



# Teacher Reference Document 15



AUSTRALIAN  
CONSTITUTION  
CENTRE

Unit 3: The introduction of responsible and representative government in colonial Australia  
– Year 5 - C & C Strand: Citizenship, Identity & Diversity

Topic 5.1: The colonies introduce Responsible and Representative Government and  
the impact on Aboriginal and Torres Strait Islander peoples

## Batman's 'treaty' with the Wurundjeri People in 1835

The first British settlements in Australia were in Sydney in New South Wales in 1788 and in Van Diemen's Land (now called Tasmania) in 1803. What is now Melbourne was in an area known as the 'Port Phillip District' of New South Wales and the British did not initially seek to set up a settlement there.

John Batman was the son of a convict transported to New South Wales. Batman was born and raised in Parramatta, Sydney, but moved to Van Diemen's Land in 1821. He [settled](#) there, married a convict, and became involved in farming and grazing cattle. He came to local fame for capturing a notorious bushranger [Matthew Brady](#) who had been on the run for two years.

Views on Batman's character and his relationship with the local Aboriginal peoples have been mixed. The 'official' version of Batman, in the [Australian Dictionary of Biography](#), refers to him as being one of the few who sought to influence the local Aboriginal peoples by kindness and who was involved in conciliation with them. But more [recent](#) accounts show him as a brutal murderer of Aboriginal people who participated in the 'Black Line' which sought to drive Aboriginal peoples off their lands into a limited area of Tasmania or onto islands offshore. His neighbour, the artist John Glover, [described Batman](#) as a 'rogue, thief, cheat and liar, a murderer of blacks and the vilest man I have ever known'.

### Port Phillip District and Batman's 'treaty'

Due to a lack of land in Tasmania to undertake extensive grazing, Batman and other British

settlers in Tasmania decided that they wanted to settle on the mainland, in the Port Phillip District, where there would be greater room for grazing. They formed the Port Phillip Association and lobbied the Government to be granted land there. When the Government did not react quickly enough, Batman went off to negotiate access to land with the local Aboriginal peoples. Given the violence that had occurred in Tasmania, which almost destroyed the local Aboriginal population, perhaps he thought this would be a more peaceful way of obtaining access to land.

On 6 June 1835, by a 'beautiful stream of water', probably the [Merri Creek](#) in Northcote, Batman met with Elders of the Wurundjeri People of the Kulin Nation and made two [treaties](#). One was for 500,000 acres of land around [Port Phillip Bay](#) (Narm-Narm in the Kulin language). The other was for about 100,000 acres in the area that is now [Geelong](#) (known as Djilang).



Early-20th-century drawing of Batman,  
based on an earlier engraving  
Source: Wiki Commons

The treaties had been prepared in advance, on parchment, by a Hobart Town lawyer, Joseph Gellibrand. In exchange for the land, Batman [provided](#) blankets, knives, looking glasses, tomahawks, beads, scissors and flour as payment, with an agreement to pay a yearly rent. This suggested that the agreement was not one for the permanent transfer of the land, but a right to occupy the land that was conditional upon the annual payment of rent. The transaction was accompanied by the ceremonial handing over of soil by each of the eight Elders. Batman wrote in his [diary](#): 'The parchment the eight chiefs signed this afternoon, delivering to me some of the soil, each of them, as giving me full possession of the tracts of land.'

When Batman returned to Van Diemen's Land, with his parchment, he attempted to get it formally recognised by the Governor. In a letter to the Lieutenant-Governor of Tasmania, Sir George Arthur, Batman referred to the Wurundjeri people as 'the real Owners of the Soil'.

## The British response

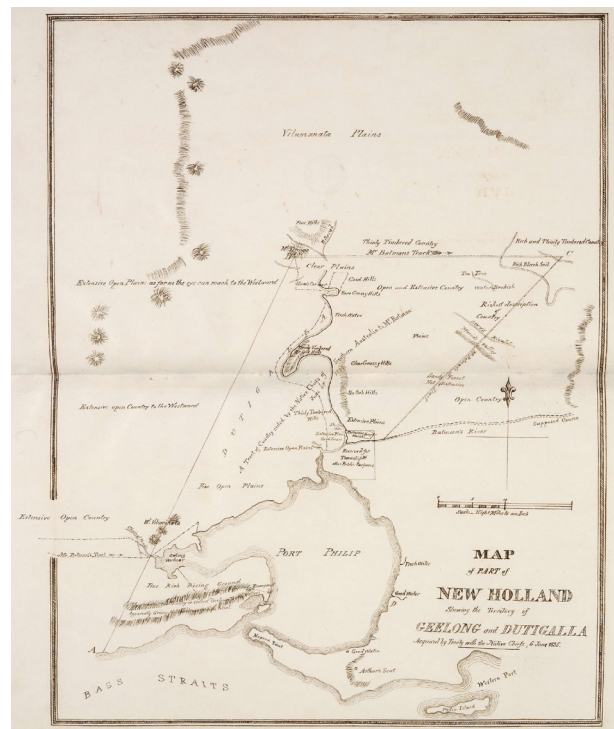
The Governor of New South Wales, Sir Richard Bourke, issued a [Proclamation](#) on 26 August 1836 declaring that 'every such treaty, bargain, and contract with the Aboriginal Natives... for the possession, title or claim to any Lands lying [within the area claimed by the British] is void and of no effect against the rights of the Crown'. He added that all persons taking possession of such lands without the authority of the Government 'will be considered as trespassers'.

The British had claimed the whole of the Port Phillip District when they settled New South Wales in 1788. They considered that this meant that the British Crown held the underlying ownership rights (the 'radical title') to the land, so only it could grant the land to others. This Proclamation is [sometimes seen](#) as an assertion that Australia was 'terra nullius'. It asserted government control over land and denied Aboriginal people the ability to strike their own bargains over it.

The legal historian Alex Castles has explained:

'Clearly, if the British authorities had recognised Batman's "purchase" this would have reversed the basic character of the approach which had been adopted in the development of the British interest in Australia from the time of Cook onwards. Not surprisingly, in the circumstances, Batman's plea for the formal recognition of his claim was denied.'

Instead, the NSW Governor allowed members of the Port Phillip Association to buy the relevant



1835 map showing the area of Port Phillip, stating that this is the land "Acquired by Treaty with the Native Chiefs, 6 June 1835" Source: Wiki Commons

land from the Crown, while deducting from the price the cost that the Association had already laid out on exploration and the transport costs of settlement. As for the right of the local Aboriginal peoples to these lands, and the impact of settlement upon them, these matters were ignored by government officials.

## The Wurundjeri perspective

The [Wurundjeri leaders](#) of the time, including [Billibellary](#) and [Bebejan](#), were in contact through trade routes with Aboriginal peoples further north who had been devastated by their loss of land to the British settlers. So they were aware of what was likely to occur.

There are different views about what occurred, and whether the Treaty was genuine. One view is that there was a complete misunderstanding between both sides as to the agreement that was made. It has been [argued](#) that the notion of the sale of land was not something within the conception of the Wurundjeri, who considered that people belonged to the land and could not part with it. The passing of a handful of soil could have meant different things to the two sides. In England, it was symbolic of passing ownership of the land, whereas to the Wurundjeri it indicated agreement to safe passage across the land as long as good relations were maintained.





[Another view](#) was that the Wurundjeri leaders were far more [sophisticated](#), pragmatic and informed than they are often given credit for being. They were prepared to permit the British colonists to live with them on their lands in exchange for a yearly rent comprised of objects that were useful to them. They saw this as a better compromise than being dispossessed, as had occurred to the north. When the rent stopped being paid after a couple of years, their leaders objected strongly.

Artist's impression from the 1880's of the Treaty being signed  
Source: Wiki Commons

Whichever view is right, the Wurundjeri people still lost out in the end – their land was taken and the payment of rent ceased. Batman may have been a man of terrible character, but he was one of the few to acknowledge Aboriginal peoples as the true owners of the land.



## Topic 5.1 Lesson One



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# What if Batman's treaty with the Wurundjeri People had been upheld and respected?

### Time/Lesson

- 1 hour

### Learning Goal

To consider whether if Batman's treaty with the Wurundjeri People had been upheld it might have led to different relations between Aboriginal and Torres Strait Islander peoples and settlers across Australia.

### Teaching Reference Documents:

[TRD 15 Batman's 'treaty' with the Wurundjeri People in 1835](#)

### Resources

- 3 minute SBS story about Batman's Treaty - <https://www.sbs.com.au/ondemand/watch/647167555965>
- State Library's lesson plan on Batman's Treaty - <http://ergo.slv.vic.gov.au/teachers/source-analysis-john-batmans-treaty>

### Teacher Instruction

Lesson outlines and guiding questions:

- Follow up the what-if questions in the podcast
  - What if Batman's treaty had been upheld and respected?
  - How could that have affected relations between Aboriginal and Torres Strait Islander peoples and settlers across Australia?
  - Would it have potentially avoided the bloodshed of frontier conflicts, by sending disputes to courts instead?
  - Would such treaties have been fair?
  - Would there be a more solid legal basis for reconciliation today, as there is in New Zealand based on the treaty of Waitangi?
- Students could research how relations between the Māori people and settlers in New Zealand proceeded under a treaty, noting both the good and the bad, and compare it to what has happened in Australia
- Show students this very good 4-minute discussion of treaty by NITV - <https://www.facebook.com/NITVAustralia/videos/1267159140110465/>. Use it as a starting point to open up a discussion about how a 'treaty' was negotiated in the past, and the current procedures in Victoria for genuinely negotiating a treaty with the Indigenous peoples of Victoria.
- Ask students to consider what has changed between 1835 and now in terms of how much we understand about Aboriginal and Torres Strait Islander peoples and their connection to their lands and waters?
  - How much has also changed in attitudes towards racism and acceptance that the same human rights apply to all people across the world?
  - Is it significant that people negotiating a treaty in Victoria today would speak the same language and be acting on a common understanding of the same laws?
  - How did different languages and different legal systems make it more difficult to undertake fair negotiations and make agreements in the 1830s?
- See also the ongoing dispute in New Zealand about the different meanings of words in the English and Māori versions of the Treaty of Waitangi

## Student Activities

- Research the Traditional Owners of the land on which your school is built and the boundaries of their country (eg the Wurundjeri People of the Kulin Nation).
- If your school does not have a written [Acknowledgement of Country](#), (Narragunnawali resource) which is read out at the beginning of school Assemblies, then have the class draft the words for one having watched videos of leaders acknowledging Aboriginal and Torres Strait Islander peoples at the beginning of an important speech which opens with an Acknowledgement of Country.
- If the school already has an Acknowledgement of Country the class should read it and practice it as a group.
- Each student is given a worksheet which is a blank map of Australia. They date it 1835. They will be marking on it each of the British settlements (the colonies) of the time. They then mark the area lived in by the Wurundjeri People of the Kulin Nation and draw in 500,000 acres around Port Phillip Bay and 100,000 around what is now known as Geelong. Finally they mark in Merri Creek where it meets the Yarra River, which was a traditional meeting place of the Wurundjeri People, and draw their own illustration of a depiction of Batman's meeting with the Wurundjeri People at Merri Creek.
- Students prepare a three minute speech on what they think are the most important facts and messages from the story of Batman's 'treaty' with the Wurundjeri People. They make the speech to their class and open it with their Acknowledgement of Country.

## Student extension activities

Students develop a discussion around the importance of the exchange of the soil ceremony in TRD 15 and its significance in representing land. Contemporary sustainability issues both in Australia and globally could be investigated, and school resources studied, through a large number of organisations working in this area.

Discuss a comparison of what it was like to live in Australia pre 1788 compared to the first years of the colony and then onto today. The decades since 1788 have seen many changes to the way we live, the things we need to be happy and content, and the comparatively recent technological explosions. Our thinking and ideas around fairness, discrimination, equality, freedom and responsibilities, human rights and racism, are quite different today from attitudes in colonial times. For many years now our Prime Ministers and other leaders have been discussing the important issue of reconciliation with Aboriginal and Torres Strait Islander people. Identify what a Reconciliation Action Plan (RAP) is and how it works: <https://www.narragunnawali.org.au/raps/what-is-a-rap>

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## Further Extension

It is important to note the difference between an Acknowledgement of Country and a [Welcome to Country](#) (Narragunnawali resource). The class could also look examples of Welcome to Country ceremonies at significant sporting and political events, many of which can be found online.



# Work Sheet 1

Students draft their own Acknowledgement of Country.

Example:

We wish to acknowledge the Traditional Custodians of the land on which we gather, (..... peoples,) who have walked upon and cared for this land for thousands of years. We acknowledge the continued deep spiritual attachment and relationship of Aboriginal and Torres Strait Islander Peoples to this Country and commit ourselves to the ongoing journey of reconciliation.