"RECONCILIATION": ITS RELATIONSHIP AND IMPORTANCE TO LAW

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I INTRODUCTION

"National Reconciliation Week" initiated in 1996 by the Council for Aboriginal Reconciliation and continued by Reconciliation Australia[1] "celebrates and builds on the respectful relationships shared by Aboriginal and Torres Strait Islander people[2] and other Australians."[3] The week runs between 27 May[4] and 3 June[5] every year, and events are held around the country to foster reconciliation discussion and activities.[6]

But what does "reconciliation" mean? Any answer depends on how reconciliation is understood or the context of the discussion. Like many words that become common political parlance—think only of "multiculturalism" or "pluralism"—

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1 Reconciliation Australia, a non-government non-profit organization, was established in January 2001 by the Council of Aboriginal Reconciliation (which wound up in 2000) to promote a national focus for reconciliation. The Council for Aboriginal Reconciliation was established in 1991 by the Commonwealth Parliament (pursuant to the *Council for Aboriginal Reconciliation Act* 1991 (Cth)) with the aim of promoting reconciliation between Indigenous and non-Indigenous communities, and between Indigenous peoples and government.

2 Indigenous and Aboriginal are used interchangeably in this paper.

3 Refer to http://www.reconciliation.org.au/nrw/what-is-nrw/.

4 The anniversary date of the 1967 Referendum, which granted the Commonwealth Parliament the power to legislate for Aboriginal people and to count Aboriginal people in the national census.

5 The anniversary date of the the *Mabo* decision (*Mabo v Queensland* (1992) 175 CLR 1 ("*Mabo (No. 2)*"), where the High Court recognised for the first time in Australian common law the existence of native title to traditional lands (overturning the doctrine of *terra nullius*), and held that native title rights were not overridden upon British acquisition of sovereignty except where title had been expressly extinguished.

6 Leading into this year's National Reconciliation Week, hundreds of Aboriginal leaders gathered at Uluru to discussed an number of issues culminating in the "Uluru Statement" which abandoned the idea of constitutional recognition of Aboriginal people as the original owners of the land, instead pushing for a constitutionally elected Indigenous body in the Federal parliament, a mechanism for treaty making and a healing commission. Refer to http://www.abc.net.au/news/2017-05-26/constitutional-recognition-rejected-by-Indigenous-leaders-uluru/8563928.

"reconciliation" enjoys no tight consensual usage. But unlike these more recent terms, "reconciliation" enjoys ancient meanings. Common to all these meanings is the concept, "restoration of right relationship."[7]

Restoring right relationships or the rights of "a peoples" or section of society will invariably have a legal (and a political) dimension. This brings me to the substantive purpose of this article: the relationship and importance of reconciliation to law. Before tackling that relationship I provide some introductory comments on the meaning of, or the concept of, reconciliation as identified or used here.

II MEANING OF "RECONCILIATION"

Reconciliation is a vague concept, more often invoked as an ideal than understood as a concrete strategy. The notion of reconciliation has been imbued with a variety of meanings, depending on whether it is being discussed from a legal, political or cultural perspective. Even after isolating the definitions of reconciliation in the legal context, one is still faced with a myriad of ideas about what the term means and what its consequences ought to be. One distinct understanding of reconciliation is explored here. This understanding involves making formerly incompatible rights compatible.[8] It views reconciliation as the process of recognising Indigenous rights and reconciling those rights with countervailing interests.

Before continuing I should emphasise that here we are not concerned with the concept of reconciling ourselves with our ideas or our housemates. The context of an analysis of reconciliation with which we are concerned is pitched at the level of major state ethnic and racial conflicts and the need for a "settling of strife" in those contexts. This is particularly the case in examining the relationship and importance of reconciliation to law.

III RECONCILIATION AND THE LAW

Reconciliation can be used to characterise the court's task of defining a set of rights for Indigenous peoples that reconciles Indigenous peoples' existence with the sovereignty of the Crown and with the presence of non-Indigenous Australian society. Here reconciliation is concerned with the *sui generis* rights and interests that Indigenous peoples hold within the framework of the existing legal system, and operates on the assumption that Indigenous peoples have certain inherent rights to equality and to flourish as a distinct people within the broader community.

7 Daniel Philpott writes that the meaning of reconciliation in Hebrew (*tikkun olam*), Greek (*katallage,* apokatallasso, and *diallasso*), Latin (*concilium*) and Arabic (*salima* and *salaha*) "[a]ll connote the restoration of relationships between persons." Refer to D Philpott, 'Beyond Politics as Usual' in 'Reconciliation…Who Reckons What!' in D. Phipott (ed), *The Politics of Past Evil: Religion, Reconciliation and the Dilemmas of Transitional Voices* (University of Notre Dame Press, 2006) 11, 14.

8 C Blackburn, 'Producing Legitimacy: Reconciliation and the Negotiation of Aboriginal Rights in Canada' (2007) 13 *Journal of Royal Anthropological Institute* 621, 621.

"Reconciling rights" is the concept of reconciliation promulgated by legal academic Andrew Lokan.[9] In basic terms, Lokan endorses the conscious creation of various legal frameworks that acknowledge the *sui generis* nature of Indigenous rights aimed at reconciling Indigenous and Crown interests. Lokan notes that the immediate task facing the courts is to reconcile Indigenous and non-Indigenous rights in conflict in the matter currently before the court. Thus reconciliation is understood as the neutral process of balancing Indigenous claims and countervailing values. An essential aspect of this approach is the role of the courts in mediating the competing interests of the majority, and the minority who hold *sui generis* rights and interests.

Lokan's version of reconciliation has two components. The first component is the recognition of a set of Indigenous rights. The second, more complex part involves the reconciliation of those rights with the doctrine of Crown sovereignty and other interests. The Supreme Court of Canada has explicitly accepted recognition and reconciliation as constituting the twofold operation of Indigenous rights law. In *Van der Peet v R*, the court stated that:

> The Canadian, American and Australian jurisprudence thus supports the basic proposition put forward at the beginning of this section: The aboriginal rights recognized and affirmed by section 35(1) [of the Canadian Constitution Act 1982 that guarantees 'existing aboriginal rights'] are best understood as, first, the means by which the Constitution recognizes the fact that prior to the arrival of Europeans in North America the land was already occupied by distinctive aboriginal societies, and as, second, the means by which that prior occupation is reconciled with the assertion of Crown sovereignty over Canadian territory. The content of aboriginal rights must be directed at fulfilling both of these purposes.[10]

Along with its contemporaries in the United States, Canada and New Zealand, the Australian judiciary has gradually moved away from its habitual denial of native title[11] toward recognition of the legitimacy of common-law claims by Australia's original inhabitants. *Mabo (No 2)* was the turning point in the High Court's jurisprudence on Indigenous rights. By overturning the doctrine of *terra nullius*, the High Court recognised Indigenous peoples' native title rights over traditional lands. *Mabo (No 2)* defined native title as a right that exists when an Indigenous community can show there is a continuing association with the land in circumstances where no explicit act of the Crown has extinguished title. It is important to emphasise here that the court recognised rather than created native title; that is, native title had unequivocally existed, albeit unacknowledged.[12]

9 A Lokan, 'From Recognition to Reconciliation: The Functions of Aboriginal Rights Law' (1999) 23 *MULR* 65.

10 [1996] 2 SCR 507, 547-8.

11 *AG v Brown* (1847) 1 Legge 312; *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141.

12 L Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future* (Federation Press, 2003) 41.

The recognition of native title demonstrates the confidence of the common law in its capacity to provide legal protection to relationships to land completely foreign to its own cultural foundations. The court recognised the *sui generis* nature of Indigenous peoples' relationship to the land, and their continued separate existence in the established system of land tenures. The majority in *Mabo (No 2)* commenced with an acceptance in principle of a concept of native title, and left the nature of native title to be ascertained by reference to Indigenous laws and customs.[13] It is those practices that determine the parameters of native title. In this way, the court held that the common law could protect a range of Indigenous interests that Blackburn J had failed to recognise in *Milirrpum v Nabalco*14 because they were not "proprietary" in nature.[15]

Of course, the right to title over traditional lands was not absolute. Illustrative of a reconciliatory approach at work, native title determinations place a strong emphasis on compromise between Indigenous and non-Indigenous interests. And in *Mabo (No 2)*, Brennan J stated:

> The common law can, by reference to the traditional laws and customs of an Indigenous people, identify and protect the native title rights and interests to which they give rise. However, when the tide of history has washed away any real acknowledgement of traditional law and real observance of traditional customs, the foundation of native title has disappeared. A native title which has ceased with the abandoning of laws and customs based on tradition cannot be revived for contemporary recognition…Once traditional native title expires, the Crown's radical title expands to a full beneficial title, for then there is no other proprietor than the Crown.[16]

In *Mabo (No 2)*, the court made an order that the Indigenous claimants were entitled "as against the whole world to possession, occupation, use and enjoyment," being the equivalent of a freehold title. However, subsequent decisions have confirmed the vague and limited content of native title.[17]

While demonstrating its capacity (albeit a limited one) to identify and acknowledge Indigenous rights, the Australian judiciary has thus far lacked the flexibility and imagination required to proceed from its initial recognition of prior occupancy to restoring rights reconciliatory approach. Not that the law, or more specifically the

13 Ibid.

14 (1971) 17 FLR 141.

15 Alex Reilly, 'From a Jurisprudence of Regret to a Regrettable Jurisprudence: Shaping Native Title from Mabo to Ward' (2002) 9 *ELAW* <http://www.murdoch.edu.au/elaw/issues/v9n4/reilly94_text.html#t1>.

16 *Mabo (No 2)* (1992) 175 CLR 1, 60.

17 For example, refer to *Wik Peoples v Queensland* (1996) 187 CLR 1; *Members of the Yorta Yorta Aboriginal Community v Victoria* [1998] 1606 FCA [162]; *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422.

common law can't achieve such an approach.

In contrast to the Australian situation, Canada has developed a broad Indigenous rights jurisprudence that both recognises a range of Indigenous rights and successfully balances those rights with legitimate countervailing interests. Canadian courts have achieved the reconciliatory function of Indigenous rights laws in a variety of ways. First, the judgments have attempted to draw a line between issues central to Indigenous customs and traditions, and those that are not. Matters that are deemed to be integral to Indigenous culture will be privileged; while Crown sovereignty and legitimate non-Indigenous interests will prevail against the latter.[18] In *Van der Peet*, Lamer CJ explained that:

> The definition of an aboriginal right must, if it is truly to reconcile the prior occupation of Canadian territory by aboriginal peoples with the assertion of Crown sovereignty over that territory, take into account the aboriginal perspective, yet do so in terms which are cognizable to the non-aboriginal legal system. It is possible, of course, that the Court could be said to be 'reconciling' the prior occupation of Canada by aboriginal peoples with Crown sovereignty through either a narrow or broad conception of aboriginal rights; the notion of 'reconciliation' does not, in the abstract, mandate a particular content for aboriginal rights. However, the only fair and just reconciliation is…one which takes into account the aboriginal perspective while at the same time taking into account the perspective of the common law. True reconciliation will, equally, place weight on each.[19]

This approach to legal reconciliation provides a flexible scope for the expansion of Indigenous rights, and shifts the juristic basis of the recognition of Indigenous rights from property to custom, without restricting non-Indigenous rights or diluting Crown sovereignty. Canadian courts have even suggested the possibility of an Indigenous right to "regulate the internal relationships within their own society and culture in accordance with their own customs, traditions and practices."[20]

The Canadian courts pronounced emphasis on particularisation of Indigenous rights is a further example of the reconciliatory function at work. The Canadian Supreme Court has essentially sought to resolve the underlying contradiction posed by white settlement of Indigenous lands by imposing a restrictive definition of Indigenous rights that construes them as derived from practices and traditions specific to Indigenous cultures rather than as "general and universal" rights.21 Thus this approach to reconciliation requires "the running maintenance of an ongoing and evolving web of legally-validated relationships and rights based

18 *R v Van der Peet* [1996] 2 SCR 507, 534-5.
19 Ibid 551.
20 Ibid 727.
21 P Patton, 'Reconciliation, Aboriginal Rights and Constitutional Paradox in Australia' (2001) 15 *The Australian Feminist Law Journal* 25, 34.

on aboriginality."[22] By isolating rights according to the cultural traditions of a specific group, the judiciary is able to retain control over the nature of the rights that can be asserted by Indigenous peoples. For example, the courts have found that the Indigenous right to engage in commercial fishing will only be made out in particular circumstances.[23]

Canadian rights jurisprudence provides a concrete example on how the law can perform a reconciliatory role. In the Canadian case this is by making it essential for judges to develop mechanisms to balance Indigenous rights against other, competing legitimate interests. Reconciliation in the legalistic sense can also produce political legitimisation and spark a progressive movement away from the past into an improved future built upon enlightenment.

IV THEORY OF LAW AND RECONCILIATION

Restoring rights relationships and reconciling rights brings into play issues of fairness and equal treatment under the law, ideally working towards a just society. This involves in the John Rawls sense, issues around the basic or primary resources that all persons need in society and ensuring they are apportioned in accordance with fairness.[24]

Reconciliation has particular value in that it focuses upon relationships and what goes wrong with them, in order to fix them. Arguably in certain legal systems reconciliation has become an element of the social facts that officials consider to be part of the law from their "internal point of view", such that, for that legal system, reconciliation is integral to the law of that legal system.

In further exploring the relationship of reconciliation to law, I turn to the work of Canadian academic Mark D. Walters and US academic Mark Greenberg.

A WALTERS

Walters poses the suggestion that "...reconciliation may be, in some societies, at least, an intrinsic part of what law is - or, to be more precise, what the ideal of legality or the rule of law requires."[25] In developing this suggestion, Walters notes three distinctions of reconciliation: "reconciliation as relationship", when people reconcile from some state of disharmony or disagreement; "reconciliation as resignation", when a person becomes "resigned to their fate, in the sense of being

22 P McHugh, *Aboriginal Societies and the Common Law* (Oxford University Press, 2004) 608.

23 The right to engage in commercial fishing was established in *Gladstone v R* [1996] 2 SCR 723, but not in *NTC Smokehouse Ltd v R* [1996] 2 SCR 672.

24 For a useful exposition, see MM Lange, 'Reconciliation Arguments in John Rawls' Political Philosophy' (2014) 15 *Critical Horizons* 306.

25 MD Walters, 'The Jurisprudence of Reconciliation: Aboriginal Rights in Canada' in W Kymlicka and B Bashir (eds), *The Politics of Reconciliation in Multicultural Societies* (Oxford University Press, 2008) 166.

accepting or being resigned to a certain state of affairs that is unwelcome but beyond their control";[26] and "reconciliation as consistency", which is a process of rendering inconsistencies consistent.[27]

All three distinctions can have aspects of law attached to them although Walters suggests that "reconciliation as consistency" may be an innate aspect of law. He argues that this distinction of reconciliation "takes the form of an interpretive enterprise aimed at political-moral coherence" which has a "traditional common law method" characteristic.[28]

Although Walter's proposes that "reconciliation as consistency" is more closely connected to law than the other reconciliation distinctions, arguably "reconciliation as relationship" has equal connection to law. Because the adjudication aspect of law, particularly the legal process, is in effect an adjudication of disputes between parties or the establishment of rights and entitlements of people or parties in a political legal system. This obviously influences relationships between people and parties in a political-legal system.

The connection between reconciliation and law, at least as Walters' views it, sits on the procedural aspects of law and integrity in decision-making. This integrity requires recognising those rights implicit within political-moral philosophy that "shows past decisions about rights to be as coherent and just as they can be".[29] Put differently:

> … the interpretive exercise that integrity implies is one that seeks reflective equilibrium between explicit propositions of law on the one hand and the set of abstract moral principles that they presuppose on the other - or, we may say, it implies a form of reconciliation as consistency. In this minimal sense, then, reconciliation is intimately connected with the rule of law, and, we may say, to a deep or constitutional sense of democracy implicit within the liberal conception of the rule of law.[30]

B GREENBERG

According to Greenberg, legal obligations are a subset of moral obligations. Greenberg calls his theory the "Moral Impact Theory"[31] because he believes that legislatures, judges etc., change the law by changing the "Moral Profile" (being the entire set of moral obligations that are imposed upon us). Lawmakers do this by changing the "morally relevant facts and circumstances" to change certain moral obligations. For example, it might be that by changing people's expectations a new moral obligation is created, an existing moral obligation reinforced, or a former

26 Ibid 167.
27 Ibid.
28 Ibid 169.
29 Ibid 170.
30 Ibid.
31 M Greenberg, 'The Moral Impact Theory' (2014) 123 *Yale Law Journal* 1118.

moral obligation disbanded. Interpreting the law then, according to Greenberg, is a matter of assessing not which of the potential interpretive options is morally best *ex ante*, but what moral obligations the lawmaker actually succeeded in bringing about.[32]

Greenberg thinks that the law is supposed to change our moral obligations in order to improve our moral situation. It is not the case that he thinks legal systems always succeed in that endeavour, but it is nevertheless an essential function of the law. For Greenberg, legal obligations are just the subset of moral obligations that exist because of the actions of legal institutions.

Greenberg suggests that legal obligations need to be generated in a "legally proper way". Greenberg notes that he has not fully determined this "proper way", but an example elucidates the problem:

> Suppose a government persecutes a particular minority group. This persecution may include directives to harm members of that group or to deny them benefits. Such government actions are likely to have the effect on the moral profile of producing an obligation to protect or rescue the minority group, to disobey the directives, to try to change the policy, and so on. It is intuitively clear that an obligation that comes about in this way is not a legal obligation, despite the fact it is the result of actions of legal institutions.[33]

Thus there are limits upon what legal obligations a legal institution can impose. This limitation goes to what obligations a legal institution can make that are *binding* and can change the moral situation for the better.

This "Bindingness Hypothesis" (part of Greenberg's "Moral Impact Theory") posits that "a legal system is supposed to operate by arranging matters in such a way as to reliably ensure that its legal obligations are all-things-considered morally binding" (or, equivalently, that a legal system is defective to the extent that it does not so operate).[34] This implies that for every legal obligation there is an all-things-considered moral obligation with the same content, such that if, in a given legal system, there is an obligation to pay tax in accordance with your income, the legal system has failed if it is, nevertheless, morally permissible not to pay your income tax. And, importantly, it is not simply the case that it would be good or preferable if the law operated in this way. This is an aspect of how law is supposed to operate. If it fails in this way, we have defective law.

The plausibility of this hypothesis stems from the nature of law. First, Greenberg asserts that if a legal system has legitimate authority then there is a general moral obligation to obey the law (though not universal and automatic).[35] Legal systems

32 Ibid 1293.

33 Ibid 1322.

34 M Greenberg, 'The Standard Picture and Its Discontents' in L Green & B Leiter (eds), *Oxford Studies in Philosophy of Law: Volume I* (Oxford University Press, 2011) 39, 59.

35 Ibid.

must have legitimate authority otherwise it seems difficult to distinguish between legal systems and brute force – thugs who have the power to enforce sanctions. Accordingly, Greenberg believes that the law having legitimate authority entails the Bindingness Hypothesis, because legitimate authority leads to a general moral obligation to obey the law. Although the law or legal system may be defective. [36]

How does this relate to reconciliation? It might be best to start with an obvious and extreme example. Laws in Nazi Germany that required the systematic exploitation and marginalisation of the Jewish people obviously failed to create corresponding moral obligations with the same content. Quite the opposite, as we now all recognise, those legal directives, purporting to create legal obligations, did not render it morally impermissible to disobey those directives, in fact, quite the opposite, they created positive moral obligations to dissent. It would not be difficult to point to similar laws enacted in Apartheid South Africa or Bosnia in the 1990s (and many, many other places).

Such legal directives, aimed at marginalising entire sections of citizens within a particular legal system, obviously fail to create legal obligations in the legally proper way, and are prominent examples of legal systems failing to do what they are supposed to do: improving the moral situation. How might reconciliation have been related to this example? If the elements of reconciliation had been considered in both enacting those particular heinous laws, as well as their application and interpretation, it is difficult to see how any legal system could have continued under the belief that it was acting as it was supposed to, by creating legal obligations with corresponding moral obligations and improving the moral situation. In short, reconciliation would have been an extremely helpful rubric to determining whether or not the legal system was operating as it is supposed to.

Legal institutions need to have regard to reconciliation when *creating* laws in order to ensure the laws they create are binding, that they are all-things-considered, genuine, practical obligations, not pro tanto obligations. Doing so, it seems, will almost certainly require consideration of reconciliation, particularly where those laws directly affect persons who are suffering from a lack of a sufficiently robust reconciliatory process.

Reconciliation is as much important to the process of legal interpretation as it is to the creation of new legal instruments. In order to determine what effect a legal instrument has had on the Moral Profile, keeping in mind, again, that it is necessary to create legal obligations that are all-things-considered binding moral obligations, a court, or other officer interpreting a law, needs to have regard to reconciliation. A failure to do so will lead to cases where certain minority groups' interests are not considered, leading to interpretations that disenfranchise those minority interests, intentionally or not. If a court does not have regard to the rule of law (and its constituent elements), to the encouragement of political trust (particularly with the minority group), and with the provision of the basic

36 Ibid.

capabilities, then the resultant interpretations are far more likely to fail to create binding all-things-considered moral obligations, because those disenfranchised persons may have trumping moral reasons not to comply with the resulting legal obligations from the as-made legal interpretations. Regard to reconciliation is necessary in that process, because it is one of the factors that ensures bindingness, to ensure the law does what it is supposed to, to ensure that our legal system makes the moral situation better.

Based on Greenberg's theory of law, law is defective if it is not improving the moral situation and failing to ensure bindingness regularly. More specifically, law is defective if it is systematically failing to create legal obligations with corresponding moral obligations for all citizens subject to a given legal system. Next, when creating law, or interpreting law, this requires lawmakers to take into account a great many number of considerations to determine what is the most salient law (or interpretation) including many different moral considerations, such as considerations of democracy and fairness. Next, there are many examples of laws that fail to ensure bindingness, sometimes on a systematic basic, on account of the fact that they marginalise a particular minority in a legal system. Those legal systems marginalise that subsection of society by failing to have regard to reconciliation when creating those laws and interpreting and applying them. Accordingly, in order to ensure bindingness and to improve the moral situation, which the law is supposed to do, it is integral that when creating or interpreting the law, regard is had to reconciliation. And it is necessary to do so, whenever reconciliation may be relevant to determining how a new law has changed the Moral Profile.

V CONCLUSION

In conclusion, I note some possible objections to the above relationship of reconciliation and law. First, Greenberg's theory of law might not be agreed to, which then makes the link between reconciliation and law as espoused here not possible. Second, the obvious positivist objection would be to reiterate that law has no necessary moral element and so reconciliation can't be integral to it. The kind of authority wielded by a legal system is not one that relies upon consolidating moral authority. Reconciliation may well be integral in certain legal systems, if, in an inclusive sense, it has been accepted as such by a legal system. But that would be a matter of empirical research for each legal system (which might be accepted in Canada but less likely in Australia). In Australia, it seems difficult to see how reconciliation is an integral part of law. Most laws, it seems, are created and interpreted without any regard to reconciliation at all, including many that we may think obviously should. We can have law in a positivistic sense without reconciliation (in fact we do have it), so reconciliation cannot be integral to law. The problem with this objection, ultimately, is simply that it rests upon the assumption that positivism is correct. The argument above, of course, assumes that Greenberg's theory of law is correct. To that end, it is really an objection to Greenberg's theory of law, not to the exploring arguments on the relationship between reconciliation and law.

It's all well and good to say that such moral considerations can be addressed when deciding what laws to make (and how to interpret them), but in reality that rarely seems to happen in legal systems that adopt particularly "black letter of the law", positivistic legal theories. It's only once we recognise the necessary connection between law and morality, and, for the purposes of this article, between law and reconciliation, that we start to take reconciliation seriously.

Finally, I think a common objection to this idea might be that it just seems too foreign. Too unlike what anyone does when making or interpreting laws. Reconciliation is clearly rarely considered for the creation and interpretation of the many thousands of laws that have been created in the history of the Australian Federation, and yet we still have law. But that an idea is new is certainly no good argument for it being false.

I acknowledge that the creation of most laws, and their interpretation, won't require a ready and explicit consideration of reconciliation. However maybe it should. For example, when deciding whether to change the speed limit for a busy street in the Perth CBD it isn't likely that reconciliation will be considered when assessing whether the law being created, or interpreted, is ensuring bindingness. The relevant factors considered will presumably be matters regarding road safety and inner city vibrancy. But arguably reconciliation should be considered because this may improve the support and adherence to the speed limit. So reconciliation may be more important (or should be more important) in the creation of more laws than one would think at first glance.

But in any case, the fact that reconciliation is not integral to the creation of *every single* legal instrument (or its interpretation) does not imply reconciliation is not integral to the concept of law. If the concept of law is such that it is supposed to ensure bindingness, and improve the moral situation, then reconciliation certainly seems integral to it. In particular, just because reconciliation is not necessary to consider with respect to every trivial law does not mean that it can be disregarded. Wherever reconciliation is relevant to determining the impact of a law on the Moral Profile, it should be considered. And that, arguably, is sufficient to show its importance to law.

Finally, that the law, and for example Australian law, has rarely considered reconciliation to date is not necessarily an argument that reconciliation is not integral or important to law. It is a sign that Australia has, to date, done a poor job of ensuring bindingness and improving the moral situation for all Australia citizens. And given the poor state of Aboriginal persons, their poor health, poor status in society, and lack of basic opportunities, it seems fairly clear that Australia has failed in that regard. The situation of Australian Indigenous peoples and relationships between Indigenous and non-Indigenous Australians may be improved via a greater consideration of reconciliation with regard to the enactment and interpretation of more laws.