Covenant and treaty: an exploration of how the Uniting Church covenant with the Uniting Aboriginal and Islander Christian Congress can inform and be informed by the current treaty debate.

By Peter Lewis,
National Director for Covenanting,
Uniting Church in Australia.

Introduction and Context

In 1988, Australia 'celebrated' the bicentennial year of British settlement. But amongst most Indigenous and a few non-indigenous people, the year was one of mourning and soul-searching. For many, there was a growing awareness that something was missing in our self-understanding as a nation. In 1988, the Uniting Aboriginal and Islander Christian Congress (UAICC) invited the Uniting Church in Australia (UCA) to enter into a covenantal partnership. Rather than repeat the mistakes of our colonial past, the church would define relationships between the Indigenous and non-indigenous communities within the church on the basis of mutuality, respect and commitment – encouraging self-determination for the indigenous church and new awareness for the non-indigenous church. The model was one of solidarity and deep partnership, defined by the biblical understanding of covenant. It was also in 1988 that talk of a treaty for Australia gained some further currency in the context of the bicentennial[1].

Today, the treaty debate has been renewed as a result of the ten year process of reconciliation auspiced by *Council for Aboriginal Reconciliation*. The issue of treaty is seen as a critical aspect of the 'unfinished business' of the Council. Indigenous people in Australia have never formally ceded their lands and waters. There is no overarching treaty in Australia; there are no treaties between Indigenous communities and settler communities[2]. Captain Cook failed to follow his instructions to seek the consent of the owners and custodians of the land. *Terra nullius* - the legal doctrine that the land was empty and unowned - is still the foundation for settlement. The

[1] Talk of a treaty had begun in earnest in the context of the land rights struggle in the 1970's. It was in June 1988 at the Barunga Festival that Prime Minister Bob Hawke advanced the idea of treaty in response to the Barunga Statement.

[2] The so-called 'Batman Treaty' in Victoria was never officially recognised and the 'Robinson Conciliation' in Tasmainia was never written down nor given official standing.

Oxford English Dictionary basically has similar definitions for covenant and treaty – although with the recognition that treaty is often between sovereignties. In fact, the Nugget Coombs inspired advertisement in the press on August 25, 1979 *We call for a treaty within Australia, between Australians* uses the word 'covenant' as a potential name for such a document.

The purpose of this article is to reflect theologically on these contextual issues of how the notions of covenant and treaty apply to the church and the nation. The parallel relationship between the theological understanding of covenant and the current debate around a treaty between Indigenous and non-indigenous peoples in Australia is the critical issue at stake in this article. While I touch on the theme of covenant in Scripture there is insufficient space to closely analyse the complex debate around the understanding of covenant, particularly in the Hebrew Scriptures. For this reason the key issue I highlight is how the key covenants of the scripture which God makes – with creation, with Abraham, with Moses, with the exilic Israelite community (in Jeremiah) and the new covenant through Christ – create a theological framework through which we can develop covenantal relationships between the Indigenous and non-indigenous in this land. In this way, the UCA-UAICC Covenant can be a witness for a treaty process which goes beyond, but includes, a legal dimension in order to establish a just and proper settlement.

In an attempt to form a framework through which the parallel issues of covenant and treaty can be discussed, I explore some fundamental questions concerning how the Uniting Church in Australia (UCA) sees its covenant with the Uniting Aboriginal and Islander Christian Congress (UAICC), ratified at the Seventh Assembly of the Uniting Church in 1994, as informing its understanding of treaty. What light does the covenant between the UAICC and the rest of the UCA shed on the current treaty debate and what light does the current treaty debate shed on the UCA-UAICC Covenant?

Central to this exploration is a theological understanding of covenant as it affects our sense of identity in this place; that is, how we read our situation and ourselves as Christians in Australia. I contend that covenanting in the Australian context involves a process of mutual liberation from the continuing colonialist effects of *terra nullius*.

For non-indigenous Christians covenanting is essentially a process of discovering how the privileged inheritors of *terra nullius* can unlearn empire and relearn the solidarity and partnership model which Jesus' ministry exemplifies.

Background - theological perspective

Before launching into a discussion about covenant and treaty, I would like to outline the theological perspective applied to engage with these issues. My perspective is framed by the belief that for Christians, (i) theology serves and informs discipleship and (ii) the belief that the fundamental theological problem for humanity is that of humanity's propensity for creating alienating power structures – or, as it is prsesented in the Bible – the problem of Empire.

"And the Word became flesh and dwelt [tabernacled] among us" – Theology and Discipleship

The indissoluble link between theology and discipleship is an important one for Christians to affirm. The whole point of theology is to inform and 're-charge' our discipleship. If and when gaps appear between the two, it is either a sign of the institutionalisation of theology (similar to when Peter suggests a dwelling for Jesus, Moses and Elijah at the transfiguration) and with it cheap grace[3] or a sign of neo-Pelagianism and with it a reduction of faith to the 'moralism of human activity'[4].

Theology/resurrection faith and discipleship/faithful action need to be seen as two sides of the same coin. One without the other is either headless or heartless (and 'footless'), that is, it remains unembodied. The basis of discipleship is at the table of the Last Supper where Jesus speaks of the blood of the covenant (Mark 14:22-25). The Last Supper is not merely an act of memorialisation but a linking of this new 'Jesus covenant' with renewing the past Exodus covenant, the solidarity with the poor (as it reminds the disciples of the crowd feeding stories), the *via crucis* that Jesus is

[3] Dietrich Bonhoeffer, *The Cost of Discipleship*, London: SCM Press, 1978, pp. 35f.
[4] Thorvald Lorenzen, *Resurrection and Discipleship: Interpretive Models, Biblical Reflections, Theological Consequences,* Maryknoll, New York, NY: Orbis Books, 1995, p. 62.

about to walk and the invitation to the *via crucis* discipleship journey.[5] For Christians, the Last Supper Covenant becomes the epistemological basis for understanding theology and discipleship.

In the light of the above, the Johanine phrase "and the Word became flesh and dwelt [tabernacled] among us" is instructive for theology in general and also in the context of how we may understand Christian Indigenous theological projects such as *Rainbow Spirit Theology*.[6] The Word being present here, in this land and place, indicates the need to be contextual in our theological methodology. A theology which exists outside context or outside our contextual discipleship response is a theology in danger of returning to that metaphysical never-never land of frozen doctrine. The Word is either en-fleshed and in-dwelling or it is a philosopher/theologian's folly, a plaything for the intellect. Theology, in a sense, begins when we enter into a real relationship with that 'flesh' in that place. For Christians in Australia, that 'flesh' is present in the crucified people of Australia - the indigenous, the marginalised and the poor.

For the church in Australia, our calling is to be with the crucified people in order to be with the crucified God.

Discipleship is about full participation in God's worldly sufferings. Christ mediates between us and the world, enabling participation in the world based on 'other-centred' existence and encounter 'through', 'with' and 'in' Christ. In this way, Christians participate in Christ's love for the world. As the community of disciples, the church is only the church "when it exists for others".[7] It does this by sharing in the suffering of God at the hands of a godless world. Only in the cross of reality can we find communion with God and participate in God's future. This means discipleship enables us to make our faith real and concrete.

The challenge to non-indigenous Christians in Australia is to view the world from the perspective of the poor in order to be active in mission and seek the Realm of God.

---

[5] Ched Myers, *Who Will Roll Away The Stone? Discipleship Queries for First World Christians*, Maryknoll, NY: Orbis Books, 1994, p. 150.
[6] This is likened to the Word 'camping' with Indigenous people in Rainbow Spirit Elders, *Rainbow Spirit Theology: Towards an Australian Aboriginal Theology,* Blackburn, Victoria: 1997, p. 59.
[7] Dietrich Bonhoeffer, "Outline for a Book", *Letters and Papers from Prison*, Abridged Edition, London: SCM Press, 1981, p. 140.

As Jürgen Moltmann and Douglas Meeks suggest in their article "The Liberation of Oppressors":

> Our part in God's history of liberation is to cease being the oppressors of the oppressed. And that means that we should see ourselves as persons who must ourselves be liberated.[8]

Along similar lines, Ched Myers, in *Who Will Roll Away The Stone?,* contends that discipleship today requires a process of literacy (understanding the Biblical text and the context of the world and its power structures),[9] 'dis-illusionment' (rejecting the dominant myths of power which privilege and possess us),[10] revisioning,[11] repentance[12] and relocation.[13]

For Myers, the process of literacy is concerned with a contextual appreciation of the biblical text. Not only does the biblical text require an understanding of its socio-political context but it also needs to be given the freedom to 'read' our context.[14] To be literate, in Myers' understanding of the term, First World Christians need to allow the biblical text to take us through a process of 'dis-illusionment'.[15] This means facing our denial concerning the state of the world,[16] asking the critical questions of the powers and authorities[17] and living a prayerful and missional life in solidarity with the poor and crucified of the world.[18]

The principle of relocation is central to Myers' approach to discipleship. In many respects, Myers concept of relocation develops an understanding of the costly nature of discipleship explored by Dietrich Bonhoeffer in *The Cost of Discipleship* and Athol

---

[8] Jürgen Moltmann with M. Douglas Meeks, "The Liberation of Oppressors", *Christianity and Crisis*, 38.20 (1978), p. 310.
[9] Myers, *Who Will Roll Away The Stone?,* pp. 45-47.
[10] Myers, *Who Will Roll Away The Stone?,* pp. 76f.
[11] Myers, *Who Will Roll Away The Stone?*, p. 111f.
[12] Myers, *Who Will Roll Away The Stone?*, p. 161f.
[13] Myers, *Who Will Roll Away The Stone?*, p. 200f.
[14] Myers, *Who Will Roll Away The Stone?*, p. xxv; also Gustavo Gutierrez, *We Drink From Our Own Wells*, Quezon City: Claretian Publications, 1984, p. 34.
[15] Myers, *Who Will Roll Away The Stone*, pp. 100f.
[16] Myers, *Who Will Roll Away The Stone?*, pp. 6-8.
[17] Myers, *Who Will Roll Away The Stone?*, pp. 22-29.
[18] Myers, *Who Will Roll Away The Stone?*, pp. 100-108.

Gill in *Life on the Road* and *Fringes of Freedom.*[19] Relocation means to move from the Courtyard of Empire to be with those whom God prefers: the poor and marginalised. It requires a change and a commitment of lifestyle and perspective. It requires that Christians leave their comfort zones. Relocation is the essence of discipleship.

Any understanding of discipleship begins with the call from our 'homes' to the journey with Christ. For those of us who are privileged, relocation involves "tearing down the walls of our own house"[20] and allowing ourselves to be touched by the reality of the oppressed.[21] Relocation enables solidarity but is an ongoing struggle as there are always aspects of our privileged background which can turn proximity to control because of the biases we may bring to situations.[22] It is this relocation which non-indigenous Christians need in order to be exposed to the reality of the crucified in the world and therefore the presence of Christ in the world.

"Always in the shadow of empire"[23] – Liberation and Jubilee.

The notion of 'Empire' refers to the systems of domination that have existed and continued to exist in this world.[24] In the Biblical story, Empire takes the form of Egypt, Canaan, Assyria, Babylon, Persia, Greece and Rome.[25] According to prophets such as Amos and Jeremiah, Judah/Israel was driven into exile because she became

---

[19] For example Bonhoeffer, *Cost of Discipleship,* p.79, where Bonhoeffer writes of the need for the disciple to break free of all earthy ties and bind themselves to Christ alone and Athol Gill, *The Fringes of Freedom: Following Jesus, Living Together, Working for Justice,* Homebush West, NSW: Lancer Books, 1990, pp. 35-41, *Life on the Road: The Gospel Basis for a Messianic Lifestyle,* Scottdale, PN: Herald Press 1992, pp. 87-112.
[20] Myers, *Who Will Roll Away The Stone?*, p. 202.
[21] Myers, *Who Will Roll Away The Stone?*, p. 206. Gill, *Life on the Road,* pp.99 – 101.
[22] Myers, *Who Will Roll Away The Stone?*, pp. 227f.
[23] Walter Brueggemann, *Texts that Linger, Words that Explode: Listening to Prophetic Voices*, Minneapolis: Fortress Press, 2000, p.73.
[24] Ched Myers, *Binding The Strong Man: A Political Reading of Mark's Story of Jesus*, Maryknoll, NY: Orbis Books, 1988, p. 6. Carrington, "Theologians Struggling to Cope at the End of an Era: Theological Educators Confronting a Multicultural World" in Jim Houston (ed.) *The Cultured Pearl: Australian Readings in Cross-Cultural Theology and Mission*, Melbourne: JBCE, 1988, pp. 12-14. Wes Howard-Brook and Anthony Gwyther use this concept as the basis for their commentary on the Book of Revelation in *Unveiling Empire: Reading Revelation Then and Now*, Maryknoll, NY: Orbis Books, 1999, p. 236. Walter Wink uses the term "the domination system" to describe this reality in Walter Wink, *Engaging The Powers*, Minneapolis, MI: Fortress Press, 1992, p. 9. Walter Brueggemann refers to the "royal consciousness" throughout, in Walter Brueggemann, *The Prophetic Imagination*, Minneapolis, MI: Fortress Press, 1978.
[25] Howard-Brook and Gwyther, *Unveiling Empire*, p. xxiii.

like Empire and forgot the marginalised and the stranger. In the context of First Century Jerusalem, Empire is particularly represented as Rome and the collaborating Judean authorities.[26] In this context, Jesus' mission to Israel can be seen as a response to the hierarchies following the way of Empire instead of the way of the prophets and the Jubilee. In a similar way, the church in the Christendom era began to follow the way of Empire. Instead of being with the poor and excluded, the church walked alongside and under the protection of the Empires of the West. This raises the question of whether the Church's collaboration with Empire represents a breaking of its covenant with Christ along parallel lines to the prophetic understanding of Israel's pre-exilic breaking of its covenant with YHWH.

In the modern era, Christian missionary zeal was culturally conditioned by belief in Western culture and that culture's right to subjugate 'uncivilised peoples'.[27] Don Carrington relates this aspect of Western imperialism to the concept of empire:

> One of the characteristics of colonial empires is that all subjects and colonies are expected to exist with one epistemology which governs all things. The Empire becomes a way of life and its religion becomes the monolithic determination of successful thinking, indeed the only successful epistemology possible. Throughout history, empires have had a way of co-opting religions and Christianity itself has had a sad history where it has been so co-opted.[28]

The various conquests of the Americas, Africa, Asia and Australia, whether it led to the conquered peoples' outright loss of sovereignty or their forced inclusion in the processes of Western trade, was accompanied by Christian missionary movements which in many cases assisted the process of Western domination. From the fifteenth to the seventeenth centuries, Catholic and Protestant rulers assumed that political hegemony would lead to submission to their religion.[29] When the expansion of the West to the rest of the world became primarily an economic or mercantile hegemonic process, missionary movements largely saw this economic expansion as a means to promote conversion to Christianity.[30] What was seen by some missionaries as a duty

[26] Myers, *Binding The Strong Man*, pp. 40-42.
[27] Myers, *Binding The Strong Man*, pp. 8-10.
[28] Carrington, "Theologians Struggling to Cope at the End of an Era", in Houston (ed.) *The Cultured Pearl*, p.12.
[29] David Bosch, *Transforming Mission: Paradigm Shifts in Theology of Mission*, Maryknoll, NY: Orbis Books, 1991, p. 303.
[30] Bosch, *Transforming Mission*, p. 303.

to 'uplift' the uncivilised became part of the hegemonic process of colonisation.[31] As Carrington suggests, "In the name of God, the epistemology of the empire ... considers that it has a mandate to expand and encompass the whole inhabited earth".[32]

To what degree did the missionary movement collaborate with the powers of domination in the modern era in similar terms to the religious leaders of Jesus' day who oppressed the marginalised and excluded the stranger? Rather than follow Christ's mission of participation in the struggles of the poor and oppressed, the missionary movements of the Christendom and modern eras, in most cases, reproduced the patterns of domination of the colonial powers and assisted in the oppression of the colonised people. There were some exceptions to this, including in Australia, but these are exceptions and often the critical difference was the primacy of language/culture learning for individual missionaries. In some situations, especially in parts of Australia, the missionaries were all that stood between survival and genocide.

Nevertheless, in the modern era:

> The entire Western missionary movement of the past three centuries emerged from the matrix of the Enlightenment. On the one hand, it spawned an attitude of tolerance to all people and a relativistic attitude toward belief of any kind; on the other, it gave birth to Western superiority feelings and prejudice.[33]

It is the message and method of Jesus' mission, not just the wisdom of hindsight, which raises questions about much of the activity of the Christendom missionary movement. The 'Great Commission' to make disciples became the justification for the subjugation of the peoples of the Americas, Africa, Asia and Australia. Ironically, faith in a God who is revealed on the cross often became an ideology of cultural supremacy. Proclamation of the 'Kingdom of God' largely became a promulgation of the kingdom of Western power. The message of liberation was mostly buried beneath the messages and methodology of Western domination.

---

[31] Bosch, *Transforming Mission*,, pp. 303f.
[32] Carrington, "Theologians Struggling to Cope at the End of an Era", in Houston (ed.) *The Cultured Pearl*, p.12.
[33] Bosch, *Transforming Mission*, p. 344.

Edward Said has written:

> Neither imperialism nor colonialism is a simple act of accumulation and acquisition. Both are supported and perhaps even impelled by impressive ideological formations that include notions that certain territories and people require and beseech domination, as well as forms of knowledge affiliated with domination: the vocabulary of classic nineteenth century imperial culture is plentiful with such words and concepts as 'inferior' or 'subject races', 'subordinate peoples', 'dependency', 'expansion', and 'authority'.[34]

This critique of imperialism and its effects on culture points to two key facets of the Christendom missionary model: the cultural environment of the missionary movement of the last five centuries and the use of Christianity as a form of knowledge which assisted the global expansion of Western 'Christian' nations.

Unfortunately we, non-indigenous Christians, did not understand "the strange new world of the Bible" (Karl Barth) and how it challenges any notion of Western superiority. The message of the Bible and its warnings against Empire and its promotion of the marginalised were largely ignored.

> The turn to the text in contemporary church life is urgent…precisely because the humanness of our society from a faith perspective depends precisely upon this deep strangeness and this surprising newness that stand outside the narratives and ideologies that govern most of our public life. It seems exactly correct to say that it is these 'outsider' claims of the text that refuse accommodation or domestication that may make a difference among us, an outsider status that freshly situates the church in society. … a fresh invitation to a healthy life in the world.[35]

Our position as non-indigenous children of empire is, theologically speaking, equivalent to Exile. Jeremiah and Ezekiel in particular represent Exile as punishment for the lack of justice by the monarchical hierarchy and the related decent of the tribes of Israel into the ideology and practice of Empire.[36] Are the churches in Australia suffering a sense of dislocation in this land because of the decline of Christendom,

---

[34] Edward Said, *Culture And Imperialism*, London: Vintage, 1993, p. 8.
[35] Walter Brueggemann, *Deep Memory, Exuberant Hope: Contested Truth in a Post-Christian World,* Minneapolis, MN: Fortress Press, 2000, p. xi.
[36] For example, Jeremiah 22 -23 and Ezekiel 34. Brueggemann, *Theology of the Old Testament; Testimony, Dispute, Advocacy*, Minneapolis, MN: Fortress Press, 1997, pp.614ff.

which of course is a worldwide phenomenon, and the challenge the legal dismissal of *terra nullius* has made to our self-understanding as a nation built on the supposed democratic/legal traditions of Great Britain? Are we an Exiled church that has broken its covenant with God by following the ways of Empire and living in the centre and not on the margins of British colonial hegemony? If so, I would contend that for the church to renew its covenant and regain God's trust in this land requires a covenant with the Indigenous peoples of Australia as the victims of colonisation.

Covenant in the Scriptures

The theme of covenant is acknowledged by most scholars to be central or at the very least foundational to Judeo-Christian faith.[37] There is a complexity of uses and understandings of the notion of covenant in the Scriptures. The purpose of this section is to provide a biblical framework for understanding the notion of 'covenant'. From this framework I will develop the notion of 'covenanting' as a theological conceptual tool for analysing the post-colonial relationship between Indigenous and non-indigenous peoples in Australia.

Covenant essentially defines God's relationship with humanity and creation. The narrative of covenant making and breaking in the Scriptures between God and the people helps read our current situation and the need for 'covenanting'. With Brueggemann and Masala, I would contend that there are two dominant covenant 'trajectories' in the Hebrew Scriptures, the Mosaic 'liberation' covenant and the Davidic 'status-quo' covenant.[38] In a sense these covenant trajectories are broad narrative streams. From the perspective of the anti-monarch prophetic tradition and Jesus ministry with those excluded from the status quo, it is the Mosaic 'liberation' story which helps us discern a biblically informed Christian theology of covenanting.

[37] For detailed discussion see George Mendenhall, *Law and Covenant in Israel and the Ancient Near East,* Pittsburgh: Biblical Colloquium, 1955; Klaus Baltzer, *The Covenant Formulary*, Philadelphia: Fortress Press, 1971; Walter Brueggemann, *A Social Reading of the Old Testament: Prophetic Approaches to Israel's Communal Life*, Minneapolis, MN: Fortress Press, 1994, pp. 43 – 69.

[38] Walter Brueggemann, "Trajectories in Old Testament Literature and the Sociology of Ancient Israel" in Norman Gottwald and Richard Horsley (eds) *The Bible And Liberation: Political and Social Hermeneutics,* Maryknoll, NY: Orbid Books,1993. Itumeleng Mosala, *Biblical Hermeneutics and Black Theology in South Africa,* Grand Rapids: Eerdmans, 1989, pp. 105f.

This 'liberation' narrative informs an understanding of covenant which involves the themes of creation, Jubilee and the connecting theme of Sabbath.

In the Hebrew Scriptures, the first covenant occurs in the story of Noah and the Flood (Genesis 9: 9-17) which itself implies a creation covenant. This is an unconditional covenant and can be characterised as a divine promise.[39] God's covenant with Abraham (Genesis 15 and17) indicates God's gracious desire to partner with Abraham and his descendants as a blessing for all nations. This covenant can also be characterised as a divine promise but one that implies and assumes a faithful journeying by Abraham and his descendents.[40]

The critical covenant for the Israelites is the Covenant Code (Exodus 20-23). This covenant provides a past and future focus for the relationship between God and the Israelites – God as liberator becomes the codifier for human relationships with God, neighbour and creation. In the shadow of empire and with the promise of deliverance, God tells the Israelites – "I will take you as my people and I will be your God" (Exodus 6:7), in other words, the relationship between God and the people is bound up in this journeying together. In fact, in the very act of deliverance the people will know who God is. God is known in God's desire for justice and solidarity with God's people.[41]

The Joshua 24 covenant-renewal passage creates a stronger sense of obligation for the people who must serve God as Lord and agree to the statutes and ordinances Joshua has worked out for them. The Joshua tradition is problematic because of its emphasis on conquest and divine right to the land allotments given to each tribe.[42] This deepening complexity in the covenantal relationship between God and people is seen as abandoned in the 'new covenant' of Jeremiah 31:31-34. God gives the Israelites another chance with a covenant which places the law in the hearts of each

---

[39] Claus Westermann, *Genesis: A Practical Commentary,* Grand Rapids, MI: William B. Eerdmans Publishing Company, 1987, p. 66.
[40] Walter Brueggemann, *Theology of the Old Testament,* p.419, and Westermann, *Genesis,* p.119.
[41] José Miranda, *Marx and the Bible: A Critique of the Philosophy of Oppression*, London: SCM Press, 1977, p.79.
[42] Norman Habel, *The Land is Mine: Six Biblical Land Ideologies,* Minneapolis, MN: Fortress Press, 1995, pp. 71-74.

person so that all will know God and the iniquity of the people will be forgiven. The emphasis is on egalitarianism and less dependence on structures of power.

These covenants within the Scriptures can be seen as linking the themes of creation, liberation and justice. Despite humanity's hubris, evil and hardness of heart, God covenants with creation and humanity (Noah and the Flood), a people called out of settled society (Abraham), an enslaved people (Exodus), a faithless and exiled people (Jeremiah) and finally all of humanity once more through Jesus. It all concerns the journey of God to return humanity to the Sabbath day perfection of creation. In Exodus, God's creation of a covenantal code for human ethical and legal behaviour is contextualised within God's creative activity as a whole through the perspective of Sabbath.[43] Prophets such as Jeremiah (34: 13-16) emphasise the link between covenant with Sabbath as a way of understanding the Exile.[44] Jesus' ministry is closely linked to the revival of the Sabbath tradition (Luke 4:18f).[45] Many of Jesus 'offences' according to the authorities were based on His prophetic stand on Sabbath.

A key biblical metaphor for the coming Realm is the Jubilee year. The Jubilee year is the celebration of the Sabbath's sabbath, the fiftieth year (Leviticus 25) when each family recovered and returned to their original allotment of land, the soil was left fallow, debts were remitted and slaves were liberated. The point of Jubilee was to remember that it was God who liberated the Israelites from Pharaoh's rule (Leviticus 25:38) and therefore no Israelite was ever to be a slave again. Similarly, the land was seen as belonging to God and therefore was to be given rest. From this perspective we can see how covenant is linked to land and creation through the graciousness and justice of Sabbath. Covenantal faithfulness to God also means being faithful to creation and our neighbours.

Brueggemann in *Theology of the Old Testament* looks at some of the key aspects of Israel's self-understanding in the light of its covenant with God.

---

[43] Ross and Gloria Kinsler, *The Biblical Jubilee and the Struggle for Life*, Maryknoll, New York NY: Orbis Books, 1999, pp. 36f.
[44] Ched Myers, *The Biblical Vision of Sabbath Economics*, Washington DC: The Church of the Saviour, 2001, p. 21.
[45] Kinsler, *The Biblical Jubilee and the Struggle for Life,* p.104.

> In Israel's testimony, Yahweh's covenant with Israel is pervasive and definitional for Yahweh, if we keep to a broad theological characterisation of covenant as an enduring relationship of fidelity and mutual responsibility.[46]

But Yahweh's covenantal relationship also includes the possibility of divorce; this was as experienced as momentary abandonment during the Exile. The Exile is punishment for faithlessness; a faithlessness characterised by the desire to have kings, the inability to look after the widows, orphans and strangers, and idolatry.[47] In fact the faithlessness actually pollutes the land that has been promised in the covenant.[48] "Israel survived, not because of its own staying power, but because Yahweh's covenantal engagement was deepened and intensified in pathos, through the reality of the exile."[49] In this and other ways, Yahweh's passion is not just jealousy but "also refers to a propensity to suffer with and suffer for, to be in solidarity with Israel in its suffering, and by such solidarity to sustain a relationship that rightfully could be terminated."[50]

For the Israelites, covenant is more than formal agreements or legal duties; it is about the dynamics of relationship, about love. This love has depth and context; perhaps it is a love first expressed at creation with God's sense of delight in creation (Genesis: 1:31); a love which appears to be unrequited in the Flood story (Genesis 6: 6);[51] a love which could be said to also inform God's promise of land for the Israelites; a love which includes custodianship; a love which also means the practice of Sabbath-based justice on that land;[52] a love that is again spurned and denied when injustice is perpetrated leading to exile;[53] a love which sustains the people during exile.[54]

---

[46] Brueggemann, *Theology of the Old Testament,* p.297.
[47] Gerhard von Rad, *Studies in Deuteronomy,* London: SCM Press, 1953, pp. 74-91; Jacob Neusner, *Understanding Seeking Faith: Essays on the Case of Judaism,* Atlanta: Scholars Press, 1986, Vol.1, pp. 137-141; Walther Zimmerli, *I am Yahweh,* Atlanta: John Knox, 1982, pp. 111-133.
[48] Habel , *The Land is Mine,* p. 80.
[49] Brueggemann, *Theology of the Old Testament*, p. 299.
[50] Brueggemann, *Theology of the Old Testament*, p. 299.
[51] God is grieved in the heart for the evil which is continually in the hearts of human beings. As Indigenous theologian Wali Fejo puts it "God also suffers because this evil violates the sacred, the Earth where God is present. The 'sorry' of God is the deep hurt God feels because of a deep hurt in the Earth." Wali Fejo, "The Voice of the Earth: An Indigenous Reading of Genesis 9", in Norman Habel and Shirley Wurst (eds) *The Earth Story in Genesis*, Sheffield: Sheffield Academic Press, 2000, p. 142.
[52] Kinsler, *The Biblical Jubilee and the Struggle for Life,* pp.38f.
[53] Brueggemann, *A Social Reading of the Old Testament,* pp. 62f.
[54] Kazo Kitamori, *Theology of the Pain of God,* Richmond: John Knox, 1965, pp. 151-167; Brueggemann, *Theology of the Old Testament*, pp. 435f.

For Christians, Jesus' covenant is an even deeper expression of Yahweh's solidarity. Yahweh enters into our suffering through the suffering of Christ. It is a question of epistemology and ontology. The ground of our knowing and being is through the crucified one's covenant with us – a covenant remembered in the wine and bread of communion. Like the disciples at Emmaus, we know Christ in the breaking of the bread. For the Israelites, their knowledge of God is due to God's action in delivering them from the injustice of Pharaoh. God's covenantal partnering creates an epistemological basis for the Israelites and that is what defines and explains the world around them. Further to this, as explained in Jeremiah, to know YHWH is to do justice (Jeremiah 22: 13-16). Doing justice, as those who were liberated from injustice, is the appropriate covenantal response to a gracious God and the way through which God and God's creation can be seen.[55] In Christ, God not only makes a new covenant with humanity but is embodied in the covenant through the sacrifice of the Son. Covenanting is therefore a way of seeing the world according to God's solidarity with humanity and creation.

This covenant also enables us to enter into the suffering of others in solidarity.[56]

> I understand covenant in our time and place to be a radical alternative to consumer autonomy, which is the governing ideology of our society and which invades the life of the church in debilitating ways.
> … the 'other' is not simply a counter-object, but it is the risky, demanding, dynamic process of relating to one who is not us, one to whom we are accountable, who commands us, and from whom we receive our very life.[57]

In 'the other' of the Indigenous peoples of Australia, Christians find Christ.

Sovereignty and counter-narrative

Learning to Read

Our faith and our covenantal relationship with God demands from us an epistemology based on our honest struggling with God's story and letting that struggle inform our

[55] Miranda, *Marx and the Bible*, pp. 44f.
[56] Jürgen Moltmann, *The Church in the Power of the Spirit,* London: SCM Press, 1978, pp. 128f.
[57] Walter Brueggemann, *The Covenanted Self: Explorations in Law and Covenant,* Minneapolis, MN: Fortress Press, 1999, p. 1.

understanding of the world. To be healthy we need to be formed by the text of faith and not – as non-indigenous people – by our colonial privileges. This leads to some strange questions. After all, what is stranger - to recognise the sovereignty of Indigenous nations or to recognise the imposed sovereignty of the British Empire? The ultimate sovereignty is that of God – but how does God rule? Through the deep memory and resistance of the Indigenous nations? Through the marginalised and the powerless? Through the crucified? Our task is one of sub-version - as Brueggemann has put it – that is, to subvert the dominant version of reality.[58] The dominant narrative of Australia's history is that a land barely inhabited and for all intents and purposes a *terra nullius* – an 'empty land' - was settled by Britain introducing civilisation. The sub-version or counter narrative told by Indigenous peoples is that their country was invaded – leading to death by disease and force, dispossession and dislocation. The laws of Indigenous peoples were ignored, as was the spiritual/political/legal nature of their custodial role in relation to land and waters.

When we in the UCA talk of covenant between Indigenous and non-indigenous people, we are suggesting that our particular way of expressing God's covenant through Jesus with us is through walking alongside this understanding. Our duty to be subversive in terms of the history of Empire becomes an invitation to subvert the dominant understanding of our history and our foundation as a nation. In the light of our particular Australian covenant, the beginning point is not 'Australian civilisation' but the history of the crucified – in this case the Indigenous – in this land. For example, I would suggest – provocatively – that to fuss over how many Indigenous people were stolen from their families is as useful as measuring the benefits of the Exodus for the Israelites. To suggest that Indigenous children were removed from their families for their best interest is like suggesting that Pharaoh treated the slaves in a benevolent fashion. Even if it were true to say that the Israelites had better food under Egypt than in the wilderness or in Palestine, it does not intrude on the profound truth of Exodus[59]. Liberation is about freedom and truth not prosperity, comfort or security.

---

[58] Brueggemann, *Deep Memory, Exuberant Hope,* p. 5.

[59] There is insufficient space to discuss the question of whether the Exodus liberation of the Israelites merely led to the Joshua conquest of the Canaanites let alone get into the debate of who were the Canaanites. As Norman Habel, points out throughout *The Land is Mine: Six Biblical Land Ideologies,* Minneapolis, MN: Fortress Press, 1995, there are many different perspectives in the Hebrew Scriptures

A Terra Nullius Epistemology

It is my contention that, for those of us who are non-indigenous Christians, the first step in our journey with Indigenous people is to acknowledge that our self-awareness is in part determined by our colonial or *terra nullius* epistemology. *Terra nullius* is most obviously present in the crown law's understanding of the land. Historically, our legal system did not recognise indigenous traditional ownership or rule. The doctrine of *terra nullius* meant that questions of prior indigenous ownership were ignored. The High Court's Mabo Decision of 1992 declared that the doctrine of *terra nullius* was no longer valid due to the operation of the *Racial Discrimination Act (RDA) 1975*. The legal effect of the RDA meant that the law could no longer discriminate on the basis of race therefore *terra nullius* was invalid as it was a racially discriminatory legal doctrine.

What emerged from the Mabo Decision was the notion of 'native title' which was based on English common law principles. Land which had not been taken away before the proclamation of the RDA could therefore be subject to a native title claim. Native title rights remain where there is a 'continuing connection' with the land based on the customs and traditions of the particular indigenous group making a claim. While Mabo was a great conceptual leap in terms of challenging our *terra nullius* epistemology, the legal right which emerged did not deal with ultimate questions of sovereignty or recognition of Indigenous law or governance. Even when it comes to native title, *terra nullius* retains its power as native title legislation serves to protect non-indigenous people from the land claims of the Indigenous.

But it is not only in terms of the law that *terra nullius* has its effect on our self-understanding as non-indigenous Australians. The epistemology of *terra nullius* can also be seen in our cultural products - such as the colonial paintings of John Glover.

(see for example pages 10 –16). I would suggest, along with Ched Myers, Jürgen Moltmann, Walter Brueggemann and Norman Gottwald (among others), that the Christian perspective is derived from Jesus' affinity with the prophetic tradition in the Hebrew Scriptures and that therefore the traditions of liberation and Jubilee provide the essential lens through which the rest of the Hebrew scriptures are understood. The Exodus story and the wilderness story essentially speak of the faithfulness of God toward a people enslaved by and liberated from Empire.

"Glover thought the blacks an error of taste and an intrusion: he painted them as nasty little cacodeamons"[60]

Even more significantly, *terra nullius* is there in our 'disremembering', in our one-colour view of history which has only been revealed in recent times by historians like Henry Reynolds. *Terra nullius* is there in our naming Indigenous spirituality and connection with the land as pagan.

> The notion that Australia is a young country, devoid of the sacred, is thus directly linked to the colonialist-supremacist idea of Australia as *terra nullius*, empty land, which the colonials had every legal and moral right to appropriate.... Our poets have long been aware of this fallacy, as in A.D.Hope's poem *Australia*: 'They call her [Australia] a young country, but they lie.' And Prime Minister Paul Keating announced: 'The great myth about Australia is that we are young. We're not. Not only is this the oldest continent and Aboriginal Australia the oldest society on earth, this multicultural Australia is also old.[61]

Terra nullius is there in our myths and legends. The notion of the nation riding on the sheep's back or of seeing ourselves as victims (of distance or of nature or authority), not oppressors.[62] Ironically, in our search for place and meaning in a post-modern age in this land, the non-indigenous are trying to get in touch with the spirituality of the land, at the same time that, in their search for rights and access to our legal system, Indigenous people are forced to translate their spirituality into material terms. [63]

Reading things differently

As church, our epistemology must run counter to *terra nullius*. Our covenantal relationship with the liberating God of Exodus and the suffering God of the Gospel demands that we see history and reality from the perspective of the marginalised.[64]

---

[60] Robert Hughes, *The Art of Australia*, Harmondsworth: Penguin Books, 1970, p. 42.
[61] As quoted in David Tacey, *ReEnchantment*, Blackburn: Harper Collins, 2000, pp. 77f.
[62] Ann Curthoys, "Mythologies" in Richard Niles (ed) *The Australian Legend and its Discontents*, St.Lucia: University of Queensland Press, 2000, p.13.
[63] Ken Gelder and Jane Jacobs, *Uncanny Australia: Sacredness and Identity in a Postcolonial Nation*, Melbourne: Melbourne University Press, 1998, pp. 1f.
[64] For examples of this view. Karl Barth, *Church Dogmatics, Vol. II, Part I,* New York: Scribner's, 1957, p.386. Dietrich Bonhoeffer, "After Ten Years" in John De Gruchy (ed)*, Dietrich Bonhoeffer:*

The radical solidarity of God, which the scriptual covenants assert, necessitates a solidarity response by the church. Our remembering of God's covenant with us leads to a resonance with the remembering of the victims of empire. Brueggemann suggests that, "Israel as an intentional counter community practiced relentless, dense memory as an alternative to the co-opting amnesia of the empire."[65] Did the church in Australia? Or were we largely co-opted by the myth of the sheep's back - the great pastoralist myth - forgetting (not knowing) that it was on the back of sheep that the European germs were carried which often killed Indigenous people and it was for the sake of sheep that the environment was changed to the detriment of Indigenous economy and ecology? Did we maintain liturgies of compliance in buildings which represented the dominance of Christendom? Did the church arrive here on the coat tails of empire? Does not the story of Indigenous people equate more with the stories of the Israelites and the Christians told in the Bible than ours as invaders?

Christians need to read history, as Said suggests, "not univocally but contrapuntally, with a simultaneous awareness both of the metropolitan history that is narrated and of those other histories against which (and together with which) the dominating discourse acts."[66]

Non-indigenous Christians need to get hooked into the stories of both the Bible and Indigenous peoples. Remembering is a process of identity formation, survival and protection for Indigenous people. The Hebrew and Christian scriptures also came out of a similar process. If we are to ground our theology in this land, we need to begin by getting hooked into the stories of struggle, survival and liberation of the Bible and the peoples of Indigenous Australia.

Covenant and Treaty in Australia

Covenanting in Australia – being faithful, being witnesses.

Witness to Jesus Christ, London: Collins Publishers, 1988 p. 268; Gustavo Gutierrez, *The Power of the Poor in History,* London: SCM Press, 1983, pp. 3-22.

[65] Walter Brueggemann, *Texts That Linger, Words That Explode: Listening to Prophetic Voices*, Minneapolis, MN: Fortress Press, 2000, p. 61

[66] Said, *Culture and Imperialism,* p. 59.

How does the church form a covenant in the context of a post-colonial, post Christendom invader-collaborating church with a community that has been dispossessed and marginalised by colonialism and Christendom? The UCA has a covenant relationship with the Uniting Aboriginal and Islander Christian Congress (the Congress). The biblical word 'covenant' involves not only the notion of 'reconciliation' but a deeper sense of partnership and solidarity in the sight of God. Covenanting means seeing the relationship between Indigenous and non-indigenous as a critical measure of the degree to which the church is faithful to God's purposes in this land. That is, the extent to which the UCA lives out its covenantal relationship with God. Covenant for us therefore has both a formal nature and spiritual nature, in a sense it is both a negotiated agreement and a spiritual relationship in which we are bound together by Christ, not as oppressor and victim but, in our context in Australia, as children of *terra nullius*. We are both 'out of Empire' and being moved towards God's Realm; our journeys are different but complementary. So the covenant is a declaration of commitment to journey together in our different ways with God as revealed by God's crucified son.

In the contextual discussion regarding relationships between Indigenous peoples and non-indigenous people in Australia, there are related questions concerning both the notion of treaty and covenant. There are similar criteria through which both can be tested. A treaty is basically a negotiated framework agreement. Obviously a treaty made centuries after invasion will have a different character to a treaty made directly after a colonial war. The current discussion of the notion of treaty amongst the indigenous community is still at its early stages. An emerging perspective is that one national treaty may provide constitutional protection for a variety of local treaties with local indigenous nations as well as the rights of indigenous people in general. The treaty or treaties may have both legal and symbolic dimensions. Acknowledgement of the past and some form of restorative justice could be included in these treaties. Critical issues will involve the co-existence of indigenous peoples sovereignties and rights to self-determination as distinct local peoples.

The UCA-UAICC covenant is primarily symbolic but does commit the church to seeking forms of acknowledgement and restorative justice. In this way, the parallels between a national treaty formation process and the covenanting process in the UCA

may shed some light on both processes. The questions for the UCA regarding the covenant relate and may be equivalent to the general national question of treaty (or treaties). For example, does the UCA-UAICC covenant recognise or provide real self-determination for the UAICC? Is it in opposition to the determination of Empire? Does it enable identity and the freedom to be community in the face of domination? Does it enable the process of decolonisation and community empowerment?

Paolo Freire, in noting the principles of community development, suggests that dominant culture's role is to dialogue and raise issues rather than impose. Hopefully, from real dialogue will emerge a genuine sharing of different worldviews.[67] In this context, the UCA-UAICC covenant is concerned with establishing an appropriate relationship between an Indigenous church seeking freedom from domination and a non-indigenous church seeking to be cured of empire in order to be true to the covenant with Christ and God.

To do this, we must beware of behaving according to surrogates for solidarity. Ched Myers points out that there are three barriers to genuine solidarity - charity, paternalism and control.[68] Charity "seeks to mitigate social problems without a clear commitment to or strategy for eradicating them".[69] Paternalism makes us imagine that we (dominant culture) can fix the problem for the marginalised which leads to, among other things, a failure to equip the oppressed to solve their own problems.[70] Lastly, our "dominant cultural need for control"[71] means that nothing really changes in our relationships. Solidarity is an issue of partnership, that is the need to take specific roles and remain in the background, our primary role being to struggle with our own - the entitled.[72] Self-determination is critical for this relationship so that we do not replicate 'Empire'.

We need therefore to ask ourselves these critical questions of both the UCA-UAICC relationship and the whole notion of treaty. The critical question is whether self-determination has occurred in our structures. Self-determination needs to be more

[67] Paulo Freire, *Pedagogy of the Oppressed,* Great Britain: Penguin, 1972, p. 68.
[68] Myers, *Who Will Roll Away the Stone,* p. 278.
[69] Myers, *Who Will Roll Away the Stone,* p. 278.
[70] Myers, *Who Will Roll Away the Stone,* p. 279.
[71] Myers, *Who Will Roll Away the Stone,* p. 280.
[72] Myers, *Who Will Roll Away the Stone,* p. 283.

than rhetoric. Many critics of the implementation of self-determination as a national government policy of the 70s and 80s would suggest that what has actually occurred is a policy of abandonment.[73] Many current supporters of self-determination as a policy believe that capacity building and support for understanding the intersection between traditional and modern governance processes are needed for the long term survival of self-determining indigenous communities in the post-colonial context.[74] Within the relationship between the UCA and the UAICC has decolonisation and empowerment occurred? Has the UAICC been given the resources and the capacity to provide ministry to Indigenous peoples? Has the UAICC been given the oversight? Are we operating as a church in solidarity and partnership?

Covenanting for the church is about more than the formal nature of our relationship between indigenous and non-indigenous. It is also a spiritual issue – one that creates the possibility for a renewal in our mutual discipleship journey in this place. A way of being and seeing which may be a witness to the rest of the Australian community about how the children of colonisers and the colonisers can discover mutuality and just relationships.

Importantly, the UCA does not see covenanting as merely a concession to indigenous peoples. There is a mutuality in the benefits of this developing relationship through Christ and before God in this land. Covenanting is a way through which non-indigenous people can enter into relationship with Jesus and Yahweh as expressed in this historical struggle for a just relationship between non-indigenous and Indigenous Australians. Covenanting is a way through which we may rediscover mission in our particular cross-cultural context. The mistakes of the Christendom model of mission, particularly in terms of assisting imperialism and creating dependency, have led to the desire by many mainstream churches to relearn mission in a way which is based on mutuality and self-determination.[75] It is also a call for the church itself to be converted. As Darrell Guder suggests:

---

[73] Richard Trudgen, *Why Warriors Lie Down and Die,* Darwin: ARDS Inc., 2000, pp.43-59.
[74] Dr William Jonas, *Aboriginal and Torres Strait Islander Social Justice Commissioner – Social Justice Report 2001,* Sydney: Human Rights and Equal Opportunity Commission, 2002, pp. 67-100.
[75] C. S. Song, *Christian Mission in Reconstruction - An Asian Analysis*, Maryknoll, NY: Orbis Books, 1977, p. 31.

> Mission is to be a continuing process of translation and witness, whereby … [the church] will be confronted again and again by the gospel as it is translated, heard, and responded to and will thus experience ongoing conversion while serving as witness.[76]

How are we to hear the gospel anew in this place? For the church, covenanting may establish a relationship based on the land and deal with our mutual need for rootedness.

> The sense of being lost, displaced, and homeless is pervasive in contemporary culture. The yearning to belong somewhere, to have a home, to be in a safe place, is a deep and moving pursuit.[77]

Norman Habel notes how, in Jeremiah, the land is seen as God's holy home and therefore the place where God's people also belong.[78] Brueggemann suggests, "The Bible itself is primarily concerned with the issue of being displaced and yearning for a place."[79]

> ... it is rootlessness and not meaninglessness which characterises the current crisis. There are no meanings apart from roots. ... This sense of place is a primary concern of this God who refused a house and sojourned with his people (2 Samuel 7:5-6) and of the crucified one who 'has nowhere to lay his head' (Luke 9:58).[80]
>
> Place is space which has historical meanings, where some things have happened which are now remembered and which provide continuity and identity across generations. Place is space in which important words have been spoken which have established identity, defined vocation, and envisioned destiny. Place is space in which vows have been exchanged, promises have been made, and demands have been issued. Place is indeed a protest against the unpromising pursuit of space. It is a declaration that our humanness cannot be found in escape, detachment, absence of commitment, and undefined freedom.[81]

---

[76] Darrell Guder, *The Continuing Conversion of the Church,* Grand Rapids, MI: William B. Eerdmans, 2000, p. 69.
[77] Walter Brueggemann, *The Land: Place as Gift, Promise, and Challenge in Biblical Faith,* Philadelphia: Fortress Press, 1977, p. 1.
[78] Habel, *The Land is Mine,* p. 80.
[79] Brueggemann, *The Land*, p. 2.
[80] Brueggemann, *The Land*, p. 4.
[81] Brueggemann, *The Land*, p. 5.

In a similar vein, Ched Myers notes the need for 're-place-ment' for the non-indigenous inheritors of the spoils of colonisation, recognising that many of the displacers were themselves displaced by the process of modernisation in Europe.[82]

Treaty and covenant in this context is about defining relationships as peoples before God in this place. Will a covenantal relationship between Indigenous and non-indigenous peoples enable a treaty process which is a fair and legal expression of a just and appropriate relationship? Perhaps the UCA-UAICC 'covenant' can be a witness to a post-colonial, culturally appropriate, non-domination based journeying which is built on mutuality and capacity building through partnership. This capacity building must enable the Indigenous cultures and the dominant culture to engage with each other in trust. While, historically, treaties were often an imposition by the conqueror to the conquered, a modern treaty based on human rights, decolonisation and self-determination can create a space for resolution and unity for this nation. Indigenous people need a treaty so that their very humanness, in all its practicalities of politics and law, can be recognised. We, the non-indigenous, also need a treaty, a covenant because the ghost of *terra nullius* is an insult to our humanity too. A treaty may become a pathway towards our deep need to belong to this place. For Christians, it may become a pathway through which we can renew our faith from the perspective of the marginalised narrative of the Bible - a pathway towards our need to unlearn empire. Treaty for the non-indigenous is grace – not only because it offers us a legitimacy we do not deserve – not only because it offers us a forgiveness we do not deserve - but it gives us the hope that God can rebirth us as a people who may one day belong to the blessed land and not just rootless colonial shadows scarring the land.

[82] Myers, *Who Will Roll Away the Stone,* pp. 341-346.

Biographical Details

Peter Lewis is the National Director of the Covenanting agency of the National Assembly of the Uniting Church in Australia. He has a Masters in Theology and is the author of two Coolamon College courses – *Introduction to Mission: The Stone in the Pond* and *Global Discipleship – Mission, Justice, Development*. Peter is also involved with *Australians for Native Title and Reconciliation, Faith Communities for Reconciliation* and *the National Sorry Day Committee.*

Abstract:

This article attempts to facilitate theological discussion about the Uniting Church in Australia's covenant with the Uniting Aboriginal and Islander Christian Congress and how it relates to the current treaty debate. It is not only a question of analysing how the churches can engage in the treaty debate but also how the treaty debate can inform the relationship between non-indigenous and Indigenous Christians. Given the complexity of scriptural understandings of covenant this article needs to be seen as an exploration which raises questions rather than seeks to establish a definitive position. The article first establishes a theological framework for understanding the issues of covenant and treaty on the basis of the mutually informing relationship between theology and discipleship and the theological problem of empire. The second section briefly reviews the understanding of covenant in scripture particularly from the perspective of Walter Brueggemann. The third section looks at the issue of Indigenous counter-narrative to the dominant narrative of terra nullius in Australia. In the final section the article begins to develop a framework for theologically understanding covenant and treaty.