



The Big S Sovereignty

Contents

Introduction.....	3
What is the general belief of sovereignty?.....	3
How does Law Apply to Man?	4
The Basic Norm.	5
The Commonwealth of Australia.....	6
Uluru	7
Small s-sovereignty.....	7
Big S-sovereignty.....	8
Australia’s small s-sovereignty.....	8
What Mechanisms?.....	9
Native Title	9
Time	10
The Status.....	10
Territory	10
Allegiance to an Authority.....	11
Nation.....	13
Sovereignties.....	13
As a Combination	14
The Indigenous Nations	15
Yidindji, an Example	16
Conclusion	18

Introduction

There is much debate surrounding the sovereignty of nations, especially surrounding the indigenous nations. What is sovereignty? What is it to be sovereign? Is there such a thing as status of sovereignty? Is there such a thing as a big S-Sovereignty? Is there such a thing as a small s-sovereignty?

This discussion is trying to keep it as simple as possible and trying to use language that is comprehended by the everyday citizens, whilst directed at all cross sections of the modern societies, from the academics through to the everyday mums and dads, everyone is affected by this concept of sovereignty and law.

The world of the law of nations is a man-made thing, a thing that other species do not know about, or for that matter worry about, yet humans are affected by this phenomenon virtually every minute of their existence. The reason for the writing of this essay is due to the ongoing primitive belief that the Australian normative society is the only system of real authority within the geographical region known as Australia, that the Commonwealth of Australia is the big S-sovereign.

The word sovereignty existing in the world of man-made law has many different meanings to many different people. It is best to try and get a cross section of definitions from the various jurisdictions in which the word is used. From various different law dictionaries, the definition of sovereignty varies, however the theme remains similar. The general theme for sovereignty is whereby law derives from an ultimate authority within some polity of humans.

What is the general belief of sovereignty?

Sovereignty is derived from the word sovereign, that is sovereignty is the state of being sovereign.

From the legal definitions, to be sovereign is “*Characteristic of or endowed with independent and supreme authority.*”¹ or “*a state which exercises exclusive power over its territory having ‘Dominium Eminens’ and ‘Imperium’.*”². The later definition refers to a “*state*” and it is this entity which is endowed with the powers vested in each individual man or woman “*God given*” authority uniting for a common goal or belief. The general consensus of the modern belief is that a sovereign state is “*An entity which has acquired the attributes of statehood under the ‘Montevideo Convention on the Rights and Duties of States 1933’*”

¹ Yidindji Legal Dictionary 1st Edition

² Dictionary of International & Comparative Law 3rd Edition

namely a defined territory, permanent population, an effective government, and the ability to enter into international relations."³

From the above basic references, the best that can be made of sovereignty is that a number of people, of a specific locality, agree to unite under a system of authority and decision-making for a common goal and purpose, and, that can make laws to govern that society of people who subscribed to that particular system of law for the common good of that society. The system of authority and decision-making creates the entity that is the thing that possesses the collective sovereignty.

This definition is best summed up as "*the independence of a state; freedom from external interference in the conduct of a state's affairs. Sovereignty is an attribute of statehood from which all other political powers of a state emanate. In law, it implies that there is no legally authorised human authority that is competent to regulate the state's affairs.*"⁴

Is the Commonwealth of Australia the only source of law and authority on the geographical continent known as Australia? Is the Commonwealth of Australia the only sovereign state? Is there another rival source of law and authority? Are there other sovereign states in this geographical location?

To answer these questions, it must be understood how law works and applies to man

How does Law Apply to Man?

All law other than the law of nature is man made. This is law that is made in the minds of men and women, not tangible, but a thought process that impacts on every action made by men and women, so how does this apply to the men and women, the humans?

Using an old maxim, "*Consensus facit legem: Consent makes law. A contract constitutes law between the parties agreeing to be bound by it.*"⁵ shows that when a man or woman agree to be seen legally and politically through a person of a particular society they agree to the laws of that society.

Man is just another animal, with the big difference is that man has a brain that can reason and think in abstract ideas. The man or woman is not the person but the holder of a person of a particular society.

³ Dictionary of International & Comparative Law 3rd Edition

⁴ LexisNexis Concise Australian Legal dictionary 4th Edition

⁵ Black's Law Dictionary, Ninth Edition

For the “...*the physical person is juxtaposed as a ‘natural’ person to the juristic as an ‘artificial’ person- a person not ‘real’ but only constructed by jurisprudence.*”⁶

The law of society derives from an ultimate authority by which the contract of citizenship is derived. It is this construction of the person through which the man or woman are legally or politically seen.

The contractual agreement to hold membership within a particular society require that the man or woman adopt a surname, that is commonly referred to as a family name of that particular society. Best summed up in an early version of Bouvier’s Law Dictionary 1856 are an integral part of creating and identifying the person from the man or woman for contractual purposes “*A name which is added to the Christian name...they are called surnames, because originally they were written over the name in judicial writings and contracts...they were taken from something attached to the persons assuming them.*” It is through this Christian and surname combination that the man or woman is seen both politically and legally by the system that created the legal identity. Assuming this identity is a requirement to take up membership within that particular society, is membership requires both offer and acceptance, or contractual agreement.

The Basic Norm.

The basic norm of a modern society is for the want of a better term, the contract to which the man or woman subscribe and undertake citizenship within that particular society. For most societies that basic norm is the constitution of that nation.

The constitution is the legal foundation of the nation or better put “*The Constitution creates the space in which all other domestic laws operate in this country. It defines the extent of the legal universe.*”⁷ This is the start and power of all other law, and in the instance of the Commonwealth of Australia, the Australian Constitution is that legal foundation that empowers the Australian Parliament to make laws that are desired by the Australian citizenry, it is the birth certificate of Australia.

The Australian Constitution is the legal foundation of the Australian nation to which the man or woman can take up full and formal membership as described in the Australian Citizenship Act 2007. The Australian Constitution is considered as the sovereign authority which is referred to as the Crown. The Crown is used to represent the authority of sovereignty within a

⁶ Kelsen H. Pure Theory of Law page 172

⁷ French R, Chief Justice, Theories of Everything and Constitutional Interpretation, 19/2/2010 Page 4

particular location at a particular time. This does not mean that this is the only authority let alone the ultimate authority within this location.

The Commonwealth of Australia

The Commonwealth of Australia certainly has a sovereign authority over all Australian citizens that make up its population. There are approximately 25 million men, women and children that subscribe to that system of authority and decision-making that is created by the Australian Constitution.

The United Nations recognises that the Commonwealth of Australia is a sovereign state under the definitions of the international order to which the Commonwealth of Australia subscribes to and is a good international citizen thereof.

The Commonwealth of Australia was born on the 1st of January 1901, when the Australian Constitution came into force and effect.

The Commonwealth of Australia was established as a system of authority and decision-making that was to preserve the “White Australia” as a British outpost in the South Pacific for the common good of all those who were of the British status.

The man or woman subscribes to, and acquires membership within the Commonwealth of Australia by a number of ways, but no matter which way citizenship is acquired, it is membership only within the Commonwealth of Australia that is granted as long as the man or woman consents to be bound by the reciprocal terms and conditions of the citizenship contract, *“The Parliament recognises that Australian citizenship represents full and formal membership of the community of the Commonwealth of Australia, and Australian citizenship is a common bond, involving reciprocal rights and obligations,...The Parliament recognises that persons conferred Australian citizenship enjoy these rights and undertake to accept these obligations...by pledging loyalty to Australia...by upholding and obeying the laws of Australia.”*⁸ This is the contractual arrangement that requires the man or woman to assume a surname, and to be bound by the laws of the Commonwealth of Australia by that person.

⁸ Australian Citizenship Act 2007

Uluru

It has been said “... *the sovereignty of Australia’s first peoples was displaced by British settlement and the introduction of their law.*”⁹ However this is not the case.

The Uluru Statement from the Heart made clear that there are multiple sovereignties in this location “...*the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.*”¹⁰ This reference is made by a hand picked government authorised group of Australian citizens that are considered as leaders within the indigenous and constitutional legal fraternity, these are the best of the best that the Commonwealth of Australia could muster.

The keyword of the statement is “co-exist”, it is not sovereignty, ownership or any other word. To understand co-exist is to understand the paradigm that exists in this locality, and in doing so, is to understand the difference between the big S-sovereignty and the small s-sovereignty.

For something to co-exist with something else means that there are two or more things present at the same time, same locality.

Further the co-existence is acknowledgement of the existence of the other thing which can be problematic when it comes to such a concept as “sovereignty”

The Australian Government commissioned the formal body to see how the recognition of a certain race of people could be adapted into the Australian Constitution, while this appears to be a noble thing to do, there are consequences for such apparent noble actions, especially when the history of the colonial actions is taken into consideration.

The best minds that Australia could muster of this subject have made it very clear that the sovereignty of the indigenous nations was not displaced, it simply became the less utilised as people simply did not understand the situation at the time and entered the Commonwealth of Australia pursuant to Australia’s sovereignty.

Small s-sovereignty

The small s-sovereignty could best be described as the sovereignty of the sovereign state’s domestic law. This form of sovereignty is that there is no other entity within that sphere of domestic authority that is superior to the sovereign state. Though the sovereign state may be

⁹ Davis M, Williams G, Everything You Need To Know About The Referendum To Recognise Indigenous Australians, page 121

¹⁰ Uluru Statement from the Heart, Referendum Council, 26th May 2017

under a higher authority, for example international law, the domestic law of the sovereign state is the supreme authority within the sovereign state to which is applied to the citizens of the sovereign state. This could be construed as a limited form of sovereignty, that is governed by the basic norm of that sovereign state.

For if the sovereign state was to be truly in the sphere of the big S-sovereignty, there would be no other authority to which that sovereign state has to answer, including international law.

The Commonwealth of Australia by subscribing to the international law is subject to the terms and conditions of being a good international citizen, for it is legally and politically represented in this international sphere as a person in accord with the Montevideo Convention on the Rights and Duties of States 1933.

The small s-sovereign is nothing more than a bundle of rights and obligations, a bundle of rights attributed by another entity in which the small s-sovereign participates.

The Commonwealth of Australia by that standard is a small s-sovereign state as it subscribes to the international laws of the United Nations.

Big S-sovereignty

The big S-sovereignty is the concept whereby the authority is continuing and has been there for such a period that it appears to have been there forever, from time immemorial. This continuing authority would be one that has never been conquered, ceded, treated, or bargained away and is acknowledged by firstly the society to which subscribes it, and secondly by other societies that understand the concepts of sovereignty.

The big S-sovereignty is the sovereignty that has superior standing when measured by all the bench marks of such a concept. The United Nations could be considered as possessing a form of big S-Sovereignty as all the nation states subscribe to the international laws or norms.

Australia's small s-sovereignty

The Commonwealth of Australia must be careful should it venture in the direction that a "later sovereignty" can displace the "original continuing sovereignty". Should this direction be chosen as the path forward, it will become a precedence, acceptable practice that is agreed to by the Commonwealth of Australia, and should another stronger nation implement its sovereignty over that of the Commonwealth of Australia's sovereignty, it will be done so as accepted practice.

To fully comprehend the situation as it stands in the geographical region known as Australia, one needs to visit the history of the last 250 years.

What Mechanisms?

By what mechanisms could it be ascertained that a concept of sovereignty exists, as the State neither “is” nor “is not” sovereign. It can only be presupposed to be or not be sovereign, and should the State possess the status of sovereign, what quality of sovereignty does that particular State possess.

The Commonwealth of Australia may have claimed to be the possessor of the “superior sovereignty” within the geographical location known as Australia, with the States of Australia possessing the “inferior sovereignty”, but this has been altered in 2017 with the Uluru statement from the Heart

The Uluru Statement from the Heart changes the sovereignty of the indigenous nations from a presumption to one of that the Commonwealth of Australia acknowledges the continued sovereignty of the pre-1770 Indigenous nations. The fiction yields to the truth when the truth appears, there is no fiction of law, in that the Commonwealth of Australia acknowledged that the Indigenous nations still possessed the sovereignty, the big S-sovereignty that was never ceded, treated, or bargained away to the small s-sovereignty of the Commonwealth of Australia.

Native Title

As with the Uluru Statement from the Heart, so to, does Native Title determinations change the presumptions that the indigenous nations have land titles “natives titles” to one of recognizable acknowledgement by another legal identity.

The acknowledgement of these systems of land tenure gives rise to the situation whereby for there to be a system of tenure there must be a system of authority and decision-making to create such a system of tenure, and with all such man-made systems of law there is the existence of a nation state. The nation state is the holder of sovereignty.

It must be remembered that the Native Title determination made in the Australian Federal Court is the view from within the Commonwealth of Australia and not from within the view of the indigenous nation that the court is so referring to.

The Native Title determination is referring to another system of authority and decision-making that predates the creation of Australia, and as a system that has survived through to current time.

Time

It is important to understand the temporal influence in sovereignty, for systems of authority and decision-making come and go over time.

There is the general consensus that is reflected in the maxim of law that time is a factor in deciding the status of sovereignty.

“Quod prius est verius, et quod prius est tempore potius est jure: or what is earlier is more genuine, and what is earlier in time is preferred in law.”¹¹

Both the Uluru Statement from the Heart and the numerous Native Title determinations are the continued acknowledgement of the status of the sovereignty of the continuing pre-1770 Indigenous Nations. Once the temporal influence is added to the equation utilising commonly accepted beliefs that earlier systems are preferred the status of sovereignty changes.

The Status

It is important to evaluate the status, the position of sovereignty of the different legal entities, the reach of the authority that is created by the entities, as this will be the deciding factor as to territories to which the authority applies.

For there can be a situation whereby a nation is occupied by a belligerent force to which the occupied nation does not owe allegiance. The occupational force is foreign to the occupied nation and are making laws and judgments outside of their jurisdiction.

Territory

For the concept of sovereignty to exist, it must exist in a certain time, in a certain place. As mentioned in the earlier paragraph of time, there needs to be a place at that time where the authority is applied, and that defined place is the territory of that sovereign state.

It has been common belief that *“Qui in territorio meo est, etiam meus subditus est: that which is in my territory is my subject; an old rule of a state’s authority over persons and things found within its territory.”¹²*

¹¹ LexisNexis Concise Australian Legal dictionary 4th Edition

¹² Dictionary of International & Comparative Law 3rd Edition

In the case of the ongoing indigenous nations of the world the territorial issues need to be carefully considered.

Within the geographical area known as Australia, are the indigenous nations in the territory of the Commonwealth of Australia, or, is the Commonwealth of Australia within the territories of the indigenous nations, considering that there is no treaty or formal agreement between the indigenous nations or any other legal entity? This is vitally important to establish who is what and who is where to establish the reach of the authority as derived from the basic norm.

In light of the Uluru Statement from the Heart, the acknowledgement by the Commonwealth of Australia that there is another sovereignty co-existing alongside the sovereignty of the Crown brings this into the spotlight.

For the sovereignty of the Indigenous Nations to exist there needs to be both the temporal and spatial standing and capacity. These issues are addressed in the numerous Native Title determinations of the Australian Federal Courts. Further to this, there needs to be some status of sovereignty attributed to the Commonwealth of Australia, its judicial systems, and its other organs, for to claim that the Commonwealth of Australia does not possess any level of sovereignty would destroy the evidence that is being deliberated upon acknowledging the existence of the sovereignty of the continuing Indigenous Nations.

Allegiance to an Authority

The issue of status of sovereignty is best demonstrated by allegiance. As the concept of sovereignty and law is purely in the minds of men and women, then there must be an agreement of the minds as to which system of authority the man or woman agrees as the one that they give allegiance to.

“Allegiance is the obligation of obedience owed by a subject to the sovereign authority of the state in return for the protection of the Sovereign. The term has been replaced by commitment in Australian citizenship law.”¹³

It is the agreement that empowers the system of authority and the application of force to bring a man or woman into that system of authority is nothing more than slavery or forced assimilation.

¹³ LexisNexis Concise Australian Legal dictionary 4th Edition

“Authority is... the characteristic of a normative order. Only a normative order can be ‘sovereign,’ that is to say, a supreme authority, the ultimate reason for the validity of norms which one individual is authorised to issue as ‘commands’ and other individuals are obliged to obey. Physical power, ...can never be ‘sovereign’ in the proper sense of the word.”¹⁴

Thus, no man or woman can be forced to bear allegiance to a particular authority, but they could be enticed to give allegiance to a sovereign authority by upholding the obligations in exchange for rights within that sovereign normative order. The nation that is unlawfully occupying the territory of another does not have agreement of the occupied nation, with this in mind the people of the occupied nation cannot be forced to do something to which they have not agreed. This state of affairs could best be described as a belligerent occupation, and is, *“the occupation of the territory of one state by the military forces of another state. Military occupation is unaccompanied by any transfer of sovereignty.”¹⁵* The Uluru Statement from the Heart confirmed that the sovereignty of the Indigenous Nations continues to this day, and that it is separate and distinct from the sovereignty of the Commonwealth of Australia. There is acknowledged existence of two sovereignties within the same temporal and spatial positions, a position that is unsustainable as it needs to be determined as to which is the ultimate law to be obeyed. For there can be no oath of allegiance demanded of the occupied by those doing the occupying, *“Oath of Allegiance- Attestation of the inhabitants of a territory to be faithful and obedient to their sovereign or government. When territory is occupied by a belligerent, the authority of the occupant is not sovereignty and the inhabitants do not owe it allegiance and may not be compelled to pledge allegiance to it.”¹⁶*

It is unjust for one group of men and women to be immune from a legal system whilst the other men and women are subject to it. This unjust position has already been demonstrated with the members of the Aboriginal and Torres Strait Islander Nations being subject to the processes of the colonial and Australian governments that led to issues like the “Stolen Generation” and the “Stolen Wages”. These members were removed from their respective territories, deprived of their natural resources, sent to missions and other institutions where they were subject to total control. These members were disallowed to participate in the life of the Commonwealth of Australia, as if they did not exist. They could not vote, they could not have a say in what affected them.

¹⁴ Kelsen H, General Theory of Law and State pg. 383

¹⁵ LexisNexis Concise Australian Legal dictionary 4th Edition

¹⁶ Yidindji Legal Dictionary 1st Edition

Nation

A nation is the centre point of a group of people forming a society that have a common origin, language, and traditions; though they do not necessarily possess a territorial base or government. There could be considered two statuses for nations.

The modern nation called the Commonwealth of Australia considers itself as a modern nation possessing all the attributes of a nation. It demonstrates its so-called sovereignty of its so-called territory with its border enforcement policies.

Is it possible for two equal sovereign states to co-exist within the same temporal and spatial place without conflict?

Sovereignties

As is the case in Australia, the issue has been realised that there are and must be different qualities of sovereignty, this is what I describe as the big S-sovereignty and the small s-sovereignty. The big S-sovereignty is the earliest continuing system of authority and decision-making of a continuing society that still subscribes to the sovereignty of their nation. The hierarchical nature of normative societies prevents this anomaly, for their must be a foundation for all other authority to be built from. The Commonwealth of Australia only came into existence in 1901 and excluded the Aboriginal and Torres Strait Islander peoples from the Commonwealth of Australia as created under the Australian Constitution. This position would be described as a nation within the territory of an older continuing nation, a small s-sovereignty nation.

Using the modern standards for the evaluation of the standing of a nation as a sovereign state, there needs to be caution to not simply accept the status quo just because it appears to be the authority in that location. The Commonwealth of Australia is a good example of this situation, “... *the Australian Constitution came into force in 1901. That document created a new nation upon a continent that the British already regarded as theirs... This of course represents the position under Australian law, of which the Constitution is the ultimate expression.*”¹⁷

The status of a sovereign state can be defined, through another Native Title determination, the continuation of law and custom is critical “*Without that quality, there may be observable*

¹⁷ Davis M, Williams G, Everything You Need To Know About The Referendum To Recognise Indigenous Australians, page 121

patterns of behavior but not rights or interests in relation to land or waters."¹⁸ and determines that the normative society has a clearly identifiable system of laws that are acknowledged by the members of that sovereign state, and not only just the customs that were observed by that society. For these laws to be acknowledged and continuing, there must be the comprehension of the central sovereign authority that is of no one particular man or women, but of the sovereign state as a whole.

Native Title determinations further reinforce the status of sovereignty, for if there is to be a recognizable title as seen by another sovereign state, there must be a corresponding system of law for the creation of that title, and when the title has survived through to current times, so to must the survival of the title creating law, "*...traditional laws and customs have survived,*"¹⁹

As a Combination

As all the ingredients that define a sovereign state are added together, the status of the sovereignty can be gaged. Is that sovereignty a small s-sovereignty, or is that a big S-sovereignty, or is it really sovereignty at all. When we look at the situations that stand in light of the Uluru Statement from the Heart, which sovereignty as mentioned in that statement has the stronger status in law, not physical force?

Looking at the sovereignty status of the Commonwealth of Australia before looking at the sovereignty of the Indigenous nations reveals the truth about the Commonwealth of Australia. The Commonwealth of Australia excluded the members of the Aboriginal and Torres Strait Islander nations, it did not have a treaty or any other formal agreement to enter the territories these pre-Australian nations, it did not gain territory from any of these other nations in a manner that is currently recognizable in any form of commonly accepted international law, it acknowledges that the sovereignty of these Indigenous nations is still there, and that, that sovereignty is recognizable by the Commonwealth of Australia.

The Indigenous Nations do not need to define to their own nation that the sovereignty of their nations still exists but can use the evidence that is produced by the Commonwealth of Australia to demonstrate to the rest of the world that their sovereignty not only exists but as to the status of the sovereignty when all modern yard sticks are utilised at the same time.

¹⁸ Members of the Yorta Yorta Aboriginal community v Victoria [2002] HCA 58, point 42

¹⁹ Johnson on behalf of the Tableland Yidinji People #1 v State of Queensland [2012] FCA 1417, point 21

There are many Indigenous Nations whose sovereignty have been very clearly defined through the Native Title process upon whose territory the Commonwealth of Australia was established. Those nations are acknowledged as deriving from a time before the arrival of the European people, they possess systems of authority, decision-making, dispute resolution, land tenure, were not of Australian origin and still survive to today's time. For the survival of just one Indigenous Nation the status of the Commonwealth of Australia is diminished within the whole, for the Commonwealth of Australia claims the whole of the continent and surrounding islands as its territory, and jurisdiction to which its sovereign authority applies to all persons within.

This single issue that comes from this belief is that the authority of the sovereignty applies to those who subscribe to that sovereign authority as the source of all law and power. Can that authority be applied to those people who were excluded? Can that sovereignty be applied to those nations who possess a legally stronger sovereignty? Should the authority be applied to all persons and things within the proclaimed territory of the so-called sovereign state?

In a finer detail, it must be understood that the Australian Constitution creates the legal foundation for all else within the Commonwealth of Australia, and it is this foundation that empowers the Australian Parliament to make laws for the peace, order, and good governance within the proclaimed territory. How can this authority be applied to those who were actively excluded, for to do so would be exceeding that authority vested by the Australian Constitution? This would mean that the commonly held belief that the sovereign state's authority subjects all persons and things within the proclaimed territory of the Commonwealth of Australia is not true, or that the Commonwealth of Australia does not possess the highest authority over certain places of the Australian continent. Is this why the Commonwealth of Australia requires a "Welcome to Country" when doing certain things within the territory of an Indigenous Nation?

Is it that the superior sovereignty resides within the Indigenous nations that are acknowledged as continuing from pre-1770? Is this why the Commonwealth of Australia is trying to "recognise" the Indigenous people?

The Indigenous Nations

Putting all the above together, in an unprejudiced view, there appears to be a superior system of authority and decision-making that predates the sovereignty of the Commonwealth of Australia, and indeed the sovereignty of the British settlers that claim Australia to have been

theirs from 1778. When view from the exterior of neither the Commonwealth of Australia or the numerous indigenous nations that are from a time that predates 1778, there was authority and decision-making systems present.

This system was and still is sovereignty of the numerous indigenous nations, these nations that are recognised by the numerous native title determinations concluded by the Federal Court of Australia.

There have been numerous native title determinations in all geographical locations of the continent, and all basically have the same theme, that of the existence of systems of authority, that create such legal instruments as titles of a land tenure system. Hence the term native title. This native title is not actually a land title of the Commonwealth of Australia, but a way that the Indigenous nations can demonstrate that they possessed some of the necessities of sovereignty that can create titles from a system of land tenure.

Yidindji, an Example

The Yidindji Nation is one such nation that is known to still exist. The continuing pre-1770 Yidindji Nation whose territory encompasses the rainforest region known by the Commonwealth of Australia as Cairns and Atherton Tablelands, has a system of sovereignty that predates the sovereignty of any other occupational nation of the region by a factor of tens of thousands of years. The Commonwealth of Australia has acknowledged the existence of this sovereignty and its continuation to this day through numerous native title determinations pertaining to the Yidindji nation.

The numerous Native Title determinations are decisions handed down from the Australian judicial system and it is these courts that are presenting the facts that are at odds with the assumption that the continent was the British or that the Australians acquired the continent in any lawful manner, *“Neither the Australian Parliament, nor the Australian Government, nor the Australian Courts have created the native title which we are acknowledging today. The Act simply provides a way in which Aboriginal people can prove traditional ownership of land, which ownership has existed since before European settlement in Australia.”*²⁰ For such a system of ownership to be recognizable and acknowledged there had to be an underlying normative nation which possessed the relevant system of authority for the creation of a system of land tenure within that nation.

²⁰ Mundraby on behalf of the Combined Mandingalbay Yidinji- Gunggandji People v State of Queensland [2012] FCA 1039, point 26

With what defines a modern sovereign state in today's terms, such have been addressed within a Native Title determination, "*The laws and customs characteristic of the regional society can be identified... A system of cosmological narratives... A system of land tenure...A system of subsistence...A system of authority and decision-making...A system of dispute resolution... A system of ceremonial practices...*"²¹

Even though the people of the Yidindji Nation know the systems of their nation exist, as they subscribe to them, it is important in the fact that the Commonwealth of Australia can recognise and acknowledge them as existing. This existence in a manner that the Commonwealth of Australia can see is important, as this is another separate nation seeing that the Yidindji Nation possess the sovereignty that is comparable to the sovereignty of the Commonwealth of Australia. It is not some alien form of sovereignty that can only be recognised and seen by those who subscribe to it.

There is however, one major difference between the sovereignty of the Commonwealth of Australia and that possessed by the Yidindji Nation, that being the status of sovereignty. Within the Yidindji territory there is no other higher authority, this is the big S-Sovereignty in that the sovereignty possessed by the Yidindji Nation is the first in time and continuing system of authority and decision-making to which not even UN international law is equal or superior. The Yidindji Nation possessing the big S-Sovereignty has the ability to create the Sovereign Yidindji Government and as a consequence of hierarchy the Sovereign Yidindji Government possesses a form of sovereignty that could be described as a small s-sovereignty due to the fact that it is subservient to the Yidindji Nation. The Sovereign Yidindji Government is what possesses an equal status of sovereignty to that as possessed by the Commonwealth of Australia.

In passing the comment that the Commonwealth of Australia was established without the consent of the Aboriginal people meant that consent could be granted, and that those who could grant the consent were a superior sovereign state that that of the Commonwealth of Australia. "...*this land and its waters were settled...without treaty or consent*"²² makes it very clear that as the Prime Minister of the Commonwealth of Australia it is known that consent is required but not yet given, and this consent can only be given by those that possess

²¹ Mundraby on behalf of the Combined Mandingalbay Yidinji- Gunggandji People v State of Queensland [2012] FCA 1039, point 21

²² Prime Minister Howard media release 11 May 2000

the big S-Sovereignty. The Yidindji Nation is one of those nations that possess this status of big S-Sovereignty.

Welcome to Country ceremonies further reinforce the status of the sovereignty possessed by the Yidindji Nation, when some Australian entity requests a welcome the welcome comes from a superior system of authority and decision-making.

The Yidindji Nation and the Yidindji people do not owe allegiance to the belligerent occupational Commonwealth of Australia and as such they cannot be compelled to do so.

Conclusion

While the Commonwealth of Australia possesses sovereignty, so do the Indigenous nations. It is the status or capacity of sovereignty that the sovereign state possesses that really matters. Is it a small s-sovereignty or a big S-Sovereignty that is possessed by the sovereign state?

It must be remembered that a river cannot flow above its source, this is also correct for sovereignty, a nation cannot be above of beyond what creates that nation and in both instances of the Commonwealth of Australia and the Yidindji Nation this is true. It is the source or starting point that is important when determining the possession of either a small s-sovereignty or a big S-Sovereignty.

It is only after all that makes up a sovereign state are fully evaluated in an unbiased view can the status or capacity of sovereignty be determined. It is the fact of reality that the world must face up to as it fully emerges from the past colonial world into a mature truly global people whereby all of mankind is created equally.

Those that possess the big S-Sovereignty must use this status and capacity for the good of all of humanity and the other species that we co-exist with upon this planet we all call earth.