

Treaties? The impact of inter-racial violence in Tasmania on proposals for negotiating agreements with Aboriginal people in Western Australia in the early 1830s.

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1. Introduction

My paper examines the origin, outcomes and significance of three proposals that were made for negotiating agreements with Aboriginal people in Western Australia in the early to mid-1830s. These proposals were made after violent conflict between Aborigines and settlers over land and resources during a period of economic depression in the Swan River Colony. These conflicts were believed by Lt-Governor George Arthur in Tasmania and some settlers in Western Australia to be attributable to the failure of government policy to provide reparation to Aboriginal people for the loss of their lands.

The proposals in the early 1830s were made in the aftermath of the 'Black War' in Tasmania that was estimated to cost the British government £30,000.¹ It was feared that a similar war, coupled with the precarious economic predicament of the relatively small settler population in the Swan River Colony, might force the colony's abandonment. Unlike the first two proposals, the last proposal for an agreement was initiated by local Aboriginal tribes in the Swan District in 1836. It was seriously considered by the Executive Council at a time when there was some expectation of a shift in Imperial policy on Aboriginal land rights, following Secretary of State Lord Glenelg's policy on South Australia, the 'Batman treaty' and the initiation of the Aborigines Committee Inquiry in the House of Commons.

II. The First proposal

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¹A.G. L. Shaw, *Sir George Arthur*, Carlton, Melbourne University Press, 1980, p.131; H. Reynolds, *Fate of a Free People*, Ringwood, Penguin, 1995, pp, 100-101.

By 1831, the increasingly violent conflict in Perth between Aborigines and settlers had reached the Upper Swan Agricultural region (24 kilometres from Perth), where settlers complained of property losses and threats to their economic livelihood. In the same year, an Agricultural Society was formed with Lt. Governor James Stirling, as patron, Colonial Secretary Peter Brown and Military Commandant Captain Irwin, as directors, all of whom had farms in the Upper Swan.² The Society acted as the only lobby group at a time when there was no elected assembly.

On 26 June 1832, Agricultural Society members met to demand a solution to the problem of settler-Aboriginal conflict and in particular the question of their livestock being taken by local Aboriginal people.³ One member who attended the highly charged meeting was charismatic Robert Lyon. Lyon was knowledgeable in classical history and languages, a self-appointed Evangelist and one of the first to receive a grant of land (of 3813 acres) in the Upper Swan. The meeting was chaired by Michael Clarkson (a relative of Thomas Clarkson of the anti-slavery movement in England), with Irish barrister and farmer George Fletcher Moore as Secretary.⁴ In 1834, Moore was to become Advocate General and an influential member of the Legislative and Executive Councils.

Lyon feared that ‘sanguinary measures’ might be taken and recommended calm. He addressed the crowd on Aboriginal rights in his best oratorical style:

Gentlemen – have you a father land? So have the aboriginal inhabitants of this country. Have you wives and little ones? So have they. Have you herds and flocks, and fowls? So have they the kangaroo, the opossum, the Swan, the pelican, the duck, the cockatoo, the pidgeon, the quail. Have you the rights of men? What has expunged theirs from the book of nature? Have you lands that have descended to you by inheritance? So have they. These lands have descended to them from their forefathers from time immemorial. And their title deeds require no wrangling of lawyers to provide them to be correct. They bear the seal of heaven the sanction of Him who divided to the nations their inheritance. They are indisputable – Reflect you have seized upon a land that is not yours. Beware, and do not

² *The Journal of the Agricultural and Horticultural Society of Western Australia*, 1842, Vol. 1, (Mitchell Library). The Society was established in the Upper Swan on 30 June 1831.

³ Decision ‘of meeting to alleviate settler-native conflicts’, 26 June 1832, Enclosure to Despatch from Stirling to Goderich, 20 September 1832, SRO (State Records Office of W.A.), WAS 1180, CONS 42/1, p.170.

⁴ Ibid.

as a people, add to this the guilt of dipping your hands in the blood of those whom you have spoiled of their country.⁵

Lyon's speech probably had a calming effect on the hostile crowd because twenty five farmers signed a resolution that a 'misunderstanding' existed between settlers and Aborigines, and called on the colonial government to take either coercive or conciliatory measures.⁶ Settlers also criticised British government policy that imposed a land tax and declared that they should be able to protect their own property, with soldiers only to be used in cases of combined attack from Aborigines. It was concluded that settlers would only act in self-defence but that if something was not done then the advantages of remaining in the colony would be outweighed by the danger to which settler's lives and property were being exposed. Lyon was instrumental in achieving an additional resolution that an agent be immediately appointed 'to go among the natives to endeavour to conciliate them with a view to the adoption of such collective measures as shall appear desirable.'⁷

In August 1832, Stirling took a copy of the resolutions and other petitions that sought a return to the free land grant system and financial assistance, on his unauthorised mission to England.⁸ In response to the meeting, he had established a small mounted police force comprised of two Superintendents and a few soldiers, until Xhosa people from the Cape Colony with horses could be employed to track Aboriginal people and funds from the British government could be obtained.⁹

Although the meeting of farmers had concluded that they would act only in self defence, Lyon had doubts that, given the high level of hostility, calm would result. He therefore urged the settlers (many of whom were magistrates) to hold an urgent meeting on July 1832 to discuss the resolution that an agent be appointed for reaching a friendly

⁵ R. Lyon to Secretary of State, Lord Goderich, 1 January 1833, AJCP, CO 18/11, Reel 298, pp. 140-144.

⁶ Enclosure, Despatch from Stirling to Goderich, 20 September 1832, SRO, WAS 1180, CONS 42/1, p.176.

⁷ Ibid.

⁸ Ibid.

⁹ Minutes of the Executive Council, 31 July 1832, AJCP, CO 20/1, Reel 1117-8, p.76.

understanding with Aboriginal tribes.¹⁰ The resolution calling for an agent to enter into a peaceful agreement with Aboriginal people was the focus of discussion among magistrates and farmers at a meeting held on 29 July 1832 at magistrate Henry Bull's farm on the Upper Swan.¹¹ Those present included senior magistrate William Locke Brockman (who had the largest sheep flock and land of any colonist), William Tanner J.P., Moore, William Shaw, David Thompson and other Upper Swan settlers.¹² By this stage it was public knowledge that Irwin would be Acting Governor, which gave Lyon renewed confidence that his proposal would be accepted.¹³ Lyon persuaded the wealthier settlers that it was in their interests to send a proposal to the Governor in Council because the success of Stirling's appeal to the Colonial Office might not be known for some time. He later reported on the meeting:

I stated that, on account of the perilous situation in which the settlement stood, I was willing to devote myself to the acquisition of the native language, in order to negotiate a peace with the native tribes. I offered also to bear the expences [sic] myself; a proposal to mortgage a part of my estate for this purpose; provided the local government would make the necessary arrangements.¹⁴

Lyon believed that Commandant Frederick Irwin, who had now replaced Stirling as the Acting Lt. Governor, was more likely to favour conciliatory proposals because of his Evangelical leanings and his support for Lyon's motion a year earlier for missionaries. Lyon appealed to settlers' economic interests, that it was necessary to avoid a costly war of extermination and conflict as had happened in Tasmania both for the sake of Aboriginal people and settlers, by negotiating a peaceful agreement which he believed could be achieved at low cost. He argued that reliance could not be placed on Stirling, who might be unsuccessful in gaining additional funds and police from England. It was agreed that the farmer and magistrate with the most economic and political influence,

¹⁰ Lyon to Secretary of State 1 January 1833, CO 18/11, Reel 298, p.140; J.M.R. Cameron (ed.), *The Millendon Memoirs: George Fletcher Moore's Western Australian Diaries and Letters, 1830-1841*, Victoria Park, Hesperian Press, 2006, p.135.

¹¹ Cameron, *Millendon Memoirs*, 28 July and 29 July 1832, p.135; Lyon to Secretary of State, 1 January 1833, CO 18/11, Reel 298, pp.140-144.

¹² Ibid.

¹³ Lyon to Goderich 1 January 1833, CO 18/11, Reel 298, p.140; SRO, Swan River Papers (SRP) 107/10, p. 111.

¹⁴ Ibid.

William Locke Brockman, would approach the Executive Council on behalf of the other settlers.

Brockman reported to the Council that he and other settlers believed that the earliest opportunity should be taken to enter into friendly communication with Aboriginal people and that an agent be sent among them to learn Aboriginal culture and language 'with the view to an amicable arrangement with them.'¹⁵ Lyon's proposal was attached to Brockman's letter, which added that if nobody could be found then Lyon would volunteer to act as agent, meeting the costs by renting his farm to the colonial government or as an employee.¹⁶

Lyon met with a member of the Executive Council, probably Irwin, prior to the Executive Council meeting to learn more about his proposal.¹⁷ He added that it would take three to five years, and provided examples of where peaceful agreements had been obtained with indigenous people in other colonies; such as in Guiana where reparation of £1000 had been provided every couple of years, and in North America.¹⁸ Lyon estimated that the colonial government would save £2000 per annum that would otherwise be spent in an 'exterminating war' such as had taken place in Tasmania and which would take place each time settlers physically occupied new territory. He was aware that £30,000 had been spent on the 'Black War,' which he argued had not covered the cost of controlling Aboriginal peoples in the last three years, and which he attributed to the original unwise policy that failed to address the question of Aboriginal rights.¹⁹

¹⁵ Letter from W. Locke Brockman to Governor in Executive Council, 20 August 1832, SRO, Colonial Secretary Office Records (CSR), ACC 36, Vol. 24, pp.94-98.

¹⁶ Lyon to Governor in Executive Council, 28 July 1832, attached to Letter from Brockman to Governor in Executive Council 20 August 1832, SRO, CSR, ACC 36, Vol. 24, pp. 94-98.

¹⁷ Lyon to Lieut. Governor in Council, CSR, ACC 36 Vol 24, p.102. It was most likely Irwin because it was Irwin who had earlier supported Lyon's proposal for missionaries in 1831.

¹⁸ Ibid.

¹⁹ Extract of a Letter from Lyon to Lt-Governor in Council, 26 November 1832, enclosed with a Letter to the Secretary of State, January 1, 1833, CO 18/11, Reel 298, p.148; R M Lyon, *Australia; An Appeal to the World on Behalf of the younger Branch of the family of Shem*, Sydney, 1839, p. 8; Lyon to Lt -Governor in Council, 24 August 1832, SRO, CSR ACC 36, Vol. 24, p105

However, Irwin decided instead to implement Stirling's programme of a police force.²⁰ In expressing his disappointment at this decision, Lyon pointed out that a contradiction existed between a military force appointed to repel aggressions and protect settlers' lives and property, and the capacity to enter into a friendly communication with Aboriginal people. He then revised his proposal to the local government by offering his services purely as a missionary rather than as an agent and negotiator for a peaceful agreement with the Aborigines.²¹

Lyon continued to lobby for Aboriginal legal rights up until 1834 in Western Australia. Inspired by increased public debate on policy regarding Aboriginal people, in September 1833, he recommended to Agricultural Society members that a national measure be enacted by the colonial and British government to protect Aboriginal rights belonging to them as 'Aboriginal inhabitants'. This meant the unrestricted freedom to hunt and fish on land that was not 'reclaimed,' and rights as British subjects.²² To a certain extent he anticipated evangelical politician Thomas Fowell Buxton's motion in the British Parliament calling for the protection of indigenous civil rights in July 1834. He emphasised that:

The sooner the national rights of the Aboriginal inhabitants are recognised by some regular deed or charter, the better it will be for them, and the British colonies in this hemisphere. It is an act of justice, as well as humanity, and therefore ought not be delayed. Delays in such cases are dangerous, and may lead to a great sacrifice of human life.²³

This move proved unpopular with various members of the Agricultural Society. Irwin had already left for England in September 1833 and it was decided to postpone the proposal until Stirling returned to the colony. However, the matter was replaced by more pressing settler concerns. Lyon left the colony shortly afterwards.

III. Second proposal

²⁰ Minutes of Executive Council, 31 August 1832, CO 20/1, Reel 1117-8, p.86; SRO, CSR, ACC 36, Vol 23, p.197.

²¹ Lyon to Lt Governor in Council, 22 September 1832, SRO, CSR, ACC 36, Vol 24, p.100.

²² *The Perth Gazette*, 28 September 1833, p. 155; *The Perth Gazette*, 11 January 1834, p.215.

²³ *The Perth Gazette*, 11 January 1834, p.215.

The second proposal arose independently of the first, in August 1832, but was the result of a similar response to dealing with a largely economic problem for the settlers, arising from resistance by Aboriginal people who protested at the taking of their land and game. In November 1831, Stirling reported escalating conflict between Aborigines and settlers in the Swan District where settlers were resisting the taking of their stock and other property. Stirling added that he had physically ‘occupied’ land in the new agricultural district of York, where a few settler families were now living and requested military reinforcements. In reply, Goderich warned against escalating violence and forwarded Lt. Governor Arthur’s despatch which proposed that agreements be made with Aboriginal tribes. Arthur recommended that as the colony of Western Australia had been exposed to the same ‘evils’ which had taken place in Tasmania as a result of the ‘opposition of the Aborigines,’ that one of the first steps taken by the colonial government should be the establishment of a ‘friendly understanding’ with Aboriginal tribes: He added that

Some two or other discreet persons will be beneficially employed from the origin of the colony, to learn the native language, and keep a direct intercourse with the Aborigines; and the utmost care should be taken to make them presents (the most trifling will satisfy them) for whatever land is taken possession of by the British settlers; for as each tribe claims some portion of territory, which they consider peculiarly their own, they should be in some formal manner satisfied for bartering it away; a negotiation which they perfectly comprehend.²⁴

The Secretary of State for the Colonies Lord Goderich referred to the violent conflict in Tasmania and how Arthur believed that more ‘kindness and attention shewn towards these people in the first instance, would have prevented much of the annoyance which settlers had subsequently experienced.’²⁵ He advised Stirling to cultivate ‘a friendly intercourse with the natives of Western Australia by adopting the course which Colonel Arthur’s experience has pointed out as the most likely to avert, the evils to which a

²⁴ Despatch from Goderich to Stirling, 16 August 1832, CO 397/2, Reel 304, pp. 113-118; Despatch from Arthur to Goderich, 7 January 1832, British Parliamentary Papers (BPP), *Correspondence and other Papers relating to Aboriginal Tribes in British Possessions*, Vol 23, (1834) Shannon, Irish University Press, 1968, pp 162-163.

²⁵ Despatch from Goderich to Stirling, 16 August 1832, CO 397/2, Reel 304, pp. 113-18.

different system has exposed the settlers in Van Diemen's Land.'²⁶ At the same time, Goderich acquiesced to Stirling's request to send additional troops by replying that the Governor of New South Wales, Sir Richard Bourke, had been asked to send two companies of soldiers if he could spare them.²⁷

Settlers were now going to Tasmania to escape the economic crisis in the Swan River Colony. Arthur reported his advice in the wider context of the problems of retarded economic growth there, which he believed was exacerbated by the 'opposition of the Aborigines,' that threatened to be repeated every time settlers' colonised Aboriginal lands. Shortly afterwards he also sent a despatch to the Colonial Office regarding the proposed colony in Spencers Gulf in what was to become South Australia. Goderich interpreted the proposal similarly to Arthur: as a low cost way to avoid the conflict and ensure actual possession.²⁸ By the time that Arthur had written to the Colonial Office, Western Australia had been a settler colony for three years, and grants of up to 1 million acres of land to settlers under the old free land grants system had already been made on paper.²⁹ There were fearful implications of another 'Black War' in a territory far larger than Tasmania and with a much smaller European population. On 28 April 1831, to complicate matters, Goderich introduced the uniform land regulations that would charge a minimum price on the sale of land. Arthur and Goderich expected the settlers to pay for any agreement to purchase Aboriginal land out of land sales revenue. However, this method was unlikely to produce much revenue for Western Australia at this time, as most grants had already been made and there was little capital and labour. In an effort to raise colonial revenue, Goderich proposed that 'Crown' land could be leased for grazing purposes similarly to New South Wales.

Arthur blithely assumed that Aboriginal 'tribes' would be happy with compensation for their land of 'trifling amounts' and would make way for settlers in exchange for the benefit of protection, and 'civilisation' on reserves. He assumed that Aboriginal people placed a lesser economic value on land than Europeans.

²⁶ Ibid.

²⁷ Ibid., p. 115.

²⁸ Shaw, *Arthur*, p.129

²⁹ S.H. Roberts, *History of Australian Land Settlement*, Melbourne, MacMillan, 1968, p.106.

By the early 1830s many settlers knew of the initiative for the removal of Tasmanian Aborigines from the settled districts and would increasingly call for this solution in the Swan River Colony. However, there were also a few, such as Robert Lyon, who proposed legislation to recognise the prior ownership of Aboriginal people to land by preventing settler interference with fishing in rivers, and hunting ‘upon all lands not reclaimed.’³⁰ He also proposed ‘native villages’ in an attempt to fix Aboriginal people to one spot as farmers and labourers.

The Goderich despatch is important because it marked a departure from the assumptions underlying the act of territorial acquisition by Stirling and the Imperial Act of 14 May 1829 establishing the government of Western Australia which justified possession by the legal fiction that lands were ‘wild and unoccupied.’³¹ By forwarding the recommendation, Goderich acknowledged (as Glenelg did in relation to South Australia) that there had been no negotiation with Aboriginal peoples over their title to land. It meant that the British government recognised that Aboriginal peoples had prior land rights which they had not given up to the British government when possession was claimed based the theory of occupancy in 1829, or earlier in Albany.³² The endorsement of Arthur’s proposal for an agreement that recognised Aboriginal people as prior owners of the land was largely an economic decision because the British government did not want a costly repeat of the ‘Black War’ and the economic losses that it had incurred. Reports of the impact of the violent conflict between colonists and Aboriginal people had reached the British Parliament and was attracting unwanted humanitarian attention.

Irwin’s initial response to the Goderich despatch was to endorse Stirling’s policy of a mounted police force to control Aboriginal people. On 23 September 1833, the Goderich despatch enclosing Arthur’s proposal for agreements was discussed by the Executive Council.³³ This took place after Munday and Miago, who were referred to as representing Yellagonga’s (Mooro people) and Yagan’s tribes (Beeliar people), sought a meeting with

³⁰ *The Perth Gazette*, 11 January 1834, pp. 215-6.

³¹ E. Russell, *A History of the Law in Western Australia*, Nedlands, UWA Press, 1980, p.329. 10 Geo IV, c22, 1829, passed 14 May 1829.

³² *Ibid*, pp.247-8.

³³ Minutes of Executive Council, 23 September 1833, CO 20/1, Reel 1117, pp. 256-259.

Irwin, with Francis Armstrong acting as interpreter.³⁴ Amongst other things, Munday protested at the way that settlers had taken over Aboriginal lands and allowed their dogs to drive the kangaroo away.³⁵ Irwin had proposed a general meeting with all the tribal groups around Perth, but had been told by Munday and Miago that this was not possible until the time for large gatherings.³⁶

The Executive Council led by new Acting Governor, Capt. Richard Daniell (who had just arrived from Hobart with an advance party of soldiers from the 21st Regiment to gradually replace the 63rd regiment) discussed the agreement made between Irwin, Miago and Munday.³⁷ The members referred to Arthur's proposal and the paragraph in the Governor's instructions regarding the civilization of Aboriginal people. It was decided that rations of wheat would be provided to Aboriginal people in 'settled districts' as compensation for the loss of kangaroo and other game.³⁸ One of these ration points was to be at Mt Eliza, (where Kings Park now is) and another at a place away from farmhouses at the Upper Swan.

Two days after this meeting, a government notice was published telling settlers not to use that part of the region under Mt Eliza and leading to the Swan river, as a public thoroughfare as several Aboriginal families were living there. This was only to be provided for as long as it was 'necessary to occupy such ground.'³⁹ The unresolved problem of co-existence on the same land would be raised again in 1836.

Despite the Colonial Office's endorsement of Arthur's proposal for agreements, there was no reference at the Executive Council meeting to purchasing Aboriginal land that was occupied by the settlers. This was no doubt due to the unpopularity of the recommendation, exacerbated by the adverse reaction to Goderich's Land Regulations,

³⁴ *The Perth Gazette*, 7 September 1833, p.142; Irwin's Report to Lord Stanley, 19 February 1834, CO 18/11, Reel 298, p.362; Cameron, *Millendon Memoirs*, 8 September 1833, p.273.

³⁵ *The Perth Gazette* 7 September 1833, p.142.

³⁶ *Ibid.*

³⁷ Minutes of Executive Council, 23 September 1833, CO20/1, Reel 1117, p.256. 'Conciliating the natives of the country by supplying them with provisions and other articles of what we have deprived them by taking possession of their country.'

³⁸ *Ibid.*, p.256; Minutes of Executive Council, 1 October 1833, CO 20/1, Reel 1117, p.265; *The Perth Gazette*, 22 February 1834, p.239. to be distributed daily in Perth (under the charge of Ellis) and military at Upper Swan, York Kelmscott, Murray and by Government Resident in Augusta and King George Sound.

³⁹ *The Perth Gazette*, 5 October 1833, p.157, Government Notice, 25 September 1833.

and the outcome of Stirling's mission which was not yet known. In July 1833, Moore reported in his private journal in the same month: 'Some persons are swearing greatly at the idea [of] paying the natives indeed for their land.'⁴⁰ However, the matter did bother Irwin sufficiently for him to include in his book published in England in 1835 the suggestion that treaties should be negotiated with Aboriginal peoples, but like Moore he believed that it was the responsibility of the British Government to effect.

IV. Third proposal

Two years later in September 1836, Aboriginal representatives around Perth again protested to Armstrong at the barriers to their access to their lands and waters by fences, and the loss of kangaroo and other game. Armstrong had been appointed as Superintendent of the Mt Eliza Institution and as a mediator of disputes between settlers and Aborigines. The Mt Eliza institution had been established for the 'civilisation' of Aborigines and was situated near the Swan River foreshore on a site of particular significance to Aboriginal people. This region was being increasingly used by settlers who farmed the fertile land near rivers, which resulted in increased tensions. Aboriginal leaders asked Armstrong to go to the Governor and propose an agreement for co-existence or dual occupation. Moore had reported in his journal that the Aboriginal tribes around Perth were 'beginning seriously to complain of settler encroachments' and to enquire 'what compensation we mean to give them for taking away from them the use of their own land.'

On 13 September 1836, Stirling informed the Executive Council that:

some time back the native interpreter had been applied to by certain of the leading natives of their district, on the subject of their lands which had to a considerable extent been taken from them in consequence of the settlements effected by the whites, and expressive of a wish to dispose of the same to the Government for a small consideration provided they were allowed free access to such parts as were not enclosed.

⁴⁰ Cameron, *Millendon Memoirs*, 23 July 1833, p.260; Minutes of Executive Council, 23 September 1833, CO 20/1, Reel 1118, pp.256-262.

The town allotments were the main source of colonial revenue from the sale of land at this time. Shortly beforehand, Stirling had received a memorial from townspeople wanting to purchase land in fee simple between the Swan River and allotments at the foot of Mt Eliza, the very place that had been left for Aborigines to access in 1833 but which was now being encroached upon. Stirling had warned settlers not to encroach on the unsurveyed parts which were regarded as Crown land. It was concluded by the Executive Council that the foreshore land would be granted as a lease and not as a purchase, in case it was needed for public purposes. Earlier in the year, Stirling had published Governor Bourke's proclamation that warned settlers that their titles would be regarded as illegal if they entered into a 'Batman style treaty' with Aboriginal people.⁴¹ This is likely because he was aware that settlers were engaging in their own private arrangements which may have included unsurveyed Crown land. One example was reported in *The Perth Gazette*, where William Shenton had bought seven acres 'for as many shillings' from the local tribe who promised protection from intrusion from other Aborigines.⁴²

By this time, it was well known among many settlers that Aboriginal people had proprietary interests in land. Armstrong reported that:

Land appears to be apportioned to different families, and is not held in common by their tribe. ..These co-proprietors appear equally interested in their respective districts, and are equally ready to revenge any trespass, which may be committed, not only by unauthorised hunting but by taking swans nests etc. Land is beyond doubt an inheritable property among them, and they boast of having received it from their fathers' fathers etc, to an unknown period back.⁴³

Influenced by the Goderich despatch, Stirling stated that he favoured some agreement being made with Aboriginal people to ensure their good conduct, where 'the views of His Majesty's Government...would be met 'on very moderate terms, merely by the issue of a small gratuity of flour and clothing.'⁴⁴ The Editor of *The Perth Gazette*, Charles MacFaull, gave his support to this opinion. On 10 September 1836, he reported that the

⁴¹ *The Perth Gazette*, 2 January 1836, Government Notice, 1 January 1836, enclosing Bourke's proclamation dated 26 August 1835.

⁴² *The Perth Gazette*, 10 September 1836, p. 760.

⁴³ *The Perth Gazette*, 29 October 1836, p. 790.

⁴⁴ Minutes of Executive Council, 13 September 1836, CO 20/2, Reel 1118, p. 152.

British government were ‘in favour of a purchase being made from the natives of the land we occupy in this territory.’⁴⁵ At this time the British government response to the Batman treaty was being awaited, and Glenelg’s policy of providing for Aboriginal rights in the Letters Patent of South Australia coupled with the Aborigines Committee inquiry led to an expectation of some official provision for Aboriginal rights in Western Australia. The outcome of the settlers’ petition opposing the Goderich land regulations was still not known.

The minutes of the Executive Council do not disclose the discussion that took place amongst the five members (the same officials who were also in the Legislative Council), which included Moore who was now Stirling’s legal adviser. However, Moore wrote about the subject in his diary shortly afterwards. He argued that reparation should be made to Aboriginal peoples, but proposed that any agreement should be a national measure on account of the large territory which had been acquired and added to England, ‘whether it be by conquest or by mere occupancy.’ Moore did not believe that the settlers should pay because it formed no part of the original contract that they had with the British government for the ‘quiet enjoyment’ of their grants. He added that ‘A purchase of land from an individual implies a power and a right for the vendor to sell and the purchaser has a right to complain if the usual covenant for quiet enjoyment is broken by his being disturbed in his possession.’⁴⁶ Moore was more disposed to absolve the settlers from any financial and legal responsibility except to advocate support for education and training Aborigines as a labour force. It is most likely that there were other members who did not want co-existence but the removal of Aboriginal people altogether from the area, such as had taken place in Tasmania in the early to mid-1830s. Increasingly, this became a campaign of the Editor of *The Perth Gazette* in the late 1830s.⁴⁷ Therefore the proposal was rejected. It was concluded that

after some conversation it appeared more advisable to inform the natives that it was not the wish of the government to deprive them of any part of their land beyond that which is or maybe required by the white inhabitants

⁴⁵ *The Perth Gazette*, 10 September 1836, p.760.

⁴⁶ Cameron, *Millendon Memoirs*, 17 September 1836, p.408.

⁴⁷ *The Perth Gazette*, 8 October 1836, p.844; N.Green, “The Perth Gazette’s influence on Aboriginal Policies in Western Australia – 1838” Bicentennial History Conference, Melbourne, 7-8 Feb 1980. (unpublished paper)

of the territory, and upon which they are not to trespass or commit any theft on pain of forfeiting the good will shown, and the protection.⁴⁸

Armstrong was told verbally and in writing about the outcome. Aboriginal people were instead given flour, and the question of the recognition of their land rights was avoided altogether.⁴⁹ Instead, in November 1836, Stirling discussed with the Chief Magistrate and Chair of Quarter Sessions William Mackie ways to deal with the problem of ‘trespass’ and theft by Aboriginal people of settlers’ private property.⁵⁰ Aborigines were subsequently prosecuted in the Court of Quarter Sessions under the criminal law, as British subjects. This meant in practice that those convicted of theft were transported to Garden Island and later Rottneest Island. Bourke’s proclamation had warned settlers not to trespass on Crown land, but now Aborigines were being warned that they were regarded as trespassers on their own land.

The three proposals had been driven by economic and political considerations. This was as a result of pragmatic realisation by some officials and settlers that Aboriginal people had to be reconciled to the settlers’ presence, and that the best way to do this was to recognise them as the owners of the soil, and argue for their inclusion in the contract with the British government by providing reparation for their gradual dispossession. The proposers questioned British government policy that failed to predict or address the question of Aboriginal land rights and make agreements, even if it was assumed that indigenous people would give up their land rights for a ‘trifling sum.’ Only then with the consent of Aboriginal peoples could settlers with a clear conscience retain ‘undisputed title to their lands’.

While Arthur and Goderich may have preferred the settlers to pay for it, Moore and some other officials regarded it as the responsibility of the British government. Subsequently, nothing was done, but even if it had been there would have been little meaningful compensation paid to Aboriginal people. Settlers in the majority were not keen on co-existence because they wanted exclusive possession of their town allotments and pastoral

⁴⁸ Minutes of Executive Council, 13 September 1836, CO 20/2, Reel 1118, p. 152.

⁴⁹ Colonial Secretary to F. Armstrong, 14 September 1836, SRO, CSR, ACC 49/8, No 335.

⁵⁰ Stirling to W Mackie, 19 November 1836, SRO, CSR, ACC 49/8, p.87.

land. Similar problems confronted, Aboriginal people in Tasmania as faced the Nyungar people in Perth from the settlers demand for exclusive possession.⁵¹ Glenelg had waited until the release of the Aborigines Committee report in June 1837 (which referred to the civilisation of Aboriginal people under the supervision of missionaries and protectors and the provision of reserves sourced from Land Funds or the sale of Crown lands), before appointing Protectors for Western Australia out of British Parliamentary funds.⁵² The problem of relying on proposals linked to a Land Fund would retard any measures taken in Western Australia, where settlers regarded it as their own money and where the British government were reluctant to use other funds. In the end the question of agreements and reparation was avoided altogether in favour of interests of colony and settlers.

⁵¹ Reynolds, *Fate of a Free People*, p31.

⁵² Despatch from Glenelg to Bourke 26 July 1837, *Historical Records of Australia*, Series 1, Vol. 19, (Sydney: Government Print, 1925) pp. 47-48; Russell to Hutt, 8 September 1840, BPP, *Papers Relative to the Aborigines*, p.379.