



IT'S TIME FOR TRUE CONSTITUTIONAL RECOGNITION

The National Museum of Australia

Noel Pearson

17 March 2021

I pay respect to the Ngunnawal First Nation of this city. I bring greetings from First Nations of Cape York. Thankyou to the Council of the National Museum and thank you for your presence today.

Before making my remarks I want to acknowledge the women of Australia who are engaged in another campaign of vital importance to the integrity of our country. Listening to Grace Tame and Brittany Higgins this week, I thought the parliaments of our nation never produce such speeches nor show such profound leadership. I pray our children will look back and see this was the moment when change started.

Given this week's events and the salutary conversation upon which our minds should be properly focused, it is with some misgiving I turn to constitutional recognition. I mean no disrespect and I wish all power to this campaign.

Before I do so, I want to acknowledge the role of Indigenous women in their leadership of the process and culmination of the Uluru Statement from the Heart. Hundreds of our women from all compass points of the country took the lead on this process of self-determination. I pay respect to them and particularly to that of Dr Pat Anderson and Professor Megan Davis for their leadership of Uluru. Might I say there is the strongest connection between the imperative of empowerment, recognition and self-determination that Uluru seeks, and the social evils to which this movement of Australian women will no longer tolerate.

Let me start with the question of 'what?'. What is it that we are engaged in, and have been ever since Prime Minister John Howard made the commitment at the beginning of the 2007 Federal Election campaign. He told the Sydney Institute:

The Australian people want to move. They want to move towards a new settlement of this issue. I share that desire which is why I am here tonight. I announce that, if reelected, I will put to the Australian people within 18 months a referendum to formally



recognise Indigenous Australians in our Constitution – their history as the first inhabitants of our country, their unique heritage of culture and languages, and their special (though not separate) place within a reconciled, indivisible nation.

The Opposition Leader Kevin Rudd made a similar commitment in response. Then just before election day Rudd deferred constitutional recognition to Labor’s second term.

A second term never materialised for Rudd, but Prime Minister Julia Gillard established the Expert Panel on the Recognition of Aboriginal and Torres Strait Islander Peoples in the Constitution, co-chaired by Patrick Dodson and Mark Leibler, which reported in late 2011.

It is now a decade since the Expert Panel. I won’t rehearse this long journey with its numerous inquiries and processes, except to answer the question of ‘what’ I raised at the beginning.

What this process has been about since prime minister Howard in 2007 and prime minister Gillard in 2011 is the recognition of Indigenous Australians: the Aboriginal and Torres Strait Islander peoples of Australia. The imperative was recognition, and it was acknowledged by our most conservative prime minister – Howard – and our first woman as prime minister – Gillard.

It has been such a long road with many twists and turns and seemingly endless miles of procedure and process we can be forgiven for having sometimes lost sight of what we are doing. Let me refresh our memories and identify what this is all about: it is about recognition.

It was not and is not about the legislative enactment of a voice to parliament by itself. It is about the recognition of Indigenous Australians in the Constitution, which empowers the parliament to legislate the voice to parliament as the means by which Aboriginal and Torres Strait Islander people are recognised in the nation.

The next basic question is “why” recognition? The answer is straight-forward: because the Indigenous peoples of Australia have never been recognised.

There was no recognition when Lieutenant James Cook claimed possession of the continent on behalf of the Crown, apparently contrary to his secret instructions which spoke of the need of the consent of the natives, in 1770.

There was no recognition when the First Fleet asserted British sovereignty in Sydney Cove in 1788.

There was no recognition when each subsequent colony was established across the



continent.

There was no recognition when those colonies federated to form the Commonwealth of Australia in 1901. Indeed peoples of the Aboriginal race were excluded from being counted as citizens in the new federation and from the national parliament's legislative power.

The necessity of recognition still remained well after the centenary of federation. This lacuna still remains today. We are a nation that does not recognise its indigenous peoples. And this was a failure that needed to be addressed according to governments led by the Liberal and National parties, as well as by Labor, in the first decade of the twenty-first century.

My point is that whatever prime minister John Howard's views about the form of constitutional recognition, there is no doubt he understood the need for it. It is why he made the election commitment he did in 2007.

1770, 1788, 1901 and 1967 all failed to recognise Australia's Indigenous peoples.

If not then, why not now?

The next question concerns "where" recognition is to be effected.

This question was answered in 2007 by the Liberal National party led by prime minister John Howard and by the Labor Party led by opposition leader Kevin Rudd in precisely the same way: recognition was to be effected in the Australian Constitution. In other words it was to be reflected in Australia's most supreme legal instrument, its constitution. That is why this process we are embarked upon is called constitutional recognition.

It is not merely recognition in some extra-legal declaration or proclamation, or by legislative enactment of the national parliament. It is the constitutional recognition effected by amendment to the nation's Constitution.

What form that amendment takes is a secondary question about "how" recognition is to be effected. Proponents of recognition may differ on the form of constitutional amendment, but everyone agreed that it was recognition within the Constitution of the Commonwealth.

John Howard proposed recognition in a preamble to the Constitution. He said in 2007:

My goal is to see a new Statement of Reconciliation incorporated into the Preamble of the Australian Constitution. If elected, I would commit immediately to working in consultation with Indigenous leaders and others on this task.

To be sure the form of constitutional recognition is as important as the question of its location



in the Constitution. My point is that whatever form recognition takes, the reform was premised on the basis of constitutional recognition.

We turn now to the question of “who” is sought to be recognised in the nation’s supreme law, its Constitution? The simple answer is that category of people whom the terms of reference for the Expert Panel established by Julia Gillard described as Indigenous Australians. The answer to the question of who is the subject of recognition may seem straight-forward, until you consider that recognition is a mirror. When the descendants of the British colonists, the Italians, the Greeks, the Vietnamese, the Congolese, the Sudanese and the Indians, the Lebanese and the Chinese, are recognised by the indigenous: there is mutual recognition and we see ourselves in each other’s eyes. There can be no unilateral recognition of a part without mutual recognition of the whole.

The final question is “when” will there be recognition? Indigenous advocacy in respect of recognition goes back to the 19th century. From the petitioners of Flinders Island in the 1840s to The Day of Mourning in 1938, to the Uluru Statement from the Heart in 2017.

We see behind us a long, storied and unrequited campaign for recognition and justice.

Are we destined for this forlorn history to continue for a third century?

We are engaged in a phase that represents our best chance to achieve recognition sought by our old people. Australians living today can bequeath to our children a Commonwealth that accords a rightful place to its original peoples.

Up until now non-indigenous Australians have told themselves that these 250 years of European history is the only thing that matters to Australia. This is but the blink of an eye of Australia’s story and recognition will bridge 65,000 years of precolonial history, cultures and languages with these 250 years.

Let me point out what is incontrovertible: Australia doesn’t make sense without recognition.

Australia is incomplete without recognition. How could there be an Australia without its Aboriginal and Torres Strait Island indigenous peoples? As long as its indigenous peoples remain unrecognised then Australia is an absurdity. A nation missing its most vital heart.

This absurdity becomes apparent with each passing January. The old idea of an Australia that started on 26 January 1788 and that’s that, is fraying and our political leaders don’t know what to do. The standard mode has been to ignore these fractures of national identity and



all of the consequences that flow from the failure of recognition, for 11 months of the year, and then to panic in January about how we are going to deal with Australia Day.

Politicians offer thought bubbles so the nation's national day might return to untrammelled celebration and joy. But no serious thinking or leadership is forthcoming from the political parties or the parliament. And the dissonance becomes more pronounced each year.

Indifference and denial might have worked in the past but plainly today, there are far too many Australians determined to stand with indigenous peoples in rejecting the old idea of Australia.

The situation calls for leadership to deliver the country from its contradictions. Without it, polarisation will increase and rather than mutual recognition we will have contradiction and repudiation.

Australians are waiting for leadership on recognition.

If not now, then when?

Repudiation is the enemy of recognition. In fighting against the repudiation of the country's indigenous heritage, no answer lies in the repudiation of its British heritage. They both enure for the memory and advantage of all Australians, even as we face the truths of our colonial past for our history is replete with shame and pride, failure and achievement, fear and love, cruelty and kindness, conflict and comity, mistake and brilliance, folly and glory. We should never shy from the truth. Our Australian storylines entwine further each generation and we should ever strive to leave our country better for our children.

The *Uluru Statement from the Heart* is Australia's greatest act of faith, hope and love. Faith in the people of Australia. Hope for the future. Notwithstanding the mountains of bitter evidence to the contrary.

Love for the country for we could never walk away from Australia. Do I need to say, this is our country too? It is the only home we have. We should never let despair alienate us from the truth that Australia is our home.

Let me lay out what lies on the horizon for us.

With constitutional recognition soon will come the day when we acknowledge three stories: the *Ancient Indigenous Heritage* which is Australia's foundation, the *British Institutions* built upon it, and the adorning *Gift of Multicultural Migration*.



The first story of our *Ancient Indigenous Heritage* is best described in the Uluru Statement:

Aboriginal and Torres Strait Islander tribes were the First Nations of the Australian continent and its islands, possessed under ancient laws and customs, according to the reckoning of culture, from the Creation, according to the common law, from time immemorial, and according to science for more than 65 millennia. This is a spiritual notion: the ancestral tie between the land, or mother nature, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with their ancestors.

The second story of our *British Institutions that were built upon it* recognises that those who sailed the First Fleet landing at Sydney Cove carried upon their shoulders the common law of England, when the sovereignty of the British Crown was proclaimed. The rule of law, parliamentary government and the Australian English language have their provenance in Britain. From eyes on board ship, this was a settlement, and from eyes on shore, an invasion. The eve of the 25th and the dawn of the 26th January 1788 is when Ancient Australia became the New Australia. The Britons and Irish – convict and free – who founded this institutional heritage, made the Commonwealth from 1901, a great democracy of the globe.

The third story is the *Gift of Multicultural Migration* and recognises that peoples from the earth over brought their multitude of cultural gifts to Australia. That we celebrate diversity in unity makes us a beacon to the world. When we renounced the White Australia policy, we made a better Commonwealth. In Robert Hughes' incomparable words we showed that people with different roots can live together, that we can learn to read the image-bank of others, that we can look across the frontiers of our differences without prejudice or illusion. These three stories will make us one: Australians.

Constitutional recognition of Indigenous Australians is not a project of woke identity politics, it is Australia's longest standing and unresolved project for justice and inclusion.

me finish by a thought experiment. That we bring together all of the great Australians of our public life who have now passed:

From James Cook to Bennelong

From Arthur Phillip to Jandamurra

From William Cooper to Dorothy Mackellar



From King Barraga to Samuel Griffiths
From Daisy Bates to Eddie Mabo
From Jack Patten to Margaret Guilfoyle
From RM Williams to Eddie Mabo
From Essie Coffey to Bill Wentworth
From Jim Killen to Kim Beazley, the elder
From Vincent Lingiari to Robert Hughes
From Ninian Stephen to Wenten Rubuntja
From Paul Hasluck to Nugget Coombs
From Harold Holt to Pastor Sir Douglas Nicholls
From Patrick White to Neville Bonner
From Ron Castan to Arthur Boyd
From Margaret Tucker to Jack McEwen
From Bill Stanner to Barangaroo
From Pearl Gibbs to Bob Hawke
From John Koowarta to Malcolm Fraser
From Doug Anthony to Rick Farley
From Sidney Nolan to David Unaipon
From Mum Shirl to Slim Dusty
From Steve Irwin to Victor Chang
From Evelyn Scott to Jack Munday
From Arthur Beetson to John Toohey
From Charles Perkins to Gough Whitlam

I will stop here, but you get the idea.

We would add to their number the countless Australians who are known to each of us, our relatives and friends of our families, people from our community, ordinary Australians of common decency, of human foibles and failings, but all possessing an abiding love for the people and the country of Australia.

If we asked this conference of our ancestral dead to consider the prospect that lies before us now – that we secure recognition of Indigenous Australians through a constitutional provision



that empowers legislation establishing a Voice to the parliament and government of the day – to advise us on what to do.

What would our ancestral dead tell us, the present living, we should do on behalf of our as yet unborn?

Let us complete the legislative design of the Voice, and produce an exposure draft of the Bill so that all parliamentarians and the members of the Australian public can see exactly what the Voice entails. Let us set the Bill aside and settle on the words of constitutional amendment that recognises Indigenous Australians and upholds the Constitution, and put the amendment to a referendum of the Australian people at the next best opportunity.

Thankyou.