

Recognising The Truth About Treaty Through A Storm Of Constitutional Spin

By [Amy McQuire](#) on May 4, 2016 [Aboriginal Affairs](#)

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More money has been allocated in the federal budget to the campaign for constitutional reform. Amy McQuire believes the government is throwing more good money after bad.

Last night, the federal government announced it was throwing more money towards the rocky path of constitutional reform.

This time, \$14.6 million over two years will go to the Referendum Council to conduct consultations around the country. An additional \$5 million will again be used to prop up Reconciliation Australia's shiny 'Recognise' campaign, even though the Referendum Council will largely be attempting to clean up their mess.

Recognise has been actively suppressing much-needed debate about the model of constitutional reform for the past half decade. It has been attempting to win whitefellas onside by silencing black dissent, and using millions of dollars of government funds to do so.

The result has provoked derision and mockery from much of the Aboriginal community. Their failure has also severely set back constitutional reform, so much so that many now believe it's time to abandon it completely, before more money is wasted in the severely-underfunded arena of Aboriginal Affairs.

CEO of the National Congress of Australia's First Peoples, Geoff Scott has written that the process should have been an opportunity to educate Australians about civics, given we have such a poor standard of awareness around it already.

But "instead of spearheading a civics programme or better knowledge of the constitution, the Recognise movement has become problematic. A government brief to raise awareness has now become a source of division and misinformation, promoted by simplistic slogans and mantras," Mr Scott wrote in Megan Davis and Marcia Langton's new book 'It's Our Country: Indigenous Arguments for Meaningful Constitutional Recognition and Reform'.

"Regular polls tells us that a majority of Australians are in favour of 'recognition' and even more unbelievable for anyone who works in the sector or knows Aboriginal and Torres Strait Islander affairs, that a majority of Indigenous people are in favour.

"But we are never told what the question posed is. What are Australians supporting? Are they supporting the mere concept of recognising, which is far from what Aboriginal and Torres Strait Islander peoples will support? The campaign and the polls are an exercise in smoke and mirrors, funded from the Indigenous affairs allocations."

Megan Davis, a Professor of Law at UNSW and the chair of the UN Permanent Forum on Indigenous Affairs, in the same book, has also said it has been a poor process, led by government. Funding a ‘yes’ campaign in the form of Recognise “before an amendment, let alone a coherent narrative of what reform is being pursued, has made it difficult for Australians, including Indigenous communities to have a debate”.

“Five years since the Expert Panel, the Aboriginal resistance grows stronger,” Prof Davis says.

The failure to acknowledge this resistance by the Recognise campaign, and the failure by government to ever respond to the recommendations of the Expert Panel, or any proposed models that have come after it, has furthered cynicism across the country. But this cynicism has also driven something else – a roaring hunger for an alternative – a treaty. It’s a roar that is starting to reach even mainstream media, even if to their ears it still seems like little more than a purr.

Earlier this month, ABC’s Lateline program broadcast a passionate and eloquent visual essay from First Nations woman Nayuka Gorrie about why she wanted a treaty over constitutional reform. It was surprising, not because her voice was a lone one, but because this was one of the first times a mainstream media outlet has actually tapped into this electric charge currently running through communities across the country.

Unfortunately, what followed was a simplistic interview with Recognise co-leader Tanya Hosch and Native Title lawyer Tony McAvoy. It was simplistic, not because of the expertise of the panellists, but because this is a debate that surely should have happened five years ago, when the expert panel first reported that the issue of Sovereignty was brought up in every one of the community consultations, but had not been included.

It’s such an old debate, and yet media are only now picking up on it. Sensing this, the Recognise campaign has begun to shift its rhetoric.

One of the questions posed to the panellists was whether treaty and constitutional reform could co-exist. Mr McAvoy, a proponent of treaty, and a man who is working towards setting up mechanisms to begin negotiations on a treaty, agreed that it could.

“I think that both discussions should proceed at the same time. I don’t think we are so unsophisticated as a nation that we need to have this binary nature to the discussion: either an on-switch or an off-switch with respect to the constitutional reform process.”

Ms Hosch responded that the point was an “important one” and that the Recognise “movement” was trying to “finally address the racial discrimination that still exists in the highest legal document in the country. So we’re not just talking about an opportunity for symbolic change”.

Although that has never been what the Recognise campaign has told its members they are signing up for.

In the absence of a model or question to take to a referendum, its claims that a majority of Aboriginal people are in favour of ‘recognition’ is ridiculous. There has never been any indication that either side of parliament are willing to promote a substantial form of

recognition. Government has been half-hearted in every step of the process, and the Recognise campaign has been promoting it regardless.

This idea that treaty and constitutional reform are interchangeable – that you are in either one camp or the other – drives even more division amongst our communities. Both address different things.

A Treaty deals with the unfinished business of the nation. Constitutional Reform, in its strongest form, should be about removing racial discrimination in the constitution, although government has only ever indicated it is about symbolic recognition. The way it has been framed by white government has been that constitutional reform could address this unfinished business through a fluffy preamble, when really that is the most meaningless, insulting way to address it.

But by equating the two, even in questioning one or the other, you are equalising what they ultimately set out to achieve.

This is why I disagree with the idea that the two conversations can occur at the same time. Legally they can, but politically they can't.

Both conversations mean that Australia must confront deeply uncomfortable truths – and given the standard of debate around the recent 'invasion vs settlement' media panic, I have very low expectations that the nation can even handle one properly.

It will ultimately descend into a 'one or the other', even if there are superficial claims that they can go on at the same time. The reality is government is backing their own agenda, and that agenda is not a treaty. If the debate has already been taken out of the hands of mob who traditionally have the ears of government – like Noel Pearson – imagine how tone deaf the government is to people who are so used to being unheard?

A common argument among those who do not hold hope in a treaty is that other nations who have treaties with First Nations peoples still have high levels of inequality – it did not solve everything. But neither did constitutional reform – if you look at the Canadian example, First Nations people forced government to consult with them over constitutional changes, and they still are fighting in the courts over issues like Aboriginal fishing rights (for more, check out [last year's interview](#) with First Nations Constitutional law expert Kiera Ladner on 98.9FM Let's Talk programme).

But we as a nation have to deal with the 'unfinished business' that started at invasion, the myth of 'settlement', that can only be dealt with through a final settlement. Tony McAvoy is one lawyer who is setting up a process to begin discussing how we could set up treaties. It is an ongoing conversation that has suffered from the distraction of constitutional reform, which in its present incarnation has been a white thing. I believe a treaty must come first, not the other way around.

Mr McAvoy writes in "In Our Country" that "at present the national psyche is comfortable and happy with the notion that Australia was legitimately settled. There is no willingness to go back and examine this 'fact'. Mainstream comfort and Aboriginal discomfort with the largely inert proposal to insert words of recognition into the Constitution pivots around this rock. Mainstream Australia is not ready to agree to the objective truth. A national referendum

to amend the constitution is not the vehicle to force this discussion. The issue needs to be reframed.”

He says that “once we have been able to push through the artificial ceiling created by the myth of settlement, constitutional reform will naturally follow to rectify the record”.

The constitutional reform debate is so polluted, that it will be very hard to clean up the waters. I believe we have to start pushing for treaty – or a national conversation around it.

Mr Scott says that maybe it’s not time to push constitutional reform.

“I would strongly suggest that the time now is not right and we should withdraw from the field and await for a better time. The governments over the past two decades have not acted with goodwill nor good faith in respect of Indigenous Australia, and the environment is beset by duplicatory bureaucrats, and ministers whose only responses have been indolent and paternal and focused on a range of interventions, not development, which has been a palliative approach resulting in greater nor less dependence and therefore never-ending”.

Comparing constitutional reform to treaty – dividing people into two camps, makes them seem almost equivalent. They are not. They do two different things. And maybe it is time to only push for one.

I believe that, in this current environment, the conversation should be around treaty. That doesn’t make me anti-constitutional reform. But this current debate, the past half a decade of division, has made me firmly anti-Recognise.

However, the Referendum Council might be unexpectedly helpful. The Aboriginal-led conventions give us an opportunity to have a conversation around a treaty. It is the first time since the community consultations that Aboriginal opinion can actually be heard, without the filtering of the Recognise campaign.

It gives us an avenue for discussion about what might come first.

There may be a light emerging through the turbulent storm of Recognise.