

17th Vincent Lingiari Memorial Lecture (2017)

***Our Hope for the Future:
Voice. Treaty. Truth.***

By

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FINAL

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Good evening everyone,

I acknowledge and pay respects to the Larrakia people, traditional custodians of the land on which we are meeting tonight.

I want to thank Charles Darwin University for asking me to deliver this Lecture. This is huge honour for me. It's always hard presenting in your home town.

I was feeling a bit anxious about that because you all know everything about me.

I would like to acknowledge Wendy Ludwick who I think put my name forward for this honour.

We are here to honour the memory of Vincent Lingiari and his leadership in the 1966 Wave Hill strike.

I will return to that story, and to the place of the Gurindji in the contemporary struggle for the rights of Australia's First Peoples shortly.

But first, I'd like to share another story with you, a personal story.

This story is from the 1950s, a decade before the Wave Hill Walk Off, and is set at Parap Camp a few miles from here (in the suburb now called Stuart Park), where I and my sisters grew up with our mum and dad.

For those who don't know the history, Parap Camp was home to many Aboriginal and some Torres Strait Islander families in those harsh post-War years.

Many of those families had a Stolen Generations heritage, with the parents of Parap camp families having grown up in the nearby Kahlin Compound. Kids were rounded up from all over the Territory.

My mother was one of those, taken as a young girl sometime in the 1930s by white men on horseback from her Alyawarre family north east of Alice Springs.

She was brought here to the Compound, fifteen hundred kilometres away.

After growing up at Kahlin, she was sent to work as a young teenager on a farm on the other side of the Darwin harbour, near Belyuen.

Later, she met my dad, a Swedish merchant seaman who had jumped ship in Fremantle, and made his way to Darwin.

They married and settled at Parap Camp.

My story is from when I was about 9 or 10 years old, when I was in Grade 3 or 4 – like almost all children from Parap Camp, I and my sisters attended school without fail.

School attendance was non-negotiable in those days – we all just went.

Every year the class would have a Christmas Party at the end of the final term, and the idea was that all the kids would bring food from home for the party.

I was excited because I knew my mum made the best sponge cakes ever: great high, fluffy things.

I pictured myself taking one of these cakes into school – I was a bit vain, and wanted to show off what a great cook mum was.

But when I asked her to make the cake, she flatly refused.

No matter what I said, how I nagged at her, she just said no.

Finally, in frustration, I just burst out: "But why mum? Why won't you make one of your cakes and let me take it to the school party?".

She hesitated for a moment.

And then she said quietly: "I don't like white people eating my food".

I knew immediately from the way she said it that not only was this the end of the argument, but also that she was telling me something more.

I can still see her face and hear her voice.

I haven't forgotten this: although I didn't understand *how* at the time, it was clearly important.

And so I had to trudge off to my Christmas party with a packet of store bought biscuits, while all the other kids brought scones, cakes and biscuits baked by their mothers – none of which, I might add, were as good as what my mum could have made.

This sounds like an ordinary domestic, family event.

And it is.

But like so many stories that are part of every Aboriginal family in this country, there is a lot packed into this little scenario.

For a start, how did my mum get to be so good a cook?

I see now that her skill with cooking was something she had learnt from the white women she worked for as domestic, unpaid labour.

Her ability to cook a beautiful sponge cake was a direct consequence of the policy of assimilation by which all Australian governments aimed to eradicate us as distinct cultural groups.

At the same time, there were other skills that were withheld from her and so many other Stolen Generations.

Most importantly, growing up in Kahlin Compound she was never taught to read or write.

Despite the rhetoric about Aboriginal children being taken away to improve their chances in life, literacy was one skill that the administration clearly thought was of no use to a young Aboriginal woman.

That much is clear from our history.

However, on a personal level, much about my mother's motivations in the story about the cake remains curious to me.

Did she not want white people to eat her food as an act of defiance?

Was it a reluctance – or a refusal – to place herself in a situation of being judged by them?

Was it her own brand of passive resistance?

I don't know.

However, I do know it was a profound moment in our relationship as she revealed something of herself to me.

This moment has stayed with me over all these years.

And I believe this little incident points to the great gulf in experience between Aboriginal and non-Aboriginal Australia.

It points towards an experience carried by so many of our families: the experience of having been treated unjustly, but of that injustice not being acknowledged.

This experience has been analysed by Jill Stauffer in her 2015 book, *Ethical loneliness: the injustice of not being heard*¹.

Stauffer describes the profound isolation and loneliness that arises as a consequence of such an experience.

Calling it 'ethical loneliness' she says that it is

a condition undergone by persons who have been unjustly treated ... who emerge from that injustice only to find that the surrounding world will not listen to or cannot properly hear their testimony. ... ethical loneliness is the experience of having been abandoned by humanity, compounded by the experience of not being heard.

There is something of this ethical loneliness in my mother's experience, and even in the story of the cake she would not make.

I believe that experience is common to many if not all Aboriginal and Torres Strait Islander families.

It stems from the complex, often damaged and damaging relationship between our First Nations and those who colonised this place from 1788 onwards.

Much of that damage remains embedded in the relationship between black and white Australia.

This nation has never properly dealt with that damage.

It has never properly acknowledged it, and acted upon that acknowledgement.

I believe we now, in 2017, all of us over the age of 18, this generation, have an historic opportunity to do that, to begin the process of repair, to re-set that relationship on a foundation of equality, justice and truth.

That opportunity is presented by the prospect of genuine and substantive reform to the Australian Constitution, and that is the topic I want to talk to you about this evening.

I would like to take you on the journey that I have been recently on as a member of the Referendum Council, which was tasked with making recommendations to the Federal Government on constitutional reform.

I would like to share with you our experience of the unique regional Dialogues with First Peoples and communities, and what we heard in them, culminating in the National Convention of First peoples at Uluru in May this year, and the *Uluru Statement from the Heart*.

And most importantly I want to describe the three essential demands to come from this process, which I summarise with these three words:

Voice.

Treaty.

Truth.

Before we trace that journey from the world of the Parap Camp in the 1950s, to where we stand today in 2017, I would like to acknowledge the importance of the Wave Hill Walk Off in 1966 in our history.

Mr Lingiari and the other Gurindji men and women first walked off their jobs on the Wave Hill station to demand fair pay and conditions, but ended up sitting down at Wattie Creek and demanding the return of their traditional lands.

They were demanding proper acknowledgment of the injustice done to them, and proper restitution of the harms done.

In doing so, they began the modern land rights movement.

But they were also re-asserting the struggle for self-determination, as summed up so elegantly by Mr Lingiari himself when he said:

*"We want to live on our land, our way"*²

In those nine words, he captured the essence of what have been and continue to be the central demands of our First Nations since 1788.

First, recognition of our sovereignty, never ceded, of the land, of Country.

Second, acceptance of our right to continue in our unique and diverse cultures.

The Gurindji and Mr Lingiari powerfully re-asserted those demands, just as our First Nations have done since the beginning of the colonisation of Australia, and just as we have continued to do since.

This year, 2017, is a year of anniversaries of events which built upon and extended the rights of First Peoples as so clearly stated by the Gurindji.

It is

- 50 years since the 1967 Referendum;
- 25 years since the Mabo decision overturned the lie of 'terra nullius' in 1992; and
- 20 years since the *Bringing Them Home Report* in 1997.

It is also, crucially, 10 years since the Intervention was unleashed on our communities here in the Northern Territory.

The Intervention was the counter-revolution, the attempt to turn back the clock to the times before the Gurindji and Wave Hill, and the 1967 Referendum, and all the other achievements.

The Intervention was the attempt to take us back to the world of Parap Camp in the 1950s, when the powers of the nation-state reached into every aspect of how we lived our lives.

Now, ten years on, it is clear how profoundly and utterly the Intervention and the thinking behind it has failed.

It continues, however, to create much heartache and pain.

As John Lawrence in his recent Castan Centre Address³ has stated, ten years on, the Northern Territory gaols more people per capita than any country in the world.

The overwhelming majority of those incarcerated are Aboriginal.

The number of children being removed from their families is soaring: it rose by an average of 16% per year between 2011 and 2015.

This frightening increase is entirely due to the removal of Aboriginal children from their families⁴.

Family violence is out of control.

These figures – which many of you will know – are profoundly disturbing.

They demonstrate the tsunami of anger, frustration, despair and sadness that is engulfing our communities and families.

These type of figures are echoed across the country.

They reflect the kind of Intervention-thinking that has informed policy making over the last ten years, based on the idea that the nation-state knows best what is good for us.

Let us remember that the Intervention was trumpeted by its instigators as necessary to protect Aboriginal women and children.

It marked a shift in policy-making not just here but across the country.

Intervention-thinking sees self-determination as a failed idea, and blames us for the situation in which we find ourselves.

It believes that we do not have anything to offer, that we are at best 'risks' to be managed.

It ignores or condones or covers up the abuse of young people in detention, or our lack of housing or access to education.

I say again: it has utterly failed.

We can see this through the statistics, but more importantly through visiting many of our communities and listening to the experience of Aboriginal and Torres Strait Islander peoples over these last few months.

I've been working in this field all of my adult life, and I can say honestly say that I have never seen things so bad.

This has to change.

We now sit in 2017 at what I believe is a critical junction in our history, not just for the First Nations of this country, but for the nation-state as a whole.

Six weeks ago, the Referendum Council of which I was Co-Chair handed a report to the Prime Minister, recommending what constitutional change should look like if it is to be acceptable to our First Peoples.

The report documents what we were told in a series of regional dialogues with Aboriginal and Torres Strait Islander people and communities across the country.

Going out and talking to Aboriginal and Torres Strait Islander people was our first priority under our terms of reference.

These twelve regional Dialogues were held from Thursday Island to Hobart, from Perth, to Ross River outside Alice Springs, to Sydney and Melbourne. People from across the regions came to these centres.

We also held a one-day information session in Canberra.

Each Dialogue was attended by around one hundred people, including Traditional Owners, representatives of local organisations, and individuals.

Each was held over three days to allow full consideration of a number of proposals for Constitutional reform. It was the same format and same agenda for each Dialogue. We needed a methodology which could, in some way, be empirically measured.

The reforms that each Dialogue considered had been inherited by the Referendum Council from the work of the *Expert Panel on the Recognition of Aboriginal and Torres Strait Islander Peoples in the Constitution* (co-chaired by Patrick Dodson and Mark Leibler) and the *Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples* (co-chaired by Senators Ken Wyatt and Nova Peris).

They were:

- first, a statement acknowledging us as the First Australians, either inside or outside the Constitution;

- second, amending or deleting that part of the Constitution which empowers the Commonwealth to make laws for Aboriginal and Torres Strait Islander peoples;
- third, inserting a guarantee against racial discrimination into the Constitution; and
- fourth, deleting that part of the Constitution which contemplates the possibility of a state government excluding some Australians from voting on the basis of their race.

The Dialogues also considered a fifth option, that of a First Peoples' Voice to be heard by Parliament, and the right to be consulted on legislation and policies that affects us.

The Dialogue process was unprecedented in Australia's history: never before have we as First Nations sat down across the nation in such an intensive, structured manner to deliberate on constitutional matters.

It was a passionate process.

Delegates grappled with the technical and legal implications of these proposals, as well as with their political viability.

There were disagreements, there were even arguments: how could it be otherwise when 1,200 people from all the diversity of our Nations were brought together to talk about matters so closely connected with the experiences and history of their families, clans and communities?

But there was also an extraordinary level of agreement on some matters.

When delegates from the Dialogues assembled at Uluru in May this year, the exhaustive deliberations and informed participation through the Regional Dialogues led to a broad consensus, as articulated in the *Uluru Statement from the Heart* which was adopted by the Convention.

Specifically, Australia's First Peoples overwhelmingly rejected any purely symbolic changes to the Constitution, such as through a 'statement of recognition'.

There were two reasons behind the rejection of this narrow model of Constitutional recognition.

First, there was a concern that formal recognition in the Constitution might interfere with sovereignty – and all Dialogues were steadfast in asserting the fact that we as First Nations had never ceded our sovereignty.

In re-asserting the fact of sovereignty, the delegates echoed the conclusions of the *Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples* five years ago, which stated that⁵:

The ... occupation of the country ... proceeded on the fiction of terra nullius. It follows that ultimately the basis of settlement in Australia is and always has been the exertion of force by and on behalf of the British Crown. No-one asked permission to settle. No-one consented, no-one ceded. Sovereignty was not passed from the Aboriginal peoples by any actions of legal significance voluntarily taken by or on behalf of them.

Second, and more simply, participants in the Dialogues and at Uluru simply did not trust the likely process for drafting a constitutional statement of recognition

The concern was that by the time the lawyers were through with it, such a statement would end up being so bland as to be incompatible with the duty to recognise the difficult truths of Australia's past.

Instead, our mob wanted substantive change, structural reform, for their communities on the ground.

And if it didn't fit that criteria, they weren't interested.

And this is where Dialogue participants and the Uluru Convention showed significant agreement.

There was overwhelming consensus around three proposals.

First, for a constitutionally established representative body that would give First Nations a Voice directly to the Federal Parliament.

Second, for the establishment of a Makarrata Commission to supervise the making of Treaties with us.

Third, for a process of local and regional Truth-telling which could form the basis for genuine reconciliation.

These three things – Voice – Treaty – Truth – were the key consensus demands that arose from the Dialogues, were captured in the *Uluru Statement from the Heart*, and form the core of the Referendum Council's report.

I'd now like to turn to each of these three crucial concepts and unpack them, give you my view why they are important, what they might mean, and how they might provide a pathway out of our current situation.

These are not abstract notions, or intellectual constructs.

Changing the Constitution, many of us believe, is the only place left for us to go.

We have sat on the Committees, we have set up our own organisations, we have changed national policy agendas, but we still haven't been able to achieve the substantive change demanded by our communities.

As Marcia Langton said at Garma recently, we have been Royal Commission-ed out, we have been committee-ed out, and we have been panel-ed out.

We still have to rely on other people's good will.

And that is not good enough anymore.

We need more than that.

We need once and for all for our sovereignty to be recognised and our voices to be heard.

The recommendation for substantive constitutional change was for the establishment of a *"representative body that gives Aboriginal and Torres Strait Islander First Nations a Voice to the Commonwealth Parliament"*.

We believed – following the consensus at Uluru – that this is the only constitutional reform which would accord with the wishes of Aboriginal and Torres Strait Islander peoples.

Why is this important?

Establishing such a body in the Constitution has both substantive and symbolic value.

Symbolically, it recognises the unique place of First Peoples in Australian history and in contemporary Australian society.

It formally acknowledges our place here.

In asking Australians to vote 'yes' to such a proposal we would be asking us all to reflect on who we are, on what values and principles we hold dearest.

It would establish a significant national narrative about working together – about a genuine two-way conversation.

But such a body will also provide substantive benefits.

A constitutionally entrenched Voice to Parliament could address Australia's poor history of consultation with our Peoples by government.

All too often we have been excluded from the key decisions that are made about our lives.

The Intervention itself is a key example, designed over three days⁶, in some offices in Canberra by people who took little account of the evidence, had no understanding of the realities of our lives and most significantly didn't talk to any of us.

(No wonder it has failed!)

The Voice to Parliament would ensure we have input at the highest level into the policy-making that affects us.

It could also play a valuable monitoring role.

Properly resourced, it could hold Government to account, regularly reviewing and reporting on the implementation of recommendations from the host of inquiries and reports from the *Royal Commission Into Aboriginal Deaths In Custody* onwards.

It could also monitor the use of the Constitution's 'race power' or attempts to suspend racial discrimination legislation so that measures like the Intervention could be properly scrutinised *before* their implementation.

Embedding the establishment of the Voice to Parliament in the Constitution is vital because the body's existence would not then be at the whim of whichever government was in power in Canberra.

You know, every time there is a change of government, or a new Minister, or even a Head of Department, we all have to troop down to Canberra yet again and justify our existence. Pretty much, start all over again.

The Voice to Parliament would be a permanent and enduring feature of the nation's body-politic.

It could only be abolished by going back to you, the people, in a new referendum.

To date, all our national organisations have disappeared with the stroke of a Minister's pen.

We would be, at last, in the main building, not in the demountable out the back.

Of course, the details of how to establish such a body would need to be carefully negotiated with Parliament once its establishment was agreed through Referendum.

My vision – and that of many people we spoke to during the dialogues and at Uluru – is for a body that include representation from all the diversity of First Nations across Australia.

It would be a place for dialogue, a meeting place for us and with us.

And in my opinion, it is this diversity that would enrich the body-politic.

After 65,000 years or more on this continent, with all our different languages, histories and cultures, I think we would have something powerful and unique to offer the nation-state through such a body.

Let me turn to second proposal to come from the Dialogues and from Uluru: Treaty.

Australia is one of the few liberal democracies around the world which still does not have a treaty or treaties or some other kind of formal acknowledgement or arrangement with its Indigenous minorities.

It is something we have demanded since at least the mid-nineteenth century.

Despite the hard-won gains, such as through the *Land Rights Act* following the Gurindji Walk Off, and the *Native Title Act* sparked by Eddie Mabo, there is unfinished business that we need to resolve.

We used the word 'Makaratta' to describe this process of agreement or Treaty-making.

Makaratta is the process that guides the Yolngu Nation in North East Arnhem Land through difficult disputes, and its workings have been recently described by Galarrwuy Yunupingu in this way⁷:

... each party, led by their elders, must speak carefully and calmly about the dispute. They must put the facts on the table and air their grievances ... The leaders must always seek a full understanding of the dispute: what lies behind it; who is responsible; what each party wants, and all things that are normal to peacemaking efforts. When that understanding is arrived at, then a settlement can be agreed upon.

Following the Uluru Statement, this means the establishment of a 'Makarrata Commission' to set up a national Framework and principles for negotiating treaties, and a possible a national settlement document.

A Treaty is a pathway to the recognition of sovereignty and to the achievement of self-determination.

It is an agreement between equals.

Such treaties could be regional or State-wide, and it would be the Makarrata Commission's job to provide a national framework for, and supervise, these two-way processes.

Critically, treaties are inseparable from the third demand from the Dialogues and Uluru: Truth.

You cannot make a lasting and effective agreement unless you have a shared, truthful understanding of the nature of the dispute, of the history, of how we got to where we stand.

The true story of colonisation must be told, must be heard, must be acknowledged.

Because, this is still not the case.

This is difficult and painful territory – for us as well as for mainstream Australia.

It can be hard to hear.

As Jill Stauffer says in her book 'Ethical Loneliness' that I quoted from at the beginning of tonight:

Responding well to others, especially survivors of wrongdoing, may require that we open ourselves to hearing something other than what we expect or want to hear

But hearing this history is necessary before we can come to some true reconciliation, some genuine healing for both sides..

I was reminded of this just last month when I read media stories about an online digital map of more than 150 massacres developed by Professor Lyndall Ryan at the University of Newcastle⁸.

Through meticulous examination of the records, the map seeks to provide the evidence for those who still question whether massacres happened.

Professor Ryan has started documenting these facts for the eastern coast of Australia but plans to extend this to the rest of the country.

This is important work.

But I question how it is that we have had to wait until 2017 for this?

Why is this not part of the national conversation?

Our communities know about the massacres.

Our families know about the children being forcibly removed from their families.

But it seems that there is a need for many in mainstream Australia to pretend that all this didn't happen, that it's all just part of a 'black armband' view of history, made up to make you feel guilty.

One of the most moving episodes in the regional dialogues for me personally came at Ross River near Alice Springs.

There the Elders spoke of the distress they felt at the recent placement of a statue of the explorer John McDouall Stuart in Alice Springs to mark the the 150th anniversary of his attempt to reach the Top End from Adelaide.

The statue was shown holding a gun.

The Elders felt legitimately that this showed a painful lack of respect, given the fact that Stuart's journey led directly to a series of massacres in the region as control of the land was wrested from the traditional owners.

Let me be clear: this process of truth-telling is not about guilt.

Guilt is a debilitating emotion that stops us moving forward or doing anything.

What I'm talking about is respect and acknowledgment.

As one participant in the Regional Dialogues in Broome said:

[We are] people who worked as stockmen for no pay, who have survived a history full of massacres and pain. We deserve respect.

And of course, this is not just the history of our First Peoples – it is the history of all of us, of all of Australia, and we need to own it.

Then we can move forward together.

The Dialogues opted for the development of a 'Declaration of Recognition' to be passed by all Australian Parliaments.

This declaration – outside the Constitution – would be free to articulate that difficult shared history.

It could provide a unifying statement about the three waves of people who make up the Australian story:

- our ancient First Peoples (65,000 years or more),
- those people who came in 1788 and after,
- the peoples who have come from out of Europe and Asia and who continue to try to come us today, often fleeing persecution and seeking a better life.

Three waves of people.

So, this where we stand now in 2017.

The unprecedented process of deliberation by Australia's First peoples, through the regional Dialogues and at Uluru, led to the formulation of three clear demands:

Voice.

Treaty.

Truth.

Some commentators and others have expressed concern that these are new proposals, the examination of which will need yet more new processes to consider.

I respectfully disagree.

None of these issues are new.

We have been talking about these things for a long time.

Other commentators believe that these are impractical, left-field proposals.

Again, I respectfully disagree.

I believe these changes are challenging but achievable, and are proportionate to the level of distress, anger and powerlessness being felt in our communities.

In the international landscape of recognising Indigenous peoples, what we are asking for is modest, conservative even.

Many of our First Nation communities and families are plagued by a myriad of challenges including poverty, suicide, youth detention, family breakdown, and all kinds of health problems.

Worse, in my view, than any of this, is that too many of us feel hopeless.

To reverse this and to take our rightful place in this country, we need to create new places, new ways by which we can speak and get things done to deal with our complicated 21st century lives.

At the same time we will strongly and even fiercely guard who we are and our right to be different.

We need to create a future when we, and our children and grandchildren, are recognised as having something powerful and unique to offer this nation.

This needs to happen now, and not just for us as First Nations.

This is about the social and emotional wellbeing of the country as a whole.

It is a time of reflection, a time for all Australians to consider what kind of a society we are today, what are our values and our principles.

Surely, we are not the same people as we were in 1901 when the Constitution was drawn up.

Eventually we will have to sit down together, black and white in this nation, and deal with this.

For the truth is that this is our place.

We, the First Nations, are not going anywhere.

They can put it off for another ten years, twenty years fifty years.

But eventually you will have to sit down with as respectful equals and sort out this relationship.

But right now, we have an opportunity, a roadmap for doing that.

Simply this:

Voice.

Treaty.

Truth.

And I want to add:

Justice.

Hear us. Acknowledge us.

Thank you all for coming.

Endnotes

¹ Stauffer J (2015) *Ethical Loneliness: the injustice of not being heard*. Columbia University Press, New York

² Deadly Vibe (30 November 2007) Vincent Lingiari. Available: <http://www.deadlyvibe.com.au/2007/11/vincent-lingiari/>

³ Lawrence J B (2017) *'Night Will Fall': The Royal Commission into the Protection and Detention of Children in the Northern Territory*. Paper for the Castan Centre for Human Rights Law Conference, 21 July 2017, Melbourne

⁴ Office of the Northern Territory Children's Commissioner (2015). *Annual Report 2014-2015*. Darwin, Office of the Children's Commissioner, Northern Territory Government

⁵ Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, January 2012, p. 22.

⁶ Toohey, Paul, *Hard law hard love*, *The Bulletin* 2 July 2007

⁷ Yunupingu, Galarrwuy (2017) Makarrata the map: now it's over to you. *The Australian* 31 July 2017

⁸ <https://www.newcastle.edu.au/newsroom/featured-news/mapping-the-massacres-of-australias-colonial-frontier>