

THE TORMENT OF POWERLESSNESS

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I start by acknowledging the Gumatj people of the Yolngu nation and I pay respects to their elders past and present.

It's a great honour to be invited to speak here this evening. I'm going to talk about constitutional recognition and the enabling of a voice for Indigenous Australians. And about how this can relieve the "torment of powerlessness", so poignantly expressed in *The Uluru Statement from the Heart*. I will explain why constitutional recognition is entirely in keeping with our Constitution as it is. And why it is so important to who we are as a nation.

For more than 30 years, I have been gifted with the friendship and trust of Aboriginal and Torres Strait Islander people. These friendships began in the 1980s in Sydney's Redfern. Redfern was a tough, confronting place. The problems seemed intractable, beyond remedy. It was emblematic of the tragic failures of the past and the inertia of the present. But Redfern was also a crucible of Indigenous activism. There was a voice there – if only Australia could hear it.

I was in my early 30s. The plight of inner-city Aboriginal people sparked my memories of growing up on Wiradjuri Country in the Western Riverina of New South Wales. I remembered very poor Aboriginal families. I remembered the shacks many of them called home. We looked away. They were outcasts, second class citizens, and seemed to be permanently so. When I was in my late teens my father casually mentioned, for the first and last time, that he had black cousins. One of them was Kevin Gilbert, the Aboriginal activist, artist and writer. I never met him or any of his siblings. They had no existence in my white non-Indigenous family. This was my own experience of what WE Stanner called "the great Australian silence".

Much has changed. Indigenous aspiration and achievement are today part of the national mosaic. Indigenous art, music, dance and drama step up whenever we want to tell the world who we are. Indigenous sports people, performers, writers and commentators are household names. Indigenous Australians occupy high places in academia, the media, politics and the professions. We rightly celebrate and recognise these remarkable Australians.

But this is not the only recognition needed. This is because Indigenous people occupy a very special place in our nation – a place unlike any other group. We need to be clear about the nature of the legal relationship, a relationship of disempowerment contained in the document at the heart of our nationhood – our Constitution.

The time has come to correct that relationship. We need an unequivocal statement of recognition levered into place as a cornerstone of our 21st-century nationhood. Intrinsic in this recognition, Indigenous Australians must be able to speak to their fellow Australians – to have some say in their destiny. These two elements – recognition and being heard – cannot be separated. They are indivisible. Nothing in this would compromise our national purpose or historic achievements – our democratic institutions and traditions, our successful multicultural society, our place in the world. Nothing in this would compromise our Constitution. What does compromise us – and diminish us – is our relationship with our First Peoples.

I know that not all Australians share this view. Not all will be persuaded that the failed relationship is anything more than an irritating blemish, or that constitutional recognition will do anything to fix it. We cannot assume that what is so appealing and straightforward to us is appealing and straightforward to all Australians - or to our politicians in Canberra. We must respect that what we are asking for will trouble some people. It will seem like a risk to the established order. It's true that support is growing - and growing strongly. But our task is to persuade a majority of Australians in a majority of States that the time has come to make a substantive - but moderate - change to our constitution.

There are very big questions here. How do we unite Australians in this cause? How do we persuade Australians that this matters to them? That it will matter to their children? That it will go on mattering until we fix it? And that, until it is fixed, our claim to greatness is compromised?

I've been thinking about what makes a great nation. For me, the great nations of the world are liberal democracies where citizens are valued equally as the nation's sovereign holders of power. Liberal democracies, underpinned by the rule of law, committed to the fair and equal treatment of all, and to the eradication of injustice. This has not held true for Australia because, from the very beginning, Indigenous people were rendered outcasts, lesser people. No other group of Australians is subject to a provision in our Constitution, which in practice is only directed towards making laws about **them** - good or bad. And in the making of any such laws they have no right to be heard. For much of our history, our rule of law, even when applied - and too often it was missing in action - imposed great hardship on Indigenous people. It strained our mindset to the tune of ignorance and contempt - ignorance about, and contempt for, our First Peoples.

Great nations support the shared values and aspirations of their citizens: where for the most part citizens can endorse decisions of their politicians as acceptable outcomes of the machinery of government. So long as the position of Indigenous Australians does not meet that standard - and it does not - Australia does not meet it.

The foundation of a great nation is a good society. In a good society people are free to be themselves, free to be fully alive. Every citizen is an equally valued part of the whole, regardless of cultural, ethnic and racial difference. Minorities have no reason to fear the majority, but flourish with them. This has never been true for Indigenous Australians, and it is not true today. Making up only 3% of our population, they have no institutional protection of their unique Indigenous rights and interests.

National prosperity is vital to a great nation - it underpins wellbeing, and the commitment of its people to live together in peace and harmony. Great nations foster the spirit of enterprise, and a sense of common purpose and shared endeavour. Australia is a great nation in so many of these respects, but Indigenous Australians have too often, and for too long, been denied these opportunities.

And crucially, a great nation is not afraid to interrogate its past. Not only the stories of triumph and progress that affirm its identity and self-esteem; but also, the shortcomings which dishonour it. We need to recognise what Indigenous Australians know, both philosophically and from bitter experience: that the past is never dead, that silence and the passage of time only amplify its meaning.

My dear friend the late Ted Kennedy, Catholic Priest of Redfern, recognised this when speaking about Aboriginal Reconciliation more than 20 years ago. He said

“Unacknowledged truth has a way of setting bands on the soul. The paralysis chokes. And unacknowledged truth has one of those perverse ways of imposing a sadness and guilt on the victim's heart.”

The grave injustices meted out to Australia's First Peoples in the first two hundred years of European settlement will be remembered for the next two hundred – remembered for as long as there is an Australia. These things will not go away. They are written into the nation's genesis, into its soul.

A great nation will address these wrongs and, most importantly, their ongoing legacies. The French philosopher, Ernest Renan, said: *“Where national memories are concerned, griefs are of more important value than triumphs, for they impose duties and require a common effort”*. Now is the moment to recognise those duties and to make that common effort. For this is where the great compromise of our national beginning rests: when we excluded Indigenous people from Australian nationhood and told them in effect, that **we** would live together, but **they** must live apart, we left a void where there should have been a foundation stone.

Now we need to put that stone where it should have been from the start. Think how different Australian history would be if it had been put there – if Indigenous Australians had been fully embraced as citizens and given a voice in the country's deliberations for the past 230 years. How much harder it would have been to practise exclusion and segregation. How much hurt might have been avoided. Instead, the colonial and post-colonial abuses continued. Then they were denied, justified, ignored and white-washed.

It need not have gone this way. The sensibilities of James Cook and the President of the Royal Society of London in 1769 were essentially more enlightened than those of many who followed a century and more later. The Royal Society's guidance was clear – to do no harm. That the shedding of blood *“is a crime of the highest nature”* and that the *“natives are the natural, and in the strictest sense of the word, the legal possessors of the several Regions they inhabit”*. And then this: *“No European Nation has a right to occupy any part of their country or settle among them without their voluntary consent. Conquest over such people can give no just title”*.

This was not to be. In 1770, two hundred and fifty years ago next year, Captain Cook claimed the East Coast of Australia in the name of the English Crown. In that moment, we closed the door on peoples whose ways of being and engagement with Country had seen them survive and thrive on this continent for 65,000 years. Most Australians now acknowledge the gross crimes and injustices that followed. They were papered over and left to fester deep into the 20th century. But the facts are irrefutable. Indigenous Australians were denied their cultures, robbed of their freedom, robbed of their lands, robbed of their children, robbed of their wages and robbed of their lives. And in all of this, Indigenous people were powerless. We know this.

What happened in our first 200 years cannot always be fairly scrutinised with modern eyes. Similar tragic events happened all over the colonial world. But the truth of what occurred remains. In different ways, we all live with that truth. We can do without guilt – it has no constructive role to play. But responsibility is a different matter.

In any event, a new day finally dawned in 1967. The 1967 Referendum promised a new beginning – acceptance of the status of Indigenous Australians in the citizenry of their own country. The impact was profound and lasting. It galvanised Indigenous Australians. It gave rise to the hope that the country had decided at last to do the right thing.

But those hopes and ambitions were answered with policies you might expect when governments – blinded by ignorance and possibly guilt, and entirely unfamiliar with consultation – decide what is best for the very people they've always rejected or ignored. A hand-out mentality prevailed. For generations of Indigenous Australians mendicancy had been a symptom of conquest: now it was the

official position. They were to be mendicants at the feet of government. They would be impoverished – physically and spiritually – by social welfare. It was to become the institutional underwriting of inequality and powerlessness. The people who conceived and administered these policies came from all sides of politics, and they were not without good intentions. But the policies were misconceived and maladministered – and it was another form of dispossession. It continues to this day.

Amidst these failings, 25 years later hope and ambition were again given institutional encouragement. In June 1992 the High Court of Australia delivered its historic **Mabo** judgment. In that moment, our highest court held that we had dealt with the original owners of this country on the basis of a fiction. Terra nullius was that fiction. The High Court brought that fiction to an end. Later that year, in his famous Redfern speech, Prime Minister Paul Keating confronted the nation with the full truth of what had been done to Indigenous people. The following year, after an agony of negotiations with pastoralists, miners and State governments, and despite resolute – sometimes hysterical – opposition and deep scepticism, the Native Title Act was passed. It was an essential step. As in 1967, **Mabo** and the Native Title Act marked a break with the past. Then in 2008 we had Prime Minister Kevin Rudd’s Apology to the Stolen Generations.

But unfinished business still remains. We cannot simply say, “*It’s over and done with, let’s move on*”. We can’t because the effects are still with us and, without significant change, will remain with us. Injustice and neglect seeded layer upon layer of inter-generational trauma, pain and dysfunction – all of which plague many Indigenous communities today.

Thankfully, Aboriginal and Torres Strait Islander people and their cultures have moved closer to the centre of who we are, of how we see ourselves as a nation. Yet, far too often, they remain outsiders, denied the opportunities most Australians enjoy. Here lies the power and the promise of *The Uluru Statement from The Heart* – a statement resulting from a national process asking Indigenous people about the form of recognition they seek. The answer was the Voice – recognition at once both symbolic and substantive. It’s a call for an end to the silence in the pages of our Constitution – our rule book of national governance. It’s a call for us to listen to them. More recently governments have acknowledged the legitimacy of that call, but when push comes to shove, we mumble and shuffle our feet.

The Uluru Statement from The Heart should be seen as the synthesis and refinement of every request and demand ever made by Indigenous Australians since 1788. Its language is compelling – as compelling and as innately and profoundly Australian as any words uttered by the founders of the Commonwealth, or any of their successors. It is an invitation to join their ambitions and their talents with those of their fellow Australians; to embed their relationship to Country and their spiritual values in our identity and our national and community values. It is an invitation to share wisdom: to bring the First Australians into the conversation about Australia’s future – **and** the conversation about what is best for them.

It is vital to see and to understand that the *Uluru Statement’s* call for constitutional recognition is simply a further development – natural, appropriate and measured – in the maturing of our country and its legal infrastructure.

I’ve heard Noel Pearson say “*non-Indigenous Australians don’t know what to do with us, they don’t know where we fit in*”. Constitutional recognition will help Australians answer that question. It will expand our understanding of what Australia is and can be. It will acknowledge the world’s oldest living cultures as the bedrock of our Australian identity. It will close the gap in our collective sense of nationhood.

Constitutional recognition in and of itself is but one element of what needs to be achieved. The other element is the empowerment of Indigenous Australians to have an assured say in their future. These

two elements - recognition and empowerment - are essential and indivisible. Any separation of them would be a stab to the very heart of the Uluru Statement.

And why is this empowerment so necessary? Well, we need look no further than the 11 Prime Minister's Closing the Gap Reports. In his speech in the Parliament in February this year, Prime Minister Scott Morrison said, when referring to those 11 Closing the Gap statements, "*The process that began in 2008 was born of good heart.*" But he went on to say, "*It did not truly seek to partner with Aboriginal and Torres Strait Islander peoples.*" Very importantly he added this: "*It was set up to fail. And has, on its own tests. And today I am calling that out*".

The Prime Minister's words confirm his commitment to addressing what the Uluru Statement calls the "torment of powerlessness". The position in remote Australia is particularly dire. Too many communities are struggling against the odds. Right here in North East Arnhem Land Aboriginal children live with unacceptably high levels of infectious diseases, anaemia, skin diseases and very poor dental care. The Menzies School of Health reports some of the highest rates of rheumatic heart disease in the world. The inter-play between poor child health and chronic adult health problems is profound. Other problems of violence, poor education, shameful levels of incarceration and lack of economic opportunity are so well known we hardly need reminding. At the same time, communities are confronted with their disappearing languages and the everyday struggle of their elders to pass on their knowledge.

And how have we addressed these problems? Well, in every State and Territory there is a Minister for Indigenous Affairs - and large bureaucracies to look after their so-called "best interests". Within these structures, governments decide where and how the Indigenous dollar is spent. Indigenous people are sometimes invited in - sometimes. Sometimes they get a good hearing. Often they do not. It depends entirely on the goodwill and inclinations of government. Governments come and go - but the needs of Indigenous people remain the one constant.

No other Australians are forced to confront such institutional barriers to their full participation in our national life. In fact, these obstacles are more than institutional - they're psychological. They contain in their bones all the paternalism and condescension of old - the memories of brutality, contempt and exclusion.

Some commentators say that Indigenous people need to take greater responsibility and step-up to these challenges. Certainly, Indigenous people do need to do this. But my own wide experience across Australia tells me that they are. Indeed, they have been stepping up for a long time now. But too often they are shackled by poor government interventions and policies.

A constitutionally recognised advisory function will help change that. It will empower Indigenous people to have a practical, stronger and more effective say in the policies and laws that affect their lives. It will increase our combined ability to extinguish the economic and social gaps that exist between us. It will empower Indigenous people to become embedded in the national economy. As Marcia Langton has said repeatedly, "*We must support business and job creation - economic development is the pathway out of poverty but 50% of Indigenous people are excluded from the mainstream economy.*" I know that corporate Australia stands ready to do more.

This is not just the right thing to do - It will save the country money as well. All Australians are rightly concerned about how much money is spent on Indigenous affairs every year - more than thirty-five billion dollars. The system is failing, and it must change. And when it does, Indigenous people will be empowered to work together around common agendas and agreed solutions. It will be like the cleansing of polluted waters.

Now there is good reason to be hopeful. Scott Morrison has done what no other Prime Minister has done. He has appointed an Indigenous person to the office of Minister for Indigenous Australians. The appointment of Ken Wyatt is most welcome. And the Morrison Government is committed to constitutional recognition and working to achieve this through a process of co-design.

It will take work to design the right model for hearing Indigenous voices. But let's not imagine that the need for Indigenous people to be heard can be adequately met by a legislated body without the underpinning and support of constitutional assurance. This kind of outcome would be to turn a blind eye to 230 years of history. It would leave Indigenous Australians where they have always been – out in the cold. Vulnerable to the legislative and policy winds of change, without any assured influence or say. Vulnerable to the permanent abolition of the legislated body itself. Vulnerable to the continuing “torment of powerlessness”.

Whatever the final result, the language of the constitutional change and the design of the proposed legislative voice must be devised by the Government in partnership with Indigenous leaders. The Prime Minister, his cabinet and his party room are critical to success. As indeed is the Opposition Labor Party.

History tells us that the conservative side of politics has the stronger record of winning constitutional change. Of the 44 proposals to amend the constitution since 1901, Labor put forward 25 with one success. The conservative side has put forward 19 proposals and 8 have been successful. Let's make it 9. Let's get on with the co-design process without delay. Let's make the effort to get it right.

I want to say a few things to the people who do not support this change. I know you are not indifferent to the plight of Indigenous Australians. And I do not suggest that this change will be a panacea for all ills; that it will miraculously cure long-standing policy failures and entrenched inter-generational disadvantage. But, properly designed to ensure essential bottom-up community input from on-the-ground grassroots people, we will have community-owned, workable solutions across the country. And that, surely, is what every Australian wants. We would all agree with the basic idea that solutions are more likely to be found if the people most affected are consulted and given the opportunity for input. It's an idea that goes with freedom and democracy. It's an idea that goes with respect and dignity.

I don't think it can be fairly said that constitutional recognition would privilege one group of Australians over others. I also think it is mistaken to say this will divide the country on race. On the issue of equality, the fact is that Indigenous Australians have never had it. This is the opportunity to change that. Substantive constitutional change will invigorate the prospects for their more complete participation in our nation. As for the fear of a racial divide, that divide is the existing reality: the result of our treatment of Indigenous people over the past 230 years. Their separate collective identity was, of course, imposed from the very beginning in 1788. It was reaffirmed in the Constitution in 1901 and again in 1967. The Uluru Statement offers a pathway towards lessening, not deepening, that divide. Some people say the Constitution should not give preference based on race. But the Constitution already gives the Parliament power to make special laws based on race. It is commonly known as the “races power” – the power used by the Parliament to make laws about Australia's First Peoples. Constitutional recognition of the Voice will be the better and more acceptable expression of their status in our Constitution.

I understand and agree with the Government's opposition to anything that might resemble a third chamber of parliament. But this was never in question. And it is pleasing to see Barnaby Joyce's acceptance that implementation of the Uluru Statement will not be a third chamber. This change to the Constitution would do no more than provide for the Parliament to establish an advisory body outside the Constitution – not in the Constitution; outside the Parliament, not inside the Parliament.

A representative body with advisory functions only, giving Aboriginal and Torres Strait Islander First Nations a voice to the Commonwealth Parliament.

It is not about cementing into our Constitution anything like a static body incapable of review. Rather, it's about cementing into our Constitution the **principle** that Indigenous people must be consulted when Parliament makes laws about them. Indeed, the actual change to the language of the Constitution can be made with relatively few carefully chosen words. It can be achieved with clarity and without compromise to parliamentary supremacy. The complexity lies more in the design of the advisory body to be subsequently enacted by the Parliament – this is the major work to be undertaken in the co-design process. As the Honourable Murray Gleeson, former Chief Justice of the High Court of Australia, said as recently as 18 July of this year:

“The structure, composition and functions of the proposed representative body would be determined, and susceptible to change, by legislation of the Federal Parliament. What would appear in the Constitution would be the minimum requirements necessary to guarantee its continued existence and its essential characteristics.”

Our systems of government are not so fragile that they cannot accommodate an advisory body whose only work will be to improve the lives of Indigenous Australians. What's more, ensuring Indigenous people can provide advice will aid and not detract from the workings of government in Indigenous affairs. To quote Murray Gleeson again:

“A proposal that the Constitution should provide for Parliament to design, establish, and determine from time to time the make-up and operations of a body to represent indigenous people, with a specific function of advising about the exercise of that power, hardly seems revolutionary.”

I want to acknowledge another former Chief Justice of the High Court, The Honourable Robert French, who only a few days ago has given strong support to this cause.

I see the Uluru Statement as fundamentally an invitation to listen, now and into the future. Let's move forward and participate openly and honestly in a dialogue about how the Constitution can ensure that Parliament and the Government listen to and hear Indigenous voices. Let's not allow a rejection of the Uluru Statement to be added to that long list of rejections borne so heavily by Indigenous Australians for 230 years. And let's not breach the trust the Uluru Statement places in us.

The challenge for those of us who support constitutional recognition is to understand that not all fair-minded people will agree with what I am saying. That said, I strongly believe that the widest range of reasonable concerns can be properly and safely addressed. In this, we must mount our arguments with clarity, care, generosity and respect. In return, I ask sceptics to stand in the shoes of people whose 65,000-year-old civilization was so purposefully, negligently or carelessly devalued and disrespected. And who were then made outcasts in the nation created by that conquest.

To those who think it's fanciful, remember there were plenty who thought Federation was fanciful. And that the Native Title Act was fanciful – and even dangerous. On both occasions many sensible people of goodwill doubted that such divergent interests could ever find common ground. But common ground was found, and on each occasion the nation took a step forward. I'd urge sceptics to consider this about those two great national steps forward: out of the 1890s Federation movement came a generation of leaders of outstanding competence and patriotic vision. The genius of the nation was framed in those

constitutional debates. Similarly, with Mabo and the Native Title Act: from those complex 1990s negotiations a brilliant generation of Indigenous advocates was born.

Consider how much we stand to gain when Indigenous people are given a constitutional guarantee that their voices will be heard in the nation's deliberations. Not only will it go some way to correcting historic failures, it will add another dimension to the national debate. It will be a lesson in the virtue and rewards of boldness. When we face the truth squarely and challenge ourselves to find answers, we gain in ways we never contemplated. When we shy away, fearing that the debate might get awkward, or raise difficult matters, or come to nothing, we lose – and in more ways than can be counted.

And if we don't, as a nation, seize this opportunity, what will that say to future generations of Indigenous Australians?

Tonight, we can pay tribute to 230 years of Indigenous resilience, resistance and leadership. Earlier, I mentioned Kevin Gilbert. One of his books was entitled *Because a White Man'll Never Do It*. So it has always been. Nothing has been achieved in their advancement without the sustained determination of Indigenous people themselves. Their ambitions, their refusal to give up and the basic justice of their cause present us with lessons in moral courage. They have been the people who have fought the hard cases – think of *Mabo* and the earlier *Gove* case. There are too many outstanding leaders over this long period to mention them all here. But I do want to acknowledge the Yolgnu people on whose lands we are gathered, and Galarrwuy Yunupingu and leaders of other North-East Arnhem Land communities.

When we finally have Indigenous constitutional recognition, Australians will be able to say with pride that those scenes of destitution and exclusion, suffering and neglect were **not** beyond remedy; not a permanent part of our nationhood. The great Australian silence could be broken. It just needs a voice – and a will to listen.

I ask all Australians, especially our political leaders, to accord the Uluru Statement the same deep consideration and respect for the nation's democracy that went into the writing of it. Don't turn away. Look to the possibility, the opportunity – not to the difficulty.

I want to say to Prime Minister Scott Morrison and to Minister Ken Wyatt: This is a rare opportunity. This is your time. You're the ones who can bring the country with you. There are few prime ministers who have had your authority and your touch with the country. Here is a great opportunity to navigate a way through this long-standing issue of the rightful and meaningful recognition of Indigenous people in our nation.

We welcome your commitment and your budget support to the process and we stand ready to work with you. This is a great opportunity for all Australians to walk together to finish what the nation started in 1967. Nothing you do as Prime Minister and as Australia's first Indigenous Minister for Indigenous Australians will endure longer in the national memory. Or earn you more gratitude from future generations.

This is a righteous cause. It can be your great and enduring legacy.

Thank you.

Danny Gilbert

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