

Inter-Indigenous treaty making: ancient principles for contemporary Indigenous purposes

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Smith D and Bauman T (2022) CAEPR discussion paper: *Inter-Indigenous treaty making: ancient principles for contemporary Indigenous purposes*, Centre for Aboriginal Economic Policy Research, ANU College of Arts and Social Sciences.

Abstract

This paper is intended as a contribution to contemporary Indigenous *practice*. Its aim is to identify *Indigenous* culturally-centred principles and processes of treatying with each other. It does not focus on treaty making with settler-colonial nation states, which has been the more common focus of the research literature. The distinction is deliberate as the paper's intention is to bring to the fore Indigenous modes of treatying that have been in operation well before Westphalian nation states sought to impose the primacy and legal constrictions of their concept of sovereign treaty-making.

The paper begins with an examination of the ordinary meanings of the concept of treaty and treatying, emphasising that Indigenous treatying is ancient and includes modes of mediation, negotiation, agreement making, and the formation of alliances and confederation; initiatives which extend well beyond the confines of Western legal terminology

We then present a series of short case studies for comparative purposes, examining diverse forms of *inter-Indigenous* treaty-making drawn from First Nations in Australia, the USA, Canada and Aotearoa New Zealand. For each case study, we examined First Nation websites and documents, as well as relevant research literature, to produce a synthesis of key information about each case - including the treaty parties, contextual issues, purposes, scale, principles and governance practices involved. From the review of each case study, the paper produces a set of *Indigenous principles* that have been used by groups to *govern* their own treaty making with each other. By 'principles', we mean the fundamental rules, laws and propositions that serve as the foundation for a system of belief and behaviour and so for a chain of reasoning. The paper argues that treatying principles are embedded in Indigenous laws, standards, norms, rules, measures and the values.

The intention in using this method is to identify any *commonalities of principles and practice* that emerge *across* the case studies. These deep treatying principles are then collated and discussed. Hopefully these principles may be useful to Indigenous polities in Australia, who can adapt them to inform and assert their preferred procedural frameworks for negotiations. For example; for rebuilding, strengthening and self-governing contemporary *inter-Indigenous* relationships and collaborations. And for asserting and implementing *their* preferred ground rules as the bases for treatying and negotiating agreements with Australian governments, industry and each other parties.

The paper's conclusion suggests there is a collateral benefit from enabling Indigenous principles of treatying in contemporary contexts; namely, it acts as a powerful catalyst within groups for rebuilding their collective solidarity and self-governance capability as a polity. In other words, treatying *with each other*, and in turn with the nation-state, can be an expression of, and tool for nation-rebuilding.