

# The Republic of Murrawarri and the Debate on Aboriginal Sovereignty in Australia

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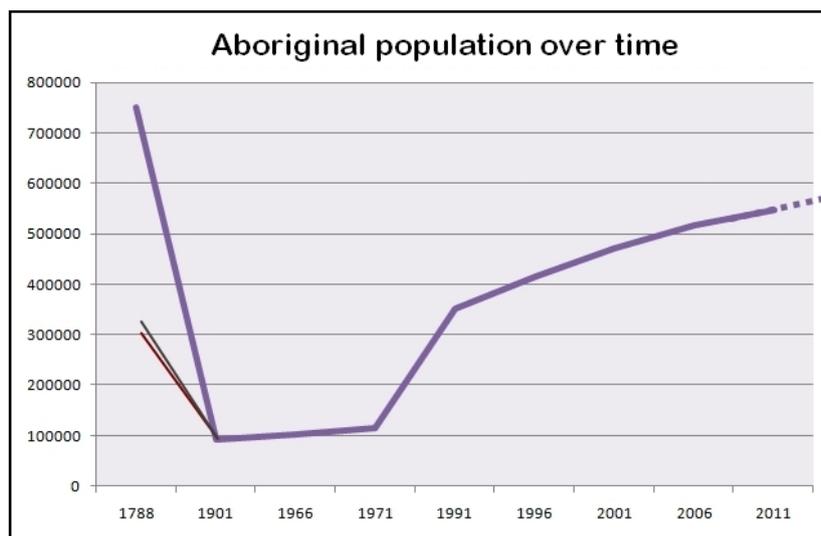
## Abstract

*The dual objective of this paper is to identify the impact of the proclamation of the Republic of Murrawarri, along with a legal and political analysis examining the demand for greater Aboriginal sovereignty, an ever-increasing subject of debate in Australia. A brief legal, territorial, media, historical and political review is undertaken to investigate the impact of the Murrawarri Republic, while the admissibility of increased Aboriginal sovereignty is assessed through a legal and political analysis of relevant pros and cons. The impact of the Republic of Murrawarri has been significant from both a media and a political perspective, despite the fact that a territorial analysis shows that its true area (22,170 km<sup>2</sup>) is less than one third of what is officially claimed. The legal and political analysis produced no legal impediments to broader Aboriginal sovereignty in Australia. In conclusion, the proclamation of the Republic of Murrawarri is currently exerting a significant influence over similar contexts in Australia, while the implementation of both Aboriginal constitutional recognition and a set of treaties between the Australian governments and the Aboriginal peoples is feasible and desirable, in order to achieve true reconciliation between Indigenous Australians and other Australians.*

**Keywords:** *Aboriginal sovereignty, native title, land claims, Aboriginal constitutional recognition, Murrawarri, Australia*

## Introduction

Aboriginal sovereignty is a historic national policy debate in Australia, addressed with varying degrees of commitment since 1788, year of the first British colony in the country. Australia was an inhabited land long before European settlement: established archaeological studies agree that Indigenous Australians have been there since between 42,000 and 50,000 years ago,(1) while more recent genetic studies confirm continuous human presence for circa 50,000 years.(2) Scholars disagree, however, on the size of the population of Indigenous Australians prior to British colonisation. In 1930 Radcliffe-Brown suggested that it could not have been less than 300,000,(3) in 1980 L. R. Smith raised the minimum figure to 315,000(4) and in 1983 Noel G. Butlin estimated that the original population of Aboriginal Australians was about a million,(5) but recent archaeological studies demonstrate that its size was probably closer to 750,000.(6)



**Figure 1.** *Aboriginal population over time. The purple line represents the estimates on pre-colonial population from the most recent archaeological studies, while the brown line shows Radcliffe-Brown's estimates and the grey one shows Smith's estimates*

Despite the fact that demands for the recognition of Aboriginal sovereignty have always existed, well organised socio-political and legal movements with this objective rose only in the 1960s, reaching greater scope in 1972, the year in which the Aboriginal Tent Embassy was established in Canberra. Although it never received the official status of embassy, the Aboriginal Tent Embassy immediately made several demands of the Australian government, stemming from the long protests for Aboriginal territorial rights.(7) The movement for the recognition of Indigenous sovereignty continued hand in hand with the recognition of Australian Aboriginal rights, a slow and yet fundamental process that has contributed to the creation of Australia's social identity. Recently, moreover, the declaration of independence from the Commonwealth made by the Republic of Murrawarri on 30 March 2013 gave new *impetus* to the widespread demands for a greater recognition of Aboriginal land rights, resulting in an important international echo which represents a further impulse for new debates in the country.(8)

For the purposes of this study, the key concepts of sovereignty, native title and land rights shall be understood with their widest possible interpretation. The former intuitively refers to the power and right of a polity to govern itself, since, to use the well-known definition of Strayer: «sovereignty requires independence from any outside power and final authority over men who live within certain boundaries», which embeds both sovereignty's internal and external dimensions.(9) The second concept is concisely explained by section no. 223 of the Native Title Act of 1993, which states that native title «means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters»,(10) under traditional right to the land, often obtained with judicial recognition and following the requirements of Australian common law. The latter term, lastly, is a broad concept that refers to the rights of Indigenous peoples to use and/or reclaim land, based on recognised dispossession, as a result of a legislative process.(11)

Under these premises, this paper aims to examine the impact of the declaration of independence of Murrawarri and the legal admissibility of Aboriginal sovereignty in Australia. The next section is a review of relevant literature, followed by a review of the legal, territorial, media and political consequences of the proclamation of the Republic of Murrawarri and a legal and political analysis of Aboriginal sovereignty.

## **Review of literature**

There is an abundance of literature on Australian Aboriginal history, mainly due to the fact that there are many essays dealing with the long process of the recognition of Aboriginal rights. A fair amount of work that examines the concept of Aboriginal territorial sovereignty is also available, but there are few studies evaluating the legal admissibility of such sovereignty and very little has been said of the impact of the declaration of independence of the Republic of Murrawarri. This section concisely outlines the major works that deal with these topics, which ought to be contextualised in the brief historical introduction above and the legal history of relevant international principles outlined in the following sections.

Russell McGregor is one of the best-known scholars in the field of Australian Aboriginal history. His most regarded work is a book in which he examines the historical origins of racial contrasts and the subsequent problems between Indigenous Australians and European colonisers, introducing the now-famous concept of «doomed race».(12) His book ends its investigation in the 1930s, similarly to another study of McGregor, where he showed the growing activism of the Indigenous Australians of the same years, primarily focused on the fight for the acquisition of more rights.(13) An additional study published in 2009 presents the characteristics of Aboriginal activism in the 1960s and 1970s, distinguished by nationalistic elements that would later become essential for the development of renewed demands for Aboriginal sovereignty.(14)

Another scholar renowned for his research on Aboriginal history and identity is Ian D. Clark, whose best-known work is a book in which he investigates the multiform linguistic aspects related to the many clans of the Aboriginal Australians, highlighting the different characteristics that have been claimed by

Aboriginal activist groups since the early 1970s.(15) Further work by Clark, published in 2003 and useful for the purposes of this study, closely examines Aboriginal legal and territorial claims in the western part of the State of Victoria, showing that these were already widespread in the late nineteenth century.(16)

As mentioned above, there is a fair amount of literature that deals with Aboriginal territorial sovereignty, among which some of the most famous works are those of two Australian academics. Henry Reynolds is the author of a book that deals with the question of Aboriginal sovereignty, examining it in depth along with the long-rejected principle of *terra nullius* and contextualising Aboriginal demands in relation to international agreements. Indigenous Australians' relations with both British settlers and current Australians of European descent are also presented, along with the Mabo decision of 1992.(17)

Aileen Moreton-Robinson is the author of numerous works concerning Aboriginal history, Aboriginal sovereignty and the role of women in Australian Aboriginal society. Her most relevant works to this study are a book and a book chapter. The former explores Aboriginal demands for greater territorial rights in light of the controversial legal aspects of British domination, also enriching the debate with different sociological insights related to the role of women.(18) In that same work Moreton-Robinson introduces her well-known concept of «patriarchal white sovereignty». Another useful study for the purposes of this work, moreover, is a book chapter in which Moreton-Robinson shows that Aboriginal expropriations and being forced to make long journeys from one territory to another have inevitably had an impact on their sense of belonging to Australia. They have, according to the analysis of the author, been illegally deprived of their land rights, a situation at the basis of current claims for a greater Aboriginal sovereignty.(19)

Larissa Behrendt, moreover, holds that the country's property law, criminal justice and education system, as well as the constitution itself, are entrenched with ideologies and bias that are co-responsible for the poor societal condition of the Indigenous peoples of Australia, a condition that is also due to the «nationalist identity» of Australia's self-image, the perceived threat to the country's traditional economic fabric and the competing images of Australian mono-multicultural society.(20) Falk's and Martin's work shares this view, given that, according to the authors, the Native Title Act leaves no space for autonomous decisions for Aboriginal peoples, notwithstanding the fact that their sovereignty, never ceded, exceeds Australian law in principle. A possible solution they outline is therefore that of partial, or internal, sovereignty.(21) Mansell's recent book, on the other hand, supports Aboriginal sovereignty from another viewpoint, that of the damages produced by European colonisation, paired with a challenging discussion on the potential benefits of Aboriginal statehood for Australia as a whole, despite expressing doubts on the usefulness of the idea of constitutional recognition.(22) Other works on Aboriginal sovereignty were also written by academic and prosecutor Michael Anderson and prominent constitutional lawyer and academic George Williams, some of which are discussed towards the end of this paper.

Furthermore, over the years some papers regarding the legal and political basis of both former British rule and the current demands of Aboriginal sovereignty in Australia have been published. Two of those, in particular, highlight that sovereignty was neither ceded nor lawfully transferred by the Aboriginal people.(23) Despite this, their conclusion is that this condition should not be an impediment to Aboriginal constitutional recognition and treaty-making between Indigenous peoples and Australian governments.(24)

Three legal milestones of Aboriginal land rights should also be mentioned in this review. The issue of Aboriginal land rights was first presented to an Australian court in what is known as The Gove Land Rights Case, in 1971. While the judge upheld the evidence of a pre-existing system of law, he felt bound by the precedents to reject the claim presented before him.(25) The 1992 Mabo v. Queensland (No. 2) judgment, on the other hand, is the most significant and ruled that the lands of Australia were not *terra nullius* when European settlement occurred, recognising native title as well, though specifying that land rights and interests «would be precluded if the recognition were to fracture a skeletal principle» of the Australian legal system.(26) The High Court's decision generated intense legislative activity, frantic

political debate and a vast amount of academic and media attention. Lastly, the *Isabel Coe v. The Commonwealth* case, from 1993, was stricter than the *Mabo* decision in recognising Aboriginal land rights, as it rejected such claims on the basis that they were challenging the sovereignty of the state.(27)

Lastly, notwithstanding the fact that significant Aboriginal demands for sovereignty have been in place since the late nineteenth century in Australia,(28) the proclamation of the Republic of Murrawarri solely in recent times has meant that comprehensive works regarding this event are not available yet. This paper will attempt to address this issue by reviewing what kind of legal, territorial, media and political impact the 2013 declaration of independence has had, along with a legal and political analysis of the admissibility of Aboriginal sovereignty.

### **The impact of the declaration of the Republic of Murrawarri**

Notwithstanding the many advances made in the recognition of Aboriginal land rights, the review of which is beyond the scope of this work, there are still 297 Native Title applications according to the official statistics of Australia's National Native Title Tribunal, as of January 2018.(29) This shows that the issue of Aboriginal sovereignty in Australia is far from resolved, as shown by the presence of numerous organisations such as *Sovereign Union*, *First Nations Foundation* and many others. The slowness of the recognition of Aboriginal land rights, along with its complexity, has been described as an «inherent unfairness of the native title process for Indigenous people».(30) This situation led, in May 2003, academic and lawyer Bryan Pape to propose a reorganisation into about twenty states(31) and, 10 years later, in 2013, to the creation of the Republic of Murrawarri. This was an event that not only received considerable international attention, but also exerted a strong influence over other Aboriginal communities in search of a greater autonomy, while promoting a renewed debate on the concept of Aboriginal sovereignty itself.

Although literature that examines the impact of the declaration of independence of Murrawarri is not available yet, an analysis of some legal, territorial, media and political consequences can be useful in order to understand the impact that the creation of the Republic of Murrawarri has had. The latter was proclaimed on 30 March 2013, declaring independence from Australia and the British Crown. In its official declaration of independence, available on Murrawarri's website, it is stated that:

«The Murrawarri People of all generations declare that we have never ceded our sovereignty, dominion or ultimate title over our ancient homeland nor did we give permission for the colonisers to enter our ancient land and for our mother earth to be violated through progressive illegal acts, practices or policies of the British crown, former British colonies, the state of New South Wales and Queensland or the Australian Federal Governments».(32)

From a legal and political point of view, this is undoubtedly the most significant reading of this document, due to the fact that it highlights the presumption that Australia was *terra nullius* at the time, a thesis that has been rejected by Australian case law because that land had been previously inhabited, in this case, by the Murrawarri people. Such a text also exposes a situation of prolonged lawlessness, in which British rule created a new *status quo* based on erroneous legal foundations. The Peoples Council of the Murrawarri sent that document to Queen Elizabeth II, the then Australian Prime Minister Julia Gillard, the then Premier of Queensland Campbell Kevin Thomas Newman and the then Premier of New South Wales Barry Robert O'Farrell, according them 28 days to respond to the statement. However none of the parties involved, predictably, gave a direct answer.

In respect of the area declared to be part of the Republic of Murrawarri, moreover, it is important to point out that, according to a mathematical analysis, the claimed 81,796 square kilometres seem implausible. Applying Vincenty's inverse formula to obtain the exact distances from the three geographical coordinates and, subsequently, using Heron's formula to calculate the total surface area of the triangle formed by the

same coordinates, an area of approximately 22,170 square kilometres is produced, less than a third of what is being claimed (see Appendix for details).



**Figure 2.** A publicly released map of the Murrawarri Republic

Although, as already mentioned, none of the parties involved explicitly replied to the declaration of independence of the Republic of Murrawarri, the announcement of its proclamation has received a major national and international echo. In Australia, the news was picked up by main national and local media, in a similar fashion to what happened in New Zealand. The proclamation was then discussed by the printed press of all major Western countries, including the United States, the United Kingdom, Italy, France and Spain. In Italy, moreover, the story has been further examined by *Limes*, a journal of geopolitics, in which Italian scholar Fabrizio Maronta concluded that it was clear that Australia had not yet resolved the territorial issue of the Indigenous Australians, suggesting that, in the present state of things, similar situations could happen again in the future.<sup>(33)</sup> In the United States, also, *TIME* magazine dedicated a long article to the Republic of Murrawarri in which, in particular, the author reported statements made by a spokesman for the Australian Attorney-General's Department, which declared that an official response was not delivered because «there are no constitutional means available for the establishment of separate political communities in Australia».

The spokesman also added that Australian sovereignty is recognised by international law and practice. In the same article the author included a statement from George Newhouse, a human-rights lawyer known for his work with Indigenous Australians, who said that despite the fact that Australia had manifestly failed to acknowledge the role of British colonialism in Aboriginal dispossession, he was not sure that the Declaration of the Continuance of the State of Murrawarri Nation had any legal value.<sup>(34)</sup> On the other hand Spain's *El País*, the country's highest-circulation daily newspaper, has recently defined the Murrawarri people as «Aboriginal people of Australia who never gave up their land sovereignty»<sup>(35)</sup>, while the issue has been further discussed by *The Times of India*.<sup>(36)</sup>

The campaign for the recognition of the Republic of Murrawarri is, however, becoming increasingly political and legal. Fred Hooper, chairman of the Murrawarri Provisional Council of State, has repeatedly stated its intention to bring the matter to the attention of the United Nations Decolonisation Committee in order to place the Murrawarri Republic on its decolonisation list, due to the fact that the Commonwealth of Australia is still «a colony of England».<sup>(37)</sup> Among the few analysts who have studied the issue, many

consider themselves convinced that the proclamation of the Republic of Murrawarri will result, at best, in a concession of slightly more rights within the claimed area, adding that even this assumption is rather unlikely. However, most of them (Neubauer, Gregoire, Maronta) are unanimous in thinking that this event will not only help to renew the debate on Aboriginal sovereignty, but it will also promote the development of new independence movements and that it will also prompt some of the existing ones to follow the same path taken by the Murrawarri Provisional Council of State.

In this context it is important to underline that 27 Aboriginal nations have already requested template documents based on papers released by Murrawarri's Council, which has already disclosed a number of them on its website. Apart from the declaration of independence, a draft constitution and a document outlining a future parliament's functions are available on the website of the Murrawarri Republic. These documents specify the inclusive nature of such a land, stating that it will be open to non-Indigenous Australians and that the Australian Dollar will be its official currency. The draft constitution also underlines that Australia was not *terra nullius* when the British settled and it acknowledges the right of the Murrawarri people to regain control of their land, which will be divided into 8 provinces and will value the religion and language of the Murrawarri people.(38) A new national flag has also been presented in which, according to what is declared by Murrawarri's council, the light-blue upper section represents «sky and water», the eight-pointed star in the canton shows «the eight clan groups of the Murrawarri Nation and the future provinces that will make up the Murrawarri Republic» and the brown lower section represents «mother earth».



**Figure 3.** The official flag of the Republic of Murrawarri, publicly released

The proclamation of the Republic of Murrawarri has had, therefore, a rather significant impact. As shown in this section, the provisional council aims to invalidate the current *status quo* since it is based on a situation of alleged illegality due to the fact that the concept of *terra nullius*, on which British rule was justified, has been rejected by the Australian courts. The next step is both legal and political and is represented by the intention to bring the matter to the attention of the UN Decolonisation Committee. However the claimed area, considerably smaller than what has been declared, is marginal from an economic and demographic perspective, despite a modest presence of opals. In spite of this, the mere existence of an Aboriginal land that had declared itself independent received unexpected international attention thanks to newspapers, journals and dozens of blogs and alternative websites, the latter category especially in those countries that have had Indigenous populations influenced by European colonialism throughout history. Part of this «snowball effect», moreover, brought Internet giant Google to accept the publication of a partial map of the Republic of Murrawarri on the search engine *Google Maps*.(39)

From a geopolitical point of view, however, the issue is far more complex. Western international practice favours the maintenance of territorial *status quo*, according to which a sovereign country, such as Australia, evidently does not have the slightest intention to consider a request for independence within its territory, which, also, could give way to a dangerous precedent. In this regard it is important to add that, following the declaration of independence of May 2013, the Mbarbram Nation, the Euahlayi Nation, the Mayarra Nyalalji and Wiradjuri Central West Republic have begun to follow the path of the Republic of Murrawarri on the basis of the same legal and cultural grounds.(40) Moreover, the Euahlayi Nation

received a certain degree of attention from Queen Elizabeth II, whose senior correspondence officer at Buckingham Palace replied to a letter from academic and prosecutor Ghillar Michael Anderson.(41)

Lastly, it is important to at least mention the settlement of one of the longest-running Aboriginal land claims in Australian history (1979-2016), which involved the granting of 52,000 hectares of Aboriginal land on the Cox Peninsula, in the Northern Territory, to one family of the Larrakia people (*Kenbi land claim settlement*).(42) This major event is set to further support Aboriginal land claims, whose importance is clearly recognised by the Australian Department of the Prime Minister and Cabinet:

«The Kenbi land claim was lodged by Larrakia people nearly forty years ago and the land grant is a major part of the final settlement arrangements which will be progressively implemented over the next two years. The claim area included both Commonwealth and Northern Territory Crown land. It was a time for celebrations for the claimants, who know that the return of their land will change the future of the Larrakia people involved in the claim».(43)

### **A legal framework for Aboriginal sovereignty in Australia**

The debate concerning a greater recognition of Aboriginal land rights, including the discussion on the recognition of partial Aboriginal sovereignty, has existed for many years and has become a historic component of Australia's socio-political dialectic. In turn, this debate is split between those who want to implement this greater recognition through a constitutional reform and those who believe a series of treaties between the Australian Government and the country's Indigenous peoples would be a better option. This section aims to contextualise these elements, providing a brief analytical presentation of legal and political pro and con arguments for the granting of an even partial Aboriginal sovereignty in Australia.

From a historical perspective, when the British settled and founded their first colony in Australia, both international law and the law recognised by the British Crown envisaged three different circumstances for the acquisition of new territories by a sovereign country: a military conquest, necessarily preceded by a declaration of war; the acquisition of a new territory as a result of a bilateral treaty; the occupation of a territory unclaimed by other nations that met the criterion of *terra nullius*, or «land of nobody».(44) In the case of British settlement in Australia, as it is well known, such new territories were claimed under that principle, aided by the role of some fundamental concepts of British foreign policy of the eighteenth century, such as the ethnic ones of alleged European racial superiority and the strategic ones of British supremacy over other nations. Another important consideration to be made in this regard is that the remaining alternatives, that is a declaration of war and the acquisition of a territory on the basis of a treaty, would have required a previous British recognition of the Indigenous Australians as legitimate interlocutors of that territory. This condition not only would have led to future problems of a political nature, but it would also have constituted a dangerous precedent for colonial management and, ultimately, it would have invalidated the principle of *terra nullius*.

A comprehensive essay, useful in tracing various cases, reports and acts regarding Aboriginal sovereignty, is that of Michael Anderson, published in 2014. The paper provides a historical contextualisation of the events that led to British rule in Australia, continuing with a list of major pronouncements and actions relating to land rights of Aboriginal peoples. The work ends, in particular, stating that:

*«[...] the Murrawarri Nation was a Sovereign Independent State before colonisation, and their sovereignty, dominion and ultimate title had neither been ceded nor any confiscation of them acquiesced in».*(45)

In order to more fully understand the admissibility of the many demands for greater Aboriginal sovereignty in Australia, however, it is necessary to refer to some tenets of international law regarding this issue. The first is known as the «principle of self-determination of peoples» and it represents one of the

pillars of both international law and international practice, often cited by the Murrawarri Provisional Council. This principle is foundational to the «ius cogens»(46) – i.e. is the set of fundamental and binding values of the international community – and implies that every nation has the right to the recognition of its sovereignty without external interference. Self-determination of peoples is a cardinal principle in modern international law and, as such, it is one of the fundamental principles of the international community. Chapter 1 of the Charter of the United Nations states that the purpose of the UN is:

*«To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace».(47)*

Another foundational document is the Universal Declaration of Human Rights (UDHR), the first global expression of rights to which all human beings are inherently entitled. Article 15 of the Declaration expresses that everyone has the right to a nationality and, more importantly as regards what is being examined here, that:

*«No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality».(48)*

Furthermore, article 1 in both the International Covenant on Civil and Political Rights (ICCPR)(49) and the International Covenant on Economic, Social and Cultural Rights (ICESCR),(50) adopted in 1966, states that:

*«All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development».*

Lastly, a more recent fundamental recognition to the universal right of self-determination of Indigenous peoples is that of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), adopted in 2007. Article 3 of such a document states that:

*«Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development».*

while article 4 explicitly declares:

*«Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions».(51)*

Nonetheless, it is appropriate to specify that UNDRIP's article 46 provides a few limitations to the aforementioned points, since it underlines that the latter should not be interpreted as encouraging actions against «the territorial integrity or political unity of sovereign and independent states».

It is clear, therefore, that there is a significant, structured and historically-rooted international legal framework that is favourable, in principle, to the claims of Aboriginal sovereignty and to the declaration of independence of Murrawarri. There are, however, various elements of *realpolitik* that make the recognition of such claims much more remote, which ought to be analysed together with them. Firstly, Western countries tend to equate the idea of international order with the concept of *status quo*, which implies that the existing state of affairs is the one to be maintained. In this scenario, following the principles of

«preponderance theory» and «hegemonic stability theory» Western nations – and Australia among them – are satisfied with the current international order and are interested in preserving the *status quo*.(52) This is especially true when dealing with Indigenous sovereignty issues, which strongly influence internal national stability.

Secondly, it is important to note that the international practice, among the countries that are most similar to Australia in respect to Indigenous history, does not support the idea of full Indigenous sovereignty. Although, as it is well known, New Zealand, Canada, the United States and Scandinavian countries exhibit a markedly more favourable scenario towards these issues, none of the three countries concerned have undertaken a complete path in this direction.

New Zealand, in particular, was never claimed according to the principle of *terra nullius*, which explains why in 1840 the British made the Treaty of Waitangi with more than 500 Maori chiefs recognising their status of interlocutors. Although much has been written about the controversies of this treaty, such a discussion is beyond the scope of this work. It is, however, important to underline that, despite the many favourable decisions of New Zealand courts and notwithstanding the fact that New Zealand built a system of land title based on the assumption of original Maori ownership, the question of Maori sovereignty in the country has still to be clarified.(53)

Canada, on the other hand, has made substantial progress in the past 45 years. It has a constitution that affords broad protection to the interests of its Indigenous peoples, which include the «Indian, Inuit, and Métis peoples of Canada» by virtue of section 35 of the *Constitution Act, 1982*.(54) However, Canada's Federal Policy states that these rights do not confer sovereignty upon Aboriginal peoples. The Government does not recognise yet the existence of independent Aboriginal nations and the Aboriginal people remain subject to Canadian laws, although Aboriginal and Canadian laws co-exist, implying that it is not clear on which grounds they might create their own socio-political system.(55)

Further, the United States Constitution gives Congress, the Executive and the Judiciary the authority to engage in relations with Indigenous tribes, thereby placing these within the constitutional fabric of the country by virtue of article I, section 8, of the constitution.(56) Indigenous tribes of the United States have therefore been given a certain degree of sovereignty, although they are subject to the country's federal laws.

Lastly, Scandinavian countries provide different kinds of recognition. Norway implemented constitutional recognition of its Sami people in 1989, with article 110,(57) which was paired with the establishment of the Sami parliament, the *Sametinget* or *Sámediggi*. Sweden mentions its own Sami people with article 20 of the second Chapter of the Instrument of Government (1974), one of the four fundamental laws at the basis of the Swedish Constitution.(58) It also has a Sami parliament, since 1993. Finland too acknowledges the Sami people in its constitution, specifically in sections 17 and 121,(59) and it has a Sami parliament as well, established in 1973.

This brief review of constitutional history shows that New Zealand, Canada, the United States and Scandinavian countries grant, with varying degrees of intensity, greater recognition to Indigenous land rights and are more open to the discussion of the concept of Indigenous sovereignty. None of these countries has, however, granted strong nor complete sovereignty to their Indigenous populations, allowing Australia to delay the creation of a similar path in both a constitutional framework and in a context of bilateral treaties between the Federal Government and the Aboriginal peoples. A further issue with the Australian constitution concerns its sections 25 and 51(xxvi), which potentially provide the capacity to discriminate against Aboriginal peoples on a racial basis.(60)

A final level of analysis allows one to understand another important reason why Aboriginal sovereignty has not been recognised in Australia, not even at a partial level and despite all of the seemingly favourable

legal conditions listed above. As shown in the previous section, the mere occurrence of the Murrawarri declaration of independence meant that 27 Australian Aboriginal nations have already requested template documents based on Murrawarri's experience, while the Mbarbram Nation, the Euahlayi Nation, the Mayarra Nyalalji and the Wiradjuri Central West Republic started following the path of the Murrawarri Republic. The grant not only of partial Aboriginal sovereignty over these territories, but also of a more achievable form of greater autonomy from both Federal and State governments would inevitably lead to the creation of a legal and political precedent which, in the Australian context, could have a sudden domino effect. It is also plausible to imagine that if these issues were even partly favoured, the international consequences in territories with similar social and territorial issues would be significant, potentially undermining the *status quo* of the countries concerned.

<b>Aboriginal sovereignty in Australia</b>	<b><i>Pro</i> arguments</b>	<b><i>Contra</i> arguments</b>
1	Invalidated <i>terra nullius</i> principle	<i>Status quo</i> maintenance (“preponderance theory” and “hegemonic stability theory”)
2	Aboriginal sovereignty was not ceded	Australian <i>realpolitik</i> : political pragmatism aimed at preserving the country's interests
3	Principle of self-determination of peoples, UN Charter, ch. 1	NZ, Canada, the US and Scandinavian countries moved forward but didn't recognise full Indigenous sovereignty
4	Universal Declaration of Human Rights, art. 15	Commitment not to create a legal and political precedent
5	International Covenant on Civil and Political Rights, art. 1	United Nations Declaration of the Right of Indigenous Peoples, art. 46
6	International Covenant on Economic, Social and Cultural Rights, art. 1	Limitations provided by the Mabo and Coe cases
7	United Nations Declaration of the Rights of Indigenous Peoples, art. 3 and 4	

**Table 1.** *Pro and con arguments for Aboriginal sovereignty in Australia*

Although, therefore, a pragmatic and realistic perspective does not allow such a possibility in the case of Murrawarri nor in another case, there are two possible paths to meet some of the Aboriginal demands, i.e. constitutional reform and a series of treaties between the Australian government and Aboriginal communities. Native title and the subsequent question of Aboriginal sovereignty concern the interaction of two systems of law, namely Australian Law and Customary Aboriginal Law. The former is dominant and includes common law and other enacted laws, while the latter represents the set of traditional laws and

customs that regulated the lives of Aboriginal peoples prior to Australia's European colonisation.(61) The current situation, according to the Australian National Native Title Tribunal, is that:

*«The native title rights and interests held by particular Indigenous people will depend on both their traditional laws and customs and what interests are held by others in the area concerned. Generally speaking, native title must give way to the rights held by others. The capacity of Australian law to recognise the rights and interests held under traditional law and custom will also be a factor».*(62)

This implies that Aboriginal rights might only include: living in a specific area; accessing the area for traditional purposes; visiting and protecting important places and sites from industrial development; hunting, fishing and gathering food or traditional resources; teaching customary law and other customs of the area.

A partial solution would be the recognition of Aboriginal and Torres Strait Islander peoples in the Australian constitution through a referendum, something that has often been debated and is usually inspired by the current situation in New Zealand, Canada, the United States and Scandinavian countries, which already recognise their Indigenous peoples. Such a constitutional reform is generally regarded as just and necessary by Australia's two main parties – and it has been for quite a few years, showing a clear stillness of Australian politics in this regard(63) – but it has also been strongly criticised. Many politologists thought it would likely be a mere set of polite words in a preamble of the constitution, and other critiques point out that Aboriginal constitutional recognition is something that could freeze the demand for actual Aboriginal sovereignty.(64) While historical advocate for Aboriginal Australians, academic and prosecutor Michael Anderson shares this view, prominent constitutional lawyer and academic George Williams stated in a paper that constitutional recognition does not negate the possibility for Aboriginal sovereignty. However, in the same paper he stressed that the constitution is not the place to recognise Aboriginal sovereignty, specifying that these claims should be recognised through the making of a treaty.(65) Lastly, it is important to mention that the final report of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples stated that «recognition in the Constitution is of vital importance in moving towards reconciliation and that it is time to remedy the exclusion of Aboriginal and Torres Strait Islander peoples from the Constitution».(66)

This second option has been widely discussed and is theoretically more suitable for Murrawarri's case. However, it has to deal with the concepts of Australian sovereignty and Aboriginal sovereignty, which might interfere with treaty-making between the Australian governments and the Aboriginal peoples. A relevant paper by Sean Brennan, Brenda Gunn and George Williams closely examines these issues, analysing the most common objections to them, such as Australian law impediments, late timing and «obsession with the past». That paper concludes by stating that:

*«The concept of sovereignty will remain a central part of ongoing debate about Australia's history and future. However, it does not pose a roadblock to moving forward with innovative new settlements, including the idea of a treaty or treaties. [...] Australian public law, and specifically the notion of sovereignty, puts few, if any, constraints on the outcomes that can be reached. The greater challenge lies in the ability of Australians to imagine new paths for moving forward and in our willingness to overcome any political obstacles».*(67)

The idea of treaty-making between the Australian governments and the Aboriginal peoples has been extensively discussed by Australian and international media, just like Aboriginal constitutional recognition was. Conclusively, this section has shown that there are more than a few legal arguments that support greater Aboriginal sovereignty. Australia, like New Zealand, Canada, the US and Scandinavian countries already did, has both the opportunity and the power to gradually adapt its political and legal system, with

«reason and principle», to achieve a true reconciliation between Indigenous Australians and other Australians. This could be done through both constitutional reform and a set of treaties – as there is no manifest legal impediment – which would, as has already happened in other nations, partially address the question of Aboriginal sovereignty without altering Australia's national identity or compromising the country's internal stability.

## Conclusion

The aim of this work was to contextualise the concept of Aboriginal sovereignty in Australia from a historical and political perspective, with the aid of a review of relevant literature, in order to examine the impact of the proclamation of the Republic of Murrawarri and evaluate the legal and political foundations of the increasing demands for a greater Aboriginal sovereignty. The fact that the declaration of independence has been made only in recent times has led to a lack of in-depth studies about Murrawarri's impact. However, a brief legal, territorial (which has mathematically proved that its real area is less than a third of what has been claimed), media, historical and political review has showed that the Republic of Murrawarri has had an unexpected national and international echo, despite the predictable silence of the institutions. The review of these elements and the analyses of international scholars, moreover, suggested that it is possible for similar situations to occur again in the future, due to both the stillness of Australian institutions and the impact that the Republic of Murrawarri has exerted on other Indigenous communities with a similar historical and territorial context, something that could relate with the recent settlement of the Larrakia land claim.

The legal analysis of the claims of Aboriginal sovereignty in Australia has also revealed a number of fundamental laws and international treaties that not only defend the principle of self-determination claimed by the Republic of Murrawarri, but also promote its self-government. Such cornerstones of international law, along with the rejection of the principle of *terra nullius* under which Australia was colonised in 1788, favour, in principle, the discussion of a higher level of sovereignty for Indigenous Australians. The same section, however, has highlighted that the pragmatic principles of *realpolitik* will not allow this to occur, due to the fact that Australia is obviously interested in preserving its current *status quo*. Also, the fact that New Zealand, Canada, the United States and Scandinavian countries – despite their undeniable concessions to Indigenous rights – have not fully recognised Indigenous sovereignty, makes it possible for Australia to postpone a thorough debate on these matters. Finally, the granting of greater autonomy, not to mention full sovereignty, in territories such as Murrawarri would create a historic legal and political precedent that would likely have a rapid domino effect, potentially even outside of Australia.

Conclusively, this paper argues that there has been a mildly positive trend in the recognition of Aboriginal land rights in Australia,(68) along with an ever-increasing demand for Aboriginal sovereignty,(69) as demonstrated by the proclamation of the Republic of Murrawarri. Although the concept of Aboriginal sovereignty is supported in principle by a solid international legal basis, it is not realistic to expect that the claims of the Indigenous Australians will be fully recognised. There are two roads that could, at least in part, address these issues, i.e. Aboriginal constitutional recognition and a set of treaties between Australian governments and the Aboriginal peoples. Both options have pros and cons but, taking into account the historical path and the legal and political elements shown in this work, it seems that there is no real impediment to implementing both. It is therefore reasonable to hope that both paths will be adopted in the short term, in order to achieve true and definitive reconciliation between Indigenous Australians and other Australians.

## Appendix

Official geographic coordinates, listed in the website of the Murrawarri Council, are Northwest: latitude -28° 9' 29" longitude 145° 52' 11" (QLD) and South: latitude -30° 24' 14" longitude 145° 20' 51" (NSW). Northeastern coordinate was obtained by locating the junction of the Bokhara river and Birrie river, as

stated by Murrawarri's Council, which is at latitude -29° 3' 12" longitude 147° 29' 32" (NSW). Vincenty's Inverse Formula was then applied with the aid of Geoscience Australia's online software ([http://www.ga.gov.au/geodesy/datums/vincenty\\_inverse.jsp](http://www.ga.gov.au/geodesy/datums/vincenty_inverse.jsp)), while Heron's Formula [ $A^2 = s(s-a)(s-b)(s-c)$  where  $s = (a+b+c) \div 2$ ] was used to compute the true total area of the Republic of Murrawarri, approximately 22.168 square kilometers. These calculations have been planned and performed by the author and their accuracy has been confirmed by Italian mathematician Eugenio Grasso (Torquato Tasso Institute) and Italian engineer Marco Berti. This geographical area, considerably smaller than the official claim, includes land of both the Shire of Paroo and the Bourke Shire, which have a combined population of about 4,800 people. However, since among these about 3,400 live in the towns of Cunnamulla and Bourke, which are outside the claimed area, it is appropriate to state that a more accurate estimate of the population of the Republic of Murrawarri is around 1,400 people.

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