to enter into treaty negotiations. For example, the Gweagal and Kamy peoples could enter into legally binding trade agreements for the sharing of land and resources with the "newcomers", who included the British Imperial Government and the pastoralists (Ivison et al., 2000; Pocock, 1998). Presumably, this was the legal basis for treaties entered into on the North American continent between its First Nations peoples and the settlers. More to the point, it has been contextualised that sovereignty of the original custodian had never been ceded, a

system of land rights had been in operation since time immemorial, and that ownership of their real estate had been protected under their jurisdiction against theft and without interference from foreigners (K. Gilbert, 2015; Pratt, 2003).

Sovereignty and Lawful Enforceability of Treaties

In the first instance of the occupation of land by the first wave of newcomers on 26 January 1788, the issue of a treaty was not raised between the First Nations peoples and the settler colonial government. A treaty, as described by Roger Scruton (1982), is an internationally binding document that constitutes rights and obligations between two or more parties governed by law. A party holding ownership to sovereign rights would lead towards negotiating legally binding treaties (Scruton, 1982). However, Captain Arthur Phillip's commission to establish a sovereign nation on behalf of the United Kingdom Government and its monarchy was unlawful as the British monarch had rescinded their sovereign authority over United Kingdom citizens following the *Act of Settlement* 1700 (UK) (Quick & Garran, 1902).

I discuss later in this chapter regarding Lieutenant Cook's arrival in 1770, that no monarch since King Edward IV in 1461 has been the legitimate heir to the Crown. Tony Robinson interviewed Dr Michael Jones, an academic, who obtained archival evidence in Rouen Cathedral in France during the time of the 100-year war, in particular, the summer of 1440–41 when Edward would have been conceived. His father, Richard – Plantagenet Duke of York III – was nowhere near his wife, Cecily Neville, at the time of conception (T. Robinson, 2004). Additionally, all monarchs' *Letters Patent* and all their vice-regal representatives have had no lawful foundation, irrespective of the *Act of Settlement* 1700 (UK). Thus, the lawful sovereignty and enforceability of treaties lay with the First Nations peoples, not the British Empire.

Now a sum of all parts begins to take shape where I argue that holders of lawful possession of sovereignty are also recognised as self-governing bodies in accordance with late eighteenth-century international laws in Europe. Henceforth, I affirm that a self-governing body is also recognised as being a possessor of self-determination. Self-determination refers to the ambitions of a particular group substantiated from an existing national or racial identity connected with a common territory, language group or a religion that has formalised its own sovereign state to govern itself. Once a single entity has been identified prior to and after the change, first as a society then later as a state, a recognisable process of self-determination can then be enabled (Scruton, 1982). First Nations peoples on the continent of Australia, who held lawful self-governance and self-determination as well as sovereignty, meant that the "newcomers" had breached their own late eighteenth-century international laws of Europe for the acquisition of First Nations peoples' lawful system of transnational jurisprudence sovereign authority.

Clear evidence has shown that a system of self-governance (Christie, 1979) and economics (Butlin, 1993) had been in existence prior to 1770, when sovereign rights, land entitlements and land rights, customary practices, and the protection of the environment were under the authority of the original custodians. Support for this evidence is provided by diverse sources (I. Clark, 1995; Massola, 1971), which indicate that pre-1770, the original custodians held land ownership and knowledge regarding their economies, customary systems of lores, self-governance and how their leaders were nominated. Marks (2018) noted that long before April 1770, internal and external treaty and trade negotiations had been in existence; however, in the post-colonised era there had been a lack of engagement regarding a treaty. This lack of recognition has been directly connected to the United Kingdom Government's desire to unlawfully acquire an international trading base underneath the mythical application of *terra*

nullius. By doing so, the Colony of New South Wales Government's support for *terra nullius* had been revealed.

Determination of *Terra Nullius*

The determination of *terra nullius* was inconsistent with the *Law of Nations* (de Vattel, 1844). That determination by the British Imperial Government was later shown to have ulterior motives (Frost, 1981). Prior to the arrival of Lieutenant Cook, K. Butler et al. (1995) noted that the British Imperial Parliament had three means by which they could take another nation:

> - If the country was uninhabited, Britain could take possession by claiming and settling that country. In this case Britain could claim ownership of the land and share it out among its own people.
> - If the country was already inhabited, Britain could ask for permission from the Indigenous people to use some of their land. In this case Britain could purchase land for its own use but it could not steal the land of Indigenous people.
> - If the country was already inhabited, Britain could take over the country by invasion and conquest – in other words, defeat that country in war. However, even after winning a war, Britain would have to respect the rights of the Indigenous people. For example, it could not steal people's land. (p. 1)

On 30 July 1768, the Office of Lord High Admiral of Great Britain provided Lieutenant Cook with secret instructions before he travelled to the Great Southern Land, which became known as Australia. Those instructions included reference to international laws of Europe concerning territorial conquest and diplomacy (Hawke et al., 1768); however, Henry Reynolds (2003) poignantly voiced his opinion on that matter. On that basis, non-First Nations peoples held a strong familiarity for the events that occurred in 1788 between January and February. More so, they had lost sight of acknowledging how astonishing their claim of "possession of the colony" was and the form that that claim had taken. That form of possession by the former British Empire had ignored the eighteenth-century international laws of Europe.

Lieutenant James Cook's Visit in 1770

Lieutenant James Cook's dairies were transcribed by Captain W. J. L. Wharton. In Chapter 8 – Exploration of East Coast of Australia – of the diaries it extrapolates that the First Nations peoples held sovereignty of their land and had a system of independent self-government that had its own customary lores (Project Gutenberg Australia, 1893). It was observed "that the Natives of New Holland (Australia) lived in a tranquil society of sharing, where they did not practise inequality between people or use pre-determined class conditioning from birth; caring for their young; an economy with building structures (huts), canoes (collection for food resources), and hunting and gathering tools; plentiful food resources and food cooking preparation systems" (Project Gutenberg Australia, p. 93).

Furthermore, Lieutenant Cook received advice from King George III in 1768 that if the land was owned by the First Nations peoples, he must gain consent from them to take possession of parts of their land (K. Butler et al., 1995). However, his diaries reveal that he had not received consent from the natives to take possession of their land as they showed hostilities towards him and his travel party (Project Gutenberg Australia, 1893). Cook and his traveling party noticed that the First Nations peoples were not willing to have them on their land, they were prepared to protect their real estate, and were not willing to receive freshly killed bird. More importantly, from Cook's own admission, when his exploration party had been met with resistance from the First Nations peoples throwing "darts" (spears), he fired shots from his musket. Also, he made frank admissions to collecting plentiful fresh fish and stingrays for the entire fleet (Project Gutenberg Australia, 1893). I argue that the resistance shown by the Eora Nations people was a victory in a sovereignty war enacted against them by a foreign authority entering without consent.

However, in an ABC News article entitled, *What Australians often get wrong about our most (in)famous explorer, Captain Cook*, the presenter states that the British were not the first

to make contact with any of the language groups belonging to the First Nations peoples in Australia (Collins, 2020). I concur with that evidence that in 1606, Dutch explorers with their leader, Willem Janszoom, on the ship *Duyfken* had a confrontation with the Tjungundji peoples from Mapoon, north of Weipa on the Cape York Peninsula (C. Fraser, 2013; Lippmann, 1984). This was the first sovereignty war prior to Lieutenant Cook's arrival. In 1642, again prior to Cook, Abel Tasman, a Dutch explorer, had visited Tasmania (Walker, 1896). William Dampier in 1688 arrived at what is now known as Broome (Collins, 2020). In March 1772, the Palawa peoples from Tasmania had been contacted by French explorers led by Captain Marion du Fresne travelling on the two ships, *Mascarin* and *Castries*. The French lost that sovereignty war (Hayman-Reber et al., 2018; Plomley, 2008; Ryan, 1972; Yarwood & Knowling, 1982).

On that basis, the explorers from European nations who had travelled to and/or attempted to explore the continent of Australia had done so under vigilant protests from First Nations peoples. I posit that the British Imperial Government's regime continued to colonise the world map through conquer-and-divide practices, such as occurred in America and Canada, and Australia was to be included as another colonised nation. There are different arguments as to why the British Empire colonised the continent of Australia. One argument is that it was out of fear that another European nation may acquire the continent of Australia before the British could (Collins, 2020). The second argument is that although Lieutenant James Cook stated in his diary (Project Gutenberg Australia, 1893) that the First Nations peoples' land was inhabited, he did not receive consent to take possession (Project Gutenberg Australia, 1893). The third argument is that as a result of the pretence that the First Nations peoples were deemed part of the flora and fauna of the new land, the British Empire applied a determination of *terra nullius* to the east coast of Australia. The fourth argument is that the United Kingdom Government's practice of deporting felons to establish its colonial government in the territory of New South

Wales was a mere smoke screen; the truth of the matter was to secure an international trading base.

Establishment of the United Kingdom Government International Trading Base

In 1784, royal assent was given to the British Imperial Parliament for the statute 24 Geo III. c. 56 that enacted the effectual transportation of felons and similar offenders and authorised the deportation of prisoners in certain cases and for other matters therein noted (Quick & Garran, 1902). To self-internalise the concept of *terra nullius,* King George III received support from the Privy Council for the transportation of felons to Australia. Following this, an Order in Council was issued on 6 December 1786 for His Majesty's "territory of New South Wales situated on the east part of New Holland" (Quick & Garran, 1902). Evidence to support this came from former British prime minister William Pitt. Pitt stated, "We need to establish a colony in Botany Bay because ..." (Frost, 2013, pp. 6–7). In 1786, Pitt had taken control of the felons in the United Kingdom as noted in the heads of plan for the deportation of convicts for the benefit of themselves and the state.

I am deconstructing the colonial history standpoint that the settlement in Australia to rid the British Imperial Government of its felons, the high prevalence of crime, and to empty its gaols was superficial. The British Imperial Parliament had ulterior motives in legitimising *terra nullius* so that they could established the United Kingdom Government's international trading and defence depot (Frost, 2011). Botany Bay would be a far more prosperous and advantageous site, especially if the timber and flax necessary to build ships came from Norfolk Island (Blainey, 1966; Frost, 2013) and New Zealand (Frost, 2013; Hawkesworth, 1774).

There was a collaboration between the Pitt administration and Brook Watson, a distinguished London naval supplier. That collaboration legitimised the unlawful obtainment

for an international trading base. Watson believed that the flax in New Zealand would be more advantageous to the British Empire than Spain's second-rate plant fibre in the South American gold and silver mines. The strategists of the British Empire were aware of the importance for a secure supply chain of naval materials pertinent to its trade and defence (Blainey, 1966, p. 28).

Prior to 1788, Bermuda provided prison sites of more superiority,. yet Botany Bay was chosen over Bermuda. Captain Phillip's instructions included the settlement of Norfolk Island immediately. Norfolk Island at that time increased his sailing time by a further two weeks. Accordingly, Captain Phillip's instructions were to assist Vancouver during his expedition to north-west America. The plausible cause was to strengthen the British Government's mercantile interests as the developing sea power of the United States was becoming a threat to Britain's monopoly of the West Indian trade. That threat also extended to the Asiatic trade (Dallas, 1978).

The War of Independence in America gifted the British Government with a clandestine manoeuvre to reassert its supremacy by force to hold a monopoly in the newly created southern whale fishery. A more thorough analysis revealed that the British Government's international trading base was the juggernaut behind the determination of *terra nullius*. This determination was the smoke screen for a wholesale land grab by the colonisers and to legitimise their international sovereignty (Dallas, 1978). As it was rightly said, the British Government between 1788 and 1829 had claimed sovereignty over Australia under European powers, which, in effect, was a mere land grab (Reynolds, 2003).

Extra-Territorial Governing of the Colony of New South Wales Government

The breaching of the *Settlement Act* 1700 (UK) had now permitted the dispossession of rights. In fact, there was no accountability regarding the new colony governing outside the laws of the

United Kingdom. The Letters Patent with a commission noted on 2 April 1787 that Captain Arthur Phillip had been promoted to the positions of Governor and the Vice-Admiral for the territory. Governor Arthur Phillip created laws for crimes and offences that had been previously unknown to law. The legislative power exerted by the Governor was also affirmed to have been identically unconstitutional as noted in Commissioner Bigges' (1823) report (Quick & Garran, 1902).

As a result of the 1787 *Letters Patent*, the key point noted was that there was an abundance of statutory authority to administer the criminal law as per all the procedures suitable for the newly created penal settlement, but in no way for a free community. This was known as "An Act to enable His Majesty to establish a Court of Criminal Jurisdiction on the eastern coast of New South Wales and the parts adjacent thereto". However, there was no statutory authority whatsoever for the creation of civil courts (Quick & Garran, 1902).

The Colony of New South Wales Government, the civil courts in Australia and the position of governor had been established by the Crown with no constitutional authority. If the Crown had been operating unconstitutionally, then it would appear that the First Nations peoples held lawful sovereign jurisprudence, which would have included the right to consent to legally binding treaty negotiations and, if they so wished, to share the sovereignty. However, the construction of the British Empire's international trading base under Governor Phillips' authority illegally claimed sovereignty over the First Nations peoples. This affected the First Nations peoples who since time immemorial had adjudicated their sovereign rights, self-governance administration, and held the rights to negotiate treaties. The momentum for the United Kingdom Government's deceit for *terra nullius* increased via its new administration. The new administration adjudicated over civil claims and did not have the authority to hear sovereign rights claims and treaty agreements.

The Lead-Up to John Batman's Treaty

This section on the importance of the period leading up to John Batman's Treaty explores Batman's internal and external motives for why he wanted that treaty. If one is to delve more deeply into the attempts by Batman and his associates to secure a treaty in the 1830s, then the ulterior motives of legitimate sovereignty were in flux. The news of the "squatterdom settlement" reached Batman, who was a settler born in Van Diemen's Land of convict parents (C. Clark, 1973). The signing of such a treaty could have in some respects provided him with the status of a nobleman and not that of being the son of a settler-born convict.

Although Batman was a married man, he was known for his drunken exploits and for having relationships with women outside his marriage. He exhibited a typical Jekyll and Hyde character when he was either drunk or sober; in a drunken state he would express hatred towards Aboriginal people, often referring to them as "black bastards". He also belonged to an organisation known as the Port Phillip Association (PPA), which consisted of Joseph Tice Gellibrand, a lawyer; John Helder Wedge; Charles Swanston; James Simpson; and seven Aboriginal men (C. Clark, 1973). The PPA was, in fact, a capitalist consortium from Hobart (Broome, 1995). It followed the British Imperial Government's stand that no European nation was permitted to acquire or settle on land owned by the Aboriginal people without voluntary consent (C. Clark, 1973).

Between May and June of 1835, Batman scoured the western part of Melbourne in search of property to purchase (Billot, 1979; Broome, 1995). Towards the end of May 1835, he and his travelling party sailed from Launceston on the ship *Rebecca*, stopping at Indented Head located near the mouth of the western entrance to Port Phillip Bay. The aim of their expedition was to negotiate the purchasing of real estate between the PPA and the chiefs of the Port Phillip Aboriginal mob. On his arrival, Batman was highly impressed with the lush 10-inch-high grass that was fit for grazing his cattle and for planting his crops.

John Batman's Treaty

The day after docking his ship, John Batman met the chiefs from the local First Nations mob at a creek they called Merri that joined the Yarra-Yarra. It was claimed that he had entered into a treaty between the local Aboriginal people and the PPA via his interpreters (C. Clark, 1973). On 6 June 1835, Batman claimed to have negotiated a treaty with the Dutigallar clan inside the real-estate boundaries of Iransnoo and Geelong. Batman had the aid of William Buckley, a former escaped convict taken in by the Watha Wurrung people (C. Clark, 1973). Batman provided a contractual deed written by Gellibrand to the Dutigallar clan chiefs. The deed granted Batman 100,000 acres of real estate as a result of providing an assortment of gifts as well as a promised annual stipend (Powell, 1970). By this stage, Lieutenant Governor George Arthur of Van Diemen's Land (Tasmania) was not enthused with the idea of Batman and the PPA grazing 20,000 stock of cattle (C. Clark, 1973).

It was during same time period between May and June that Batman had purportedly negotiated a similar deed whereby he had purchased real estate of approximately 600,000 acres from the chiefs of the Kulin Nation – the five linguistic groups from south-central Victoria. He had done so as a representative of the Hobart capitalist consortium, whereby two deeds had been drawn up and both signed with payments (Billot, 1979; Broome, 1995). Supposedly, Batman and his capitalist colleagues had offered the Kulin Nation 20 pairs of scissors; 50 handkerchiefs; 12 red shirts; four flannel jackets; four suits of clothes; and 50 pounds of flour. The "deal breaker", however, was the supply of enough "grog" to entice the local Kulin Nation peoples to accept his offer. He later returned to Launceston with the euphoria of being "the new king" in his future squatterdom. He was confident that Lt Governor Arthur would approve of this treaty (C. Clark, 1973).

Lt Governor Arthur, already distressed by the Black Wars and slavery in Tasmania, held suspicions of Batman's intentions of his treaty with the Kulin Nation peoples (Buxton,

1866; Kenny, 2008; The House of Commons & the "Aborigines Protection Society", 1837). At this instance of Batman's treaty, Lt Governor Arthur had been in discussion with Sir Thomas Fowell Buxton and the Parliamentary Select Committee on Aboriginal tribes (British settlements). He provided evidence of the Black Wars and slavery at the same time that Batman had been making plans for a treaty in Port Phillip (Victoria) with the Kulin Nation people (Buxton, 1866; Kenny, 2008; The House of Commons & the "Aborigines Protection Society", 1837).

The Colony of New South Wales Governor, Richard Bourke, voiced to all that Batman's treaty was null and void with no effect against the rights of the Crown. Any squatter found in possession of any First Nations peoples' real estate without licence or authority from His Majesty's Government would be deemed trespassers (C. Clark, 1973). Governor Bourke disavowed Batman's treaty as they were private citizens/company trespassing on Crown land (Reynolds, 2003). Thus, according to the Colony of NSW's interpretation of the US Supreme Court decision in the *Johnson & Graham's Lessee v. McIntosh* (1823) case, only the government had the authority to purchase First Nations peoples' land. A similar view of Batman's treaty in 1835 was that it violated the Kulin Nation peoples of their sovereign ownership and that they were the titleholders of their real estate. His treaty (Cruickshank, 2013) was scandalous as it was nothing more than an instrument for the dispossession of Crown land. In relation to the dispossession (Billot, 1979; Broome, 1995), Batman's treaty, for all its problems, was an admission to the lawful fact that it was the First Nations peoples and not the Crown who owned the real estate. More so it was the First Nations peoples who had the lawful right to alienate their real estate.

The other side to this was that the Kulin Nation people were knowledgeable with their own system of governance and that senior men of their clan held positions of power and authority. The head clansmen in some Kulin languages are referred to as "ngurungeata". They

preside over all areas of land management and resources within their real estate, using the principles of reciprocity. Outsiders were able to gain formal permission from the ngurungeata for temporary access. Thereafter, their safety was guaranteed (Barwick, 1984; Kenny, 2008). Batman was under the pretence of having purchased land at the onset of the clan-heads performing a "tanderrum", which is a ritual that gives outsiders temporary access to land (Barwick, 1998; Kenny, 2008).

William Thomas, a supporter of the Kulin Nation people, described how Gellibrand had drawn up a deed based on "enfeoffment" – an ancient system of land tenure – whereby gifts are offered in return for a handful of soil (Bride, 1969; Kenny, 2008). William Barak as a young boy witnessed this event of the clan-heads, which was described as an important meeting (Howitt, 1904; Kenny, 2008). Accordingly, Buckley requested tomahawks and scissors as they were a highly sourced items. Also, Billibellary, who was present and head of the local axe stone quarry in Mt William in the north-western part of Melbourne, knew these items could be then traded with First Nations peoples as far away as New South Wales and the newly formed Colony of South Australia (Diamond, 1997; Kenny, 2008; Presland, 1994).

Suffice to say, the treaties between Batman and the First Nations peoples were not a clear and concise understanding of each other's legal interpretation of what constitutes property law and land tenure. The performing of the tanderrum meant that Batman and the PPA only had temporary access to use the land. Billibellary knew that the First Nations peoples held lawful property rights as did Batman and the PPA. On 24 January 1937, that recognition had not been lost as it was cited by William Cooper and the Australian Aborigines League who said the First Nations peoples, with reference to the Kulin Nation people as being the original landowners. Poignantly, in 1951, the 50th year of Federation, Pastor Doug Nichols was not enthused with the Melbourne City Council's celebration of colonisation that had ignored the First Nations peoples' rightful place. He declared that another Day of Mourning event shall be

held on the Yarra River bank as a re-enactment of Batman's signing of the treaty with the lawful landowners (Attwood, 2003).

The Home Office took the view that only the Crown, and not private citizens, could formalise such treaty frameworks. This included the engagement of legally binding agreements between the sovereign rights of First Nations peoples and the British Imperial Government. The purchasing of land from the sovereign First Nations peoples could only be undertaken by the Colony of New South Wales Government, based on a United States Supreme Court precedent in 1823 *Johnson & Graham's Lessee v. McIntosh* (1823). On one hand, the Crown, under the pretence of *terra nullius* and with the usage of Pope Alexander VI medial Christendom views, effectively took ownership of First Nations peoples' land (Frost, 1981; Hanke, 1965). On the other hand, the concepts of sovereignty, the monarch relinquishing its sovereign authority over citizens, the British Imperial Government's denial of *terra nullius* after Lieutenant Cook's visit and upon settlement, the United Kingdom Government, enacted by the Crown, had no constitutional authority. In addition, King William IV's *Letters Patent* of 1836 for the creation of South Australia, indicated that the rights and occupation of First Nations peoples would not be affected. Thus, I argue that the Crown or the United Kingdom Government had no lawful means to take possession of land.

The *Royal Proclamation Act* 1763 (UK) was issued by King George III and was enacted by the United Kingdom Government, who proclaimed that only the colonial government administrators could purchase land from the First Nations peoples in Canada and North America (Dorsett & Godden, 1998). Consequently, by the enactment of that proclamation, the colonial administrators were gifted with a legal instrument to conduct treaty negotiations (Dussault & Georges, 1999). More to the point, the First Nations peoples had been acknowledged as a self-governing body (The Land Claims Agreement Commission, 2013). I

discuss this in more detail in Chapter 2: Colony of Australia Government Validates the Myth of *Terra Nullius* under the section titled Pre-1770 British Imperial Government Statutes.

Rectifying Unconstitutional Frameworks

My argument continues with the rectifying of unconstitutional frameworks by the Home Office who at that time was the responsible government overseeing the individual colonies in Australia and elsewhere in the Empire. There is a link between Lieutenant Governor Arthur's refusal to accept Batman's Treaty and legislative instruments enacted by the Home Office. In particular, this legislation helps to debunk the notion of *terra nullius* and that the land was not uninhabited.

First, the *Letters Patent* establishing the Province of South Australia 1836 (UK) expressly recognised the rights of First Nations peoples in the following terms:

> …. to that part of the main Land of the said Province **Provided Always** that nothing in those our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or employment in their own Persons or in the Persons of their Descendants of any Lands therein now actually occupied or enjoyed by such Natives… (p. 2)

Second, the Select Committee of the House of Commons on Aborigines 1837 (UK) is cited by Caiphas Tizanaye Nziramasanga (1974) in his masters thesis, *A Study of the British Parliamentary Select Committee on Aborigines in British Settlements 1835 to 1837*. He provides two quotes from the Select Committee's report on aboriginal land concepts and policies. The first is as follows: "So far as the lands of the aborigines are within any territories over which the dominion of the Crown extends, upon any title of purchase, grant or otherwise, from their present proprietors, should be declared illegally and void" (p. 88). The second is from the committee's fifth recommendation: "All governors of Her Majesty's colonies are not to acquire any new territories without sanction from the Home government" (p. 88).

The commissioners noted that the colonial officials had not been accountable when claiming vast number of Aborigines' real estate in the name of the British Imperial Government without written legal authority. A number of land acquisitions resulted in wars with Aboriginal tribes, as there were no specific treaties with lawfully recognised tribal leaders that had been signed. Many of the Aborigines-settlers' treaties prior to the committee's report had been of a verbal nature that always ended up in expensive wars accounting for the lives of Aborigines and in expenses associated with maintaining the British soldiers (Nziramasanga, 1974).

The Aborigines Protection Society

The Aborigines Protection Society was a philanthropic organisation that together with the House of Commons (The House of Commons & The "Aborigines Protection Society", 1837) through the Home Office applied pressure to the self-governing colonial governments as both had higher legislative authority. Furthermore, the Home Office acted in the role of the federal parliament. Thus, the Home Office had the authority to override colonial governments' legislation. The Aborigines Protection Society Committee responded to the Report of the Select Committee on Aborigines (British Settlements): With minutes of evidence, appendix and index released by the House of Commons in 1836. It voiced its displeasure towards the treatment of First Nations peoples undertaken by numerous British Imperial governments. The main purpose of the Society was to assist in the protection of the defenceless and promoting the enactment towards the advancement of uncivilised tribes. In the Preface of the report, the Aborigines Protection Society displayed its condemnation of the injuries received by First Nations peoples on their own land as a result of the oppression of the British Imperial governments. The British Empire's acquisition of land also brought with it many evils underneath the disguise of vicious and/or mistaken legislation. Most notable was the fact that the British Imperial Government's national honour had been disgraced, its integrity thrown out

the window, and it had sacrificed life on numerous occasions all in the name of convenient trade.

Notwithstanding, the Society explained that, as a nation, the British Imperial Government had not hesitated to intrude into the many rights that the First Nations peoples held dearly (The House of Commons & The "Aborigines Protection Society", 1837). Furthermore, the behaviours of the British Imperial Parliament had somewhat professed to the principles of equity, yet they performed conflicting acts designed for the dispossession of land, where British Imperial Parliament ignored its reservations to any proceeds that would benefit the First Nations peoples' property rights.

More so, (The House of Commons & The "Aborigines Protection Society", 1837, pp. 2-3) King Charles II, during his address to the Council of Foreign Plantations in 1670, provided an illustration of his instructions:

> Forasmuch as most of our said colonies do border upon the Indians, and peace is not to be expected without the due observance and preservation of justice to them, you are, in our name, to command all the governors, that they, at no time, give any just provocation to any of the said Indians that are at peace with us.
>
> And that if any shall dare to offer any violence to them in their persons, goods or possessions, the said governors do severely punish the said injuries, agreeably to justice and right.

Even though the Home Office intended to rectify unconstitutional irregularities that the settler governments in New South Wales, Victoria, and South Australia employed, these colonies chose to ignore the Home Office's legislative authority. The colonial governments had acted unconstitutionally since their first arrival and as a result of the Colony of Victoria Government's unaccountability they enacted the unlawful *Aboriginal Protection Act 1869* (Vic).

The Unlawful *Aboriginal Protection Act* 1869 (Vic)

The commencement of the removal policies and practices began in 1860, with the Central Board for the Protection of Aborigines producing seven reports. In 1869, the *Aboriginal Protection Act* 1869 (Vic) commenced. The use of the word "Protection" was highly misleading. Its actual meaning was in the context of "dominant control"; in particular, a monarch belonging to a foreign authority who supported that form of dominant control:

> "An Act To provide for the Protection and Management of the Aboriginal Natives of Victoria"
>
> Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):
>
> 2. It shall be lawful for the Governor from time to time to make regulations and orders for any of the purposes hereinafter mentioned, and at any time to rescind or alter such regulations (that is to say).

The Act's sole purpose was to "round-up" Aboriginal people to train them as domestic slaves; not forgetting that the children were to be fostered out into non-Indigenous families or at worst institutionalised. I view these actions as the beginning of eugenics by social Darwinian thinkers from the British Imperialist Government as well as being a form of social engineering that resulted in the loss of First Nations peoples' practices, social understandings, language and country, affecting personhood and community. I am stating that the Christian view enthused by the colonial governments was the key factor of the *Aboriginal Protection Act* 1869 (Vic) underneath the false pretence of *terra nullius* (Frost, 1981; Hanke, 1965).

More to the point, this Act and its policies commenced the denial of the citizenship rights era in Australia. This Act later defied *Pacific Islanders Protection Act* (*th*e *Kidnapping Act*) 1872 (UK), and the *Pacific Islander Protection Act* 1875 (UK). The *Aboriginal Protection Act* 1869 (Vic) led to full control by a settler sovereign government and church-run missions

rounding up different language groups and congregating them into controlled communities. The Western Australian Colonial Government legislated its own Act known as the *Aborigines Protection Act 1886* (WA).

United Kingdom Protection Acts for Pacific Islanders

The *Pacific Islanders Protection Act* (*the Kidnapping Act*) 1872 (UK) and the *Pacific Islander Protection Act* 1875 (UK) recognised the original custodians as occupiers of their real estate and to be treated without hindrance. This can be seen in Section 7 of the Act, Saving of rights of tribes, which provides some supporting evidence. Notwithstanding, the Letters Patent 1836 establishing the Province of South Australia and the Select Committee of the House of Commons on Aborigines 1837 (UK) cemented the support for the 1872 and 1875 Acts. More to the point, both Protection Acts should have repealed the unlawful *Aboriginal Protection Act 1869* (Vic). The reason being was that the Home Office was effectively the responsible parliament because the Colony of NSW legislation would have been inconsistent with the Home Office legislation. Additionally, the Colony of New South Wales Government was acting unconstitutionally.

The *Pacific Islanders Protection Act* (*the Kidnapping Act*) 1872 (UK) *Pacific Islander Protection Act* 1875 (UK) played a major factor in the favourable decision in *Mabo v. Queensland* (*No. 2*) HCA 23; (1992) 175 CLR 1 (3 June 1992). Justice Brennan stated the 1875 Act had clearly disavowed "any claim or title whatsoever to dominion or sovereignty over any such islands or places" and with any further demand, "to derogate from the rights of the tribes of people inhabiting such islands or places, or chiefs or rulers thereof, to such sovereignty or dominion". In the *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, 1. 10 *the impact of Mabo v Queensland* (*No. 2*) HCA 23; (1992) 175 CLR 1 (3 June 1992) document there was no mention of the 1872 and 1875

Acts. The importance of that Act was to lay the foundation as to whom held land tenure prior to European occupation and since Federation.

First Nations Peoples' Loss of International Trade

The loss of international trade was the final step in removing traditional economies and trade negotiation agreements. In his book, *Why Warriors Lie Down and Die: Towards an Understanding of Why People in Arnhem Land Face the Greatest Crisis in Health and Education since European Contact*, Richard Trudgen (2000) discusses the Yolŋu people's loss of international trade with the Macassans. Trudgen noted that the trade with the Macassans, who were trading partners prior to European occupation, had ceased. The local Yolŋu people along the coast indicated that the Balanda (whitefella) were responsible. Between 1894 and 1903, the Balanda had charged tariffs on goods brought in by the Macassans. Ethnographical stories handed down extrapolate that the Macassan captains were informed by the Balanda located in Port Darwin that they would not be permitted to enter the port. Not surprisingly, in 1906, the Colony of South Australia Government had repealed the licences given to the Macassans to fish for trepang. There are two beliefs currently held today: one is told by Yolŋu elders with grave sadness even though many Yolŋu reject this. Two, they rather said, "Who are these Balanda?" The Balanda had no authority in legal agreements between the Macassans and the Yolŋu.

The loss of the First Nation peoples' trade links became a formality when the six colonies embarked on unifying a federated Australian nation-state. During the 1890s, representatives from each colony attended conventions aimed at drafting a constitution in order for the colonies to become a federated nation. During these conventions the drafting of the Australian Constitution was debated and voted on at referendums in each colony. It was at

these conventions that the original custodians lost their right to international trade agreements as well as the local trade agreements amongst neighbouring language groups.

Unifying the Six Colonies' Trade Links

New Zealand for a short period of time was governed by New South Wales in the 1840s when it was included as part of the Colony of New South Wales. Prior to the conventions for a federal union, a Letters Patent, dated 15 June 1839, stated that the Colony of New South Wales had proclaimed the territory of New Zealand from latitude 34° South to 47° 10' South and from longitude 166° 5' East to 179° East. Coincidently, George Gipps, the Governor for the Colony of New South Wales had also been appointed the governor for New Zealand (National Australasian Convention, 1891). Yet, the governing of New Zealand by the Colony of New South Wales was internationally unlawful because in 1841, the New Zealand Māoris had signed a legally binding agreement known as the *Treaty of Waitangi*. I argue that the determinations in de Vattel's (1844) *Laws of Nations* provided the New Zealand Māori with lawful sovereignty, treaty negotiations and self-governance, leading to their recognition as an independent nation-state political body, and a civil society.

In the 1890s, the process commenced to unify the six colonies to become a federated nation and New Zealand was invited to participate. Thus, New Zealand representatives attended nationwide conventions to unify the six individual colonies under a sole federated nation called Australia. It was during these conventions that it was reported that the New Zealand Māori (Ministry for Culture and Heritage, 2017) had signed the legally binding *Treaty of Waitangi* on 6 February 1840, whereby it was then recognised by the British Imperial Government and the Government of New Zealand. In 1852, the New Zealand Government had its own constitution, the *New Zealand Constitution Act* 1852 (15 and 16 Vic. C. 72) (UK;

Parliamentary Counsel Office, 1986). This legislative instrument meant that, like Australia, New Zealand had become a separate self-governing colony belonging to the United Kingdom.

At the 1891 Convention, the first proposed draft was to include a section similar to that of the Fourteenth Amendment implemented in July 1868, Section 1 of the United States Constitution (Quick & Garran, 1902), which reads:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State .... deny to any persons within its jurisdiction the equal protection of its laws – Fourteenth Amendment, sec, 1.

A historical note shows clause 17, Chapter V, of the 1891 Commonwealth Bill states that: "A State shall not make or enforce any law abridging any privilege or immunity of citizens of other States of the Commonwealth, nor shall a State deny to any person, within its jurisdiction, the equal protection of the laws."

What is important from that first draft were the presentations from each individual colony: New South Wales; New Zealand; Victoria; Queensland; South Australia that also included the settlements in the Northern Territory of South Australia; Tasmania; and Western Australia. The first draft of the Australian Constitution did not provide a Bill of Rights (Magna Carta) like the United States of America (National Australasian Convention, 1891) and it was with effort to exclude the will of the First Nations populations. Notwithstanding, the members of the second convention meeting in Sydney on 22 September 1897, (Australasian Federal Convention, 1897) noted in Section 110, Chapter V, that they had adopted in its entirety the statement from Clause 17, Chapter V, of the 1891 Commonwealth Bill. The expert panel's report, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution*, stressed that for the most part First Nations peoples were not able to vote for delegates to represent them at the constitutional conventions; yet First Nations women from South Australia had been placed on electoral rolls and were able to vote for delegates. However, the panel understood

that no evidence existed to show that Aboriginal and Torres Strait Islander people had been involved in the conventions or had had a say in the drafting of the Constitution (Dodson et al., 2012). Prior to Federation, the constitutional convenors had attempted to insert a written definition of the meaning of citizenship into the Australian Constitution (Irving, 2001).

At the Melbourne convention on 22 September 1898, an amendment was proposed by the Tasmanian House of Assembly that was similar to that of the Fourteenth Amendment in the United States Constitution; however, it was dismissed. The reason for that rejection was that if the Commonwealth felt there was a need to act, it would prefer that the states be allowed to deal with such matters (Sawer, 1967).

By 1899, voters from each colony except Western Australia had approved the final draft of the Constitution. The fact of the matter was that non-Indigenous women and peoples from other non-European backgrounds had not been permitted to vote. The Colony of Western Australia constituents voted in a majority in a referendum to join the union as a federated nation. Their referendum was held on 30 July 1900, 21 days after Queen Victoria had given royal assent to the Australian Constitution. Nevertheless, the constituents had taken on "good faith" that the Constitution presented to the United Kingdom Government was not going to be ratified and accepted as written. This was not the case (Colony of New South Wales, 1899) as one example demonstrates; the Home Office in the United Kingdom ratified Section 74 of the Appeal to Queen in Council :

> No appeal shall be permitted to the Queen in Council in any matter involving the interpretation of this Constitution or of the Constitution of a State, unless the public interests of some part of Her Majesty's Dominions, other than the Commonwealth or a State, are involved.

When the constitution had arrived back in Australia, the Federation Committee had accepted Home Office ratified version of the constitution. However, Federation Committee failed to seek

permission from the voting if they had accepted the ratified version Not forgetting that the original custodians were not consulted during the Colonial Government referendums, nor had they been able to show their displeasure of this Act of Parliament. More so, the Federation Committee had not presented the ratified version of this Act of Parliament cited as An Act to Constitute the Commonwealth of Australia 1900 (UK) (Institute of Constitutional Education and Research, 1999; Vol. 1 & 2). Notwithstanding, this Act was and still is under the control of the United Kingdom and has remained in a place of invalidity (Institute of Constitutional Education and Research, 1999; Vol. 1 & 2).

It is also of high importance to note that more evidence has come to light, whereby a prominent Australian Queen's Counsellor (QC) asserted that Queen Victoria had not validly provided royal assent to the Constitution Act, the Royal Proclamation, and the *Letters Patent* required by United Kingdom legislation as she was too ill. The Australian QC had possession of written advice from the House of Lords, the Constitutional History of England, by Professor F. W. Maitland (Maitland, 1919; Simmons, 1999).

The Institute of Constitutional Education and Research's (1999) evidence noted that the draft constitution proposed to federate had failed when presented at the 1898 referendum. In 1899, the draft constitution was approved after a re-drafted version had been presented. It was reported, however, that the approval had come from a limited franchise and other factors, with a mere seven per cent of the people having registered such desire. Point 6 showed evidence that the Colonial Office had altered the draft constitution whilst in London. The proposed constitution was an enactment of the British Imperial Parliament, to which Queen Victoria gave *Royal Assent* on 9 July 1900 (Institute of Constitutional Education and Research, 1999; Vol. 1 & 2). More so, I have established that the new system of settler sovereign governance only held quasi-sovereignty.

In 1901, when Australia became a federated nation, it was not recognised as a nation-state with its own sovereignty; it only had domestic sovereignty (Benton, 2008). Notwithstanding, full international sovereignty had not yet been reached nor had it been requested (Irving, 2001). Also in 1901, in accordance with common law, no acts for citizenship had been enacted. Therefore, all Australians had been defined as British subjects. Thus, all people were born within the monarch's allegiance – meaning, Britain or any of the colonies belonging to the Empire or any British ship – regardless of the nationality of their parents. They were British subjects irrespective of a person's skin colour, gender, or religion. Notwithstanding, all subjects were equal under the law as well as being entitled to the full protection of British law.

New Zealand Says No to Joining the Colony of Australia Government

The colonies in Australia had been courting New Zealand to become part of their union. The most surprising fact is that under Section 6 of the Australian Constitution, titled "New States", New Zealand is referred to as one of the colonies. However, New Zealand voted against joining the federated union of Australia. Thus, Section 6 has been unlawful as New Zealand is a self-governing colony of the United Kingdom. A number of important reasons put forward by the New Zealand delegates led to the "no vote" (Reaves, 2001; Roper, 1899).

I need to discuss the delegates from New Zealand's who were involved in New Zealand joining a federated Australia. The implications of New Zealand's withdrawal from the Federation enabled it to keep its strong connection with the New Zealand Māori. Also, the New Zealand delegates had concerns regarding the treatment of the First Nations peoples in Australia (Roper, 1899). Maintaining New Zealand's own independence, the elected members and senators would reside in New South Wales and not New Zealand, and its main source of trade and business was with "Mother Land" England. New Zealand stood to lose a massive

amount of national gross income. Not forgetting that New Zealand had a far more established system of infrastructure with intersecting roads that provided easier communication and transport, where transportation via the ports was of no hindrance. Furthermore, New Zealand would have to assist the six former colonies in repaying those debts. The New Zealand Conciliation Committee envisaged that New Zealand would have to contribute £1,000,000 to assist the upgrade of infrastructure in Australia (Roper, 1899). In addition, the Constitution framers from Australia during that period were not seen as equivalent to the parliamentarians in England. Furthermore the travel from Wellington to Sydney was treacherous and lengthy (Reaves, 2001).

The aftermath of the institutionalised federal union had created a conundrum. Since the signing of the *Treaty of Waitangi* in 1840, the New Zealand Māori held rights to their sovereignty as they had never ceded them to the British Imperial Government. In addition, the First Nations Americans and Canadians had their sovereignty and self-government recognised by the 1763 Royal Proclamation from King George III (The Land Claims Agreement Commission, 2013). Most noticeable was that the First Nations peoples in the continent of Australia had neither recognised. The Royal Proclamation issued by Queen Victoria on 17 September 1900 did not mention a Queen's vice-regal representative as in the governor-general (Quick & Garran, 1902). Surprisingly, Quick and Garran (1902) issued the authoritative edition, which states that "to the People of Australia this Book is Dedicated by the Authors". The *Annotated Constitution of the Australian Commonwealth Revised Edition* is the unlawful version (Glew, 2020). Unfortunately, even *The Annotated Constitution of the Australian Commonwealth* 1902 has no lawful foundation; the references to Queen Victoria's *Royal Proclamation* and the monarch's regal representative as the ruling monarch has been discovered to be the illegitimate heir to the throne.

Conclusion

I have argued that the colonial governments applied an unlawful interpretation of sovereignty. Evidence has shown that the Colony of Australia Government had no legal sovereign rights. It was a system of *quasi*-governance that had no legal right to enter into treaty negotiations, either externally or internally, not forgetting that the Colony of Australia Government had secured a Constitution that was unconstitutional. However, in the pre-1770 period, the First Nations peoples had held sovereign rights, land tenure and land rights since time immemorial and had negotiated legally binding trade agreements, both nationally and internationally. Furthermore, the First Nations peoples had never ceded their sovereignty nor consented to a massive land grab by the British Imperial Government. This is, as I see it, "unfinished business" between the United Kingdom Government, its Colony of Australia government, each First Nations language group in Australia, and all new citizens since colonisation.

Chapter 2
The Myth of *Terra Nullius* Validated: The Establishment for a Colony of Australia Government

Summary of Argument

Chapter 2 builds on Chapter 1 that outlined how the British Imperial Government had declared Australia terra nullius based on falsehoods (Banner, 2005; Connor, 2004; Frost, 1981; Hanke, 1965; High Court of Australia, 1979; Locke, 1764). The argument for the validation of terra nullius began after a successful campaign by the British Imperial Government and the Colony of Australia Government in that the Colony of Australia had been established via the United Kingdom-legislated Commonwealth of Australia Constitution Act 1900 (UK). However, the Annotated Constitution of the Commonwealth of Australia (Quick & Garran, 1902) was the authorised constitution. I argue that under the false pretence of *terra nullius*, the United Kingdom Government, the Crown, and now the Colony of Australia Government had unlawful claims to transnational jurisprudence sovereign authority. As a result, the United Kingdom legislation displaced and denied the existence of First Nations peoples' lawful transnational jurisprudence sovereign authority.

In this chapter I apply a First Nations academic research cultural and political integrity standpoint to engage with Western academia and the Australian population. That focus is the *Commonwealth of Australia Constitution Act* 1900 (UK), which had gifted the United Kingdom Government with another foreign self-governing outpost, just like Canada and New Zealand, in addition to the royal monarch becoming the head of a self-governing colonial government.

Additionally, I provide a critique of both the Preamble and the Constitution proper from the *Commonwealth of Australia Constitution Act* 1900 (UK) and their applications. Furthermore, this chapter illustrates that some Preamble and Constitution crises occurred because of a number of international events that happened after the end of World War One,

such as the signing of the *Treaty of Versailles* (Referendum [Constitution Alteration] Bill, 1919), the passing of the *Treaty of Peace Act* No. 20 of 1919 – An Act to carry into the effect the Treaty of Peace with Germany [Assented to 28 October, 1919.], and Australia joining the League of Nations in 1920, which signalled that a gradual cession process from the United Kingdom had commenced (Hudson, 1924).

Notwithstanding, the Balfour Declaration of 1926 was also a further step in the gradual process of cession from the United Kingdom, whereby Australia was becoming recognised as not being a colony of the United Kingdom. Thus, all levels of government, the United Kingdom Constitution, and its judiciary had no foundation in law, which has remained (Levick, 2019; National Unity Government, 2016). However, an opportunity for a compact or a "Makarrata" was there to be introduced; yet that has been non-compliant, and anytime altering the Colony of Australia's United Kingdom Constitution via a referendum has shown to be problematic. Therefore, it would require venturing outside Australia's domestic courts as noted by John Newfong in 1972 (Newfong, 1972). More so, the *Commonwealth Electoral Act* 1918 (Cth) and its unlawful application supports my position, which requires going outside Australia's domestic law courts to obtain lawful transnational jurisprudence sovereign authority.

Central Arguments of Chapter 2

The central argument of this chapter is to critique the Preamble and the Constitution. First, on the surface, that legislative instrument included a constitutional Westminster system of governance. The Westminster system of governance includes the House of Representatives and the Senate, an Executive Government, and a judicial federal law court as well as a vice-regal representative appointed by the monarch. That representative is noted in the Preamble and Constitution as the Governor-General who authorises a sworn allegiance to the monarch for all parliamentarians. More so, the vice-regal representative is the overseer of the Constitution and

all constitutional matters. In addition, the united indissoluble federated nation had been granted sovereignty by the United Kingdom Government via its constitution to embark on trade and foreign affairs agreements internationally.

Second, as I have already discussed in Chapter 1, a wrongful interpretation of terra nullius had been applied by the United Kingdom Government to acquire the south-east coast of Australia (Blainey, 1966; Dallas, 1978; Hawke et al., 1768; Frost, 2011, 2013; Project Gutenberg Australia, 1893). Additionally, the monarch had no sovereign authority to rule over subjects/citizens (Institute of Constitutional Education and Research, 1999; Vol. 1; Quick & Garran 1902) since 1461 at the commencement of King Edward IV's reign (T. Robinson, 2004). Also, not every citizen in Australia during the 1899 referendums voted for an indissoluble federated nation (Dodson et al., 2012; Irving, 2001). Notwithstanding, three post-1788 legislative instruments acknowledged the First Nations peoples' lawful sovereignty, land tenure and property lore rights, and self-governance. These legislative instruments were also excluded from the Preamble and Constitution. However, the *Mabo v. Queensland* (*No. 2*) HCA 23; 175 CLR 1 (June 3 1992) determined that the Queensland Government only held a quasi-system of governance, citing *the Pacific Islanders Protection Act* (*the Kidnapping Act*) 1872 (UK) and *Pacific Islanders Protection Act* 1875 (UK).

Thus, I am now making a claim that a layer-upon-layer effect had been established as a result of the flawed validation of *terra nullius*. With the acquisition of a Colony of Australia Government and its unlawful sovereign monarch jurisprudence via her vice-regal representative has continued the denial and displacement of First Nations peoples' lawful sovereign jurisprudence. Additionally, all these points have confirmed that a Preamble and Constitutional crisis had already been established.

Third, as of June 1919, a number of international events commenced the gradual process of rescinding the United Kingdom's An Act to Constitute the Commonwealth of Australia 1900: (1) after the signing of the Treaty of Versailles, a gradual process was required to create a cession between the United Kingdom and Australia(Referendum [Constitution Alteration] Bill, 1919); and (2) in 1920, Australia was admitted to the League of Nations. Australia, Canada, New Zealand and South Africa joined as independent nations, although they were included in the British Empire bloc. Thus, Australia only had a token form of independence (Hudson, 1924), which was, in effect, an illegitimate status of admission due to the United Kingdom having political control over Australia via the United Kingdom-legislated constitution. That instrument continued with the membership to the United Nations, Purposes and Principles in Chapter 1 (United Nations, 1945).

Co-existing in July 1921, at the end of the Irish War of Independence, the Preamble to the Australian Constitution contained an invalid matter pertaining to the monarch's Royal and Parliamentary Titles. The Royal and Parliamentary Titles was the United Kingdom of Great Britain and Ireland. Then in 1927, the *Royal and Parliamentary Titles Act* (UK) was altered to the United Kingdom of Great Britain and Northern Ireland, which included the Royal Coat of Arms seal.

Supporting evidence for all the matters came after June 1919, whereby the unlawfulness was not limited to the parliament; it incorporated the Executive Government; the Judicature, including the High Court of Australia and other domestic courts; and all legislation presented and passed as acts of parliament in all Australian jurisdictions. More so, the Executive Government and Judicature have been complicitous in allowing the parliament to continue to operate unlawfully. In the *Wik Peoples v. Queensland* (*"Pastoral Leases case"*) HCA 40; 187 CLR 1 (23 December 1996), former prime minister John Howard enacted discriminatory legislation to further extinguish the First Nations peoples from having control over their land

via the *Native Title Amendment Act* 1998, Act No. 97 of 1998. [This Act was amended by Act No. 63 of 2002; No. 125 of 2007]..

More to the point, on a number of occasions, the High Court of Australia has also skirted that responsibility. A system of *quasi*-sovereignty and governance had been decided in M*abo v. Queensland* (*No. 2*) HCA 23; 175 CLR 1 (3 June 1992), whereby I claim that a reset button should have commenced to invoke a new system of self-governance and a treaty process with the First Nations peoples of Australia. In the Joosse & Anor v. Australian Securities and Investment Commission (1998) (15 December 1998), M35/1998 case, the claimants submitted evidence that no lawful document had been provided or requested by the federal parliament nor the Executive Government to relinquish the United Kingdom's Australian Constitution and the monarch's vice-regal representative. The *Sue v. Hill & Anor*; *Sharples v. Hill & Anor* HCA 30; 199 CLR 462 (23 June 1999) determined that the monarch and the United Kingdom were found to be a foreign authority in relation to Section 44(i) of the Constitution. The Executive Government, and the Judiciary, including the High Court of Australia, have been complicitous in allowing the federal parliament to operate unlawfully.

Finally, this chapter will also argue that there had been an opportunity for a compact or a Makarrata but that has been non-compliant, and that to alter the Colony of Australia's United Kingdom Constitution has shown to be problematic. More to the point, it would require going to Australia's domestic courts as noted by John Newfong during a 1972 interview at the Aboriginal Tent Embassy in Canberra (Newfong, 1972). But the *Commonwealth Electoral Act* 1918 (Cth) and its unlawful application supports my position, which requires going outside Australia's domestic law courts to obtain lawful jurisprudence sovereign authority.

The *Commonwealth Electoral Act* 1918 (Cth) and its usage has maintained the current extension to the validity of terra nullius, the unlawful usage of sovereign jurisprudence by a

foreign authority, and the ongoing Preamble and Constitutional crisis. As the Federal Government of Australia has appointed its own governor-general since the late 1920s under the flawed interpretation of nation-state independence (Cunneen, 1973), I posit that as the overseer of the Constitution, the Governor-General has been to a large extent responsible for Australia's position remaining as a self-governing *quasi*-colony of the United Kingdom. All levels of government in Australia (state and federal), the constitution and judiciary are null and void (Levick, 2019; Simmons, 1999; Ridgeway, 2004).

Validating the Colony of Australia Government

The support for the construction of a Colony of Australia Government was based on the falsehoods of *terra nullius*. Those falsehoods led to the Colony of Australia Government successfully obtaining a Constitution Act being the *Commonwealth of Australia Constitution Act* 1900 (UK). This Act consists of a Preamble, which includes an opening statement and Sections 1 to 9. In addition, a Constitution was contained in that Act between Chapters I and VIII, along with the Schedule, which has an allegiance to the monarch .

The Preamble

In Chapter Twelve of An Act to Constitute the Commonwealth of Australia 1900 (UK), the opening statement that the people from five of the six colonies (Western Australia agreed to federate after the constitution had received *Royal Assent* from Queen Victoria) had agreed to a united federation. Whilst the Constitution was in transit from the United Kingdom, the people from Western Australia agreed at their referendum to unite as a federated nation. The opening introduction clearly states:

> Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established. (p. 1)

Section 1 certifies that this Act shall be cited as the *Commonwealth of Australia Constitution Act* 1900 (UK). Section 2 explains that the Constitution extends to the Queen's successors being Her Majesty's heirs in the sovereignty of the United Kingdom. Section 3 says that it will be lawful for the Queen, with advice from the Privy Council, to declare a proclamation not more than one year after the passing of this Act that the people of New South Wales, Victoria, South Australia, Queensland and Tasmania and Western Australia if the people from that state agree to unite in a Federal Commonwealth. Also, that the Queen at any time in post proclamation appoint a governor-general.

Section 4 notes that with the establishment of the Commonwealth, the Colony of Australia Government, being the Commonwealth of Australia, shall take effect on the day so appointed. In Section 5 it acknowledges the operation of the Constitution and the laws within that Act. Section 6 is an important piece inside the Preamble noting the states as being former colonies, one of which is New Zealand:

> "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.
>
> The States" shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called a "State". (p. 2)
>
> "Original States" shall mean such States as are parts of the Commonwealth at its establishment.

Section 7 basically says that the Federal Council Act 48 & 49 Vict. c. 34 being *The Federal Council Australasia Act 1885* had been repealed. As for Section 8, it certified that the Colony of Australia was, in fact, a self-governing colony:

> After the passing of this Act, the *Colonial Boundaries Act 1895* shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act. (p. 2)

Section 9 articulates what the United Kingdom Constitution within the Commonwealth of Australia Constitution Act 1900 encompasses. The Constitution has eight chapters and a schedule, which consists of the Oath and Affirmations to the monarch. The opening heading says "The Constitution of the Commonwealth shall be as follows" (p. 2).

The Preamble Crisis

I posit a strong argument regarding the underlying factors that connect the myth of *terra nullius* and the inherited Preamble crisis. In Chapter One, I argued that the falsehoods of the United Kingdom Constitution being the *Commonwealth of Australia Constitution Act* 1900 (UK) held no lawful foundation as there had been a change in sovereignty being the *Act of Settlement 1700* (UK) (Institute of Constitutional Education and Research, 1999; Vol. 1). More so, only 7 per cent of people actually voted for a united federation (Institute of Constitutional Education and Research, 1999; Vol. 1) and those who had voted had been Anglo-Saxon males. Helen Irving (2008) concurred with these facts.

Support for Irving (2008) came from Queen's Counsel Ron Merkel (2012), who stated that during the referendums, there had been a franchised system of voting for landowners and First Nations peoples had not been consulted nor did they vote at the referendums. In 1902, the Commonwealth Parliamentary Debates stated that in four states – New South Wales, Victoria, South Australia, and Tasmania – First Nations peoples had obtained the same state franchise as non-First Nations peoples. Whereas in Queensland and Western Australia, First Nations peoples had been offered a restricted right to vote based on property qualification. However, Dodson et al. (2012) noted that First Nations peoples had not been involved in the voting or the drafting of the Constitution, even though First Nations women had been placed on the

electoral rolls and had been able to vote for delegates (Dodson et al., 2012). Together, these points illustrate a wrongful picture of a unanimous declaration, whereby injustices had occurred that lay underneath the Preamble crisis.

The Preamble crisis was further extended with the reference to Ireland given that the Ireland had been divided into the two nations of Northern Ireland and the Republic of Ireland on 10 July 1921 after the Irish War of Independence (Dorney, 2012). After the end of this war, the United Kingdom passed a new *Royal and Parliamentary Title Act* 1927 (UK) and the Colony of Australia Government failed to rectify this crisis. Rectifying this matter would have initiated a new Constitution Act, which would have refuted the British Empire's flawed standpoint on *terra nullius* and resulted in some form of an internationally recognised treaty between the First Nations peoples, the wider community, and a newly formed independent sovereign nation-state government without a regal representative.

The Constitution extends to the Queen's successors being Her Majesty's heirs in the sovereignty of the United Kingdom. Between 1901 and 1927, the role of the Governor-General had been a dual position of being the constitutional monarch's representative and an imperial diplomat (Cunneen, 1973). Further evidence has shed more light on the fact that Queen Victoria had not validly provided Royal Assent to the Constitution Act, *Royal Proclamation*, and *Letters Patent* required by United Kingdom law as she had been too ill to do so (Simmons, 1999). Unfortunately, there has been no accountability regarding Queen Victoria not providing royal assent to these statutes.

However, a layer-upon-layer effect has remained: (1) in accordance with the *Act of Settlement* 1700 (UK), the First Nations peoples' lawful sovereignty had been recognised, in turn, confirming the existence of a Preamble and Constitutional crisis; (2) the monarch's successors were reliant upon the approval of the British Imperial Government, which was

considered a foreign power after the signing of the *Treaty of Versailles*; (3) since 1461, no monarch has been the legitimate heir to the Crown (T. Robinson, 2004); and (4) the appointment of the then position of Governor-General and Commander-In-Chief has aided and abetted the ongoing positions of lawful sovereignty and the Preamble and Constitutional crisis. As the monarch has no lawful sovereignty, the Governor-General has no legal standing, which includes the Governor-General's duties and commission. Therefore, the appointment of justices to the judiciary and judges to the courts, the swearing-in of parliamentarians, and the provision of royal assent to legislation has also remained with no valid foundation (National Unity Government, 2016). Thus, confirming my argument that a protracted form of Preamble and Constitutional crisis has remained silent to validate the myth of *terra nullius* and the Colony of Australia Government's existence.

New Zealand was included as a state of the Commonwealth of Australia. As mentioned in Chapter 1, New Zealand eventually chose not to join the united Federal Commonwealth (Reaves, 2011; Roper, 1899). One of the delegates from New Zealand, Captain William Russell, extrapolated that the colonies in Australia had ignored the status and rights of the First Nations peoples (McGregor, 2011). I subsequently discuss an overview of the Constitution, which consists of eight chapters plus the Schedule, which is the Oath and Affirmation to the monarch. Then I pay particular attention to critiquing the key areas of the Constitutional crisis that are pertinent to the thesis argument.

Constitution Inside the *Commonwealth of Australia Constitution Act* 1900 (UK)

The enactment of the Constitution continued to validate the myth of *terra nullius* and established a system of settler quasi-sovereign governance from which the First Nations peoples had been displaced and dispossessed. In the covering clauses in the Preamble, it states that the Commonwealth was declared to be "under the Crown", meaning to be constitutionally

subordinate. Thus, the Commonwealth of Australia was not an independent sovereign community or state (Quick & Garran, 1902).

The Parliament

Part I in Chapter I outlines the operations of the federal parliament. It has a general purpose, with sections 1 to 6 noting when the parliament meets and duties of the Governor-General and the salary of the Governor-General. Part II, sections 7 to 23 which the upper house or commonly known as the house of review. It cites the provisions of the Senate, the number of senators required, the fact that senators represent a state, increasing or diminishing the number of senators, the term of an elected senator, and the qualifications to be elected.

Part III, sections 24 to 40, is concerned with the House of Representatives and there are some key points: (1) the number of members of the lower house must be approximately double that of the total number of senators; (2) the number of members per state is to be reflective of the population size of each state; and (3) likewise with a senator, a member must meet the same qualifications to be elected.

Part IV, sections 41 to 50, is concerned with both houses of parliament and covers a number of key points, such as the rules of voting, allegiance to the monarch, disqualification of a senator or member, the salaries of senators and members, and parliamentary privileges. Section 42 states that all senators and members must subscribe to the Oath and Affirmation in the Schedule before the Governor-General. Since Federation, Section 44 – Disqualification has been interpreted in a number of ways. One key interpretation has been that if a senator or member holds dual citizenship, that person is deemed to have an allegiance to a foreign power/authority. Section 46, which deals with penalties for sitting when disqualified, notes that a member or senator must for every day whilst in the parliament be responsible for paying £100 to any person who sues for it in any court of capable authority.

Finally, Part V sections 51 to 60, is concerned with the powers of the parliament, whereby Section 51 states that in accordance with the Constitution, the parliament has the authority to make laws for peace, order, and good governance of the Commonwealth in 39 key areas (subsections [i] to [xxxix]). Also, sections 58 to 60 provide the Governor-General with the authority to provide assent or withhold assent to any legislation as the monarch's representative. In addition, any legislation can be returned to where it originated from with any recommended amendments, the monarch can disallow a law within one year of the Governor-General's assent of the legislation, and the Governor-General must inform each house of parliament when a law reserved for the monarch's pleasure has received the monarch's assent. Section 51 subsection xxvi is discriminatory against First Nations peoples who could not have special laws made for them. The premises for this was that the convenors for the constitutional debates believed that as the First Nations peoples were dying out, federal intervention towards them wasn't required, and that the First Nations peoples were not considered a threat to the Colony of Australia Government (Garran, 1944). This was altered after the 1967 Referendum.

The Executive Government

The Executive Government has been positioned in Chapter II of the Constitution located between sections 61 to 70 and is referred to as the Federal Executive Council, where it advises the Governor-General. The elected members of the Executive Council are selected and summoned by the Governor-General and sworn as Executive Councillors. Furthermore, there shall be no more than seven ministers of state. Section 69 notes that certain state government responsibilities had been transferred to the Commonwealth. Those transfers consisted of post, telegraph, and telephone; naval and military defence; lighthouse, lightships, beacons, and buoys; and quarantine.

The Executive Government located inside Chapter II of the *Commonwealth of Australia Constitution Act* 1900 (UK), Section 62 states " the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure" (p.12). Executive Government must be appointed by the Governor-General, in that, the Governor-General selects 10 members from the Lower House and 8 members from the Senate. These politicians hold portfolios, and the Constitution didn't deny them from sitting in parliament; however, they were prevented from voting in the parliament This is the lawful interpretation in selecting the Executive Government (Glew, 2020). Current convention is that the Prime Minister selects his/her Executive Government, of which, is not consistent with the lawful selection of the Executive Government note The Annotated Constitution of the Australian Commonwealth (Quick & Garran, 1902).

The Judicature

The Judicature is positioned in Chapter III of the Constitution and consists of sections 71 to 80, which cover matters such as judicial power and the Courts, the appointment of judges and remuneration, appeals to the High Court of Australia, appeals to the Queen in Council, and the jurisdiction of the High Court. The monarch's vice-regal representative has been mentioned in all sections. An important function of the Judicature is contained in Section 80, which states that a trial by a jury shall occur for any offence against a Commonwealth law. The Governor-General oversees the functioning of the judicature.

Finance and Trade

Finance and Trade is dealt with in Chapter IV of the Constitution, sections 80 to 105. These sections centre on the Consolidated Revenue Fund, whereby the Commonwealth collects revenue or monies via the Executive Government. The Treasury of the Commonwealth has been linked with the Governor-General in Council and the Executive Government.

Furthermore, in Section 98 that is concerned with trade and commerce, there is no mention of any international trade and/or treaty agreements. However, parliament can make laws for trade and commerce that extends to navigation and shipping and to the railways property for any state.

The States

Chapter V in the Constitution, from sections 106 through to 120 relates to the states and outlines that the Constitution of each state of the Commonwealth shall continue after the Commonwealth has been created. More so, all former colony parliaments that become a state, each state parliament laws will remain. In addition, any state parliament may surrender part of a state to the Commonwealth. Furthermore, Section 109 says that if a state law is inconsistent with a Commonwealth law, the Commonwealth law shall prevail. For example, if state and territory quarantine and vaccinations laws are inconsistent with the Commonwealth laws, the Commonwealth laws shall prevail.

New States

Chapter VI of the Constitution, sections 121 to 124 deals with the creation of new states. These sections related to the acceptance of a new state or territory by the Commonwealth. This includes the Commonwealth enacting terms and conditions for a new state or territory being admitted to the Commonwealth and its representation in either house in the parliament. Also, a new state maybe formed by a separation of a territory from a state. Examples are the separation of the Northern Territory from South Australia and the creation of the Australian Capital Territory within New South Wales.

Miscellaneous

Chapter VII of the Constitution, sections 125 to 127 deals with some miscellaneous matters of which Section 127 was of a racist nature to the First Nations peoples. Section 127 stated that First Nations peoples were not to be counted in calculating the population census.. The ideology behind First Nations peoples not being counted as citizens was that they counted for little, they were excluded from citizenship rights, and they were presumed to be outside the nation of the Australian community (McGregor, 2011). Section 127 was repealed after the 1967 Referendum.

Alterations of the Constitution

Chapter VIII of the Constitution contains Section 128, which is concerned with alterations to the Constitution, whereby an alteration to the Constitution is permitted via a referendum. The last three successful referendums are as follows In 1946, social services was added to Section 51 (xxiiA). This inclusion covered the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical benefits, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students and family allowances. In 1967 the "Aboriginals" Constitution amendment altered Section 51 (xxvi) and repealed Section 127. In 1977, the Constitution alterations repealed and substituted Section 15, which is concerned with Senate casual vacancies, Section 128 was amended to include Territories in referendums, and Section 72 was amended regarding the retirement of judges. All three alterations received royal assent from the Governor-General.

Schedule

The Constitution concludes with the Schedule. The Schedule is the prescribed allegiance to the ruling monarch to be undertaken as noted in Section 42 and subscribing an allegiance to the

monarch is non-negotiable. The first part of the Schedule is the Oath to the monarch, of which, each elected member and senator must undertake as inserted:

> "I, *A. B*., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. So Help Me God!"

The second part of the Schedule is an Affirmation, likewise, each elected member and senator must undertake as inserted:

> "I, *A. B*., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law."
>
> "(Note. – *The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time*.)"

Constitutional Crisis

As there is a current Preamble crisis, so, too, is there one for the Constitution, and how the Preamble crisis has impacted on the Australian Constitution. The Preamble has the insertion of a monarch's sovereign jurisprudence over her subjects (people of Australia). First Nations peoples had been deemed to be subjects but had not been afforded the same rights as other Australians. As I have argued, the monarch has not held any lawful sovereign rights over citizens since the *Act of Settlement* 1700 (UK), and as per the *Demise of the Crown Act* 1702 (UK), the United Kingdom Parliament appoints the monarch who must reside in the United Kingdom. In addition, since King Edward IV's reign in 1461, no ruling monarch has been the legitimate heir to the Crown (T. Robinson, 2004). More so, there has been great debate regarding the application itself and the issues of its legitimacy – for example, the dismissal of former prime minister Gough Whitlam and his government by Governor-General Sir John Kerr

on 11 November 1975. Had there been a joint sitting of the House of Representatives and the Senate, the Australian Labor Party would have had the necessary votes for the approval of the Money Supply Bill, which was one of the reasons for the dismissal.

Federal Government Crisis and Its Impact

The Australian system of government consists of a number of divisions, such as the Senate, the House of Representatives, the Powers of the Parliament, Executive Government, and a Judicature, of which, there's a separation of powers between the Parliament, the Executive Government, and the Judicature. In spite of that, the commission of the governor-general has endured to be unconstitutional. Moreover, in spite of the Governor-General being the monarch's unlawful sovereign jurisprudence representative, the day-to-day functioning of governance, legislature and judiciary, and constitution has continued a political impasse. The *Commonwealth Electoral Act* 1918 has been the influx capacitor that has injected fuel into the federal government's time continuum so that a political impasse lingers on.

The Senate Crisis and Its Impact

The impact of the constitutional crisis has flowed onto the lawful functioning of the Senate. As the Senate was included in the Constitution, the overarching impact from this crisis, is the First Nations peoples have continuingly been displaced and denied their lawful sovereign jurisprudence. The Senate is the house of review, which determines legislation presented to it by the House of Representative. In 1900, each state elected six senators for a term total of six years; one half to be elected at the end of the third year whilst the other half at the end of the sixth year. Currently there are 12 senators for each state and two senators each for the Northern Territory and Australian Capital Territory.

As the constitution has been null and void, together with senators subscribing to an oath or affirmation to a monarch who holds no lawful sovereign jurisprudence, the qualifications of

a senator have also become null and void. Section 16 of the Constitution states that the qualifications of a senator are the same as those for the House of Representatives in Section 34(i). At the time that the Constitution received royal assent from Queen Victoria, a senator must have reached the age of 21 years prior to an election and be entitled to vote at an election. The minimum age limit of 21 years of age was lowered to 18 years of age, but not by a referendum; it was amended in 1973 through the *Commonwealth Electoral Act* 1918, after receiving royal assent from the Governor-General. Henceforth, that amendment enacted a placebo validity for sections 16 and 34(i), whereby it effectively extinguished the United Kingdom original version . More to the point, that alteration has not been challenged in the High Court of Australia.

The Senate, whilst in a crisis, has since Federation passed laws that have excluded First Nations peoples. Some examples where senators have approved legislation to the detriment of the First Nations peoples are the *Franchises Act* 1902 (Cth), which set a precedent for two other Acts, the *Invalid and Old-Age Pensions Act* 1908 (Cth) and the *Maternity Allowances Act 1912* (Cth). All three had clauses that excluded First Nations peoples (Chesterman & Galligan, 1997). After the successful *Mabo v. Queensland* (*No 2*) HCA 23; 175 CLR 1 (3 June 1992) ruling, which refuted and dismissed the myth of *terra nullius* , land entitlement by the coloniser government was denied and the Merian people held the rights to land ownership. More so, the Colony of Queensland Government only held possession of a quasi-system of governance. As for sovereignty, that decision could not be made in any of the domestic courts. In 1989, three years before the Mabo decision, the myth of *terra nullius* was cited in Henry Reynolds' (1989) *Aborigines – Australian Colonies*) and attributed to Justice Willis (Reynolds, 1989:

> Although it is in the recollection of many living men that every part of this territory was the undisputed property of the aborigines;

> For a body of the aborigines appeared on the shore, armed with spears, which they threw down as soon as they found the strangers has no hostile intention. This being the case, it does not appear there was any conquest; and it is admitted there has hitherto been no cession under treaty;
>
> For it was neither an unoccupied place, nor was it obtained by right of conquest and driving out the natives, nor by treaties. (pp. 68–69)

What followed was the passing of the *Native Title Act 1993,* Act No. 110 of 1993. The Act was watered down due to the interests of mining companies, which had denounced the findings from the High Court of Australia (Goot & Rowse, 1994). External policymakers such as Hugh Morgan, the executive director of Western Mining, said that the Mabo decision placed property rights in danger as well as being an erosion of the validity of Australia (Russell, 2006). Parliamentarians have often been influenced by external authorities, such as political party monetary donors. Although it is not an application of Section 44 in that the parliamentarians have an obedience and/or allegiance to a foreign power/authority. As a result, I posit that the parliamentarians have committed an imprisoned for treason of sovereignty for their own financial gain in exchange for favourable legislation towards political party donors. After the *Wik Peoples v. Queensland* (*"Pastoral leases case"*) HCA 40; 187 CLR 1 (23 December 1996) decision, there was a further weakening of native title, with the *Native Title Amendment Act 1998,* Act No. 97 of 1998. This Act was amended by Act No. 63 of 2002 and No. 125 of 2007, which was highly discriminatory towards First Nations peoples.

The House of Representatives Crisis and Its Impact

Similarly to the Senate, the House of Representatives has been in crisis mode, whilst at the same time having introduced legislation to the detriment of the First Nations peoples. More so, the electoral boundaries for the House of Representatives have denied the lawful sovereign jurisprudence of each language group belonging to the First Nations peoples in Victoria, and

some of those language groups real-estate area has been displaced into two states – New South Wales and South Australia – and the Northern Territory.

The current position is that the number of members for each state vary in accordance with each state's population size. Also, the number of members must be as nearly as practicable twice the number of senators. However, the quota of members elected per State was not double the number of Senators per State. Therefore, there has been an erosion of quotas in the House of Representatives. In 1900, New South Wales had (26), Victoria (23), Queensland (9), South Australia (7) and Western Australia and Tasmania (5) each. Each State had 6 senators with a total of 36 in the Colony of Australia Government, of which, was roughly half that of 75 members in Colony of Australia Government.

Section 27 of the Constitution is important because it stipulates that "Parliament may make laws for increasing or diminishing the number of Members of the House of Representative". Likewise with the Senate, Section 34(i) has been altered without a referendum. The *Commonwealth Electoral Act* 1918, a legislative instrument that has protected this alteration without it being challenged, was enacted by the parliament for the election of people to the parliament. As per the Senate, the House of Representatives introduced a bill that was to the detriment of the First Nations peoples whilst the House of Representative has been in a crisis state.

In 2021, the increase in the number of members in the House of Representatives, the total number of members is currently 151: New South Wales (47); Victoria (38); Queensland (30); South Australia (10); Western Australia (16); Tasmania (5); Australian Capital Territory (3); and Northern Territory (2). As it stands, the number of senators is 12 per state and two each for the Australian Capital Territory and the Northern Territory. In South Australia and Tasmania, the number of senators is greater than the number of members of the House of

Representatives from these two states. In addition, the quota for senators from the Northern Territory equals the number of the House of Representative members for that jurisdiction, whereas each Territory jurisdiction should only have 1 senator.

One of the most discriminatory pieces of legislation to be introduced into the House of Representatives has been the *Northern Territory National Emergency Response Act 2007*, Act No, 129 of 2007. In 2006, in an episode of the television program, *Lateline*, its presenter Tony Jones discussed the Mutitjulu Indigenous community's sexual abuse story from the Northern Territory (Jones, 2006). One key witness, who said he was a former youth worker at Mutitjulu, was in fact senior bureaucrat Gregory Andrews, assistant secretary in the Office of Indigenous Policy Coordination under the former Minister for Indigenous Affairs, Mal Brough. Of the concerns he said he had, he never spoke of them to the Northern Territory Police, which was confirmed by Claire Martin, Northern Territory Chief Minister at the time (Graham, 2012). What followed was the report titled Ampe Akelyernemane Meke Mekarle (Little Children are Sacred), which was the outcome of an investigation conducted by Rex Wild QC and Patricia Anderson. It made 97 recommendations, none of which were implemented by the former Howard Government; instead, this government enacted a military-style "invasion within Australia".

The Complicitous Executive Government

The word "complicitous" is derived from a Latin term meaning "choosing to be involved in an illegal or questionable act, especially with others, or having complicity". As per the Parliament, Senate, and House of Representatives, a continued functioning of the Executive Government has remained under the auspices of a null and void monarch's representative, the Governor-General. In turn, that continued execution and maintenance of enacted legislation has remained in a crisis. The selection process for the Executive Government must be conducted by the

Governor-General in that the Governor-General selects 10 members from the House of Representatives and 8 members from the Senate. These politicians held portfolios, and the Constitution didn't deny them from sitting in parliament. However, they were prevented from voting in the parliament (Glew, 2020; Quick & Garran, 1902). Over a long period of time, the Executive Council has had its name changed to Prime Minister and Cabinet, Coalition of Australian Governments (COAG), and the newly introduced National Cabinet. A National Cabinet is nothing more than a neoliberalist cabal discussing policies underneath a cone of silence.

There is a general convention that purports that the Prime Minister selects a Cabinet with ministers having portfolios – for example, the Minister for Defence. This process by the Prime Minister has been inconsistent, whereby the Council has not been chosen and summoned by the Governor-General. More recently with COVID-19, the Prime Minister has selected his own National Cabinet, which has consisted of himself, the premiers and chief ministers of the state and territory governments. The National Cabinet, which had been introduced 13 March 2020 was an unconstitutional cabal. Federal Court Justice Richard White, who is a presidential member of the AAT, ruled that the mere usage of the name National Cabinet does not in itself have the effect in bringing a group of persons under the name of a "committee of the Cabinet". Likewise, nor does the sheer naming of a committee as a "Cabinet committee" have that outcome (Head, 2021).

Complicitous Judicature

As I have already discussed, the monarch has not held any lawful sovereign authority over the people from the United Kingdom, which includes all citizens that the former British Empire had conquered and colonised. After the signing of the Treaty of Versailles, Australia received international independence. In 1920, Sir Geoffrey Butler, KBE, MA and fellow, librarian in

international law and diplomacy at Corpus Christy College, Cambridge, has provided scholarly evidence (G. Butler, 1925, as cited in Simmons, 1999):

> It is arguable that this article in the Covenant's most significant measure. By it, the British Dominions, namely New Zealand, Australia, South Africa and Canada have their independent nationhood established for the first time. There may be friction over small matters in giving effect this internationally acknowledgement fact, but the Dominions will always look back to the League of Nations Covenant as their Declaration of Independence. That the change has come silently about and has been welcomed in all corners of the British Empire in the final vindication of the United Empire loyalists. (p. 3)

Additionally, the United Kingdom has the sole lawful authority to rescind its legislated constitution. The late Eminent Professor G Clements QC UK, and Emeritus Professor in Law at Cambridge University confirmed this (Paterson, 2015). On 12 February 2001, solicitor Nick Faulkner sent an email to Joe Bryant, John Cummins, Larry Anthony, and Senator Aden Ridgeway, who were members of the Joint Standing Committee on Treaties (Faulkner, 2001). He had received correspondence from Peter Batten a leading proponent of "Australia the Concealed Colony!", a 400 page document, released by the Institute of Constitutional Education and Research. On 28 November 2000, Batten wrote a response to Chief Justice Murray Gleeson's Boyer Lecture "The Rule of Law and the Constitution, Lecture No. 1: A Country Planted Thick With Laws" (Faulkner, 2001).

In this correspondence was a statement made by Eminent Professor G Clements QC UK. This evidence was provided by Faulkner (2001) in his submission to the the Joint Standing Committee on Treaties:

> The continued usage of the Australian Constitution Act (UK) by Australian governments and the judiciary is a confidence trick of monstrous proportions played upon the Australian people with the intent of maintaining power. It remains an Act of the United Kingdom.
>
> After joining the League of Nations in 1919, Australia became a sovereign nation. It had no further legal power to use, alter or otherwise tamper with another nation's legislation.

> Authority over the Australian Constitution Act lies not with the Australian Government nor with the Australian people; it rests solely with the UK. Only they have the authority to repeal this legislation … (p. 11)

Furthermore, Faulkner (2001) sent the same correspondence to the High Court justices Hayne, Gaudron, McHugh, Gummow, Kirkby, and Callinan. Suffice to say that much of the evidence noted in "Australia the Concealed Colony!" has been relevant to First Nations peoples' claims for the ongoing obtainment of unlawful transnational jurisprudence sovereign authority.

Between 1919 and 1921, the then prime minister William Hughes attempted to embark on cession process between Australia and the United Kingdom but failed(Referendum [Constitution Alteration] Bill, 1919). Instead of a complete cession, a placebo was applied by the Colony of Australia Government with the support of the United Kingdom Parliament and its monarch for the appointment of an Australian-born Governor-General selected by the Colony of Australia Government. The process to remove the ability of the UK monarch to appoint a Governor-General was commenced in 1919 by Hughes, whereby the Dominions should be able to nominate their own candidates with citizens from the Dominions being included. The Colonial Office strongly opposed this request. It was pressured again by Hughes in 1920 with a second request, which resulted in the Colonial Office bowing to that pressure by proposing three candidates (Cunneen, 1983; Twomey, 2006).

Prior to the 1926 Balfour Declaration in 1925, former prime minister Stanley Bruce followed suit seeking to have an Australian-born vice-regal representative. Since then, Australian prime ministers have advised the monarch to appoint an Australian-born nominee. That procedure took full force on 30 November 1930 with the appointment of Sir Isaac Isaacs as Governor-General on the advice of former Labor prime minister James Scullin, and that process has remained since. At that time, the former British monarch King George V had chosen English Baron Field Marshall Sir William Birchwood to be the next Governor-General

of Australia. The monarch made his displeasure apparent regarding the nomination of Isaacs but reluctantly accepted the advice of Scullin under the Constitution's Method of Appointment (Cunneen, 1983; Twomey, 2006).

Yet, in 1995 a Senate Legal and Constitutional Committee Report outlined the history in which Australia had received its nation-state independence at an international level. That commenced with the 1917 Imperial War Conference and continued subsequent to the Peace Conference after World War One. This process culminated with Australia being accepted into the League of Nations and the International Labour Organisation (Keith, 1928). Consequently, the Governor-General at that time should have convened a meeting between the House of Representatives and the Senate to enact a dissolution of the Commonwealth Government and begin the cession process from the United Kingdom Constitution, the system of governance, and judiciary. More to the point, every Governor-General since then has been complicit in allowing the High Court of Australia to oversee the interpretation of Australia's Constitution and having knowledge that the United Kingdom and its monarch are a foreign authority in relation to Australia in the Sue *v. Hill & Anor; Sharples v. Hill & Anor* HCA 30; 199 CLR 462 (23 June 1999).

Non-Compliance with a Compact or "Makarrata"

When Federation occurred, segregation existed in terms of who was eligible for citizenship. Yet, an opportunity, similar to that of the Māori New Zealanders, First Nations Canadians and Norwegians, where an allocation of seats had been reserved for them within their respective federal parliaments, should have been enacted in the Australian Parliament (Dow & Gardiner-Garden, 1998). William Cooper had petitioned for First Nations peoples to have an allocation of reserved seats (M. McKenna, 2018). Likewise in 1983, a report from the Senate Joint Standing Committee on Constitutional and Legal Affairs acknowledged that the continent of

Australia had been accessed by unlawful means. Therefore, as the Australian Constitution, judiciary, and system of governance was null and void, after 1919, a treaty process should have taken place. Nonetheless, Australia's First Nations peoples thus far have not been afforded an allocation of reserved seats with an independent voice to parliament.

Currently, there are First Nations people parliamentarians. Unfortunately, those parliamentarians are members of non-independent political parties, such as the Australian Labor Party, the Australian Greens, the Liberal and National parties, and the Democrats. The *Commonwealth Electoral Act 1918* voting mechanism has been designed for candidates from political parties and has hindered independent First Nations people from winning at an election (Australian Electoral Commission, 2020). In the event of having an allocation of reserved seats, it would be problematic as the system of government and its constitution are null and void.

Frustratingly, Australia remains the only nation in the world that has a history of colonisation, whereby its United Kingdom Constitution fails to mention that history. The Constitution also does not mention that it was the First Nations peoples' land on which a foreign nation had constructed its own *quasi* self-governing body. That situation shall remain whilst there is an unlawful governance, constitutional, and judicial system that is unaccountable nationally and internationally.

Repealing of the Colony of Australia Government Constitution

On 11 December 1997, an application was received by the United Kingdom Foreign and Commonwealth Office of the United Kingdom Government by a Lord Chancellor regarding the legitimacy of the Colony of Australia Constitution. The Lord Chancellor's reply was cited under the heading Australian Constitution Remains British Law (Institute of Constitutional Education and Research, 1999; Vol. 1 & 2):

> "The *Commonwealth of Australia Constitution Act* was enacted in the United Kingdom…… There are at present no plans to repeal the Constitution Act……. The Government of the United Kingdom would, however, give consideration to the repeal of the *Commonwealth of Australia Constitution Act* if a request to that effect were made by the Government of Australia. To date no such request has been made. (p. 17).

I have provided evidence that the Australian Constitution and Preamble have been null and void for a long period of time. More so, the repealing of the *Commonwealth of Australia Constitution Act* 1900 remains via the legislative approval from the United Kingdom Parliament. Consequently, a Preamble and Constitution crisis has been in existence. As a result, the alterations to the Constitution in 1967, Section 51 (xxvi) were also null and void.

Consequently, contacting the current monarch, Queen Elizabeth II, to repeal the Australian Constitution, the system of governance and the judiciary would be fraught with danger in light of the recent "Palace Papers" (Hocking, 2020). John Newfong, at the time of the establishment of the Aboriginal Tent Embassy, said we may need to go outside domestic courts and governments to have our sovereignty and self-governance recognised (Newfong, 1972). Likewise, during the 1960s and 1970s, a new period questioned the lawful foundation of Australia's colonial government nationalism that had reshaped the history of Australia. Furthermore, it would denounce the aftermath of the post-1996 federal election period of the former Howard Government's neoliberalist application of Australia's nationalism (de Costa, 2006). The current complicitous *Commonwealth Electoral Act* 1918 could also not be relied upon to rectify the current position.

Complicitous *Commonwealth Electoral Act 1918*

The *Commonwealth Electoral Act* 1918 is the instrument that has been used to elect the settler *quasi*-governments, which include a complicitous Executive Government and Judicature. The current application of the Act requires a voter to choose a candidate via a preferential voting system. The most recent amendment came prior to the 2019 federal election, which was *An Act*

to Consolidate and Amend the Law Relating to Parliamentary Elections and for Other Purposes. The Act was registered on 12 March 2019, two months prior to the 18 May 2019 Federal Election.

A key application of this Act of the Colony of Australia Government uses a coercive preferential voting system in the Senate. In Section 239 (1A) and (1B), (2A) and (2B), voters are instructed to vote either above the line or below the line, where they make a number of selections. In Section 240 (1A), (1B), and 2, which relates to the House of Representatives, voters are instructed to select a first choice and then their other preferences. In Section 245 (1), it states that voting is compulsory for people registered on the electoral roll, and subsections (2), (3), (5), (6), (15), (15A), (15B), and (15C) prescribe penalties in the form of a monetary fine for failing to vote and that constituents who choose not to vote according to the Australian Electoral Commission pamphlets will be prosecuted.

There are crucial points regarding the electoral process in Australian elections that centre on the Australian Electoral Commission (AEC). The AEC organises and conducts Colony of Australia Government elections. Furthermore, the AEC has state affiliates that oversee organise and conduction the Colony of State and Territory Government, and Local Government elections. conduct of elections. Each electoral commission in Australia is a government authority that has a corporate plan. In addition, a candidate for either house must pay a deposit of $2,000 with their nomination application. That legislative instrument has been the modus operandi for the selection of parliamentarians, as per sections 16, 27, 34 (i) in the null and void constitution and has gone unchallenged in any international court. In the most recent iteration of this Act Section 100 – Claims for Age 16 Enrolment now permits 16-year-olds to have their names placed on the electoral roll in preparedness for voting when they turn 18.

Conclusion

This chapter has shown that the Colony of Australia Government, with support from the British Imperial Government and its monarch, has refused to acknowledge the Preamble and Constitutional crisis. The Executive Government and the Judicature have been complicitous in allowing the federal parliament to operate unlawfully. That refusal has continued to deny and displace the lawful transnational jurisprudence sovereign authority of the First Nations people nationally and internationally, and it has failed to be challenged in an international civil law court. More so, challenging the system's unlawful sovereignty, as well as all the levels of governance, judiciary, and the United Kingdom's Commonwealth of Australia Constitution Act 1900 has remained problematic due to the *Commonwealth Electoral Act* 1918. The flawed application of sovereign nationalism has to be decided outside the domestic law courts, and with newly elected constitutional and treaty conventions between the First Nations peoples and the wider Australian population.

Chapter 3
First Nations Peoples' Lawful Transnational Jurisprudence Sovereign Authority Claims, 1788–1992

Summary of Argument

Chapter 3 brings together the evidence from Chapter 1, which illustrated the legal determinations to the ownership of lawful sovereign jurisprudence (Ivison et al., 2000; Scruton, 1982; Trudgen, 2000) and how the British Empire had applied the determination unlawfully by claiming Australia as *terra nullius* so as no other European nation could claim Australia (Collins, 2020) for the purposes of establishing its own international trading base (Blainey, 1966; Frost, 1981, 2011, 2013; Hawkesworth, 1774). Additionally, a deconstruction-of-colonialism viewpoint was that in the pre-1788 and post-1788 periods, the First Nations peoples had never ceded jurisprudence sovereign authority (Lippmann, 1984). For the benefit of the reader, I have applied the word jurisprudence (a legal system) in a post-colonisation context to refine the typical Westminster system's notion of jurisprudence that incorporates First Nations peoples' knowledge of lore systems. Additionally, I have used the term "sovereignty wars" in this chapter as I explained in the Introduction.

For the purposes of this chapter, I allude to the nature and persistence of First Nations peoples' lawful system of sovereignty and jurisprudence. A number of themes are presented, which include lawful jurisprudence; claiming land theft against a sovereign foreign monarch (lawful land tenure); recognised treaties; self-governance; and citizenship rights (Nichols, 2017). These themes are spread across from the eighteenth to the twentieth centuries because they are complementary to each other. I begin this chapter with the section titled the Impact from the pre-26 January 1788 First Nations Peoples' Possession of Lawful Transnational Jurisprudence Sovereign Authority. This section establishes this chapter's arguments regarding the post-1788 period of First Nations peoples' lawful jurisprudence sovereign claims for self-

governance, citizenship rights, treaty and land rights, and sovereignty wars. More importantly, this chapter offers material refuting the United Kingdom's Colony of Australian Government's claims of *terra nullius*.

I first discuss the claims in the section titled 1843 to 1937: First Nations Peoples' Jurisprudence Sovereign Self-Governance Claims. My second discussion regarding citizenship rights claims is detailed in the section 1937 to 1967: First Nations Peoples' Jurisprudence Sovereign Citizenship Rights Claims. The third discussion relates to treaty and land rights claims in the section titled 1788 to 1992: First Nations Peoples' Jurisprudence Sovereign Treaty and Land Rights Claims. Finally, the last discussion centres on sovereign war claims in the section titled 1788 to 1992: First Nations Peoples' Jurisprudence Sovereign Wars Claims.

The conclusion of this chapter argues that the First Nations peoples certified their lawful jurisprudence sovereign authority. The First Nations peoples had to contest and debate against a foreign Westminster parliamentary Executive Government and judiciary system, which was not prepared to relinquish control and only provided punitive token jurisprudence sovereign real-estate ownership and self-governance. Consequently, to rectify all these matters, the First Nations peoples will need to go outside all domestic courts to obtain their lawful jurisprudence sovereign real-estate ownership and self-governance (B. McKenna & Wardle, 2019; Newfong, 1972). This final argument was first developed in the last paragraph of the Summary of Argument section in Chapter 2.

Central Arguments of Chapter 3

Thus far, the emphasis of what this research thesis has established is that the First Nations peoples have never ceded their lawful jurisprudence sovereign authority to foreign authority and that foreign authority's monarch (K. Gilbert, 2015; Pratt, 2003). I have outlined in this chapter's Summary of Argument my application to the use of the word jurisprudence. In doing

so, I will enhance the First Nations peoples' knowledge with the use of the word "jurisprudence" as a signpost for the theory or philosophy of First Nations peoples' knowledge of lore systems. This approach builds on my First Nations' perspective and decolonising methodology that lies at the heart of this thesis.

Thus, in the pre-26 January 1788 period, the First Nations peoples held lawful determinations to sovereignty (Scruton, 1982) and that sovereignty was recognised internally and externally. External sovereignty refers to territorial sovereignty as is often represented by national borders on the world map. Internal sovereignty refers to a political body that has supreme authority (Grant & Barker, 1986). Both determinations are complementary to that of a civil society that self-governs as a national settlement that is independent from a foreign national authority (de Vattel, 1844). Consequently, that lawful possession of jurisprudence sovereign authority continued for First Nations peoples in the post-26 January 1788 period as they had a lawful right as the supreme rulers of their jurisprudence which was complementary to sovereign self-governance, sovereign citizenship rights, and sovereign treaty and land rights (Nettheim, 1991). Governor Philip King determined that the real-estate proprietorship belonged to the First Nations peoples (Reynolds, 1987), which would trigger the need for post-26 January 1788 lawful transnational jurisprudence sovereignty wars.

The first-claim period by the plaintiffs I refer to as 1843 to 1937: First Nations Peoples' Jurisprudence Sovereign Self-Governance Claims. In Chapter 1, I provided evidence to the events that led to Batman's 1836 Treaty. One key factor of that evidence was that the Watha Wurrung and Kulin Nation's peoples were holders of their land, which extrapolated their lawful jurisprudence sovereign right to lawful jurisprudence sovereign self-governance. Consequently, Willum Barak and Simon Wonga, over a 20-year period, campaigned for sovereign self-governance (Attwood,2003; W. Thomas, 18471848, 1849) and in 1863 established their own system of sovereign governance at the Coranderrk Station in Badgers

Creek near Healesville, Victoria (Attwood, 2003W. Thomas, 1859, 1861). Next, in 1881, William Cooper, a politically savvy Yorta Yorta man, led his compatriots in a campaign to have a similar mission with a petition, and by 1883, the Cumeroogunga Station had been established. It is located between the Echuca district in Victoria and the New South Wales border (Aborigines Advancement League, 1937; Patten & Ferguson, 1938).

The second-claim period by the plaintiffs I refer to as 1937 to 1967: First Nations Peoples' Jurisprudence Sovereign Citizenship Rights Claims. This period centres on one key theme – citizens without any rights (Chesterman & Galligan, 1997). In Chapter 1, I alluded to the rectifying unconstitutional frameworks where the First Nations Peoples had received rights to their land and the 1872 and 1875 United Kingdom Protection Acts for Pacific Islanders afforded them freedom of movement without hindrance and recognised their real-estate ownership. Yet, here in Australia, the *Aboriginal Protection Act* 1869 (Vic) indicated that First Nations peoples were the monarch's subjects via birth in one of the monarch's dominions but they had no entitlement to citizenship (Cronin, 1982). The restrictive and control measures of the *Aboriginal Protection Act* (Vic) Act No. 2 of 49 1869, 33 VICTORIÆ mirrored fascist policies of former Nazi Germany.

William Cooper said that mission life mirrored that of Nazi concentration camps under the authority of the Aborigines Protection Board (APB). Thus, politically savvy campaigns started in 1937, when William Cooper attempted to send a petition to King George VI (originally it was for George V who died in 1936; Aborigines Advancement League, 1937), and continued with the Day of Mourning in 1938, the Federal Council for Advancement of Aboriginal and Torres Strait Islanders (FCAATSI) being established in 1958, the 1965 "Freedom Ride", the 1967 Referendum, which culminated with the creation of the 1967 Council of Aboriginal Affairs (Dexter, 2015).

The third claim period refer to as 1788 to 1992: First Nations Peoples' Jurisprudence Sovereign Treaty and Land Rights Claims. This discussion builds on what this research has already established with regard to treaty agreements being made long before any European explorer travelled to Australia. From there a form of political resistance continued after Federation with the 1933 "Thomson Treaty". In 1933, Japanese fishermen entered the sovereign real estate of the Djapu nation Yolŋu people in eastern Arnhem Land without their consent. After that encounter Thomson's Treaty was created between the Commonwealth of Australia and the Djapu Nation (Gordon, 2000; Peterson, 2003). Further evidence is provided by the Gurindji people's strike at Vestey's Hill, the *Milirrpum v. Nabalco Pty Ltd and the Commonwealth of Australia* (*Gove Land Rights Case*) HCA 27; 153 CLR 168 (11 May 1982), the Aboriginal Tent Embassy, the Council for Aboriginal Affairs – Whitlam Government, the 1973 and 1974 Aboriginal Land Rights Commission reports by Justice Edward Woodward, and the 1979 Aboriginal Treaty Commission.

After that I discuss key court case decisions regarding land rights. First, I will cover the *Coe v. Commonwealth of Australia and the Government of Great Britain and Northern Ireland* HCA 68; 53 ALJR 403 (5 April 1979) case. Second, I will outline the *Koowarta v. Bjelke-Petersen* HCA 27; 153 CLR 168 (11 May 1982) case, which involved John Koowarta, a Winychanam resident from Aurukun people, and other Aurukun people in northern Queensland taking legal action against the Archer River Pastoral Holding and former Queensland premier Joh Bjelke-Petersen. Third, in 1982, legal action against both the Queensland and the Australian Government was taken by Eddie Koiki Mabo, Sam Passi, David Passi, Celuis Mapo Salee, and James Rice to claim ownership of their land, the Island of Mer in the Torres Strait. There were two cases: the first was *Mabo v. Queensland* (*No. 1*) HCA 69; 166 CLR 186 (8 December 1988) and the second was *Mabo v. Queensland* (*No. 2*) HCA 23; 175 CLR 1 (3 June

1992). It was the second case that refuted the notion of *terra nullius* and the determination on sovereignty cannot be adjudicated in any domestic court of law.

My final discussion relates to April 1778 to 1992: First Nations Peoples' Jurisprudence Sovereign War Claims, which resulted in wars defending the First Nations peoples' lawful sovereignty. This section will examine the sovereign wars that occurred in the post-colonisation period, such as the Kadigal (Barton, 1889; Lippmann, 1984), Pemulwuy and the Eora Nations peoples (Bridges, 1970; Willmot, 1988), the Palawa "Black War" in Tasmania (Frost, 1981; Hayman-Reber, 2018; Plomley, 2008; Reynolds, 1987; Roe, 1965; Yarwood & Knowling, 1982), and the Myall Creek Massacre (Millis & Stewart, 2019). Then from the 1830s, the Ganai Kurnai were involved in the protection of their sovereignty, which led to the Ganai Kurnai Sovereignty War in Gippsland, Victoria (Gardner, 1983). In the post-Federation period in 1928, the Coniston Massacre of the Walpiri people occurred from August to October on the Coniston Station (Glynn-McDonald, 2007; R. Sutton, 2013. Following the post-1967 Referendum period, the Aboriginal Tent Embassy and its occupants suffered violent clashes under the auspice of the federal government (E. Gilbert, 2015; Howell, 2015; Muldoon & Schapp, 2015). To be more precise, these wars were not of an internal nature between one language group and another; they were against "newcomers" who had entered without consent to obtain sovereignty that they had never sought nor negotiated for (K. Gilbert, 2015; Irving 2008; Pratt 2003).

The Impact From the pre-26 January 1788 First Nations Peoples' Lawful Transnational Jurisprudence Sovereign Authority

In relation to the pre-26 January 1788 period, I have already presented evidence for the determinations for holding possession of lawful sovereignty (Scruton, 1982) and the *Mabo v. Queensland* (*No 2*; 1992) case refuted the notion of *terra nullius* and that a determination of sovereignty cannot be decided in any domestic law court. More specifically, Justice Brennan

of the High Court said that the Pacific Islanders Protection Acts 1872 and 1875 the 1875 Act refused to acknowledge or accept "any claim or title whatsoever to the dominion of sovereignty over any such lands or places". However, each language group would be recognised as a political body within the sovereign real estate in accordance with the *Laws of Nations* (de Vattel, 1844).

These facts have not waned in the memories of politically savvy First Nations peoples and the pre-26 January 21788 period has continued into the post-colonisation era. In Chapter 1, in the section Extra-Territorial Governing of the Colony of Australia Government, I stated that the Colony of Australia Government had been acting unconstitutionally (Quick & Garran, 1902), having no statutory authority to make civil laws (Quick & Garran, 1902). Therefore, the determination by Governor King that the First Nations peoples are the sole proprietors of the real estate (Reynolds, 1987), having possession of lawful internal and external sovereignty (Grant & Barker, 1986), equates to the First Nations peoples having lawful sovereignty authority, which encompasses self-governance, citizenship rights, treaties and land rights (Nettheim, 1993) as well as the right to defend that lawful sovereign authority via sovereignty wars.

1843 to 1937: First Nations Peoples' Jurisprudent Sovereign Self-Governance Claims

It is this second claim where I have examined prominent First Nations peoples politicising their thoughts and actions to stake claims to land that they had never ceded. In having never ceded their land, they also had never ceded their self-governance rights. Although Batman's treaty predates the Australian Constitution Act 1900 (UK), as I have alluded to in Chapter 1, the treaty was rejected by New South Wales Governor Bourke (before the separation of Victoria) as no treaty could be negotiated with private citizens – not forgetting that Governor King in 1808 had clearly stated that the First Nations peoples had the sole rights to their land's proprietorship

(Reynolds, 1987). Unfortunately, the Colony of Australia Government's assertion of *terra nullius* and the acquisition that all land was "Crown land" had no foundation in accordance with First Nations peoples' lawful jurisprudence sovereignty and land lore knowledge that predated the arrival of the British Empire. More so, the Kulin and Wada Wurrung peoples had the lawful right to enter into a contract. Thus, the impact from that led to a politically savvy First Nations peoples asserting their self-governance claims. Acquiring land tenure and land rights are comparable with sovereign self-governance.

Coranderrk Station Healesville Sovereign Self-Governance

In early 1843, the demand for sovereignty was commenced in Victoria by the Woi Wurrung people (Attwood, 2003). Between 1847 and 1849 a monumental shift occurred when William Thomas stated that the Yarra blackfellows should have their own country on the Yarra so that they could harvest it themselves (Attwood, 2003; W. Thomas, 1847,1848, 1849). That action for land ownership continued in the late 1850s by the Kulin Nation peoples. (Attwood, 2003c, p. 8; Thomas, 1859). By 1861, further action had been supported by William Thomas (1861). Subsequent action was taken by the Woiworung and Taungurong peoples led by William Barak and Simon Wonga. In 1863, the Coranderrk Station was born (Attwood, 2003; Leader Newspaper, 1876). The Coranderrk Station was fully self-sufficient when Rev John Green was the station manager as he gave the residents full autonomy in controlling the affairs of Coranderrk. The station was a thriving business up until Green's removal in 1874, after which it declined (Colony of Victoria, 1882).

Cumeroogunga Station Sovereign Self-Governance

In 1881, William Cooper and his colleagues gave a petition to the Governor of New South Wales seeking land ownership in the same manner as had William Barak and Simon Wonga for Coranderrk. The Yorta and Pangerang men had received encouragement from William

Barak and other Kulin people who had been visiting them or had been most likely residents at Maloga (Attwood, 2003). The Moira and Ulupna clans introduced their own personal recollections in their history of dispossession by the colonised government (Cato, 1976; Daily Telegraph, 1881). The crux of wanting the land was to cultivate it and have it fully self-sufficient just like Coranderrk. By 1883, there had been a favourable outcome for William Cooper and his plaintiffs, with the land being promised as a reserve that would become Cumeroogunga, a Yorta word meaning "our home"(Attwood, 2003) . Then in 1887, the Yorta people, led by William Cooper, had written a petition insisting that sections of the land should not be smaller than one hundred acres for each family. The plaintiffs were politically savvy, knowing that their Coranderrk counterparts had expressed the same arguments that they were the original occupiers of their lands. More importantly, they had strong desires to work the land to earn their livelihood from it (Riverine Herald, 1887). Yet, the true picture from the missions and/or stations was one of punitive self-governance rights because the Aboriginal Protection Board had been replicating a form of control that was reminiscent of a Nazi Germany concentration camp (Goodall, 1990).

Jimmy Clements' 1927 Protest at Old Parliament House

In 1927, Jimmy Clements camped outside what is now Old Parliament House, protesting against the new system of government which had been built on his nation's land. His firm stance was that it was the sovereignty of his people and not the Crown as his people had the lawful sovereign authority to govern themselves. More to the point, he delivered a claim of sovereign rights to the regal representatives being the Duke and Duchess of Kent. At that very instance, the sovereign of the Crown and the Australian Parliament was asserted; Jimmy Clements claimed the First Nations peoples' sovereignty rights and that those sovereign rights had never been extinguished (M. McKenna, 2018).

Ten years later, William Cooper attempted to send a petition to King George VI seeking a number of conditions. One of the key conditions was for First Nations peoples to have representation in the parliament. The petition also requested that non-First Nations peoples who were aware of their needs would show empathy towards the First Nations Peoples as their elected political representatives (Australian Aborigines' League, 1937). The following year, William Cooper, at the Day of Mourning protest, demanded that the enactment of laws was not to be of a segregated nature and that it was based on equality. Those moments signalled the rise in political resistance against racist policies and the enforcement of equal citizenships rights. Anthony Martin Fernando was another First Nations protestor who, in the late 1920s, protested on the streets of London outside Australia House where he condemned the failure of British Empire rule in his country (Paisley, 2012).

1937 to 1967: First Nations Peoples' Jurisprudence Sovereign Citizenship Rights Claims

It was during the 1930s that the system of apartheid policies was at the forefront for many politically savvy First Nations peoples. This period was marked by William Cooper with his Petition to King George VI in 1937 (originally intended for King George V) and in 1938, the 150th year since colonisation, he organised the Day of Mourning protest. Finally, a period of self-determination entered the Australian political arena with the creation of the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI). Charlie Perkins, who organised the "1965 Freedom Ride", showcased racism and apartheid government policies, and the strength of FCAASTI opened the door for the 1967 Referendum. In addition, FCAASTI also made strong representation to change the Australian Constitution. The 1967 Referendum challenged the racist constitution, but it also demanded that First Nations peoples receive the same rights to education, housing, sovereignty, land rights and ownership, and self-determination as well as having sole control over their medical services.

Petition to King George VI in 1937

William Cooper a political leader from the Yorta clan with the assistance of the Australian Aborigines' League attempted to send a petition to King George VI (originally intended for George V). It highlighted that the British monarchy and its government had acquired lands that did not belong to it. Also, it sought the elimination of Aboriginal racism and requested better living conditions; First Nations peoples' legal status had been taken away.

Day of Mourning – 26 January 1938

The Australian Aborigines Conference titled Day of Mourning and Protest was held on Wednesday 26 January 1938, the sesquicentenary year of colonisation, in the Australian Hall located at 148 Elizabeth Street, Sydney. The conference, which had been organised by the Aborigines Progressive Association, exposed the unequal treatment handed out to First Nations peoples. In addition, the conference petitioned a statement of rights (Aboriginal and Torres Strait Islander Commission, 2001; Patten & Ferguson, 1938).

An ultimate resolution passed on the 150th year of the coloniser's seizure of land was that the land did not belong to the British nor the monarchy. The attendees at the conference protested against the cold-hearted treatment that all First Nations peoples had received during that 150-year period. Notwithstanding, on that day they made a further appeal to the Australian nation for the instalment of new laws for the betterment of education and care for First Nations peoples. Most importantly, the new policies would install full citizenship rights and equality within the Australia community (Patten & Ferguson, 1938). The Day of Mourning on 26 January 1938 set the wheels in motion by protesting to the NSW premier at the time regarding the "arrogant and abusive" actions of Cumeragunja Mission manager A. J. McQiggan. William Cooper and the Cumeragunja Cumeroogunga residents likened mission life at Cumeragunja to that of a Nazi concentration camp (Foley, 2003).

Federal Council for the Advancement of Aborigines and Torres Strait Islanders 1958

The Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI) brought to the forefront the activism for First Australian peoples' land ownership via a meeting in 1958 at the Willard Hall in Adelaide. Proactive support came from members of the Victorian Aboriginal Advancement League (Bill Onus, Doug Nichols, Bert Growes, and Jeff Barnes), Gordon Bryant the Australian Labor Party Federal Member for Wills, and representatives from a small number of other groups. There were 30 delegates at the conference who represented nine groups of which three were Aboriginal organisations. The attendees drafted a list of eight goals for the alteration of Australia's Constitution, which they included in a petition to the federal government. The framers of this petition were Lady Jessie Street, Brian Fitzpatrick, and Christian Jollie-Smith. The petition had approximately ten thousand signatures and demanded that the former Menzies Government hold a referendum to alter the Constitution (Bandler, 1989).

Freedom Ride 1965

Between 12 and 26 February 1965, the Freedom Ride was organised by Charles Perkins, together with First Nations and non-First Nations students from the University of Sydney who were known as Student Action For Aborigines (SAFA). Their campaign brought attention to the racism and the poor living conditions that were rampant in New South Wales. The Freedom Ride was a "fact finding" mission undertaken by the students journeying to western New South Wales towns to see firsthand the apartheid conditions of First Nations peoples. The Ride members produced a survey of First Nations peoples' living conditions and directly challenged the banning of First Nations ex-servicemen from the Walgett Return Services League. In addition, they protested against the local laws that refused First Nations children from entering the Moree and Kempsey swimming pools (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2017; Curthoys, 2002).

The students made sure that their protests received media exposure, both nationally and internationally, which highlighted the racial discrimination that had been occurring. Eventually, this action stirred up a robust debate that highlighted the disadvantage and racism that First Australians had been enduring Australia-wide at that time (Curthoys, 2002). The Freedom Ride and the media attention it drew led to the Holt Government presenting a referendum to the Australian constituents. The referendum sought to legislate First Nations peoples' equal rights to education, housing, sovereignty, land rights and ownership, self-determination, and the right to determine their own medical services.

1967 Referendum

On 27 May 1967, a federal referendum was held that sought to end discrimination against all First Nations peoples by government and organisations. The wishes of the Australian electorate provided a near-unanimous vote of 92 per cent, which authorised the federal government to take full responsibility for policies and finances that affected the affairs of First Nations and Peoples (Dexter, 2015). The 1967 Referendum repealed Section 127 of the Australian Constitution, which previously stated: "In reckoning the numbers of the people of the Commonwealth or of a State or other part of the Commonwealth, aboriginal natives shall not be counted". In addition, Section 51 (xxvi), which previously read, " The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws" was altered as a result of the 167 Referendum, with the phrase "other than the aboriginal race in any State" being removed. Notwithstanding that the First Nations peoples were to receive equal rights to education, housing, and self-determination, it unfortunately, has not always been the case.

Council of Aboriginal Affairs 1967

After the 1967 Referendum, the Holt Government created the Council for Aboriginal Affairs (CAA), which became the Commonwealth authority that was to oversee all First Australian matters nationally. Former prime minister Harold Holt appointed three executives to the CAA: Barrie Dexter, Dr H. C. "Nugget" Combs and renowned anthropologist Professor W. E. H. Stanner, with Dexter being appointed the CAA secretary. In addition, the CAA had been incorporated into the Office of Aboriginal Affairs in each state. Most importantly, the Council had the imprimatur from the federal government to abolish discriminatory practices (Dexter, 2015).

1788 to 1992: First Nations Peoples' Jurisprudence Sovereign Treaty and Land Rights Claims

I posit my fourth argument, which centres on the post-colonisation era, whereby the Yolŋu people and the Macassans still had an existing treaty arrangement prior to the arrival of Lieutenant James Cook (Trudgen, 2000). Those arrangements were in operation after colonisation and into the early years after Federation. But, as I noted in Chapter 1, the Colony of South Australia Government had rescinded those trade agreements by imposing tariffs on the Macassans in 1906 (Trudgen, 2000).

More so, as I argued in the previous section – 1843 to 1938: First Nations Peoples' Sovereign Self-Governance Claims –that, since 1804, William Buckley, an escaped convict from the ship *Lady Nelson*, had resided with the Watha Wurrung people. As previously stated, John Batman and his PPA only had temporary access to the Watha Wurrung and Kulin Nation's people's real estate (Cruickshank, 2013; Kenny, 2008; Reynolds, 2003). However, Governor Bourke dismissed John Batman and his PPA treaty claim because only the British Empire, and not private citizens, could enter into treaty negotiations. Yet, as Henry Reynolds discovered, in 1808, Governor King proclaimed that "the Aboriginals [are] the real proprietors of the soil"

(Reynolds, 1987, p.6). Thus, Governor Bourke's decision was inconsistent with what Governor King had stated. In 1927, Jimmy Clements demanded sovereignty and land at his protest at the then New Parliament House in Canberra. The vice-regal representative and the parliament were well aware of this lawful claim, yet it fell on the deaf ears of the Colony of Australia Government and the monarch's representatives (M. McKenna, 2018). However, a continuation of treaty and land rights resistance campaigns did continue.

Foreign "Newcomers" Entering Without Prior Consent

In 1933, 32 years after a federated Colony of Australia Government had been established, the Djapu Nation people held ownership of real-estate boundaries between Caledon Bay and Blue Mud Bay in eastern Arnhem Land. This led to the defending of their real estate from "newcomers". Five Japanese trepangers (fishermen collecting sea cucumber) had been caught fishing and later murdered by three sons from the Djapu leader, Wonggu, and a warrior, Dhakiyarr. Constable McColl, a European police officer, received orders to investigate the Japanese fishermen's deaths. During the investigation, Dhakiyarr murdered McColl. Dhakiyarr protested his actions, stating that McColl had restrained one of his wives using handcuffs, and had later raped her as a means in an attempt to shoot Dhakiyarr when Dhakiyarr made his presence known. Judge Wells sentenced Dhakiyarr to death by hanging for the murder and later Wonggu's three sons for the slaying of the trepangers. Each of Wonggu's sons received 20 years' incarceration. Judge Wells had failed to acknowledge customary lore that the three men had clearly described in their defence. The Japanese fishermen had invaded their real estate to smoke trepan, violently abused their women, and had attacked those who had tried to save the women. Donald Thomson, an anthropologist, was sent by the federal government to act as a negotiator. Thomson eventually consolidated peace and his negotiator skills achieved the aided release from prison of Wonggu's three sons and Dhakiyarr (Gordon, 2000; Peterson, 2003).

Furthermore, land rights were of high importance in FCAASTI's infancy, with a plethora of First Nations peoples demanding the right to own their land or to be compensated for the loss thereof. In 1960, at the third annual conference held in Newport, New South Wales, Alex Vesper from Woodenbong, a First Nations reserve located in the northern New South Wales, presented that mentioned appeal. Land ownership for the First Nations peoples is a monumental connection for each language group, it being vital to their links with tradition (Bandler, 1989).

Gurindji People's Strike at Vestey's Hill

The significance of this strike lies in its timing just after the Australian nation had been made aware of the 1965 Freedom Ride and the pre-empting of the 1967 Referendum. In 1966, the Gurindji people, led by Vincent Lingiari, commenced strike action at the Wave Hill Station in the Northern Territory against Lord Vestey, the station's agricultural property owner. Vestey had been occupying Gurindji people's land and, furthermore, they had been alienated from their inherited land rights (Whitlam, 1985). The strike campaign took centre stage when 170 Gurindji men walked off the Wave Hill Station and established a protest camp in the nearby location of Wattie Creek. Their protest centred on the poor working conditions at the station and the unequal pay rates they had been receiving. More so, their protest began to draw attention to the jurisprudence of sovereignty and land lore rights long before colonisation had commenced. The Gurindji people argued their case was based on traditional associations that were connected to their land (Yarwood & Knowling, 1982).

***Milirrpum v. Nabalco Pty Ltd and the Commonwealth of Australia* (*Gove Land Rights Case*) 17 FLR 141 (27 April 171)**

Then in 1963, land rights were again on the national agenda, when there was a proposal to mine Arnhem Land after the discovery of massive amounts of bauxite in the Gove Peninsula. With the discovery being on Yolŋu Nation land, the Yirrkala people signed the Yirrkala Bark

Petition, which was a petition that was delivered to the House of Representatives illustrating their disgust at Nabalco's mining of bauxite on their traditional lands. Two key points were noted: (a) with the exception of the missionaries, no other persons had permission to have access to this vast parcel of land; and (b) the federal government had allocated large portions of Gove Peninsula land for mining. At the FCAATSI Sixth Annual Conference, a telegram was read that had been sent from the Yirrkala Mission by Reverend Edgar Wells, stating that the Elders from Yirrkala Mission had made it abundantly clear that no mining was to be conducted on their land. Federal opposition frontbencher Gordon Bryant was at this conference that had played a key role in the Yirrkala people's fight for their land (Bandler, 1989). What transpired from this conference was the *Milirrpum v. Nabalco Pty Ltd and the Commonwealth of Australia* (*Gove Land Rights Case*) SCNT 17 FLR 141 (27 April 1971) Northern Territory Supreme Court case.

This case against the Nabalco mining company in the Gove Peninsula in the Northern Territory was, in my view, the central nervous system that had placed land rights on the political agenda. The case was adjudicated in the Northern Territory Supreme Court, with the plaintiffs taking legal action against the mining company and the Commonwealth of Australia. This case was presided over by Justice Blackburn who determined, that in 1889, *terra nullius* was the correct sanction by the Privy Council in the United Kingdom on the basis that Australia had been settled without there being inhabitants; it was essentially unoccupied (Reynolds, 1989).

I concur with Beth McKenna and Ben Wardle (2019) that judges and politicians have relentlessly continued to alter the legal discussions regarding First Nations peoples' sovereignty. More so, the United Kingdom Government and now Colony of Australia Government have continued the façade of legitimising sovereignty, regardless of the apparent weaknesses in both of their positions (B. McKenna & Wardle, 2019). Unfortunately, the CAA had to contend with the difficult former prime minister William McMahon, who had refused

to negotiate on equitable terms. Thus, the Aboriginal Tent Embassy was erected in 1972, on the lawns opposite Old Parliament House in Canberra (Hazzard, 1972).

Aboriginal Tent Embassy Canberra 1972

The small gains that had eliminated the apartheid policies through the near-unanimous vote from the 1967 Referendum were not taken seriously by the former McMahon Government. On 26 January 1972, McMahon made some highly offensive remarks that replicated "assimilation policies" (Foley et al., 2014; Hazard, 1972). Consequently, the Aboriginal Tent Embassy was erected on the lawns opposite Old Parliament House in Canberra, where First Nations peoples asserted their claims, nationally and internationally, as being the original landowners, demanded a political voice, insisted on negotiating the terms of the existence of the colonial settlement on the continent of Australia, condemned the assimilation policies of the government, and demanded to be acknowledged as the lawful sovereign nations (Foley et al., 2014).

Additionally, the Tent Embassy symbolised the unlawful declaration of *terra nullius* (Foley et al., 2014; S. Robinson, 2014) and it had a "five point plan for land rights" (Newfong, 1972, pp. 33-34). The birth of the 'plan had been conceived by John Newfong with collaboration from Michael Anderson, Chicka Dixon and Paul Coe, who were from a coalition known as the Black Power movement. It was their intention to make a public declaration of the ultimate aims. The key aim was land rights, which provided the economic potential for development that would have resulted in economic self-sufficiency as it was the sacred or spiritual connection. The five points of the plan were (1) the control of the Northern Territory as a State within the Commonwealth of Australia, and the parliament in the Northern Territory to be predominantly Aboriginal with title and mining rights to all land within the Territory; (2) legal title and mining rights to all other presently existing reserve lands and settlements

throughout Australia; (3) there must be the preservation of all sacred sites in Australia; (4) legal title and mining rights in and around all Australian capital cities; and (5) compensation monies for lands not returnable to take the form of a down-payment of six billion dollars and an annual percentage of the gross national income.

Council of Aboriginal Affairs – Whitlam Government

Barrie Dexter noted the retention of the standpoint for the "100 Days" approach, whereby by 6 September 1973, Dr Coombs had redrafted significant aspects of Dexter's paper into the possible sections for the policy speech to be made by former prime minister Gough Whitlam that would outline a greater composition. The paper he wrote was endorsed by the CAA that stated the following::

> We acknowledge that the settlement and development of Australia by white Australians has wrought great damage to Aboriginal society and is bringing it close to complete destruction. We are determined that this process will be halted. We will undertake a long-term program to compensate and habilitate the Aboriginal people of Australia and open for them a full and free life prospect as their right as Australians and not as an act of charity. To this end my government will, within the first session of Parliament during its term of office were to take the following actions: Land and Land Rights; Compensation and Habitation; Education; Civil Liberties; Organisation and Representation; Commonwealth Responsibility for the Aboriginal Affairs; and Economic Opportunity. (Dexter, 2015, pp. 263–264)

The CAA achievements included bringing to the forefront Aboriginal land rights in the Northern Territory via the *Aboriginal Land Rights Act (Northern Territory)* in December 1976 as result of its persistence. However, the CAA over a period of time became consumed within the federal Department of Aboriginal Affairs.

First Woodward Commission Report 1973

Justice Edward Woodward (1973) was commissioned by the then Governor-General Sir Paul Hasluck to write the Aboriginal Land Rights Commission's First Report, which he submitted on 19 July 1973 to the Governor-General. This report contained important matters regarding an appropriate means of recognising and establishing the traditional rights and interests of First Nations peoples regarding their land. Furthermore, the First Nations peoples had other detailed aspirations being ownership rights pertinent to their land.

Second Woodward Commission Report 1974

A second report was written for the Aboriginal Land Rights Commission by Justice Woodward in April 1974, titled: . In the Introduction, Woodward recommended the establishment of a commission, the aims of Aboriginal land rights, the role of the commission, the conduct of the commission, and his visit to North America. Furthermore, his report noted the following key principles with a summary of recommendations: Aboriginal reserves; other land claimed by Aborigines including vacant Crown land; pastoral leases; city and town dwellers; Aboriginal organisations; land usage; government services; tourism; conservation; sacred sites; mineral rights; and the Aboriginal Land Commission. Both reports appear to come under the understanding of a legally binding treaty/treaties.

Land Returned to the Gurindji People August 1975

I posit that the returning of the land to the Gurindji people had been based on former prime minister Gough Whitlam's belief in justice and equality that had been outlined in the reckoning of the 1967 Referendum as well as both of the reports presented to him by Justice Woodward. More so, it was also based on Whitlam's view that the Australian Constitution was out of date in relation to the First Nations peoples. On 16 August 1975 at Daguragu, approximately 200 people attended a ceremony where Whitlam made inroads with Australia's First Nations

peoples. They were to receive fair and equal wages when he spoke to the Gurindji strikers from Wave Hill Station. This occasion also included a ceremony that officially returned the land to the Gurindji people. Whitlam made a short speech before taking some sand and pouring it into the hands of Vincent Lingiari, the leader of the protest movement (Whitlam, 1985).

In 1975, Whitlam gave a description of what he and his government set about to achieve for the Australian people in his speech given at the Curtin Memorial Lecture. Whitlam gave an insightful statement:

> The question is whether any duly elected reformist government will be allowed to govern in the future. What is at stake is whether the people who seek change and reform are ever again to have any confidence that it can be achieved through the normal parliamentary process. (p. 4)

Consequently, his government's determination was to enact an apology that would head towards the formation of a treaty. In 1976, the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) was enacted by the former Fraser Government; however, the legislation enacted was not national land rights legislation.

The Aboriginal Treaty Committee 1979

I argue that the Aboriginal Treaty Committee was similar to that of the 1967 Referendum in that it sought to negotiate a treaty. That treaty I suggest would have been in the positive representation as per the alterations in Section 51 (subsection xxvi) of the Australian Constitution. In 1979, the Aboriginal Treaty Committee was established with the former CAA executive member Dr H. C. Combs as its chairman. The key point in their advertisement noted that the National Aboriginal Conference (NAC) had made a unanimous request for the negotiation of a treaty. Furthermore, the committee demanded that the Commonwealth respond and urged the Australian Government to undertake negotiations (The Aboriginal Treaty Committee, 1979, August 25th, p. 13).

The key points were to conduct a convention with representatives elected by First Nations peoples and associations so as to negotiate what manner and agreed contract was to be entrenched. Another key point was to present a treaty to the Australian Parliament for ratification. Also the protection of First Nations peoples' identity, languages, law (lore) and culture was to be protected and to adhere to the Justice Woodward's commission report's recommendation that recognition and restoration of land be made available nation-wide and that there be reimbursement for the taking of traditional land in the form of damages associated with that loss.

Coe v. Commonwealth of Australia and the Government of Great Britain and Northern Ireland **HCA 68 (1979)**

The action taken against the Government of United Kingdom of Great Britain and Northern Ireland was pertinent at that time. As I have noted previously, the reference to Ireland became null and void after the completion of the Irish War of Independence which resulted in the creation of two separate nations. Northern Ireland remained as a dominion of the United Kingdom and the Republic of Ireland ceased to be a dominion (Dorney, 2012). Legal action was undertaken in the High Court of Australia by First Nations lawyer Paul Coe (Reynolds, 1989). The case was cited as *Coe v. the Commonwealth of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland* HCA 68; 53 ALJR 403 (5 April 1979).

The contest consisted of two important legal issues that were brought before the High Court of Australia: (1) the colonial government's assumption of sovereignty and the exercisable right for political power over the continent of Australia; and (2) property law and the actual ownership of that land (Reynolds, 1989). The late Harry Gibbs, chief justice of the High Court of Australia, was one of the four justices who dismissed the claims. The annexation of the east coast of the continent of Australia from Captain Cook and further acts, whereby the

entire continent of Australia was acquired by the Crown were acts of state and that validation could not be challenged (Reynolds, 1989).

***Koowarta v. Bjelke-Petersen* HCA 27 (1982)**

John Koowarta, a Winychanam resident from the Aurukun people in northern Queensland, contested with other Aurukun people (claimants) the Archer River Pastoral Holding against former Queensland premier Johannes Bjelke-Peterson (respondents). In 1974, the Aurukun people sought the right to purchase land from the owners of the Archer River cattle station. One year later, the claimants won the right to purchase the land with assistance from the Aboriginal Land Fund and entered into an agreement with Remington Rand, the owners of Archer River Pastoral Holding. However, in 1976 the former Queensland Bjelke-Peterson Government refused to allow the claimants to purchase their land. Consequently, the claimants took their case to the Australian Human Rights and Equal Opportunity Commission and were successful. At that time, the *Racial Discrimination Act* 1975 (Cth) had become federal legislation (Rutledge, 2015).

The claimants then took their case to the High Court of Australia (ABC News, 2015, May 19th). The *Koowarta v. Bjelke-Petersen* HCA; 27 153 CLR 168 (11 May 1982 case involved legal claims against the Queensland Government. A majority of the four justices were in favour of the claimants. One important point that needs to be noted is that in 1966, the federal government had signed the United Nations International Convention on the Elimination of All Forms of Racial Discrimination. Therefore, an international agreement in the form of a treaty between Archer River Pastoral Holding and the Aurukun people was recognised. Unfortunately, not long after the successful High Court of Australia decision, the Queensland Government converted the pastoral lease into a national park (ABC News, 2015). Later, in a

separate court action Eddie Mabo and his colleagues took the Queensland and Australian governments to court, demanding the return of their land and the recognition of ownership.

***Mabo v. Queensland Government* (*No. 1*) HCA 69 (1988)**

In this first case *Mabo v. Queensland* (*No. 1*) HCA 69; 166 CLR 186 (8 December 1988) in 1988, the claimants were successful in arguing that Australia was not *terra nullius* in that it was the means as to how the British took possession of Australia. The history of this case dates back to 20 May 1982, when Eddie Koiki Mabo, Sam Passi, David Passi, Celuis Mapo Salee, and James Rice commenced legal action against the Queensland Government and the Commonwealth of Australia. They were claiming ownership of their real estate, which was the Island or Mer in the Torres Strait located between Australia and Papua New Guinea. However, in 1985, whilst this case was being heard in the Supreme Court of Queensland, the Queensland Parliament enacted the *Queensland Coast Islands Declaratory Act* 1985 to extinguish any native title claim after 1879, including the Murray Islands.

Proceeding from this was a challenge by the plaintiffs to the constitutional validity of the Queensland Coast Islands Act, under Section 109 of the Constitution, in the High Court of Australia. Consequently in December 1988, the High Court determined that the Queensland Coast Islands Act was invalid as it was inconsistent with the *Racial Discrimination Act* 1975 (Cth). Thus, the original case brought by the plaintiffs was able to continue.

***Mabo v. Queensland Government* (*No. 2*) HCA 23 (1992)**

In the case of *Mabo v. Queensland Government* (*No. 2*) HCA 23; 175 CLR 1 (3 June 1992), High Court Justice Brennan acknowledged the Meriam people from the Murray Islands as the plaintiffs and that their land lies within the Torres Strait, approximately 10 degrees south latitude and 144 degrees east longitude. The total area of their real estate was in the order of nine square kilometres, with the largest piece of real estate being the Mer (Murray Islands),

which is of an oval shape roughly 2.79 kilometres in length and 1.65 kilometres in width. Furthermore, prior to European occupation, the Meriam people had held ownership to that real estate being the sole occupiers and that there had been no permanent immigration from outsiders. Thus, the Meriam people are the present inhabitants and the descendants as illustrated in the early reports from the Europeans. They in fact hold the legal rights to their real estate. More to the point, they had held ownership of their real estate for generations prior to the first European contact (High Court of Australia, 1992).

Justice Brennan made important points specifically as to who was a subject of a monarch, noting that there were two further Acts by the British Empire that stated that a dominion could not claim sovereignty. Justice Brennan had quoted the following, "The findings show that Meriam society was regulated more by custom than by law" (*Mabo v. Queensland Government No. 2,* 1992, pp. 4–5). He said that before their annexation to the Colony of Queensland in 1879, the Murray Islands had not been included as part of Her Majesty's dominions. However, in the 1860s in the western Pacific when "blackbirding" was being practised, the Murray Islands were raided, with women being seized and some of their people murdered. The *Pacific Islands Protection Act (the Kidnapping Act)* 1872 and *Pacific Islanders Protection Act* 1875 (UK), however, placed an end to the blackbirding practice (*Mabo v. Queensland Government No. 2,* 1992). Most strikingly, Justice Brennan supported the Meriam people's claim in points 5 and 6:

> 5. However, the 1875 Act expressly disavowed "any claim or title whatsoever to dominion or sovereignty over such islands or places" and any intention "to derogate from the rights of the tribes or people inhabiting such islands or places, or of chiefs or rulers thereof, to such sovereignty or dominion".
>
> 6. Nevertheless, it appears that the Queensland authorities exercised some de facto control in the 1870s over islands in the Torres Straits, which were not part of that Colony's territory".

Barunga Statement 1988

On 12 June 1988, at the annual Barunga cultural and sporting festival held near Katherine in the Northern Territory, former prime minister Bob Hawke was presented with the Barunga Statement (Aboriginal and Torres Strait Islander Commission, 2001). It was during this festival that Hawke gave his promise for a treaty (Hewat, 1993). This proclamation was witnessed by a large gathering of First Nations people at the festival (Hewat, 1993). The Barunga Statement comprised firstly of an opening address (Aboriginal and Torres Strait Islander Commission, 2001)

Furthermore, there were the two key demands for self-determination and self-management for their freedom, which included their right to create their own economic, social, and religious and cultural development. Other key aspects sought compensation for the loss and use of their lands, full control and enjoyment of their ancestral lands, and the control to protect access to their sacred sites and objects. Also included were the artefacts, designs, knowledge, and works of art (Aboriginal and Torres Strait Islander Commission, 2001). Notwithstanding was the protection and respect of Aboriginal identity. This was a crucial moment for political activism by a strong gathering of First Nations peoples towards the federal government of Australia.

Declaration of Sovereignty

Prior to the *Mabo v. Queensland (No. 2)* June 3 determination, on 28 January 1992, members of the Aboriginal Tent Embassy delivered a Declaration of Sovereignty to the Minister for Aboriginal Affairs (K. Gilbert et al., 1992). Kevin Gilbert and Paul Coe, when discussing the Declaration of Sovereignty, stated that sovereignty and land ownership were identical twins. Furthermore, that the land has always been governed by First Nations peoples. However, the illegal regime, in particular, the powerful conservative forces, such as Lang Hancock, the

mining lobby group, and the Colony of Western Australia Government, had obliterated a uniform national land rights program (K. Gilbert et al., 1992).

1788 to 1992: First Nations Peoples' Jurisprudence Sovereign Wars Claims

Thus far, chapters 1 and 2, and now this chapter, have shown a number of lawful facts, which provide First Nations peoples with lawful jurisprudence sovereign authority to protect their lawful civil and political rights that have been embedded in lawful sovereignty against the "newcomer" pastoralists, the unlawful pre-Federation colonial governments and the Colony of Australia Government and its foreign monarch. The sovereignty wars covered in this thesis occurred in the post-26 January 1788 period. Furthermore, the subsequent parliaments and the judiciaries have constantly changed the rhetoric by altering the lawful determinations of sovereignty, self-governance, equal citizenship rights, and treaty and land rights (B. McKenna & Wardle, 2019).

Other researchers have used the term "frontier wars"; however, I have chosen "sovereignty wars". Why? Because, the location of the Aboriginal Tent Embassy in Canberra was within the land axis of the Parliamentary Triangle to the Australian War Memorial (Muldoon & Schaap, 2015). More so, clashes against the First Nations peoples have been violent and uncivil by enforcements authorised by the colonial government that I argue were an act of a civil war. Also, as a researcher, I view a similarity between the Irish War of Independence and American War of Independence and the newcomer governments and pastoralists against the First Nations peoples of Australia. The First Nations peoples fought military-style conflicts to maintain their lawful civil and political sovereign independence as did those in Ireland and the United States of America against the colonising United Kingdom Governments.

More to the point, in 1808, Governor King clearly stated that the First Nations peoples held proprietorship rights of the real estate. This was also consistent with Captain Arthur Phillip's received instructions to reside in a harmonious environment with the First Nations peoples. The killing of an Aborigine was seen as a serious offence compared to that of a European (King, 1986; Reynolds, 2003). Unbeknown to the Colony of Australia Government, the First Nations peoples have always been a politicised force with knowledge of customary land tenure and rights.

The Kadigal Sovereignty War

The first sovereignty war in the post-colonisation period was between the Kadigal Nation peoples and Captain Phillip and the newcomers. The Kadigal people were defiant in not ceding their sovereignty to the British imperial squatters or foreign newcomers (Lippmann, 1984). The Kadigal sovereignty war was the first of the many sovereignty wars between the two parties. Between the months of May and October in 1788, two separate conflicts occurred after the arrival of Captain Phillip and the newcomers (Lippmann, 1984).

On the real estate belonging to the Kadigal peoples and the newcomers, there was not a harmonious relationship between the two. Captain Phillip staked the British Empire's claim for the continent of Australia as being *terra nullius*. The newcomers could not fathom why the First Nations peoples had been unprepared to become friends. The newcomers were not just staying for a short-term holiday; they were here to stay permanently. The Kadigal people were horrified by the treatment towards the convicts that was being meted out by the British imperial establishment. In addition, the First Nations peoples were disgusted at the drunkenness and the fighting they witnessed. In May 1788, four months after the commencement of the "land grab", the first conflict occurred, where articles were stolen and a First Nations person was murdered by a convict with equal reprisals when two convicts had been killed. Then in October 1788, the

conflict between the two parties escalated with further deaths for both parties (Barton, 1889; Lippmann, 1984).

Pemulwuy and the Eora Sovereignty War

Pemulwuy, an Eora clan leader, staged a 12-year war with the British Empire because its representatives had encroached on his people's land without seeking prior consent. In Chapter 1, I detailed the Eora Nation real estate boundaries and the names of each language group (Wilmot, 1988). This war began in 1790 and ended in 1802 after the death of Pemulwuy. What separated Pemulwuy from his later contemporaries was his defiance towards the British Empire's blatant takeover of his people's land without consent (Willmot, 1988).

Bennelong once described Pemulwuy as "one eye" (due to a blemish in one eye), that he's nothing and doesn't understand the British (Willmot, 1988). Pemulwuy was a close relation to Bennelong whom the British also referred to as one eye and had traded with the British on mutual terms. (Willmot, 1988). In October and on 9 December 1790, Pemulwuy used militant tactics against Governor Phillip's unwanted colonisers. Later, in January 1791, Pemulwuy speared Phillip's gamekeeper John McIntyre, whom he loathed and who later died from his wounds (Willmot, 1988). Then in mid-1795, Pemulwuy, with some of his warriors, struck again, but by the end of 1795, he was presumed dead. However, that was only a myth as Pemulwuy surged again in 1797, launching two raids towards the coloniser's – one in Toongabbie, the other in Parramatta. The Toongabbie attack was withdrawn due to the number of colonisers seeking to win the battle. Having not been defeated, Pemulwuy sought revenge against the colonisers stationed in Parramatta who had killed five of his warriors and had severely wounded him (Willmot, 1988). In addition, in the first six months of 1798, more intense sovereignty wars were conducted by Pemulwuy and his warriors, with a reward being

offered for his capture or death by Governor King. Finally, in 1802, Pemulwuy was killed by two colonisers (Bridges, 1970).

The Palawa Black War

In the Palawa Black War, more First Nations Peoples' lives were lost than the squatters (Frost, 1981; Reynolds, 1987). Initially in 1810, David Collins, a former judge-advocate from New South Wales, proclaimed the harming or murdering of an Aborigine by a "newcomer" would be treated as doing the same to a "civilised person" (Yarwood & Knowling, 1982). However, at this point, equal rights under British Imperial law had failed to stand true. A horrendous enactment of conquer and divide by the colonisers virtually decimated the Palawa Nation's population in Tasmania. This has been referred to as "the Black War in Tasmania" or the "Black Line" (Hayman-Reber, 2018).

In 1824, an equal application of David Collin's proclamation was not enacted, thus severing the basic law of mankind. A feudal system, conducted under the watchful eye of Governor George Arthur, was used to segregate the Palawa peoples and drive them away from the newcomers (Yarwood & Knowling, 1982). More to the point, the newcomers' population size, including the cheap convict labour, eventually exceeded the Palawa population (Roe, 1965). As a result, from 1826 the Palawa peoples were prohibited from mixing with the new settlers. The Victory Hill murders was a massacre in late 1827, where the Van Diemen's Land company shepherds were not held accountable for their actions. Martial law had been enforced by 1828, yet it failed the Palawa peoples.

Disgustingly, after 1830 monetary payments were offered to settlers, police, groups of convicts, and hordes of soldiers for capturing members of the Palawa Nation – £5 for adults and £2 for children. The captures occurred by the newcomers hiding in the bushes (Yarwood & Knowling, 1982). Ultimately, in September and October 1830, 2300 soldiers plus volunteers

had created a human fence, called the Black Line, which ran from the north to the south of the Forestier Peninsula to keep out the Palawa (Hayman-Reber, 2018; Plomley, 2008). I concur with Andry Sculthorpe's descriptions when he said this was effectively a civil war and could be seen as nothing other than genocide (Hayman-Reber, 2018).

The Myall Creek Massacre

The Myall Creek Massacre was committed on 10 June 1838 by a congregation of 11 convicts and former convict stockmen under the auspice of squatter John Fleming. This lynch mob also included John Russell, James Lamb, John Blake, Edward Foley, John Johnstone, Charles Kilmeister, James Parry, James Oates, and William Hawkins. These men were in search of Aborigines to chase them away from the cattle stations (Milliss et al., 2019).

Between 7 June and the date of the actual event, the operation was to "chase of the blacks", which was orchestrated by John Fleming. By 9 June, they had been informed to head to Myall Creek and on the next day they did. The Weraerai (Wirrayaraay), who belonged to the Kamilaroi Nation, were sitting by their campfire. That evening, led by John Fleming, the group captured these men, women and children who were pleading for their lives as they were escorted away from their huts. As the sun set on 10 June, approximately 28 men, women and children had been slaughtered. Two trials eventuated after an investigation had been conducted. It was at the second trial on 15 December 1838 that seven of the gang – John Russell, Charles Kilmeister, James Parry, James Oates, Edward Foley, John Johnstone and William Hawkins – were sentenced to death. John Fleming and the rest were not pursued (Milliss et al, 2019).

The Ganai Kurnai Massacres in Gippsland

The Ganai Kurnai had owned their real estate for at least 18,000 years. The population size was between 2500 and 3000 people (Gardner, 1983). The Ganai Kurnai people's first contact with the newcomer settlers was in 1835 when they encountered George McKillop and a group of

squatters in Omeo. In 1840, Angus McMillian, a Scottish settler, had gained employment from Lachlan Macalister, who at that time owned a station called Nuntin. Furthermore, by 1841, Angus McMillan and Pawel Edmund de Strzelecki had been acknowledged as being the persons responsible for exploring Gippsland. In 1843, Charles Tyers had become the Crown land commissioner and he reported that there were roughly 1800 members of the Ganai Kurnai mob.

Not only was there the civil rights action (pastoralist wars) between the original owners of the Ganai Kurnai real estate and those that had obtained unlawful possession of their land but also there were the retaliatory reprisal attacks by the newcomer settlers on the Ganai Kurnai people, who had only been using their own system of lore against the newcomer settlers and government authorities who had breached the Ganai Kurnai people's civil rights. In addition, the settlers the used chemicals and introduced known life-threatening diseases to murder the owners of the Ganai Kurnai real estate (Gardner, 1983b).

Pertinent to the untold truth surrounding the Gippsland massacres was the veil of secrecy regarding the truth as to why there had been a decrease in the population size of the Ganai Kurnai peoples. This first encounter of "whitefella" encroachment had now been exposed as the cause. Gardner (1983) clearly states that this cloak of secrecy had been known to historians for the past 100 years and yet this "darkest" chapter had failed to be written.

The Coniston Massacre

Between August and October in 1928, a massacre occurred at the Coniston Station in the Northern Territory. This was a reprisal for the death of the non-Indigenous dingo trapper Fred Brooks, whose body was discovered in a shallow grave along with traditional weapons at the station in August 1928. The "lynch mob" style reprisal, led by mounted constable George Murray, was undertaken by a group of non-Indigenous civilians and police. As a result, over

60 Walpiri women, men and children were murdered, including the Anmatyerre and Kaytetye peoples on different sites. Henceforth, this massacre was referred to as the Coniston Massacre (Glynn-McDonald, 2007; R. Sutton, 2013). It is my view that a vast majority of non-First Nations people would not be aware of the Coniston Massacre or why Fred Brooks had been found murdered.

Unjustifiably, two Warlpiri men, Arkikra and Padygar, were arrested and imprisoned in Darwin but were later acquitted. In fact, it was Kamalyarrpa Japanangka, known as "Bullfrog", who was the killer of Fred Brooks. Fred Brooks had been murdered because he had breached Warlpiri marriage lore whilst residing at a waterhole called Yurrkuru, which was positioned close to Coniston Station. The Warlpiri people, including Bullfrog, resided there. More to the point, Bullfrog had exercised his rights under traditional marriage lore. Ultimately, British law had been sabotaged by the settlers who acted outside their own law. The wrongdoers were never charged regarding their crimes (Glynn-McDonald, 2007; R. Sutton, 2013).

The Aboriginal Tent Embassy – 1972 to 1992

The Aboriginal Tent Embassy has been involved twenty-year sovereign war with then Colony of Australia Government. In July 1972, five years 1967 Referendum, the former McMahon Government authorised the police to dismantle the Aboriginal Tent Embassy (Muldoon & Schaap, 2015). The attempted removal by force would occur on many other occasions over the course of the Tent Embassy's history, which involved many violent clashes that only served to embarrass the federal government through the national and international media (Howell, 2015). Evidence supporting this claim came from Eleanor Gilbert (2015), who states that since 1992, when the Tent Embassy was re-established on the lawns opposite Old Parliament House, members of the police force have continued to be routinely asked to dismantle any structures, as in, a tent which represents a self-governing body the protestors have built. The actions of

these forces are synonymous with the sovereignty wars enacted previously by the newcomer pastoralists.

Conclusion

The contest of having never ceded their transnational jurisprudence sovereign authority is complementary with sovereign self-governance, land rights and treaty and civil rights that have never been far from the memories of the First Nations peoples. Politicised actions have always been central with every discussion between the settler *quasi*-governments and each language group belonging to the First Nations peoples. The returning of land to the Gurindji people in Arnhem Land and the *Mabo v. Queensland* (*No. 2*; 1992) HCA 23; 175 CLR 1 (June 3 1992) decision should have led to a lawful determination of sovereignty outside the domestic law courts. However, the ongoing "shifting of the goal posts" by the judiciary and the parliament regarding First Nations peoples' lawful sovereignty has created a political and sovereignty modern-day "Mexican standoff". This brings me to the final summation, which is that Paul Coe was correct to say that First Nations peoples need to venture outside Australia to rectify the lawful determination of their jurisprudence sovereign real estate and self-governance.

Chapter 4
Colony of Australia Government Extinguishes the Lawful Determinations of Its United Kingdom Constitution and Its Impact

Summary of Argument

Australia as a dominion was acknowledged, as a result of resolution IX of the 1917 Imperial War Conference, as being "autonomous" (Keith, 1928), along with the signing of the Treaty of Versailles in 1919, the enacting the *Treaty of Peace Act 1919* following the nation's admission to the League of Nations in 1920 (G. Butler, 1925; Chresby, 1985; Referendum [Constitution Alteration] Bill, 1919), and being present at the 1926 Balfour Declaration Imperial Conference (Institute of Constitutional Education and Research, 1999; Vol. 1 & 2). Suffice to say, the Colony of Australia had no lawful basis under international law to use its United Kingdom Constitution, and, in turn, have an elected government and a judiciary (Ridgeway, 2004; Simmons, 1999). Thus, the Colony of Australia had chosen to extinguish the lawful determinations of its United Kingdom Constitution, which had its impact. Notwithstanding, the United Kingdom's acquisition of the south-east coast of Australia was based on *terra nullius* and that *terra nullius* has been revisited many times since (Connor, 2004). Senator Neville Bonner in 1974 and 1975 made those exact claims.

Central Arguments of Chapter 4

The Colony of Australia Government should have requested its United Kingdom Constitution be repealed, along with all levels of the parliamentary system and the judiciary (Faulkner, 2001). I cannot claim to argue with any certainty, but I posit that there were enough politically savvy First Nations peoples – such as Jimmy Clements, Anthony Fernando, and William Cooper – to at least engage in the concept of legislating for a Sovereign Australia Constitution Act. That would have effectively cut the umbilical cord from the British Empire and its

monarch, its constitution, its system of governance and its judiciary as well as rectify the position of *terra nullius*.

Outside the notion of a Sovereign Australia Constitution Act with the First Nations peoples, I can argue vigilantly that no new constitution has been requested by the Colony of Australia Government. Instead, with the knowledge of the British monarch and the United Kingdom Government, a peaceful extinguishment was created to cover up the existing preamble and constitutional crisis and the Colony of Australia's *quasi*-government status. The modus operandi had been to establish Australia as an independent sovereign nation-state. The Colony of Australia Government, *ultra vires*, established the lawful and independent sovereign nation-state of Australia, and by doing so, had changed the narrative to the lawful status of a self-governing colony of the United Kingdom. Clear examples included the Australian prime minister selecting an Australian-born governor-general, the declaration of a Queen of Australia via Colony of Australia Government acts of parliament in 1953 and 1973, removing appeals to the Queen in Council in the Privy Council in London with acts of parliament in 1968 and 1975, and the *Australia Act 1986* (Cth). The constitutional convention proceedings (1988) investigated ways to enhance the federated nation of Australia and its constitution in the post-1900 period. Additionally, the *ultra vires* of the lawful determinations of the sworn oath or affirmation to the monarch protects Australia's independent sovereign nation-state status nationally and internationally.

Examples of the impact included a token system of self-governance provided to the First Nations peoples through government-approved First Nations bureaucracies, like the Aboriginal and Torres Strait Islander Commission (ATSIC), which remained under the control of the federal government as did their government funding. However, the former Howard Government was adamant in its disapproval of ATSIC, which led to neoliberalist policies comparable to those of the pre-1967 Referendum era, defensive nationalism and popular

sovereignty (de Costa, 2006; B. McKenna & Wardle, 2019). A key policy was the watering down of the land rights after the *Wik v. Queensland* (*"Pastoral leases case"*) HCA 40; 187 CLR 1 (23 December 1996). However, the Aboriginal genocide prosecutor's case challenged the Colony of Australia Parliament for crimes of genocide (Balint, 2014). Ultimately, at the end of June 2005, the former Howard Government abolished ATSIC altogether, as well as his military-style "government invading its own country" Northern Territory intervention that was supported by Rudd's Labor opposition. Furthermore, the Expert Panels Report for Constitutional Recognition of First Nations Peoples was a mere smokescreen, as was the 2015 Referendum Council to include First Nations Peoples into the Constitution. The Victorian Treaty Commission is a state government-funded machine that has elected representatives who will negotiate a treaty with the Victorian Government.

Finally, this chapter argues that in 1999, the judiciary, via the Court of Disputed Returns in *Sue v. Hill & Anor*; *Sharples v. Hill & Anor* HCA 30; 199 CLR 462 (23 June 1999) supported the *Australia Act 1986* (Cth) as declaring Australia's sovereign independence. It also stated that the British monarch and the United Kingdom constituted a foreign authority, which meant the obtainment of those legislative instruments, as in the United Kingdom Constitution and swearing an allegiance to the British monarch, are breaches of Section 44(i) of the Constitution; the same constitution that has remained null and void. Those legislative instruments have continuously changed the rhetoric to the lawful determinations of an independent sovereign self-governing nation-state.

Evidence That Should Have Enacted the *Sovereign Australia Constitution Act* in 1928

After the Balfour Declaration Imperial Conference in 1926, King George V said that sovereignty had been transferred to the people of the Commonwealth (Simmons, 1999). Second, Jimmy Clements informed the Duke and Duchess of Kent, who were at the opening

of the new Parliament House in Canberra in 1927, the monarchy didn't have lawful sovereignty and that First Nations peoples had not ceded their sovereignty or legal title to their land. The federal parliament was also informed by Clements that it didn't have the lawful rights to have established a parliament house on the land that his nation was the lawful owners of (M. McKenna, 2018). Also Anthony Martin Fernando in the late 1920s had already protested his discontent to the United Kingdom regarding how the British Empire's system of governance had failed the First Nations peoples (Paisley, 2012). I post a notion that a referendum in 1928 may have been introduced.

The United Kingdom Parliament had peacefully allowed the Colony of Australia Government to have its international independence and sovereign nation-state status. As this chapter argues, this gifting by the United Kingdom Parliament and King George V was done so without the Colony of Australia Government being held accountable nationally or internationally. Therefore, the impact of this has remained and the Colony of Australia Government has continued but in an unlawful means.

Ultra Vires Determinations of the Monarch and the Monarch's Regal Representative

The progression in altering the position of the United Kingdom's monarch and the monarch's regal representative was noted in Chapter 2 in Complicitous Judicature after William Hughes had made attempts for a cession of the United Kingdom Constitution (Referendum [Constitution Alteration] Bill, 1919). As no cession had occurred, I stated that a placebo effect had taken place when the monarch had been informed by the settler *quasi*-government that it will choose its own governor-general who will be an Australian-born citizen. In 1919 and 1920, William Hughes said that the dominions, as per their international independence from the United Kingdom, should nominate their own governor-general (Cunneen, 1983; Twomey, 2006). This same request was made again in 1925 by former prime minster Stanley Bruce, and

on 30 November 1930, Sir Isaac Isaacs was appointed the first Australian-born governor-general (Cunneen, 1983; Twomey, 2006). From there I argue that after the Colony of Australia Government had commenced installing Australian-born governors-general on the advice of the prime minister, a Preamble crisis emerged relating to Section 3, which stated that the Queen may at any time appoint a governor-general.

I argue that once the prime minister had the authority to appoint a governor-general, the Colony of Australia Government had obtained its international independence from the United Kingdom. Thus, there had been a slow progression to further alter the United Kingdom Constitution. That further alteration had provided the Colony of Australia Government with its own sovereign monarch. I argue that the new monarch, the Queen of Australia, has remained unlawful.

Between 1953 and 1973 the introduction of the notion of the Queen of Australia gradually extinguished the Queen of the United Kingdom of Great Britain and Northern Ireland and the monarch's title. Thus, the former Menzies Government's legislation introduced a separate monarch, known as the Queen of Australia with the assenting of the *Royal Style and Titles Act* 1953*,* Act. No. 32 of 1953. This was undertaken in line with other Commonwealth nations. In 1973, former prime minister Gough Whitlam completed this by legislating the *Royal Styles and Titles Act* 1973 (Cth), which finalised the position of the Queen of Australia.

However, that Act removed all references to the United Kingdom, where it especially only mentioned Australia. The monarch's new title became Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth (Winterton, 1993). More so, there is doubt that the Colony of Australia had such authority to enact such legislation (Winterton, 1993). Former prime minister Kevin Rudd and Elizabeth the Second, Queen of Australia, amended the 1984 Letters Patent that related to the Office of

Governor-General of the Commonwealth of Australia, citing the monarch as Elizabeth the Second, by Grace of God Queen of Australia and Her Other Realms and Territories, Queen of the Commonwealth (Letters Patent Relating to the Office of Governor-General of the Commonwealth of Australia, 2008).

Appeals to the Queen in Council

In union with the creation of the Queen of Australia, all appeals to the Queen in Council were altered without a referendum. Appeals to the Queen in Council, which has remained in the unlawful Constitution in Section 74, were removed via the *Privy Council (Limitation of Appeals) Act* 1968 (Cth) Act No. 36 of 1968. Following that was the *Privy Council (Appeals from the High Court) Act* 1975 (Cth), Act No. 33 of 1975. I pose the thought that if the legislation regarding appeals to the Queen in Council had not been removed, the First Nations Peoples could have challenged the *Aboriginal Land Rights (Northern Territory) Act* 1976*,* Act 91 of 1976 to amend it so that it would be universally applied throughout Australia. The *Australia Act* 1986 (Cth) and (UK) had not repealed An Act to Constitute the Commonwealth of Australia [9th July 1900] *Commonwealth of Australia Constitution Act* 1900 [63 & 64 Vict] (UK). Suffice to say that the *Australia Act* 1986 was, in my opinion, the final enactment of cession from the United Kingdom and a nation had now been afforded its international independence underneath the falsehoods of lawful determination of an independent jurisprudence sovereign nation-state government.

Australia Act 1986 (Cth) – Unlawful Determinations of an Independent Jurisprudence Sovereign Nation

I wish to state that the interpretations of the *Australia Act* 1986 have, in many respects, gifted the lawful determinations of self-governing once exercised by the United Kingdom Parliament. In 1980, the chronology of this Act commenced under a “cone of silence” between former

prime ministers and their respective state premiers (M. Fraser, 1982). Section 51 (xxxviii) had been altered without permission from the voting public. Section 51 (xxxviii) of the Constitution had been requested by the state governments for the federal parliament to legislate this Act under the Powers of the Parliament. The voting public was asked in 1984 whether the Commonwealth and the States could voluntarily refer powers to each other in the Referendum Question 2 – Interchange of Powers, which was rejected.

The former Hawke Government presented a Bill known as the *Australia Act 1986,* Act No. 142 of 1985 approved in 1985 by both houses of the federal parliament and received royal assent on 4 December 1985. The *Australia Act* 1986 (Cth) effectively brought the state and territory governments into conformity and gifted the Commonwealth of Australia its sovereign independent status as a federated nation. It was enacted by the House of Representatives, the Senate, and the Queen. This Act has an unlawful Parliamentary Coat of Arms Seal and not the United Kingdom's. As a result, after the passing of this Act, a cession of power by the United Kingdom Parliament to legislative for Australia commenced. The unlawfulness of this Act followed on from the two Acts that had created the Queen of Australia, as it was doubtful that the federal government had the legislative authority to pass those two Acts; not forgetting that this Act had overridden the *Commonwealth of Australian Constitution Act* 1900 (UK) Section 51 (xxxviii) where state governments could engage with any countries outside Australia. For example, after the passing of this Act, the Colony of Victoria Government could engage with the Chinese Government regarding trade agreements without hindrance.

The United Kingdom's version of the *Australia Act* 1986 (UK*)* showed remarkable differences. Section 5 in the United Kingdom Act stated in a side note on the left of the page that two Acts would not be affected: one was the *Commonwealth of Australia Constitution Act* 1900 (UK) and the other being the *Statute of Westminster Act* 1931 (UK) c. 4 [23 & 23 Geo. 5]. Additionally, the United Kingdom Act didn't provide the federated nation of Australia with

independent jurisprudence sovereignty. I have argued that the Colony of Australia Government provided itself with its own determination of being an independent jurisprudence sovereign authority so as to rescind its status of that of being a self-governing colony of the United Kingdom.

Australian Constitutional Convention Proceedings

Between 1973 and 1985, six separate Australian Constitutional Convention Proceedings (ACC Proc) had taken place. The timeline consisted of ACC Proc Sydney 1973, ACC Proc Melbourne 1975, ACC Proc Hobart 1976, ACC Proc Perth 1978, ACC Proc Adelaide 1983, and ACC Proc Brisbane 1985 respectfully (Byers et al., 1988). All six proceedings provided a report; one title was Proceedings of the Australian Constitutional Convention (1973), Government Printer New South Wales. Then in 1987, the Constitutional Commission released five reports cited as Executive Report, Judicial Report, Powers Report, Rights Report, and Trade Report. One noted report was Executive Government, a report of the Advisory Committee to the Constitutional Commission (1987) (Byers et al., 1988). The entire process was a reflection to that of the Australasian Federal Convention and the Colony of New South Wales.

On 19 December 1985, the establishment of the Constitutional Commission and Advisory Committee occurred. The acting prime minister and attorney general at the time, the Honourable Lionel Bowen MP, proclaimed that the federal government had decided to establish a Constitutional Committee to undertake a thorough review of the Australian Constitution. No First Nations person who had been legally trained in constitutional law was on the committee. Furthermore, in their terms of reference, they had four objectives for the revision: (1) to adequately mirror Australia as an independent nation-state; (2) to deliver a more reliable framework regarding the economic, social and political enhancement of Australia as a federation; (3) to recognise the appropriate divisions of responsibilities between the

Commonwealth, the states, the self-governing territories, and local government areas; and (4) imperatively, that democratic rights would be guaranteed (Byers et al., 1988). The crucial point stated by the Constitutional Commission was that, currently, the United Kingdom Parliament remained the architect of the Australia Constitution.

As stated on Friday 31 January 1986, former prime minister Bob Hawke opened the ceremony to claim the first meeting of the Constitutional Commission. In his view, the Constitutional Commission would become a part of Australia's history in its reform of the Constitution that bring together the relevant players and establish a new hope that would aid in the renewal of an Australian Constitutional framework. This adds further evidence to the notion that successive federal parliaments had the desire for a revised Constitution that would be compatible with the original Constitution but had also been modernised to reflect the nation's independent status. Therefore, they employed a number of standpoints noted in the Introduction under the Constitutional Commission and Constitutional Review (Byers et al., 1988).

The commission conducted a number of surveys in 1987 to gauge the level of knowledge the Australian people had of the Constitution. The results showed that only 53.9 per cent of Australians were aware that Australia had a written constitution. Also, 70 per cent of the respondents in the 18–24 age group were unaware that Australia had a written constitution. However, of the respondents who were aware of the written constitution were males over the age of 35 years who had ceased attending school at the age of 17 years or older and worked full time in the white-collar sector (Byers et al., 1988).

What's pertinent is that the percentage of people who were unaware that Australia had a written Constitution would also be unaware of the amendment to Section 51 (xxvi) and the repealing of Section 127 after the1967 Referendum. Also, the reason for the establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) could be traced back to the

former CAA set up after the 1967 Referendum. However, I argue that ATSIC, as a whole, had not been created for the betterment of First Nations Peoples. Why? On the surface, the intention of the 1967 Referendum for self-governance and self-determination was present. Underneath the surface, the ATSIC organisation had been assimilated into the non-First Nations Peoples government's departments who controlled the budget finances and limited how much self-governance and self-determination the First Nations peoples were permitted.

Aboriginal and Torres Strait Islander Commission (ATSIC)

Although the introduction of ATSIC predates the Hawke Government, it suffered almighty political condemnation from the First Nations peoples as a result of former Aboriginal affairs minister Clyde Holding "sticking his nose" into virtually all aspects of Indigenous affairs. This was the opposite to the Gough Whitlam ethos of self-determination. Hawke, under relentless pressure removed Holding. The heat from the "blow torch" had now intensified onto the government in the period heading towards the 1988 Bicentennial celebrations. Towards the end of 1987, the pressure that Hawke felt led him to install Gerry Hand as the new minister for Aboriginal affairs (Foley, 1999).

In Part 4, 1970s-1998 of the book, *The Struggle of Aboriginal Rights: A Documentary History.* Point 168 states that Lois O'Donoghue, the author of the book, *Aboriginal and Islander Consultative Organisation*, detailed the conclusion and recommendations for a First Nations peoples' consultative organisation (Attwood & Markus, 1999). O'Donoghue provided information in her dealings with First Nations peoples nation-wide. She further states how she had sent letters to "approximately 900 First Nations peoples between October 1985 and July 1986 providing information and gained feedback regarding a new consultative organisation via the following processes: (a) announcing the guidelines for how the government was prepared to see a new organisation established; (b) setting a timeline for ongoing discussions with

Aboriginal people on the format of the new organisation; and (c) having a report circulated, along with the government's own standpoints, to Aboriginal organisations and communities as a means for further discussions (Attwood & Markus, 1999).

In addition, there was a noticeable practice gap concerning the available resources to form a new political voice and what form this new organisation should take. This consisted of the expectations of delivering an acceptable balance between the consultative organisation's roles in providing a political voice for the First Australian peoples; the advancement of self-management via participation of policy and programs; and providing advice to the federal government (Attwood & Markus, 1999). Many of the First Nations peoples held a massive yearning to carry on with their involvement in developing the new organisation. Hitherto, there remained an immeasurable degree of uncertainty regarding how this new organisation would be constituted so that it would efficiently meet the wishes and expectations of the First Nations peoples and the government (Attwood & Markus, 1999).

For those who are not aware, Lois O Donoghue was appointed in 1967 as a junior administrative officer in the Commonwealth public service within the new Department of Aboriginal Affairs. After eight years, she became the director of the South Australian office in the Department of Aboriginal Affairs. After taking a break from the public service, she was then appointed to the position of chairperson of the Aboriginal Development Commission by the Hawke Government (Attwood & Markus, 1999). Hence, O'Donoghue was an "approved" Aboriginal bureaucrat, together with a few other pre-selected approved Aboriginal public servants who had held senior positions in this department prior to the formation of ATSIC. In order to sell the federal government's new initiative, the government would require "government-approved Aboriginal bureaucrats" who had already been *assimilated* into the Canberra bureaucracy (Foley, 1999).

ATSIC was conveyed to the world as the epicentre of the First Nations peoples' self-determination by former prime minister Paul Keating, Hawke's successor. However, the regional councils did not have their own autonomous control of their expenditure within their own regions. ATSIC's yearly budget was controlled and analysed in a similar fashion to other government departments. More so, the ATSIC commissioners were delivering policies that had been prepared by non-First Nations bureaucrats who operated within the confines of First Nations peoples' affairs. However, when the leadership inside ATSIC changed to Geoff Clarke as chairperson and "Sugar" Ray Robinson as the deputy chairperson, they presented First Nations peoples' health and education as two separate areas of policy (Moreton-Robinson, 2007).

When John Howard became prime minister in 1996 after the defeat of the Keating Labor Government, he said that health and education had failed to improve; however, he failed to mention that both policy areas were being administered by the Colony of Australia Government's own First Nations peoples' Affairs department, not ATSIC. Also, to say that ATSIC was incompetent in service delivery was a baseless lie and smacked of sovereign "white supremacist" ideologies (Moreton-Robinson, 2007). Thus ATSIC itself was assimilated into the Colony of Australia Government's Aboriginal Affairs department and not in the manner it should have been in the spirit of the 1967 Referendum's self-determination and self-governance. More to the point, the Howards Government's Indigenous policies and ideologies and the government's non-elected political allies, such as the Farmers' Federation of Australia and various mining companies enacted *quid pro quo* and continued to practise neoliberalism policies from the pre-1967 Referendum period.

The Howard Government's ATSIC Policies

In 1996, newly elected Prime Minister John Howard of the Liberal National Party coalition voiced his stern displeasure at the First Australians having a system of representative governance. Thus, a respectful reconciliation process for self-determination and self-governance was destroyed. One of the first speeches delivered by Howard was on 10 April 1996, at a news conference, from which I have noted the main points (Howard, 1996).

His opening statement trumpeted that he wanted more accountability within Aboriginal and Torres Strait Islander affairs. On 9 April, 1996, the Federal Cabinet had made several decisions, whereby the former minister for Aboriginal affairs, Senator Herron, made a number of endorsed recommendations. His government would make amendments by seeking parliamentary approval to amend the ATSIC legislation concerning the appointment of the chairman and one other commissioner. They, the government, were seriously voicing the request to decrease the number of representatives of the regional councils. In Howard's opinion, the amendments had already been fully canvassed (Howard, 1996)).

After the former prime minister, in 1996, stated "against the background of mounting public concern regarding accountability in matters affecting Aboriginal Affairs", his government made two further decisions. One, that Senator Heron directed that ATSIC provide a general financial statement. The Howard Government also had planned to install a more paternalistic means of monetary expenditure by ATSIC, whereby all monies to be disbursed by ATSIC to other organisations would not be released until a special auditor was utterly satisfied that all conditions of the general directive had been met (Howard 1996). Howard went on to say that a copy of this had been provided to the media. The second decision the government had made was that it would seek permission from the parliament to amend the ATSIC legislation for the appointment of an administrator. The administrator during his/her commission would have the exercisable right to perform the same function as the ATSIC

commissioners in the event there is evidence in the opinion of the Minster that fraud and/or gross mismanagement has been committed, or ATSIC had failed to attend to any general directives from the minister (Howard 1996).

Return of the *Terra Nullius* Policies

The return of the *terra nullius* policies and their "cone of silence" regarding the colonised history of Australia's unlawful constitution could not be just the result of ignorance or incompetence; there would have to have been a more systematic implementation of secrecy. As former US president Franklin D Roosevelt once noted, "In politics, nothing happens by accident. If it happens, you can bet it was planned that way" (Allan & Abraham, 1971, p. 6). The analogy given by Roosevelt stands true, in particular, in regard to the neoliberalism period post Whitlam Labor Government. The neoliberalists, such as former prime ministers Bob Hawke and John Howard, were advocates of the "free market" privatisation and financial deregulation of Australia. I argue that these ideologies established *quid pro quo* neoliberalism policies. *Quid pro quo* is a Latin term meaning "something for something".

Colony of Australia Government *Quid Pro Quo* Defensive Nationalism and Popular Sovereignty Policies

Highly influential policymaking key stakeholders, such as the Business Council of Australia (Pusey, 2006) and private mining companies (Foley, 2013; Innis, 2016,) effectively cemented the new era of neoliberalism. The relationships with these key stakeholders promoted a new era of neoliberalism, which I posit mirrors that of defensive nationalism and popular sovereignty (de Coasta, 2006; B. McKenna & Wardle, 2019). The domino effect resulted in the First Nations Peoples' hopes for lawful sovereignty succumbing to the pre-1967 Referendum period.

The Australian Labor Party was now in unison with the centre right conservative Liberal and National Party policies that were identical in application and their agenda. In the new Australian democracy market, Australian politicians were entrepreneurs, whereby they were delivering political goods to the highest bidder. The suppliers, being Australian politicians coming from privileged backgrounds in society, as such, continue to remain in a monopolised position as the gatekeepers for the supply of such goods. Ultimately, the Australian Labor Party and the Liberal and National parties have been hijacked by neoconservative ideologies in that they both serve up identical neoliberal policies to manage the economy and society (Paul, 2006).

I argue that there are past and present Australian politicians who have forged an allegiance and obedience with co-dependent key stakeholders who are unelected politicians. They both offer *quid pro quo* engagements for financial benefit, such as the Business Council of Australia (Pusey, 2006) and the Western Mining Corporation (Foley, 2013). I assert that unbeknown to the vast majority of non-First Nations peoples, the operations and supply of the Basics Card, a taxpayer-funded cashless welfare card that had been introduced as part of the Northern Territory Intervention (Terzon, 2019), had been given to the private company, Indue. Indue had links to the former National Party MP and federal president of the Nationals, Larry Anthony. Up until 2013, Anthony had been the deputy chairman of Indue, and his trust company, Illalangi, still holds an incredible number of shares with Indue. At the commencement of the Basics Card trials, Indue had collected from the taxpayer between $4000 and $10,000 for each Centrelink recipient (Jokovich, 2019).

The views of Paul (2006) and Nash, (2009) are similar to those of Wolfe (1999), who argue that the initial colonial project in Australia has continued into contemporary times, whereby both political parties have followed the same colonialist-style agenda. That agenda is to maintain the Colony of Australia Government's defensive nationalism and popular

sovereignty in the eyes of the international political arena. More to the point, the defensive nationalism and popular sovereignty polices have caused more injustice and illegal actions against the First Nations peoples of Australia.

Terra Nullius Application to the *Wik Peoples v. Queensland ("Pastoral Leases Case")* HCA 40 (1996)

After the *Mabo v. Queensland* (*No. 2*) HCA 23; 175 CLR 1 (3 June 1992) decision, the enactment of the *Native Title Act* 1993 (Cth) invoked land rights and land tenure that were more restrictive than the property law rights, whereby freehold or leasehold is granted for temporary use owned by another party, such as the Crown (Hunter, 1994). What's more, the decisions provided by the High Court justices in the *Mabo v. Queensland* (*No. 2*) HCA 23; 175 CLR 1 (3 June 1992) ruling inserted a historical rupture with the Colony of Australia Government that would have been sufficient enough for the First Nations peoples and the settler societies to reconstitute their relationships (Wolfe, 1999).

I argue that electoral campaigns produce financial inducements to candidates. most notably from the major political parties. For example, mining companies have bought political influence in Australia, whereby their donations have resulted in advantageous legislation for their mining projects in the state of Queensland (Innis, 2016). After the *Wik Peoples v. Queensland* (*"Pastoral Leases case"*) HCA 40; 187 CLR 1 (23 December 1996), former prime minister John Howard received condemnation from pastoralists as a result. At his press conference, Howard placed fear into the people's minds that 79 per cent of the nation's land mass was up for grabs under the *Native Title Act* 1993 (Cth) (Howard, 1997; Moreton-Robinson, 2001). Consequently, Howard instituted the 10-point Wik Plan as part of the *Native Title Amendment Act* 1998*,* Act No. 97 of 1998, whereby the lawful sovereign rights of the First Nations peoples to land tenure and land rights had been further extinguished under the false disguise of dispossessing the patriarchal "white" sovereignty of its land mass ownership.

Howard later reiterated similar views after the 11 September 2001 bombing of the World Trade Centre, with his rhetoric of patriarchal white sovereignty. He accused the Muslim people of being the invading "other". Consequently, he advocated a new platform to distinguish the security and protection of the territorial integrity of the patriarch white sovereignty inside Australia and international law (Moreton-Robinson, 2007). These ideologies were later used as blatant forms of treason against the First Nations peoples that contributed to the continuation of the dominant *terra nullius* regime, such as the Aboriginal Genocide Prosecutors case and the Northern Territory Intervention.

The Aboriginal Genocide Prosecutors

The Aboriginal Genocide Prosecutors – Wadjularbinna Nulyarimma of the Gungalidda, Isabell Coe of the Wiradjuri, Billy Craigie of the Kamilaroi, and Robbie Thorpe of the Boorun – challenged the 1998 Native Title Amendment Bill. They claimed it was a continuation of genocidal acts against all First Nations peoples. That piece of legislation would take away further provisions of the *Native Title Act* 1993 (Cth) from First Nations peoples in Australia. The Native Title Amendment Bill perpetrated an increase in instruments of extinguishment that had been ongoing since colonisation. In 1996, after the *Wik Peoples v. Queensland* (*"Pastoral Leases case"*) HCA 40; 187 CLR 1 (23 December 1996) ruling the Howard Government had opened the door for the complete extinguishment of native title (Balint, 2014).

On Friday 3 July 1998, the Aboriginal Genocide Prosecutors sought criminal actions. The claimants journeyed into the Canberra police station, instituting claims of genocide against the current members of the Australian Parliament. Then again, on 6 July 1998, Wadjularbinna Nulyarimma – with Len Lincoln, a lawyer, and Eleanor Gilbert – submitted papers and an affidavit to the registrar of the ACT Magistrates Court. They sought criminal actions against former prime minister John Howard, former deputy prime minister Tim Fischer, independent

senator Brian Harradine, the leader of One Nation at the time, Pauline Hanson MP, and all members of the Australian Parliament (Balint, 2014).

The claimants relied on the fact that, in 1948, Australia was a signatory to the United Nations Convention on the Prevention and Punishment of the Crimes of Genocide. Yet several Colony of Australia governments in Australia had failed to enact a lawful legislative instrument for domestic prosecutions (Balint, 2014). Research has shown that in June 1949, a parliamentary debate on Australia's ratification of that convention did not include any representatives of First Nations peoples. Not surprisingly, that debate determined that no genocide had occurred during Australia's colonised history and, therefore, no legislation was introduced. That decision hindered all avenues for genocide crime prosecutions nationally and internationally (Tatz, 2003). At that time, the Chifley Labor Government held most seats in the House of Representatives and an absolute majority in the Senate.

Justice Crispin in his statement put it on record that during the colonisation of Australia, he was satisfied that several acts of genocide had been committed. Those genocidal acts had been illustrated under the definitions outlined by the United Nations Genocide convention. Henceforth, Justice Crispin made an official acknowledgement that genocide had occurred in Australia (Balint, 2014). The applicants were unsuccessful with their claims as Justice Crispin stated that members of the federal parliament could not be held accountable for criminal prosecution in the course of undertaking their duties (Balint, 2014).

As it stands, the Colony of Australia Government had no lawful membership of the former League of Nations nor the current United Nations (UN). Unbeknown to the vast majority of Australia people, Australia has an illegitimate membership of the former League of Nations and the now United Nations as per the Charter of the United Nations, Chapter 1 Purposes and Principles, Article 1 Points 1, 2, 3, and 4). Lawful membership requires a nation-

state to be in possession of lawful sovereignty. Additionally, the UN has strong policies in maintaining world peace and security, as well as, since 1947 taken a strong stance against the abuse of human rights towards all people (Nakata, 2001). Consequently, the UN has acted *usurped* in continuing to admit the Colony of Australia Government to the UN. More to the point, I argue that the First Nations peoples sovereignty and human rights have been abused here in Australia under the present Colony of Australia Government regime.

Northern Territory Emergency Response Act 2007 (Cth)

The former Northern Territory Government under Clare Martin commissioned an inquiry into the sexual abuse of Aboriginal children. In their thorough investigation into the protection, health and wellbeing of NT Aboriginal children, commissioners Rex Wild QC and Patricia Anderson visited 46 communities and received 260 submissions. They found that a belligerent form of neglect had occurred since 1977 by successive federal and Northern Territory governments. The evidence from the inquiry showed that there had been a practice of excessive alcohol consumption that was linked to third-world poverty, high levels of unemployment, lack of education, boredom, and overcrowded and inadequate housing. In addition, the consumption of drugs and petrol sniffing has been connected to these. The sum of factors had led to extreme levels of violence occurring. The saddest aspect of all these facts was that it could escalate to the sexual abuse of children (Wild & Anderson, 2007).

The inquiry discovered, however, that there was no evidence to indicate that any "paedophile consortium" had been operating in the Northern Territory. What the inquiry did uncover was an abundance of evidence that clearly identified that non-Aboriginal paedophiles had infiltrated Aboriginal communities where they committed atrocious acts on Aboriginal children. These putrid men were known within these Aboriginal communities and therefore were not considered to be "stranger danger". One non-First Nations Christian brother in one

community had numerous accounts of sexual abuse against Aboriginal children over vast periods of time. The inquiry mentioned many more instances of sexual abuse that had been performed on Aboriginal children by non-First Nations men (Wild & Anderson, 2007).

Within two weeks after the release of this inquiry, the Howard Government had produced the *Northern Territory National Emergency Response Act* 2007 (Cth) in world land-speed record time. The Rudd Labor Opposition at the time did not oppose this legislation and, consequently, it was passed in the Senate. Former prime minister John Howard stated on national television that Aboriginal men had been committing heinous sexual acts against Aboriginal children. Howard was not interested in the 97 recommendations made by the inquiry, nor did he have a "lynch mob" patrolling the boundaries of the Northern Territory looking for the non-First Nations paedophiles in order to have them brought to justice. Further, Howard did not say on national television that non-First Nations men had been for some time the perpetrators of sickening sexual acts against First Nations children.

As illustrated, Kevin Rudd, who was the opposition leader at the time, fully supported the Northern Territory Intervention. Backtracking to his Apology to the Stolen Generations on 13 February 2008, I am stating that the support for constitutional recognition were actions of a personal nature to clear a guilty conscience (Rudd, 2008). Also, it was hypocritical on his part as he had approved the 2007 Northern Territory Intervention – another form of cultural genocide and a severe breach of the United Nations Declaration on the Rights of Indigenous Peoples (United Nations, 2007). In the final report of the Constitutional Commission's 1988 Volume Two, the commission recommended that Section 51 (xxvi) be omitted as it felt it was inappropriate and unnecessary for such a provision to be in the Constitution (Byers et al., 1988). I argue, that his position as Prime Minister and that of the Executive Government has been unconstitutional (Quick & Garran, 1902), as the Governor-General appoints the Prime

Minister, Ministers of State that sit inside the Executive Government, as per, Section 62 Chapter II – The Executive Government .

Expert Panel's Report a Mere Smokescreen

On the surface, to a vast majority of the wider community, it would appear that there has been sentiment for the Colony of Australia Government's constitutional recognition. The desire to change the settler contract has been similar to that from the 1967 referendum. Unfortunately, this sentiment had not occurred prior to the November 2007 Federal Election when John Howard was prime minister. The First Nations peoples on the Expert Panel were Patrick Dodson, Josephine Bourne, Timmy Djawa Burarrwanga, Megan Davis, Lauren Ganley, Sam Jeffries, Alison Page, Marcia Langton, Noel Pearson, and the Federal Member for Hasluck, Ken Wyatt. There were two ex-officio co-chairs of the National Congress of Australia's First Peoples – members Jody Brown and Les Malezer – plus Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner.

The then new Labor prime minister Kevin Rudd continued with this sentiment in July 2008 and finishing on 23 December 2010 with the change to the former prime minister Julia Gillard. She commissioned the Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution Report of the Expert Panel. After the 2010 federal election, the Gillard government required support from four crossbenchers – Adam Bandt from the Australian Greens and the independents Rob Oakeshott, Andrew Wilkie and Tony Windsor – who all signed an agreement for money supply and policies with the one proviso that constitutional recognition was to be pursued in the 43rd Parliament (Dodson et al., 2012). Not surprisingly, the then federal government in 2012 sat on the Expert Panel's recommendations, as did the Abbott Coalition Government in 2013.

The true standpoint as to why this sentiment had surfaced can be referred back to the 18 August 2007, to the Howard Government's Northern Territory Intervention – *Northern Territory National Emergency Response Act* 2007 (Cth). This Act suspended the *Racial Discrimination Act* 1975 (Cth), where former prime minister John Howard had authorised a martial law-style behaviour that instructed the Australian Defence Forces to enforce the Northern Territory Intervention. The Howard Government ignored the findings and the 97 recommendations made by Rex Wild QC and Patricia Anderson in their report, Ampe Akelyernemane Meke Mekarle (Little Children Are Sacred) report. This report was commissioned by the Northern Territory Government (Wild & Anderson, 2007).

The final report by the Expert Panel, in conjunction with all other standpoints, was significant in that it maintained the system of the Colony of Australian Government' unlawful sovereignty. Furthermore, it cannot be disputed that a picture has been painted that illustrates the unlawfulness of the Australian Government's democratic governance. More to the point, I argue that the Expert Panel's Recommendation 10.6 maintains the status quo in providing a lack of education, in particular Point C: "The referendum should only proceed when it is likely to be supported by all major political parties and a majority of state governments" (Dodson et al., 2012, p. 227). A referendum is the will of the people in a true democratic society, not the will of elected parliamentarians. The Referendum Council fared much the same given that it was another government authority selected by the unlawful Colony of Australia Government.

The Referendum Council

On 7 December 2015, the Referendum Council was commissioned by former prime minister Malcolm Turnbull and former leader of the opposition Bill Shorten. Its aim was to inform the progress and ways forward for a successful referendum that would recognise First Nations peoples in the Constitution. The Referendum Council was jointly hand-picked, which meant it

effectively became another government authority (Referendum Council, 2015). The council invited all people from across Australia to share their views on constitutional change regarding the country's First Nations peoples. Two questions in particular were: "Do you support constitutional change? And, if you do, What form do you think change should take?" The Uluru Convention was established after nation-wide dialogue with First Nations peoples had been organised by the Referendum Council (Melbourne Law School, 2017).

There are four pertinent standpoints here. One, the government of the day could, via legislation, alter the constitution without a referendum as per the *Privy Council (Limitation of Appeals) Act* 1968 (Cth), Act No. 36 of 1968 and *Privy Council (Appeals from the High Court) Act* 1975 (Cth), Act No. 33 of 1975 and insert a section for an independent Makarrata Commission. Two, Constitutional change would have no lawful authority as the settler contract, the Colony of Australia Government, and its judiciary have no foundation in law. Three, only the United Kingdom Parliament has the lawful authority to alter, amend or repeal its legislation. Four, the 2017 Uluru Statement from the Heart was completed by First Nations peoples and communities who have the lawful means of governance (From the Heart, 2017).

Five, the Uluru Statement said that sovereignty had never been extinguished nor ceded and coexisted with the sovereignty of the Crown (From the Heart, 2017). Yet, this research study has alluded to the fact that the Crown has no lawful sovereign authority. At the end of the day, the Uluru Statement should have commenced the process for a new independent nation-state sovereign constitution. I agree with the viewpoint of John Newfong, (Newfong, 1972) to go outside Australia to gain sovereignty for First Nations peoples. This point is discussed in Appendix A, which is a letter to the Treasury Solicitor from the Legal Government Department in London. Second, I have proposed a new constitution, *Sovereign Australia Constitution Act* (Aus), which I discuss in more detail in Appendix B.

Victorian Treaty Commission

On the Aboriginal Victoria home page, it states that the Victorian Advancement Commission is an independent body that has been established to oversee the momentum of the treaty process. Additionally, an Aboriginal representative body was further established, which is to be known as the First Peoples' Assembly of Victoria and it will be an independent and democratic voice for Aboriginal Victorians. The assembly will assist the next stage of the treaty process. Both the Victorian Treaty Advancement Commission and the First Peoples' Assembly of Victoria are agencies of the Colony of Victoria Government (First Peoples – State Relations, 2021).

Furthermore, according to the Victorian Government, a treaty is an agreement between states, nations or governments. A treaty can be an agreement between Indigenous peoples and governments (First Peoples – State Relations, 2021). Those statements are flawed as no level of settler governments and their judiciaries have any foundation in law. As mentioned in Chapter 1, treaties are legally binding agreements that consist of rights and obligations between two or more parties governed by law. Any party holding ownership sovereignty rights would head towards negotiating legally binding treaties.

There are five treaty bodies in Victoria, which include the Victorian Treaty Advancement Commission, the First Peoples' Assembly of Victoria, the Aboriginal Treaty Working Group, the Aboriginal Community Assembly, and the Colony of Victoria Government (First Peoples – State Relations, 2021). As all parties are government bodies, neither party has any foundation in law. Further evidence has come to light that in 1975 the Colony of Victoria Government repealed the *Victorian Constitution Act* 1855 (18 & 19 VIC C 55) (UK); however, the 1855 Constitution remains in force because there is no facility to partially repeal or totally repeal the Act without the authorisation of the United Kingdom Parliament (Shaw, 2002). Victoria still remains a colony of the United Kingdom, meaning they

have *quasi*–governance status. The *Constitution Act* 1975, which was last amended on 17 March 2021 , does not remove the fact that the Colony of Victoria Government has no sovereignty or any lawful foundation like that of the federal government.

Ultra Vires Relating to the United Kingdom Oath and Affirmation to the Monarch

The *ultra vires* exercised in relation to the oath and affirmation to the Queen of Australia or to the Commonwealth of Australia I argue was comparable to all other lawful determinations changed beyond one's powers in the quest for the Colony of Australia Government's cession from the United Kingdom. In order to change the Schedule – Oath and Affirmation in the United Kingdom Constitution, alterations were required. But those alterations must come from the United Kingdom Parliament as it has sole lawful authority to alter, amend or repeal its legislation.

In 1952, the reign of a new monarch, the Queen of Australia, commenced. Section 42 clearly states that every member and senator must subscribe before the governor-general or another person authorised by the governor-general an oath or affirmation of allegiance that's stipulated in the Schedule of this Constitution (Australian Government, 2013). Yet, the commencement of the new reign of the Queen of Australia would have no lawful foundation (Winterton, 1993) and, therefore the *Royal Style and Titles Act* 1953 (Cth) and the *Royal Style and Titles Act* 1973 (Cth) would have no legal basis, either. Therefore, the Queen of Australia's representatives had no lawful basis to provide royal assent to legislation, such as the *Northern Territory National Emergency Response Act* 2007, Act No. 129 of 2007.

Therefore, the duly appointed positions of the Queens representatives were unlawful as were all legislative Acts. Since 1984 the governor-general has performed this task, not the governor-general and commander-in-chief (Truth-Now. Net, 2013). Before an elected

politician commences their role as either a member or senator, they must subscribe to the oath or the affirmation: stipulated in the Schedule:

Oath

> I, *A.B*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. So Help Me God!

Affirmation

> I, *A.B*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

In laypersons terms what has been prescribed is what all members and senators must swear to. What most people would be unaware of is that there have been former prime ministers who have altered the oath and affirmation without having previously sought the endorsement of the Australian people via a referendum. The altered sworn oaths and affirmations by various former prime ministers are mentioned below.

On 16 February 1962, the holding of the Bible as the holy book by which members and senators swear their oath or affirmation had been altered (McKeown, 2013). At this point in time, the attorney-general was Sir Garfield Barwick. The oath of allegiance need not necessarily be made on the authorised version of the Bible, although this has been the common practice. A member may recite the oath while holding another form of a Christian holy book, or, in respect of a non-Christian faith, a book or work of such nature. The essential requirement is that every member taking an oath should take it in a manner which reflects his or her conscience, regardless of whether a holy book is used or not. This was the advice provided by the Attorney-General's Department on 16 February 1962 (Wright, 2012).

When Michael Lavarch was sworn as the new attorney-general after winning a by-election held in April 1993, the Keating Government altered the oath and affirmation of office (McKeown, 2013). Most notably, ministers no longer promised to serve the Queen, but to serve

the Commonwealth of Australia. The oath of allegiance was dropped, even though it had been part of the swearing-in ceremony. This remained a requirement under the Constitution prior to taking a seat in the parliament, and that its repetition before taking a ministerial office was considered excessive.

When John Howard was elected prime minister in 1996, he also made notable changes to the oath and affirmation of office. His oath of office went as such:

> I, [Minister's full name], do swear that I will well and truly serve the people of Australia in the office [position] and that I will be faithful and bear true allegiance to her Majesty Queen Elizabeth the Second. So help me God!

However, the swearing of allegiance to the Queen of Australia was changed in 2007 when Kevin Rudd became prime minister. The oath and affirmation were to be made not to a monarch but to the Commonwealth of Australia. After being elected, Rudd, again, altered the sworn oath and affirmation so both could be consistent with the Constitution. Thus, he inserted "her people and her lands" and removed the allegiance to the sovereign (McKeown, 2013):

***Kevin Rudd's Oath of Office* (2007)**

> I, [minister's full name], do swear that I will well and truly serve the Commonwealth of Australia, her land and her people in the office of [position]. So Help Me God!

***Kevin Rudd's Affirmation of Office* (2007)**

> I, [minister's full name], do swear that I will well and truly serve the Commonwealth of Australia, her land and her people in the office of [position].

As for former prime minister Julia Gillard, she removed the reference to "her land and her people" (McKeown, 2013):

***Julia Gillard's Oath of Office* (2010)**

> I, [minister's full name], do swear that I will well and truly serve the Commonwealth of Australia in the office of [position]. So help me God!

***Julia Gillard's Affirmation of Office* (2010)**

Accordingly, McKeown (2013) relied on evidence taken from the *Sydney Morning Herald* that Julia Gillard had not sworn allegiance to the Queen. Julia Gillard's affirmation states as follows:

> I, [minister's full name], do solemnly and sincerely affirm and declare that I will well and truly serve the Commonwealth of Australia in the office of [position].

This contradicts with that of the *Channel Ten News* recording of Gillard's sworn affirmation, with her affirming to serve "her land and her people" and no swearing of allegiance to the Queen. Gillard's sworn affirmation before the governor-general showed that she did so without holding a holy book of any description. When being sworn in as the newly appointed Australian Labor Party prime minister in 2010, Julia Gillard made the following affirmation:

I, Julia Eileen Gillard, do solemnly and sincerely affirm and declare that I will well and truly serve the Commonwealth of Australia, her land and her people in the office of prime minister.

Tony Abbott's Oath of Office **(2013)**

Basic Fraud (2013) obtained a live broadcast showing former prime minister Tony Abbott citing his oath to the office of prime minister before former governor-general Quentin Bryce:

> I, Anthony John Abbott, do swear that I will well and truly serve the people of Australia in the office of prime minister and I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Australia. So Help Me God!

Abbott signed his agreement for the oath of office of prime minister – no spoken words, just his signature. His signature was then followed by that of Bryce's. After this, the ministers of his government sang the national anthem before the governor-general.

Although Abbott and other former prime ministers have altered the lawful determinations of the required sworn oath and affirmation as set out in the Schedule in the Australian Constitution, only the United Kingdom Parliament has the lawful authority to alter the Constitution (Institute of Constitute Education and Research, 1999). The Colony of

Australia Government's United Kingdom Constitution has been rendered null and void (Faulkner, 2001; Levick 2013; Ridgeway, 2004). Consequently, the Colony of Australia Government has extinguished all other interpretations for disqualification in Section 44(i) of the United Kingdom Constitution. More to the point, a non-disqualification of these co-dependent key stakeholders is comparable to the unlawful determinations of being disqualified as a parliamentarian.

Judiciary Supports the *Australia Act* 1986 (Cth)

The extinguishment of the lawful determinations of the judiciary – being the High Court of Australia – has a direction connection with that of the federal parliament. Being the co-dependent key stakeholders, the parliamentarians from across the political spectrum have expressed their desire for greater scrutiny of the High Court of Australia as they affirm that the court itself has taken on a more "political role". Shadow Attorney-General, Peter Costello said empathetically: "they've got to be outed by the press, academics, and the Parliament" (Kingston, 1992, p. 4). More so, the government has to be consulted more rigorously before making such appointments.

Since the introduction of the *Australia Act 1986* (Cth), the High Court of Australia has supported that Act via a number of cases referred to the Court of Disputed Returns regarding Section 44, where members and senators have been disqualified for holding dual citizenship to a foreign authority. The *Sue v. Hill & Anor; Sharples v. Hill & Anor* HCA 30; 199 CLR 462 (23 June 1999) is one notable case (High Court of Australia, 1999). Henry Nai Leung Sue, the petitioner, won his case against Heather Hill & ANOR, whereby Heather Hill, the respondent in this case, lost her right to be an elected senator after the 1998 federal election.

Heather Hill argued that the swearing of an allegiance to the Queen of Australia was equal in terms of swearing an allegiance to the Queen of the United Kingdom and Northern

Ireland. Justice Gaudron refuted that claim on two fronts: (a) yes, the monarch, Queen Elizabeth II, is physically the same person; however, both titles to the same monarch are legally independent and distinct; (b) the monarch's position has been referred to as the divisibility of the Crown and its "implicit in the Constitution". However, in the Central Argument section of Chapter 2 on page 72, I alluded to the fact that on this case a majority of the High Court justices ruled that the United Kingdom of Great Britain and Northern Ireland was a "foreign power" as per Section 44(i) of the Constitution (McConvill, 1999).

Conclusion

This chapter has argued that the Colony of Australia Government should have repealed its quasi-sovereign self-governing colony of the United Kingdom status. However, as this chapter has argued that did not happen because of the slow progression in altering the lawful determinations of the United Kingdom Constitution, which had gifted the Colony of Australia Government its independent jurisprudence sovereign nation-state self-governance, as well as the notion of *terra nullius* in the unlawful acquisition of Australia. Past federal governments have not had the legislative authority to create a "Queen of Australia", nor select their own vice-regal representative, and, therefore, have acted beyond their powers (Winterton, 1993). Both of these illegal unconstitutional changes were similar to the repealing of appeals to the Queen in Council. Thus, the embedded determination of Australia's independent sovereign nation status, via the *Australia Act* 1986 (Cth), has denied the First Nations peoples from challenging legislative acts, such as the *Northern Territory Lands Act* 1976 (Cth), the shared responsibility agreements, and the military-style invasion of the Northern Territory through the neo-fascist *Northern Territory Emergency Response Act* 2007 (Cth). Yet, as I have previously noted, these matters could be challenged outside the domestic parliamentary and judicial systems (Newfong, 1972) as well as by putting an end to the theft of the lawful determinations

of the First Nations peoples' lawful transnational jurisprudence sovereign authority (B. McKenna & Wardle, 2019; de Costa, 2006).

Chapter 5
First Nations Peoples' Transnational Higher Jurisprudence Sovereign Authority

Summary of Argument

This chapter confirms that the colonial system of governance must be replaced with a lawful jurisprudence sovereign authority. This chapter also acts as a conclusion to the overall thesis argument. In addition, this brings and extends what this research thesis has argued: that in the pre-26 January 1788 period, the First Nations peoples had a transnational higher sovereign authority (M. Smith, 2001) which was comparable to lawful jurisprudence self-governance, citizenship rights, and treaties and land rights that existed long before the unlawful acquisition by the former British Empire (de Costa, 2006). There was a small period of roughly eight years after the 1967 Referendum, whereby claims to lawful jurisprudence sovereign self-governance, citizenship rights and land rights were a part of a progressive nationalism by the former Whitlam Government, which included the return of land in August 1975 to the Gurindji people southwest of Katherine in Arnhem Land (Whitlam, 1985). I claim that error *nullius* – wrongful determination of *terra nullius* that had been in existence since Lieutenant James Cook's arrival in April 1770 (Blainey, 1966, Connor, 2004, de Costa, 2006; Frost, 2013; Reynolds, 1987) must now be rectified in an era going back to the 1980s where defensive nationalism and popular sovereignty had been introduced (de Costa, 2006). This chapter argues that the rectification of *terra nullius*, nationally and internationally, includes the United Nations and Queen Elizabeth II.

Finally, at the end of this chapter are two appendices, which indicate how the First Nations peoples' lawful transnational higher jurisprudence sovereign authority could be returned. Appendix A contains a letter by the First Nations peoples' language group to the treasury solicitor in the Legal Government Department in London for exiting from the

Commonwealth and the repealing of the United Kingdom Constitution. Appendix B provides suggestions as to what a *Sovereign Australia Constitution Act* (Aus) legislative instrument may look like. It would be recognised nationally and internationally in addition to demonstrating the cession from the United Kingdom and its monarch. This proposed new constitution would in some way introduce a healing process for a nation that has been suffering since the British Empire unlawfully acquired the continent of Australia and its surrounding islands. There would be a treaty between the First Nations peoples and the wider community that affirms an equal sharing of lawful sovereign rights.

Concepts of Chapter 5

In January 1978, Paul Coe, along with Cecil Patten and non-First Nations person lawyer Bruce Miles, travelled to the United Kingdom and in a small rowboat ventured out from the English shore. The plan was to row their boat many kilometres from the shore, then return to the shore and take possession of United Kingdom by inserting the Aboriginal flag just as the British had done in 1788 on Farm Cove. Unfortunately, due to poor weather the rowboat capsized and Bruce Miles nearly drowned. This event hasn't been etched into the minds of non-First Nations peoples' minds (de Costa, 2006).

In its position paper, *Makarrata v. Treaties*, the National Unity Government noted a protest that had been led by Kevin Gilbert, George Rose, Cecil Patten, and Kevin Wyman on the site for the new parliament house on Capitol Hill in Canberra. Gilbert said the First Nations peoples didn't recognise the theft of their land by the United Kingdom Government and the current Colony of Australia Government and would never recognise it. On 8August 1979, the National Aboriginal Conference (NAC) demanded that a treaty be negotiated by NAC representatives. A copy of a sovereign treaty was delivered to former prime minister Malcolm Fraser on 17 August 1979. Seven days later, Fraser informed Kevin Gilbert that his government

was prepared to consider a treaty with the elected National Aboriginal Conference (National Unity Government, 2017). John Howard was then the federal treasurer in the Fraser Government. When Howard became prime minister, he promoted a defensive nationalism and a popular sovereignty which resulted in the further extinguishment of the First Nations peoples' transnational higher sovereign authority (de Costa, 2006).

Another enactment of the post-Federation defensive system of nationalism and popular sovereignty (de Costa, 2006) came via the unlawful *Australia Act* 1986*,* Act No. 142, 1985 and the *Australia Act* 1986 Chapter 2 1986 (UK). But in 1988, the 200-year anniversary of the colonisation of Australia, Burnum (Harry Penrith) travelled to the white cliffs of Dover in the United Kingdom. He planted an Aboriginal flag into the soil, staking claim to the United Kingdom. Burnum Burnum's actions were a greater public relations success than Paul Coe and his associates. It was reported by the media both in Australia and the United Kingdom. More so, his actions deflated the celebrations that took place in Sydney Harbour (Norst, 1999). His actions reclaimed the First Nations peoples' democratic system of transnationalism jurisprudence sovereignty authority.

The *Mabo v. Queensland Government* (*No. 2*) HCA 23, 175 CLR 1 (3 June 1992) decision further reignited the progressive system of nationalism. But the *Native Title Act* 1993 (Cth) was, to a larger extent, a vastly watered down version of progressive nationalism that had been closer to a softer version of defensive nationalism and popular sovereignty. The post-*Wik v. Queensland* (*"Pastoral Leases case"*) HCA 40; 187 CLR 1 (23 December 1996) period and the *Native Title Amendment Act* 1998 resulted in the Colony of Australia Government strengthening its undemocratic system of defensive nationalism and popular sovereignty and international globalism. More so, the United Nations itself has acted in an *ultra vires* manner by recognising the Colony of Australia Government being an independent nation-state sovereignty, which was inconsistent with the United Nations Charter in Chapter 1, Purposes

and Principles 1, 2, 3, and 4 (United Nations, 1945). I have argued that the *Mabo v. Queensland Government* (*No. 2*) HCA 23, 175 CLR 1 (3 June 1992) ruling and the *Wik v. Queensland* (*"Pastoral Leases case"*) HCA 40; 187 CLR 1 (23 December 1996) decision reflect the ongoing *error nullius* – Australia was considered *terra nullius* wrongfully (Connor, 2004) thinking of the High Court of Australia and that the current judiciary and political systems used at the federal, state and territory levels have no foundation in law (National Unity Government, 2016). More so, I have stated those facts during the 2006 10th Chronic Disease Network Conference (Crane, 2006). Former senator Aden Ridgeway (2004), in a speech to the Senate, confirmed these facts as did Nick Faulkner (2001).

Finally, the First Nations peoples' global transnational higher sovereign authority has been mentioned in the United Nations Human Rights Charter, but it hasn't been given any such dedicated dialogue (Pritchard, 1997). More to the point, scholars in the law fraternity have showed some interest in the work undertaken by First Nations peoples in the United Nations human rights field (Aboriginal and Torres Strait Islander Commission, 2001). Yet, the First Nations peoples' rights to their nationalism and higher sovereign authority have rarely been mentioned in the international sphere (Goodall, 1996). To rectify the wrongdoing, there must be a contest against the former League of Nations and the now United Nations, the monarch and her United Kingdom Government, and the Colony of Australia Government's usage of *ultra vires* (beyond one's powers) instruments. Those instruments have reinforced the Colony of Australia Government's independent sovereign nation-statehood. That form of restitution must be instigated by the solicitor general in the Legal Government Department in London.

Ultra Vires Effect

The Colony of Australia Government, by acting in an *ultra vires* manner, was able to gift itself an unlawful determination of transnational sovereign authority, which included its own

monarch, the Queen of Australia, who was disguised as being separate and independent from Queen Elizabeth II of the United Kingdom of Great Britain and Northern Ireland. In *Sue v. Hill & Anor; Sharples v. Hill & Anor* (1999) HCA 30; (23 June 1999), 199 CLR 462, Justice Gaudron stated that the monarch, Queen Elizabeth II, although the same physical person, in her dual role as the Queen of Australia and the Queen of the United Kingdom of Great Britain and Northern Ireland was a legally independent and distinct monarch for each of the jurisdictions. On that basis, altering the sworn oath and affirmation, noted in Chapter 4, has not been challenged; former governors-general have permitted it without any accountability. As I argued in Chapter 4, there is serious doubt that the Colony of Australia Government has the authority to legislate those instruments (Winterton, 1993).

However, I also argued in Chapter 2 that a majority ruling from this case determined that the United Kingdom of Great Britain and Northern Ireland was a "foreign power" in accordance with Section 44(i) of the Australian Constitution (McConvill, 1999). Therefore, the Colony of Australia Government and Queen Elizabeth II were complicitous in acting *ultra vires* creating two separate monarchs, which have been interpreted differently. I argue that both the Colony of Australia Government and Queen Elizabeth II should be held accountable for imprisoned for treason of sovereignty. More to the point, Justice Gaudron, one of the seven adjudicators in this case, also presided over the *Mabo v. Queensland* (*No. 2*) HCA 23; 175 CLR 1 (3 June 1992) case, which determined that sovereignty couldn't be decided in any domestic court. Thus, the Colony of Australia Government should have been advised that the swearing of allegiance to a sovereign monarch needs to be addressed based on the matter of who has lawful sovereignty, which to date has not been decided.

At the 2010 federal election, a "hung parliament" was the result, with the Australian Labor Party and the Coalition each having 72 elected members (Australian Electoral Commission, 2010). I alluded to the fact in the Expert Panel Was a Mere Smokescreen section

of Chapter 4 that the Australian Labor Party received support from four crossbench members of the House of Representatives, thereby gifting Julia Gillard a minority government of 76 seats. I also noted in Chapter 4 the ultra vires status of taking the United Kingdom oath or affirmation to the monarch, which Gillard, as well as other former prime ministers altered upon becoming prime minister (Channel Ten News, 2010; McKeown, 2013). In 2010, the governor-general was Quentin Bryce who was also the mother-in-law of Bill Shorten, the Labor Member for the Victorian seat of Maribyrnong and a minister in the Gillard Government. I have argued that a conflict of interest existed with the governor-general because the governor-general was complicitous in acting *ultra vires* regarding the administration of the oath and affirmation. Therefore, I argue that an imprisoned for treason of sovereignty has been committed. I have also argued that had a challenge been made regarding acting *ultra vires* to executing the oath and affirmation, former governor-general Bryce should have been removed as well as Julia Gillard and other elected members or senators who had failed to swear appropriately to the oath or affirmation as noted in the Schedule in the Australian Constitution.

Domestic Enactments by First Nations Peoples Claiming Their Lawful Transnational Jurisprudence Sovereign Authority

On 28 January 1992, an official declaration of sovereignty was presented to the former Keating Government in the Old Parliament House (K. Gilbert et al., 1992), which was then followed by the decision from the *Mabo v. Queensland Government* (*No. 2*) HCA 23, 175 CLR 1 (3 June 1992) case, which invoked the First Nations peoples' lawful transnational jurisprudence sovereign authority. The *Mabo v. Queensland* decision should have rescinded the Colony of Australia Government, the unlawful United Kingdom Constitution, and the judiciary. I posit that the First Nations peoples and the rest of the Australian population should have had a new unified Sovereign Union of Australia Constitution Act that would have enshrined them as holders of lawful sovereignty and self-governance. In addition, the recognition of First Nations

peoples' cultural heritage, languages, land rights and tenure, trade and treaty agreements and customary lore should have also been included.

Additionally, I assert that the First Nations peoples' claim of globalism provided them with lawful instruments to enter into legally binding trade agreements, which, in contemporary terms, would equate to trade agreements with each language group belonging to the First Nations peoples and transnational trade agreements with other nations (Hannerz, 1996; Khagram & Levitt, 2004). As a unified nation, the wider community would also have benefitted economically, spiritually, and culturally from the creation of a new history of the continent of Australia. However, that has not been the case. The Colony of Australia Government's stranglehold on its defensive nationalism and popular sovereignty has caused genocide in Australia, along with the refusal to acknowledge the return of lawful land ownership to the Gurindji people and the decisions that came from the *Mabo v. Queensland* (*No. 2*; 1992) case. Therefore, First Nations peoples decided to enact internal challenges against the Colony of Australia Government for their lawful transnational jurisprudence sovereign authority against the Colony of Australia Government and Queen Elizabeth II.

Samuel Crane 10th Chronic Disease Network Conference

In June 2006, I completed my first master's degree with the University of Melbourne in Aboriginal Health. Following that I made a presentation at the Chronic Diseases Network's 10th Annual Conference in Darwin (21 and 22 September 2006) on my research thesis, Key Components of Recovery Programs for Urban Melbourne Koori Men Suffering from Alcohol Dependency and Substance Abuse: A Review of Evidence. After my presentation, I listened to a presentation on tobacco and the benefits of programs to reducing the number of "smokers" in First Nations peoples' communities supported by the Office of Indigenous Policy Coordination. I said to the presenter that I applauded the research and that I have no

disagreement with the presentation. However, I said there are a number of flaws not by any of the programs nor the deliverers of the programs or the presenter at the conference.

First, I said that no level of government in Australia nor the Australian Constitution has any lawful, has had authority, nationally or internationally, since the signing of the Treaty of Versailles and when Australia joined the League of Nations. The United Kingdom Government had said that Australia had received its independence. Also, the *Act of Settlement 1700* (UK) had removed the monarch's authority to be the sovereign ruler of people in the United Kingdom. Thus, no governor or governor-general in Australia has had any lawful authority to be a vice-regal representative nor to provide royal assent for any legislation or to dissolve and install a government. Since 26 January 1788, under United Kingdom law, all First Nations peoples and those that came to Australia have possession of lawful sovereign authority and not the government, monarch nor the monarch's vice-regal representative. More so, the *Mabo v. Queensland* (*No. 2*) decision created the position for a new Australian Constitution and lawful independence from the United Kingdom, its monarch, and the Commonwealth.

Ngarrindjeri People Assert Their Transnational Sovereign Authority

I argue that the Ngarrindjeri people asserting their transnational jurisprudence sovereign authority would have provided the lawful means to challenge the Colony of Australia Government's unlawful determinations of transnational jurisprudence sovereign authority. Additionally, I assert that the Ngarrindjeri people's claim of globalism provided them with the lawful instruments to enter into legally binding trade agreements, which, in contemporary terms, would equate to trade agreements with each language group belonging the First Nations peoples of South Australia and transnational trade agreements with other nations (Hannerz, 1996; Khagram & Levitt, 2004).

The Ngarrindjeri people had possession of the Writ of Privy Seal and were represented by Shaun Berg, a barrister in South Australia, who fought for their land and social justice. This case is important to the argument presented in this research study because it had the potential to rectify the unfinished business that had been in place prior to Federation. On 10 June 2010, Shaun Berg, along with a 14-member Ngarrindjeri delegation, held discussions with the former SA attorney-general Jon Rau, the former Aboriginal affairs minister Grace Portolesi, and the former commissioner for Aboriginal engagement Klynton Wanganeen. The aim of this meeting was to inform the former SA premier Mike Rann that the process of consultation for the betterment of a just settlement in South Australia extended beyond merely paying financial restitution. In the instance that the Ngarrindjeri people received a negative outcome, they could induce a form of litigation and appeals to international tribunals (Treaty Republic & Nason, 2010). This has two arguments: (1) that the fundamental principle for sovereignty had been laid to rest under a cone of silence that had maintained the status of *terra nullius*; and (2) a reignited debate for sovereignty and land tenure and title paving the way for First Nations peoples' transnational jurisprudence sovereign authority.

Following this meeting, the South Australian Government requested from the Ngarrindjeri people a clear standpoint of their views regarding the legal consequences for South Australia in relation to the *Letters Patent* of 1836 signed by King William IV. This was South Australia's founding document. The legal issues at hand illustrated that South Australia and its boundaries included a guarantee of some land rights for the Ngarrindjeri people and their descendants. The then South Australian attorney-general Jon Rau sought clarity from the Ngarrindjeri people. Rau sought the actual legal nature of their assertions regarding the Letters Patent of 1836. Furthermore, he sought the particulars of any and/or all of the consequences that the Ngarrindjeri people believe may flow from this (ABC News, 2010). The *Letters Patent* of 1836 were actually signed by King William IV, which occurred during the Right Honourable

William Lamb 2nd Viscount Melbourne's British Imperial Government. The Ngarrindjeri people cannot negotiate with an unlawful government. Henceforth, they should notify the treasury solicitor of the United Kingdom Government and Legal Department.

Sovereign Yidindji Government Asserts Its Transnational Sovereign Authority

In 2013, the Yidindji Nation located in far-north Queensland, which consists of eight language groups made a statement in a position paper. The Yidindji Nation people have been and remain a separate and distinct society of people from what the international world knows as Australian citizens. They declared that they had never relinquished their sovereignty and or their dominion status. More to the point, the Yidindji Nation lives by Yidindji tribal law and is not subject to federal or state law (Sovereign Yidindji Government, 2013).

On 13 February 2013, in relation to this position paper, Tony Abbott, then federal opposition leader, said that the Liberal Party would give the Gillard Government its support for an Aboriginal and Torres Strait Islander Peoples Recognition Bill. At a speech in Parliament House on that day, he stated the following (Hall & Hawley, 2013):

> Australia is a blessed country. Our climate, our land, our people, our institutions rightly make us the envy of the earth; except for one thing – we have never fully made peace with the first Australians … We have to acknowledge that pre-1788, this land was as Aboriginal then as it is Australian now, and until we acknowledge that, we will be an incomplete nation and a torn people. We only have to look across the Tasman to see how it all could have been done so much better. Thanks to the Treaty of Waitangi in New Zealand, two peoples became one nation. So our challenge is to do now in these times what should have been done 200 or 100 years ago … I believe that we are equal to the task of completing our constitution rather than changing it. The next parliament will, I trust, finish the work that this one has begun.

Gillard had previously given similar in-principle support, stating her government's position at a miners conference held on 30 May 2012 (Iggulden, 2012):

> And here's the rub: you don't own the minerals; they own it and they deserve their share, she added. Governments only sell you the right to mine the resource – a resource we hold in trust for a sovereign people. The government does not own the resources; it holds the resources in trust for another people. Who are the other people?

International Enactments by First Nations Peoples Claiming Their Lawful Transnational Jurisprudence Sovereign Authority

After the *Wik Peoples v. Queensland* (*"Pastoral Leases case"*) HCA 40; 187 CLR 1 (23 December 1996) , the Howard Government, under the guise of defensive nationalism and popular sovereignty, further extinguished First Nations peoples' lawful transnational jurisprudence sovereign authority. As this research study has shown, the settler Colony of Australia Government did not have possession of lawful membership of the former League of Nations and now the United Nations. However, Euahlayi Nyoongahburrah and the Sovereign Union sought to have a claim with the United Nations, not as Australia, but as their own language group sovereign union.

National Unity Government

In 1999, a statement was presented by Michael Anderson (this was prior to claiming his birth right name of Ghillar), for and on behalf of the Euahlayi Nyoongahburrah and the Sovereign Union in Geneva, where the United Nations head office is located. He delivered his statement to the Working Group for the Commission on Human Rights to Elaborate a Draft Declaration on the Rights of Indigenous Peoples. The title of the statement was Sovereignty. In his opening address, he noted the fundamental right of peoples to be free amongst themselves against the systematic oppression and numerous accounts of murder from tyrannical governments. He then quoted to the United Nations advocates the following:

> State practice since the Second World War in fact demonstrates that a right to session will only arise where a government is quite guilty of gross and systematic abuse of the human

> rights of a group which could be categorised as a people. (National Unity Government, 1999, p. 2)

What followed was a highly deductive form of reasoning, where he questioned if a state (governing authority in the continent of Australia) has clearly been shown to be guilty in relation to the abovementioned scenario – that is, First Nations peoples of that state (continent of Australia) shall therefore be firmly situated to demand the right to institute their sovereignty along with all their exercisable rights to self-determination and independence afforded to them under international law (National Unity Government, 1999).

Euahlayi Peoples Republic

The Euahlayi people commenced their proceedings against Queen Elizabeth II with Buckingham Palace. On 24 July 2010, under his natural and given Euahlayi name, Ghillar, asked Her Majesty Queen Elizabeth II the following questions:

> a) Can you provide us with the documents where war had been declared against the peoples of the Euahlayi Nation?
>
> b) Or where the peoples of the Euahlayi Nation had voluntarily ceded their sovereignty to Great Britain?

Their most recent communication from Her Majesty on 24 August 2010, which, her senior correspondence officer, Mrs Sonia Bonici, had written from Buckingham Palace said: “As a constitutional sovereign, Her Majesty acts through her personal representative, the Governor-General, on the advice of her Australian ministers and it is to them that your appeal should be directed”.

Ghillar further mentioned that he had received a letter from the Office of the Official Secretary to the Governor-General that was signed by Mark Fraser OAM, the Deputy Official Secretary to the Governor-General, replying for and on behalf of Queen Elizabeth II’s Australian

representative, where he stated exact words: “I regret to advise you that I cannot add anything further to my reply of 7th July and I am unable to supply any of the documents that you seek”.

What is apparent is that all the heads of government inside Australia are unable to produce any documents. That failure clearly demonstrates the First Nations peoples’ lawful right for their continued system of governance. Maurice Japarta Ryan, the chair for the Central Land Council (CLC), refuted claims made by Warren Mundine, the head of the Prime Minister's Indigenous Advisory Council, that treaties between each First Australian nation and the federal government were flawed (ABC News, 2014).

Ghillar Michael Anderson, the convenor of the Sovereign Union and the Provisional Euahlayi Peoples Executive Council, stated the following:

> On 3 August 2013 in Dirranbandi, Queensland, a meeting of key Euahlayi family members and Elders concluded that a letter be forwarded to Her Majesty Queen Elizabeth 11, informing her that the people of Euahlayi have asserted their pre-existing and continuing statehood.

Gilbert extrapolated, that since 2013, that First Nations language groups in the continent of Australia have individually declared their status quo by making unilateral declarations of independence (UDIs) whereby they affirmed that First Nations peoples had never been included in the Australian Constitution. He also mentioned that the Murrawarri and Euahlayi Nations had been the first of the First Nations and Peoples to notify the United Nations and Her Majesty Queen Elizabeth II of their UDIs. He stated that the concept of the sovereignty of Aboriginal Nations and Peoples had now been firmly placed in the psyche, where there was a renewed strategy for treaties between the sovereign nations regarding the need to reconstruct the ongoing genocide. He then mused: “How the occupying Commonwealth Government deals with its Achilles heel remains to be seen”. Gilbert concluded that a referendum to coercively

include First Nations and Peoples into the Australian Constitution is one strategy that is unwanted from those who have seen it as a trap (K. Gilbert, 2015).

Based on the evidence I have presented, notifying Queen Elizabeth II was a pointless and needless exercise as the High Court of Australia had declared that the United Kingdom was a foreign power. These critiques of sovereignty from First Nations peoples showed that the current federal, state and territory governments are, in fact, a quasi-governments, which the *Mabo v. Queensland Government* (*No. 2*; 1992) HCA 23, 175 CLR (3 June 1992) determined. Consequently, the rationale of that case questioned the legitimacy of all Australian governments and the Australian Constitution. Former High Court of Australia justice Michael Kirby said that the Australian Parliament, along with the Australian Constitution, has been discriminatory towards the First Nations peoples (Kirby, 2011).

Murrawarri Republic

The Murrawarri Republic presented a media release on 10 May 2013 titled "Queen Recognises Murrawarri Republic". The opening bold sentence stated the following: Her Majesty Queen Elizabeth the Second, the Queen of the United Kingdom and the Head of the Commonwealth, recognises the Murrawarri Nation's continued independence and statehood. On 30 March 2013, the Murrawarri peoples issued their own Declaration of Independence and Statehood. As per the Murrawarri Republic, the drafted constitution is the enactment of the Peoples Council, which had been established with the instalment of the Provision Government of the Murrawarri Republic (2013).

Succeeding that, on 3 April 2013, the Murrawarri Peoples Council notified Her Majesty Queen Elizabeth the Second of the said declaration of the Murrawarri Nations continued independence and statehood. They also requested that Her Majesty produce documents that proved how sovereignty, dominion and ultimate (radical) title had been claimed from the

Murrawarri Nation's ancient lands, waters, surface, natural resources and airspace in accordance with international and British common law. The Murrawarri Peoples Council requested one of the following documents (Murrawarri Republic, 2013):

a) Documents between the Murrawarri Council and the Crown of Great Britain outlining the conditions of a treaty

b) A deed of cession document that showed the Murrawarri Nations had ceded sovereignty, dominion and ultimate (radical) to the Crown of Great Britain

c) Documents showing a declaration of war against the Murrawarri Nation and its people by the Crown of Great Britain.

The crucial points raised within this media release showed that the Murrawarri Peoples Council had delivered to Her Majesty a set of instructions. That if the documents were not produced within 28 days of receipt of the correspondence that she holds possession of, the council would make a representation to the United Nations to be acknowledged as the world's most recent independent nation as per the protocols of the United Nations. On 10 April 2013, the Murrawarri Peoples Council received correspondence from Buckingham Palace that Her Majesty had possession of the Murrawarri Peoples Council's letter (Murrawarri Republic, 2013).

More importantly, on 8 May 2013, the 28-day period had expired, and by that time the Murrawarri Peoples Council had not received a reply from Her Majesty. Therefore, the failure by the Crown to produce the aforementioned documents had affirmed that the Murrawarri Republic was a continued free and independent state that would be recognised under international law and covenants. Ultimately, the Murrawarri Peoples Council would contact the secretary general of the United Nations seeking assistance in the development of a recovery framework for the restitution of all ancient lands, subsurface, natural resources, waters and airspace located inside the boundaries of the Murrawarri Republic. This would be in line with

United Nations Resolution 1541 (XV) VI. It was also noted that the Murrawarri Peoples Council planned to make a presentation to the United Nations for their acceptance as the world's newest nation (Murrawarri Republic, 2013).

Makarrata versus Treaties

In the view of the National Aboriginal Conference, the position of a Makarrata as a treaty was merely semantics. In 1981, the then minister for Aboriginal affairs Peter Baume considered that the Makarrata/Treaty Subcommittee had provided a separate determination for the word "treaty". Occasionally, this word has ordinarily been used in a domestic context, such as the sale of land as in a private treaty. However, the word "treaty" has also been used in reference to a kind of international agreement. Thus, it is not applicable to form an agreement between the Commonwealth and the Aborigines as the latter is not a "nation" (National Unity Government, 2017).

More so, in 1980, the then attorney-general, in a letter to the prime minister dated 115July 1980, made further arguments in respect of the word "treaty". Given the connotations of the word "treaty" from an international context, it would be pertinent to avoid the word in relation to an agreement, and, instead, use a term, such as Makarrata, which may be used after a full and frank examination had decided that it was appropriate. The former attorney-general further said that it would be possible to include in an arrangement as if they, the Aboriginals, were a community separate from the Australian community, with provisions to ensure that the arrangement would not be conceived as being comparable to a treaty between separate nation-states. In deciding whether such provisions should be encompassed, account must be taken of any risk, in the absence of sufficiently overt provisions to the contrary, that an enactment may be made that confers a status whereby the Aboriginals could declare a right of self-determination as a "people". A treaty of any type, be it under international law or the domestic

law of the Australian Constitution, could be used to provide a treaty with constitutional backing and standing. This would have to be included into a new constitution (National Unity Government, 2017). However, a new democratic constitution would have to be negotiated with the First Nations peoples (Pateman, 2007).

Warren Mundine, former head of the Prime Minister's Indigenous Advisory Council, made suggestions for alleviating the position of native title claims (ABC News, 2014). He proposed that by recognising First Nations peoples via treaties could be an alternative to native title claims. Mundine further stipulated that treaties would establish the recognition of First Nations peoples as the traditional owners of a defined area of land and sea in addition to recognising Australia and its right to exist. Former Central Land Council chairperson Maurice Japarta Ryan made his point extremely clear that treaties with the Australian Government would be inappropriate. He further said:

> Any treaty should be done with the Queen of England. Not with Australia, with England because we never acquiesce our sovereignty for 1788 to present day. I hear Tony Abbott talk about sovereignty. I hear the Foreign Minister talking about the border situation. It is not Australian sovereignty, it's the sovereignty of the First Nation's people. (ABC News, 2014, paras 5–7)

Reclaiming First Nations Transnational Higher Jurisprudence Sovereign Authority

To date, it has been problematic seeking assistance from the monarch given that she herself has acted in an *ultra vires* manner as has the Colony of Australia Government with the creation of the position of Queen of Australia. Furthermore, to challenge these matters in the UK High Court of Justice, Chancery Division as did non-First Nations barrister David Fitzgibbon in the case of *David Claude Fitzgibbon v HM Attorney General* (2005) would be fruitless because of the interference by former prime minister John Howard (Levick, 2019); not forgetting that former solicitor Wayne Levick had been disbarred by the New South Wales law association in

2001 because he had represented a client from the Australian Taxation Institute in challenging that all taxation and treaty laws were null and void as were the Australian Constitution, the federal, state and territory governments, and the judiciary. In 1975, Queen Elizabeth II had knowledge and/or a hand in the dismissal of former prime minister Gough Whitlam and his elected government (Hocking, 2020). I have argued that as the Colony of Australia Government, its judiciary, and the monarch with her vice-regal representatives cannot be trusted, First Nations peoples must go outside all domestic courts and parliament and make their claim with the treasury solicitor in the Legal Government Department in London.

Suffice to say, the means for introducing new conversations about a new Australian Constitution will develop from the publication of this research study. In addition, I plan to have a video documentary produced by close family members on the unlawfulness of the system of governance, constitution, and judiciary on the continent now known as Australia. Furthermore, once completed and assessed, making this research study available through Federation University Australia's online research repository will help disseminate this knowledge and these arguments.

Conclusion

Lawful transnational jurisprudence sovereign authority existed long before the British Empire's acquisition of the continent of Australia, not as a penal colony, but as an international trading base as noted in Chapter 1. Reclaiming the lawful transnational jurisprudence sovereign authority cannot be undertaken here in Australia as the current system of governance, its judiciary, along with the monarch and her vice-regal representatives cannot be trusted. The *Sovereign Australia Constitution Act* (AUS) would unite a nation and the many First Nations peoples' languages groups. It would also go a long way in healing a nation that has been suffering since 26 January 1788 and build many bridges. This form of healing could include a

treaty with the First Nations peoples and the wider community, which would provide all citizens in Australia and its surrounding islands with lawful sovereign authority and independent lawful transnational jurisprudence authority with its own self-governance that is recognised nationally and internationally.

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Appendix A

February 22, 2022

Ms Susanna McGibbon

Treasury Solicitor

Government Legal Department

102 Petty France

LONDON, SW1h 9GL

mailto:thetreasurysolicitor@governmentlegal.gov.au

RE: First Nations people's language group exiting the Commonwealth and repealing the United Kingdom Constitution

Dear Ms McGibbon,

Firstly, we the assigned First Nations people language group have formally advised you that we as the original sovereign owners of our land, seas, waterways, and airspace will be exiting the Commonwealth. Furthermore, we will also be repealing the current An Act to Constitute the Commonwealth of Australia [9th July 1900], Commonwealth of Australia Constitution Act [63 & 64 Vict] and the most recent version being *Commonwealth of Australia Constitution Act (The Constitution)*. This compilation was prepared on 4 September 2013 taking into account alterations up to Act No. 84 of 1977.

Secondly, Samuel Crane a First Nations person belonging to the Bulluk-Willam people of the Woiwurrung nation from the Coranderrk Aboriginal Station, Wadawurrung in Geelong, and Monaro peoples in Cooma has provided us with a copy of his Master of Arts Research. His research has clearly shown that all current forms of government on the continent of Australia are unlawful as are their judiciaries. More to the point, Section 8 of the Preamble that the continent of Australia was not an independent nation. We have also been informed that only 7 per cent of the entire adult population in 1900 had voted in colonial referendums for a federated

nation. Yet, we the First Nations people were not a part of that process. In contemporary terms this would be discriminatory and racist.

Thirdly, the *Mabo v. Queensland* [No 2] [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992) case clearly defined that the Queensland Government held no lawfully recognised sovereignty. In addition, the majority decision from the *Mabo v. Queensland* [No 2] that sovereignty was unable to be dealt with in any municipal domestic court. We have also discovered that the state governors and the Commonwealth governor-general have unlawfully permitted all state and federal courts magistrates, justices and the chief justice to adjudicate court trials and pass judgements.

Fourthly, holding a referendum to abolish the unlawful local, state and federal governments will be difficult. All levels of government have strong connections to wealthy business entrepreneurs who have contributed monies towards their elections. Notwithstanding, the current monarch, Queen Elizabeth the Second, is not the lawful heir to the Crown under United Kingdom law as she holds German ancestry.

Lastly, as we hold distrust and dissent with all levels of unlawful government here in Australia, we are now seeking to rescind the United Kingdom Constitution enacted by the former British Imperial Government, In addition, we want to dissolve the Westminster system of governance. We, therefore, request that the treasury solicitor dissolve all levels of government, assist with the conduction of elections for an Independent Sovereign Union of Australia, and to enact our own constitution.

We the assigned will be in discussion with you as soon as practicable.

First Nations language group.

Appendix B

Sovereign Australia Constitution Act (Aus)

A new *Sovereign Australia Constitution Act*, of which, will be a legislative instrument that will be recognised nationally and internationally the First Nations peoples' transnational jurisprudence sovereign authority. The new constitution will have a bill of rights for all citizens of Australia with no monarch representative; local governments shall be removed and replaced with local cantons, similar to that in Switzerland; and state borders to be realigned with the real-estate borders to each language group. The former states will become regions that will consist of the state electoral seats. The one constitution shall apply nationally, with local cantons making local laws that must not impinge of the civil rights and liberties of all Australians and treaty agreements set forth in accordance with the new constitution. Notwithstanding, local canton laws must be compliant the new constitution.

Opening Statement in *Sovereign Australian Constitution Act* (Aus)

One, we affirm that the former British Empire had acquired the continent of Australia and its surrounding islands under the falsehoods of *terra nullius*. Two, that we, all the people residing on the continent of Australia and its surrounding islands, unanimously affirm the repealing of An Act to Constitute the Commonwealth of Australia [9 July 1900] and the *Commonwealth of Australia Constitution Act* [63 & 63 Vict] (UK). Three, we also affirm that we wish to be a sovereign independent nation with a cession from all legislations under the authority from the United Kingdom of Great Britain and Northern Ireland, including the *Australia Act* 1986 (Cth) and the *Australia Act* 1986 (UK). Four, we also affirm a cession from the United Kingdom of Great Britain and Northern Ireland and the Commonwealth. Five, in accordance with the *Act of Settlement* 1700 (UK), we wish to have a cession of the United Kingdom of Great Britain and Northern Ireland monarch as well as rescinding all regal representatives being state

governors and the governor-general. Six, the new nation will have possession of a new national flag, which will include the colours of the Aboriginal flag and the Torres Strait Islander flag. The red, white and blue colours of the United Kingdom shall be removed.

Sovereign Jurisprudence Authority

Tiga Bayles hosted a Let's Talk forum broadcasted from the Brisbane Indigenous Media Association, whereby he had panellists discussed various issues with panellists. The first in the series of Let's Talk panellists Mary Graham, Michael Mansell, Bob Weatherall, and Lilla Watson discussed sovereignty. Sovereignty is a term used by Westminster parliamentary systems and in the context of First Nations peoples, sovereignty has many meanings, such as, lore, spirituality, and the vast number of millennia of history prior to colonisation. Sovereignty has a powerful and lawful connection to our sovereign birthright the songs and languages from each persons 'country'. More so, sovereignty is about each person autonomous self. Each language group is autonomous from each other. Finally, sovereignty for First Nations peoples has to be recognised internally and externally and political representation especially of policies that affect First Nations peoples (Bayles, 2013).

Independent Transnational First Nations Treaty

A treaty with the First Nations peoples and the entire Australian population shall have national and international protections. Unlike the Uluru Statement, sovereignty will be shared equally and not with the Crown. This treaty shall be recognised under international law. Additionally, all transnational treaties and/or agreement made by the former self-governing Colony of Australia shall be rescinded and any new transnational treaties and/or agreements will have to satisfy the treaty agreement between the First Nations peoples and the wider Australian population. Furthermore, the former states and territories shall be renamed to a First Nations

language group for that region as this will be a part of the healing process to a nation that was at least 60,000 years old prior to the unlawful acquisition by the former British Empire.

Within the treaty will be removal of all foreign governments and multinational mining magnets who had acquired land from the settler *quasi*-sovereign government without the permission of the First Nations peoples and the wider Australian population. That land shall be returned to the lawful sovereign people of Australia. One such treaty was made in 1966 for the establishment of Pine Gap, located on the Arrernte people's land in Alice Springs, and was signed by the United States and the Australian governments (Middleton, 2017). Pine gap has contributed to the injuring of lawful sovereign citizens from overseas countries. Additionally, within this treaty there shall be no invasions made by the new Sovereign Australia nation in the form of wars against another overseas nation as was the case with the establishment of the Pine Gap operations and the Vietnam, Gulf, Afghanistan, and Iraq wars.

Independent Transnational Sovereign Governance

The federal parliament shall consist of an executive government, comprising two people from each region (the former states) and the Northern Territory. As for Canberra, it is located inside the New South Wales land mass, which means that New South Wales and Canberra will share two elected members. Canberra shall be a regional city inside New South Wales and be renamed Ngunnawal. More to the point, the current capital of Australia is Canberra and my thoughts are to alter that as a process in healing the nation of Australia. My suggestion is that the national capital should be on the Eora Nations people's land given that it was there where the former British Empire illegally acquired land not belonging to them. Also, there will be one elected person from each of the islands. The federal parliament shall remain where it currently is in Canberra. The states and the Northern Territory shall be renamed to one that is suitable in relation to each First Nations people's language pertinent to that region. In addition, there shall

be no outsourcing of any federal or canton government responsibility to a private organisation or company.

Current Federal Parliament House, Canberra

The new parliament house, which cost the taxpayers an astronomical amount of money of 1.1 billion dollars shall be dismantled and items, such as the marble staircase, sold. Those monies shall be return to the newly established federal taxation office. Old Parliament House shall be the federal parliament. No former members or senators from the previous system of governance shall be permitted to nominate for an election in the federal parliament. Finally, the 1972 Aboriginal Tent Embassy shall be rebuilt on the site of its original location as a historical information centre for all Australians and overseas tourists.

Election of Parliamentarians

The *Commonwealth Electoral Act* 1918 (Cth) shall be rescinded with a new *Sovereign Australian Electoral Act* (Aus). There will be one electoral office in the new national capital. Local elections will be held in each local canton. The winner of each election will be the person who has won the most votes, such as using the first-past-the-post method. The former preferential voting system will be abolished as will the donations to candidates and political parties. There will also be a system of progressive representation, whereby women will be encouraged to nominate.

High Court of Australia

The judiciary system under the former Commonwealth of Australia shall be replaced as in being a cession from all United Kingdom legislation. The High Court of Australia (HCA) shall remain as it will be the court that protects the new constitution. It will also act as a court that settles any disputes on constitutional matters within any of the newly formed regions. Most

importantly, it protects the lawful sovereign rights of all citizens residing on the continent of Australia and its surrounding islands. Under the former system, the governor-general selected justices and the chief justice of the HCA. Katie Sutton and Jayne Huckerby, in their journal article titled *A gendered interpretation*: *Women on the bench of the International Criminal Court*, alluded to the gender bias in the selection of justices to the HCA (K. Sutton & Huckerby, 2002). I posit a view similar to theirs for a like-for-like arrangement by the Rome Statute of the International Criminal Court, Article 44(2) relating to the Office of Prosecutor, the Registry and the Judicial Chambers for the administration purposes of the HCA (K. Sutton & Huckerby, 2002).

In addition, as per the healing process for the continent of Australia, I posit a view that the HCA will have a legislative instrument similar to that of the International Criminal Court (2011). Externally, the Colony of Australia Government has invaded foreign countries in acts of war that have killed and/or injured lawful sovereign citizens from other countries. One clear example is the Vietnam War, as men were conscripted to join the Vietnam War. However, the 1946 alteration to the Australian Constitution Section 51 (xxiiiA), stated no authorisation to any form of civil conscription. Two points wish to raise, one, that, all men who were conscripted and/or coerced in to joining the Vietnam War had done so unconstitutionally. Secondly, as the Colony of Australia Government had lawful authority to govern they also had no lawful authority to invade foreign countries in acts of war. Therefore, all deceased parliamentarians shall be acknowledged as war criminals and be recorded in all future history books of Australia. The same will apply to the World War Two, Korean War, Malayan Emergency, Indonesian Confrontation, Gulf, Afghanistan, and Iraq wars. From an internal viewpoint, all sovereignty wars and massacres incurred by the British and the settler *quasi*-sovereign government shall have a judicial process, and to be included in the war records in

Australian War Memorial . The Northern Territory interventions instigated by all governments since 2007 shall also be brought before a judicial process.

Bill of Rights

The constitution proper will have a number of key legislative instruments that will protect the civil rights and liberties of all lawful sovereign citizens in Australia. One of those will be a citizen's initiative that provides protection to citizens when removing a member of parliament at a federal or local canton level. Another key legislative instrument would be known as a bill of rights, which will afford protection to all citizens' cultural, religious, and language beliefs.

Sovereign Waters, Rivers, Fisheries, Seas, Seabeds, and Air Space

One example comes from the Northern Basin Aboriginal Nations (NBAN), who are an independent self-determining collective, whose primary focus is the cultural and natural resource management of the northern Murray-Darling Basin. The NBAN is seeking absolute recognition for Aboriginal science and cultural values and uses related to the land and water management in the northern Murray-Darling Basin. Notwithstanding, the NBAN request a higher level of input towards the decision-making processes and the planning for the Northern Murray-Darling Basin (Northern Basin Aboriginal Nations, 2017). Under the premise of local cantons, the NBAN would join with the local cantons. This would form an internal treaty supported by the new federal constitution.

Another example is the Sami in Norway, Sweden, and Finland, who have, like the First Nations peoples of Australia, contested that they have never ceded their lawful sovereignty and state ownership of all their lands. The Sami have been provided with land and resources rights that include pre-colonial fishery economic traditional resources (Dow & Gardiner-Garden, 1998). Combining this with the NBNA would afford an equitable sharing of traditional economical resources. In addition, the local cantons under the new constitution would have the

authority to monitor and register all lawful fishing licences to all citizens. The same canton would be afforded lawful authority in the protection of all local waters, rivers, seas, and seabeds. The federal government would then monitor and legislate for the protection of sovereign maritime seas that extend 200 nautical kilometres from the shore. This legislative instrument would be included in the new constitution. The federal government defence force, as in the navy, would oversee these transnational seas. The air force would monitor all airspace above the continent of Australia and its surrounding islands.