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Is Australia Big Enough for Reconciliation?

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I acknowledge the Ngunnawal people as the traditional owners and custodians of the land on which we meet today.

It is an honour to give this lecture – not least because of those who have preceded me.

The invitation was issued by the University in February and when I accepted, I was promptly asked to provide a topic, which I did. Just under a month ago, I was asked for a topic again – so much for my unwillingness to predict in March what I might want to say about reconciliation in December. But I want to stick to my March choice, "Is Australia big enough for reconciliation?"

To ask the question might seem strange. In January I had pronounced, in the presence of the Prime Minister, that this was the most hopeful period of my long life. Yet in March I was questioning our national capacity to reconcile.

Let me explain.

My hopefulness is based on the fact that, from a 50 year perspective, we have made considerable progress, and, unlike the past, there are so many people and institutions which see ending Aboriginal disadvantage as something for all of us. I will have something to say about where I believe we have made progress, and go into more detail about community involvement, shortly.

My questioning, however, arises from our response to the determination of so many Indigenous people to achieve, not just social and economic equality – the closing of the gap – but to maintain their collective identities and their cultures. One well-known representation of these identities is the Tindale map of Australia, with which I suspect everyone in this audience would be familiar.

However sympathetic we are ending Indigenous disadvantage, we are – in our hearts and instincts – assimilationist. This is part of the success of “closing the gap” as a spur to engagement. Australians are strongly attracted to equality. Allowing Aboriginal and Islander Australians to be equal is what was overwhelmingly supported in the 1967 referendum. Of course we want them to be equal, and indeed to be just like us.

So I will say something about what is good today, about how we moved from segregation to an equality of citizenship. Then I want to address the challenge of leaving room in this great and blessed country for the world's oldest living cultures to survive.

My first engagement with an Aboriginal person was a shallow one. I was holidaying on a farm where there was an Aboriginal girl employed as a domestic servant. I saw no unkindness in her treatment but, as a 14 year-old, sensed that she did not fit in my understanding of Australia and how Australians related to each other.

As an immature university student two years later, I was aware that I was living in a segregated society where the first Australians were, in the main, denied the vote, not counted in the census, interfered with by officials, were segregated from each other as a price of citizenship, and were subject to child removal for other than welfare grounds. They were comprehensively left out of the luck in the Lucky Country. I visited the native reserves in the south-west of Western Australia and engaged with some of the fringe dwellers in the Swan Valley. I saw the sexual abuse of Aboriginal women in a rural town. There were people living on reserves at the edge of town housed in tin sheds. There was no protection or acknowledgement of indigenous rights to land. The segregation was both in fact and in law.

Later, as a young lawyer, I saw child removal for social rather than welfare reasons, and blatant abuses of the processes of the law. These early experiences drove my interest in reconciliation, although that was not a term we used then.

We have made progress

During the course of this year, I have described what I see as the progression out of segregation into equal citizenship. No matter how bad things are now, they were much worse then.

Let me list what are – to me – some of the markers of our direction of travel as a country over the last 50 years:

- Voting rights legislated for in 1962;

- the unprecedented level of support for the 1967 referendum;
- the Gove land rights case 1971 which, while denying recognition of native title, set the intellectual framework for recognition of land rights;
- the Woodward reports on the implementation of land rights in the Northern Territory in 1973 and 1974, supported across the Parliamentary divide;
- all-party support for the Racial Discrimination Act 1975;
- all-party support for the establishment of Land Rights in the Northern Territory culminating in the Land Rights (NT) Act 1976,
- the subsequent establishment of Land Rights regimes in the majority of Australian states during the 1970s and 80s;
- the establishment of the Council for Aboriginal Reconciliation in 1991;
- the High Court's Mabo judgement in 1992;
- Keating's Redfern speech in the same year;
- the Native Title Act 1993;
- the bridge walks for reconciliation in 2000;
- the establishment of Reconciliation Australia in 2001;
- Prime Minister Rudd's national apology in 2008 and
- current all-party support for constitutional recognition; and
- the widespread engagements across the community with Indigenous people exemplified by the RAP program.

To this list can be added endless expressions of good intentions over that period by governments of all stripes, Commonwealth and State.

To report progress is not to be blind to continuing disadvantage and failure. This audience does not need to be informed how far we have to go in terms of closing the gap in social and economic circumstances. This is documented annually in the Prime Minister's report to Parliament. It is also documented in the reports *Overcoming Indigenous Disadvantage* issued by the Steering Committee for the Review of Government Service Provision, the most recent of which was published last week. Progress is reported but it is spotty and slow. The rates of imprisonment of indigenous Australians alone are a clear indicator of continuing, shameful, failure to meet our aspirations in practical reconciliation.

The RAP program

Reconciliation Australia has been inviting business and other organisations to enter into Reconciliation Action Plans since 2007. This successful program is based on the

establishment of respectful relationships with Indigenous people, leading to productive engagements. These often include employment and procurement from Indigenous businesses, but respectful relationships come first. The take up of RAPs has experienced record growth over the past 12 months, growing by 126 organisations to a total of 563 with an endorsed RAP. A further 488 organisations are scoping or developing their first RAP, with around 190 of these making first contact with Reconciliation Australia over the past 12 months.

The problem for Reconciliation Australia is meeting the demand for assistance in developing a RAP within a constrained budget. This problem has been partially met by providing for a range of RAP categories related to the intensity of the engagement and the depth and quality of the commitments made.

Quite apart from this formal way of engaging in the reconciliation process, there are numerous other community-led and often government-supported initiatives, not least the area of education, where there is strong private sector support for scholarships and in-school programs.

The breadth of community engagements in 2014 stands in stark contrast with the segregated Australia of my youth, when these matters were left to a few religious bodies and to governments. In my earliest years, I would have excused any Indigenous person for saying the world was against them. In 2014, they have many allies. It is this broad community engagement which appears to me to be based on a broad community desire to settle these matters which led me to proclaim this as the most hopeful period of my life.

Current determination to close the gap

The determination of the present government to achieve change in this area is clear. At the political level, we have a Prime Minister who has described himself as Prime Minister for Indigenous Affairs, he has a Minister for Indigenous Affairs in Cabinet, and a Parliamentary Secretary for indigenous affairs. The Government has in train a wholesale reorganisation of its programs and their administration. 150 programs are to be converted into five streams, enhancing the capacity to work flexibly at the local level and escape the program and departmental silos which have hindered sensible local action. These changes are immensely ambitious and I have detailed elsewhere my concerns, not about Commonwealth intentions, but its capacity to deliver. The announcement a week ago of

the delay in making decisions on the current funding round was inevitable. Too much is trying to be done too soon.

The risk is that desirable moves towards a more flexible and localised approach may be discredited by implementation failure.

I dealt with this in some detail in the John Button Oration earlier this year. As part of that I said:

“There is much to like about some of the ideas behind this restructuring. Whole of government approaches, local solution brokering, the possibility of pooled funding are to be welcomed. But I ask you to hold in your minds the administrative complexity of what the government is undertaking and the management challenge it faces. In the space of one year it is to take 150 existing programs which involve, I understand, some 1400 organisations, and redirect expenditure into five broad streams while at the same time changing the geographic and hence jurisdictional basis of the administrative framework. I ask you also to consider what sort of skills are required to carry out some of the admirable intentions, to engage with communities to negotiate and implement tailored local solutions, providing, as the government says elsewhere, opportunities for communities to contribute to the design and delivery of local solutions to local issues. The skills required for this difficult work are largely absent from the APS and there is no training program to learn those skills.”

It will be capacity to deliver on its ambitious promises that counts. The decisions on the current round of grant funding last week are a reminder that the execution of these changes within a limited timeframe will be extremely difficult. There is a risk there will be unintended destruction of value in current programs unless decisions are finely tailored to on-the-ground realities. We are reminded that the Commonwealth does not have a good record in this regard, by recent governments’ abolition of the CDEP in remote communities and its replacement by ineffective job arrangements. In the communities I know best this has been very damaging. A new set of proposals is being developed; yet another fresh start.

In addition, the receptiveness of Indigenous communities to this new approach and preparedness to engage will be affected by current issues like proposals to close down remote communities, the demand for 99 year leases under the Land Right (NT) Act, and

whether a constitutional amendment for recognition around which all Australians can coalesce can be devised. One thing that is predictable is that missteps on any of these issues could unite Indigenous opinion against Government measures generally, and further set back the cause of reconciliation.

The world's oldest living cultures

Australia's colonial history is distinctive in its failure to recognise Indigenous polities with which the settlers were required to deal. Not for us the treaties of North America and New Zealand. Over time, distinct tribal and language groups were identified, but it was not until the seismic shift of Mabo that these collectives were afforded a legal status, with membership and internal rules defined by indigenous law and custom. Native title determinations reflect recognition by Australian law of collective, rather than individual, rights. The numerous agreements between native title holders and mining companies are not agreements made with Indigenous people as individuals, but with traditionally-defined and authorised collectives. The land settlement agreement being negotiated by the WA Government with the Noongah nations in the south-west of Western Australia will be made, if it is made, on it being agreed to by traditionally-defined collectives.

Notwithstanding this apparent post-Mabo lock-in of collective status, what is troubling me is the ever-present, if now seldom overtly stated, pressure for assimilation. Writing recently in response to Noel Pearson's Quarterly Essay, *"A Rightful Place"* I wrote,

"There is much in Australia today to suggest that we are not very interested in allowing room for indigenous cultures to continue to be part of our national fabric. Whatever lip service we offer the world's oldest living cultures, the clear message from our actions is that our main concern is to bring Indigenous individuals into full enjoyment of their rights and duties as Australian citizens. There is no clear message that we understand and value these cultures as part of our nation. There is no indication from our actions that we will preserve sufficient space for the Yolnu, the Nyungar, and so on, to retain collective identities and distinctive cultural spaces.

In the case of remote communities that still observe practices close to those of pre-settlement cultures, the policies of successive governments seem designed to strangle them."

In the few months since I wrote that, things have worsened. Current policies now threaten to close many communities down and to dump their populations on the fringe of towns, to rot as they were left to rot as fringe dwellers in the 1960s, following the equal wage case.

If indigenous people were to choose to assimilate, to forego any ongoing collective identity, to simply join other ethnic or cultural groups as individual Australians with an acknowledgement of past identity – presenting as equal Australian citizens and no more – fine. But that is a matter for them. Were they to go down that path, that would be the end of that. There would be no need for reconciliation. Instead, we would simply deal with disadvantage wherever that lay within the whole community. Some people, for example Peter Coleman on the ABC's Q&A recently, suggest there is where we are heading. I suspect that many others think the same thing.

History suggests, however, that is not what will happen, our history and the history of like settler countries. This is not a recent issue. I discussed these matters 34 years ago in an address in Queensland (Sherrington Memorial Address, 18 September 1980). In the address I described as contentious...

...the maintenance of a permanent Aboriginal element in the Australian community, preserving a community which is distinctive and recognisably Aboriginal in character, with a lifestyle or lifestyles of the same nature. Commonwealth policy overtly recognises this possibility – as Liberals, we quite properly would not prescribe it. In our 1975 election policy, we said we were committed to the principle that all Aboriginals should be as free as other Australians to determine their own varied futures,

...and that...

...we recognise the fundamental right of Aboriginals to retain their racial identity and traditional lifestyle or, where desired, to adopt, partially or wholly, a European lifestyle.

I went on to quote my predecessor as Minister for Aboriginal Affairs, Ian Viner, as saying that our policy of self-management requires Aboriginals, as individuals and communities, be in a position to make the same kinds of decisions about the future as other Australians customarily make, and to accept responsibility for the results flowing from those decisions. Ian spoke of Aboriginals exercising authority with responsibility, offering a means of breaking up from the state of dependence which has for so long enchained them. I mention this, in part, as a reminder of how much recent debate reflects debates of decades ago.

We have still not settled nor dealt with these issues.

In that same address I quoted from the distinguished Canadian judge, Berger, in part as follows:

... Problems of native people are not simply problems of poverty, but of a people trying desperately to preserve their cultural identity.

And then,

The culture and the values of native people amount to more than crafts and carvings. The tradition of decision-making by consensus, their respect for the wisdom of their elders, a concept of the extended family, their belief in a special relationship with the land, their regard for the environment, their willingness to share – all of these values persist in one form or another within their own culture, even though they have been under unremitting pressure to abandon them.

And then a passage which has forever remained in my mind:

Yet, through all the vagaries of government policy, the native people have endured. This is so because of their powerful sense of belonging to a group defined by distinctive social, economic and cultural traditions. What will decide the future of the native people in Canada is their own collective will to survive as a people.

This is what has so impressed me about the people on whose land I live, the Noongah people. Their history is reasonably well known to me. It is one of dispossession, dispersal, extraordinary bureaucratic interference with every aspect of their lives and families, including child removal for non-welfare reasons. Yet they have endured as peoples, as collectives, able to negotiate with the WA government on that basis. Their survival as peoples is a triumph of the human spirit.

The survival of Indigenous Australians as peoples is what Noel Pearson spoke of at Garma this year, and again in the Quarterly Essay previously referred to. With his customary eloquence and scholarship he explains why...

...the virulent but sometimes subtle antipathy of some Australians to our existential claims is the source of the indigenous Australian anxiety.

In Australia, post-Mabo, it is hard to argue that Indigenous collectives, tribes, First Nations, call them what you will, are not part of the legal framework of Australia. But are they frameworks for what we hoped for in our optimism in the 1970s and 1980s, that opportunities for self-management would mean the Indigenous community would take responsibility for its progress? As Percy Neil said to me in Yarrabah in 1980, and so many Indigenous people said elsewhere,

"Give us back our land and our problems will be solved."

It has not proved as easy as that.

There are so many unanswered questions around this matter of enduring collectives. Will they be defined other than in the highly technical way required by native title processes? What rules do they follow? How are those who speak for collectives appointed or identified, and on what matters do they speak with authority for the collective? How is authority exercised in the collective?

These are matters for them to decide and not for governments nor the rest of us. What is needed, and is not generally available, is the space and time for them to work through these issues. It is for us to understand that our role is to acknowledge that their collective identities matter to the nation as to them, and for us to provide the space and the opportunities to have their own discussions on these critical questions. Many Indigenous people are under too much day-to-day pressure just to survive, let alone prosper and contemplate their futures. They need to be given the opportunity to develop collective visions and views for the future.

Instead, we are always impatient, even if sometimes our impatience is well-meaning. We all want to see rapid improvements. Political timetables trump workable timetables.

Where does constitutional recognition fit into this? It is relevant to the past, present and the future. Where we started as a nation is in an age of racial discrimination. That is evident from the Convention debates as it is from the text of the constitution itself and from the words of our first and second Prime Ministers, as quoted in the report of the Expert Panel on Constitutional Recognition of Indigenous Australians. These quotations explain to me, better than anything else, the Australia I was born into; an Australia where indigenous people were non-citizens, legally and de facto segregated.

As Barton argued in support of the Immigration Restriction Act 1901,

I do not think, either, that the doctrine of the equality of man was really ever intended to include racial equality. There is no racial equality. There is basic inequality. These races are, in comparison with white races – I think no one wants convincing of this fact – unequal and inferior.

Deakin, in the same debate gave his version of the future:

Little more than 100 years ago, Australia was a dark continent in every sense of the term. There was not a white man within its borders. In another century, the probability is that Australia will be a white continent with not a black or even dark skin amongst its inhabitants. The Aboriginal race has died out in the South and is dying fast in the North and West, even where most gently treated.

These attitudes explain the Australia I knew in the 1950s. These 19th century attitudes were deeply ingrained in our national psyche. This is what underlay where we were when I started to think about these matters little more than half a century ago. Those deeply ingrained attitudes still inhibit our acceptance of our first Nations, and hence inhibit our embrace of reconciliation beyond an attachment to undifferentiated equality. For those with whom we seek to reconcile – Indigenous Australians – equality is important, but not enough.

In the wildly successful 1967 referendum, that wonderful expression of the Australian instinct for fairness and equality, we took out one objectionable provision and empowered the Commonwealth to legislate about Indigenous people. But, as yet, there is nothing in the Constitution which acknowledges the 40,000+ years of Indigenous occupation and sovereignty, nothing which acknowledges what Mabo acknowledges, no signal about the continuing presence of our first Nations to which all of us of us can look. We will all feel better about ourselves and our country when our constitution is completed by recognition of the layers of our unique Australian identity.

The question remains to be answered – are we big enough, generous enough, to provide room for the world's oldest living cultures to find their continuing futures?