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Indigenous treaty talks have a long, rich history

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Talk of treaties with Aboriginal tribes should not cause surprise, let alone alarm. In fact, they already exist. Governments and mining companies have to accommodate the post-Mabo reality and such agreements are the way to go.

In the southwest of Western Australia, native title is extinguished for the bulk of the area. But the survival of remnant native title allowed the Noongar tribal identities to negotiate the South West Land Agreement with the state government. From an Aboriginal and native title perspective, this is a government to government agreement — whatever name is attached to it.

It is not called a treaty, so it has not excited panic or public controversy. Ironically, some elements of the 36,000 Noongar community who want sovereign recognition now oppose it.

Probably the objectors would have been satisfied with an agreement named as a treaty that recognised a form of subordinate sovereignty within the national framework.

Almost every Australian interested in Aboriginal and Islander people can mentally conjure up the Tindale map of the Aboriginal tribes of Australia. Australia is a brightly coloured jigsaw of the tribal groups with their distinctive languages and territories. Many tribes were dispossessed and dispersed after 1788 but across the Australian landmass hundreds of thousands of Aboriginal Australians identify themselves as the peoples of those territories.

When Norman Tindale drew his map in 1974 it represented the recording of a historical and present reality. At the time that reality had no place in the law apart from some government reserves and uneven protection of Aboriginal heritage sites.

Since 1992 and the High Court Mabo decision, these tribal identities have legal recognition as collectives with a relationship to country that can be recognised by Australian law. This is not a recognition of the interests of individual Aborigines but of collective rights held by groups whose membership is determined by Aboriginal law and custom traced back to the time of settlement. Aboriginal collective identities, tribal identities, are a recognised part of our nation's legal fabric.

The long struggle of Aboriginal people for equal citizenship in the land that was once theirs alone was eventually embraced by the people of Australia. There were many milestones. Full voting rights were achieved in 1962 after a parliamentary inquiry. In 1967 90 per cent of Australians embraced the idea of equal citizenship that was the understanding underpinning that uniquely successful referendum. Almost all could agree that we should all be equal as citizens.

What proved much more challenging after 1967 was the claim that these newly equal citizens also had special and different rights. The often bitter disputes about land rights were based on objections to Aboriginal people having rights different from other Australians. The idea that different collective rights to land and culture was available only to collectives of Aboriginal Australians was often regarded as offensive to the idea that we were all equal.

The land rights movement succeeded politically with the Aboriginal Land Rights (Northern Territory) Act of 1976.

It was fought to a standstill in Western Australia with a divisive campaign by the mining industry and the state Liberal Party. In the face of that, the federal Labor government withdrew its support for national land rights legislation. The issue was lifted out of the political mire by the Mabo decision and the mining companies that had led the charge against Aboriginal land rights quickly accommodated the new reality.

Acceptance of recognition and treaty-making requires no more than public understanding of what Aboriginal people have already won through long efforts to achieve recognition as distinct and continuing peoples whose collective identities are a part of our national fabric.

Governments making agreements with Aboriginal people do not require a further constitutional leap. If the West Australian government can do it without fuss, why should anyone get their knickers in a knot about other states following suit?

It can be done with or without constitutional change. There is no loss of sovereignty in this process, just an acknowledgment that the entity with which you negotiate is founded on pre-settlement entities that have carried through to today.

The request for a treaty or treaties from the National Aboriginal Conference in 1980 did not alarm the Fraser government, of which I was part. The then prime minister indicated a willingness to consider the idea. He was alert to the sort of alarmist campaigns that could be mounted by then state leaders such as Charles Court and Joh Bjelke-Petersen, so suggested they find another word. The wise leaders in the NAC offered makarrata, which they told us was a Yolngu word meaning coming together after a fight. That seemed satisfactory.

Subsequently, the push for a treaty died away as other issues took precedence. It was for a time pursued by the Aboriginal and Torres Strait Islander Commission but faded again with the abolition of ATSIC. Now it has come to the fore again in the context of the long and elusive debate about recognition in the Constitution.

As with all the other great challenges we face as a nation, the pursuit of a quiet consensus would be more productive than the panic division and name-calling that marked this year. Perhaps 2017 could be the year of quiet agreements on budget repair, carbon reduction as well as the relationships with the First Australians.

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