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The Aboriginal Question

Enough is Enough!

John Stone

I begin with a welcome to country – a welcome to **our** country. In doing so I take as my model that employed by Alan Anderson in commencing his paper[1] at the Society's 21st Conference in Adelaide. So let me begin by acknowledging the traditional owners of this land: King George III, and his heirs and assigns.

Introduction

I first list some matters that arise when discussing Aboriginal questions:

- I refer throughout to **Aboriginal** people, not **Indigenous** ones. Most people here, I imagine, are indigenous (that is, native-born) Australians, and the Orwellian arrogation of that term by the Aboriginal industry should not be condoned.

- I refer throughout only to **Aboriginal** people, not to the job lot term, **Aboriginal and Torres Strait Islanders.** The latter – a Melanesian people – do not like being lumped in with their mainland counterparts, whom they rightly regard as having been Stone Age "hunter gatherer" nomads; by contrast, Melanesians developed agricultural gardens and settled land holdings to go with them.
- I reject the pretentious terms, "**First Peoples**", or "**First Nations**". This United Nations-derived terminology asserts Aboriginal superiority over the rest of us, whereas a foundation stone of our nation is that we are all, and equally, Australians.

I am giving this paper because, having observed Aboriginal politics for the past 50 years, it is time to say, "It's over". Our once seemingly boundless goodwill towards our Aboriginal fellow Australians is becoming exhausted. Despite the countless billions spent in their behalf, each failed "program" is succeeded by demands for another. "Aboriginal demands fatigue" is setting in. Recent developments have been the last straw: the so-called Uluru Statement from the Heart (read Pocket), and the resulting Referendum Council power grab proposals which, if ever consummated, would threaten not only the workings of our representative democracy but also the very sovereignty of the Australian nation.

Enough is enough! So much for preliminaries: now to substance.

Schema

In this paper it is impossible to detail all the events leading to our present predicament. So much increasingly corrupted historical water has flowed under this bridge during the past 50

years that it would require several volumes to do justice to the disaster wrought.

I begin with the 1967 constitutional referendum that, in hindsight, can now be seen to have committed the fatal error of handing power over Aboriginal affairs to Canberra. During the next 25 years (1967-92), federal governments of both political persuasions pursued broadly similar, and broadly equally mistaken, policies.

The next milestone is the High Court's 1992 decision in *Mabo*, when six of the seven Justices so far forgot themselves as to deliver what clearly ranks as the most legally indefensible decision in that Court's history (notwithstanding several competitors for that ranking).

Not content with the damage flowing from that judgment, the Keating Government then enlarged upon it via the *Native Title Act* 1993 (Cth).

Next we had the National Inquiry into the Separation of Aboriginal and Torres Strait Island Children from their Families, which in 1997 produced its *Bringing Them Home* report, thereby inventing the still extant myth of the so-called "Stolen Generation" (sometimes even rendered in the plural).

In 1999 the Howard Government sought to amend the Preamble to our Constitution to mention our original inhabitants, the first significant step in what has since become the "Recognition" project.

The "Stolen Generation" myth was revisited in 2008 with a "National Apology" delivered in Parliament by Kevin Rudd, echoed by the equally deluded Brendan Nelson.

The "Recognition" project was formally initiated in 2010 by the Gillard Government, appointing a so-called Expert Panel to consider that matter and make recommendations.

Thereafter, a series of such bodies appointed by successive governments has recently culminated in a proposal for a

constitutional provision establishing a special Aboriginal body sitting alongside our already representative Parliament, and empowered to "give advice" on (what would quickly become) almost all Commonwealth legislation.

The 1967 referendum

In saying earlier that, in hindsight, the 1967 constitutional amendment was in error in handing power over Aboriginal affairs to Canberra, I was not seeking to criticize the 90.77 percent of voters who, on 27 May 1967, were responsible. I was then on leave from the Commonwealth public service, and living in Washington, DC.[2] I am not even sure that I voted but, if I did, I would probably also have voted "Yes". Many years later my old friend, the late Ray Evans, told me he had firmly voted "No", because giving more power to Canberra was always a bad idea. How wise he was.

The referendum sought to amend section 51(xxvi) of the Constitution, which originally gave the federal Parliament, "subject to this Constitution", the power "to make laws for the peace, order and good government of the Commonwealth with respect to: … (xxvi) the people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws". The Federal Parliament thus had no powers to make special laws for Aborigines other than in its territories.

The overwhelmingly positive referendum vote reflected a widespread attitude of goodwill towards Aborigines felt by almost all Australians. Today, however, Aboriginal industry spokespeople normally revile the amendment, saying "it hasn't done anything for us", and that (they argue) the Federal Parliament has used it to make special laws **against** Aboriginal interests.[3] The example most often quoted is the Howard Government's "intervention" to deal with the endemic sexual

and other abuse of Aboriginal children revealed by the Northern Territory's *Little Children are Sacred* report [4] in 2007.

The complaint that the 1967 amendment "hasn't done anything for us" reflects both the lies told in the lead-up to the referendum by its proponents, both Aboriginal and non-Aboriginal, which raised false expectations, and the continuing reality that inserting words in a constitutional rule book is no substitute for what John Howard later called "practical reconciliation" (measures to improve Aboriginal health, education and so on).[5]

The 1967-92 period

The 25-year period following the Referendum saw governments of both political persuasions stumbling from one failed policy to the next. Here I merely set out, staccato, some of that period's main features:

- In 1967, Prime Minister Harold Holt appointed H.C. ("Nugget") Coombs as Chairman of a new Council of Aboriginal Affairs. In that role (until 1973) he embarked on what was to become a 30-year personal project to destroy our national sovereignty.
- In 1972, the Whitlam Government established the National Aboriginal Consultative Committee, the first national body to be elected by Aborigines. Although its role was purely advisory, it was seen as a first step towards Aboriginal "self-determination".
- In 1972, the Whitlam Government established the first separate Department of Aboriginal Affairs. Scandals surrounding misuse of public moneys soon began erupting.
- In 1977, the Fraser Government replaced the National Aboriginal Consultative Committee with the National Aboriginal Conference. In 1979, this

body proposed a treaty (sic) between the Australian Government and Aboriginal "nations" (sic).[6]

- In 1981, functions of the Council for Aboriginal Development, previously established by the Fraser Government, were taken over by the Aboriginal Development Commission.
- In 1990, the Hawke Government merged the functions of the Aboriginal Development Commission with those of the Department of Aboriginal Affairs to create the Aboriginal and Torres Strait Islander Commission (ATSIC),[7] which became formally responsible for overseeing government programs (for example, health, education) as they affected Aborigines.[8]
- In 1991, the Hawke Government (with unanimous cross-party support) established the Council for Aboriginal Reconciliation "to promote a process of reconciliation between Aboriginal and Torres Strait Islanders and the wider Australian community", based on "an appreciation of indigenous cultures and achievements . . . of . . . the indigenous peoples of Australia".

  Since the "achievements" of Aboriginal hunter-gatherers prior to European settlement are hard to discern, and since the less said the better about their fundamentally violent and pay-back-ridden "culture",[9] one might have thought this body would have had its "appreciation" work cut out. It did, however, provide well-remunerated positions for both Aboriginal and non-Aboriginal activists, for whom this was a nice little earner.

Throughout these 25 years of change, three things remained unchanging: the constant flow of public money, at first a trickle, building to a river, within which the Aboriginal industry has its being; the fact that, despite the money lavished upon them, the situation of "real" Aborigines does not seem to have improved; and the fact that, as each demand has been granted, it has been succeeded by a new one.

Mabo

When most people think of the *Mabo* case, they think of the High Court's 1992 judgment. In fact, that was *Mabo (No.2)*, which originated in a High Court action brought in 1982 by Eddie Mabo, a Meriam Islander, claiming title to land on Murray Island. Because of legislative intervention by the Queensland Government, that claim only reached the High Court in 1986.

The Court was then presided over by Sir Harry Gibbs[10] – later the inaugural President of this Society – and it determined that, before hearing the case further, it needed to be satisfied on the facts. It therefore appointed Queensland Supreme Court Justice Moynihan to inquire into and report on them. His hearings were, however, put on hold when Eddie Mabo and others launched a new High Court action challenging the constitutional validity of the aforementioned Queensland legislation.

When that second case was heard in 1988, the Court's composition had changed following Sir Harry's retirement,[11] succeeded as Chief Justice by Sir Anthony Mason. The plaintiffs won the case, which became *Mabo (No.1)*. Justice Moynihan then resumed his hearings and, late in 1990, delivered his determination on the facts. His report, although couched in appropriately discreet terms, made it clear that, in his judgment, Eddie Mabo was not a witness of truth. The facts thus

determined (albeit effectively ignored), the High Court was then able to begin hearing the legal arguments.

I said earlier that the judgment (six to one) in that case clearly ranks as the most legally indefensible decision in that Court's history. In a paper to this Society in 1993, the late S.E.K. Hulme, QC, scarified not only the judgments of the six perpetrators, but also Mason's lack of judicial leadership in merely assenting to Justice Sir Gerard Brennan's lead judgment rather than delivering one of his own.[12] In brief, Hulme said:

- The Court was hearing a case about land holdings in the Meriam Islands.
- Whatever the merits of that case (on which Justice Moynihan had raised the gravest doubts), evidence led in support of it had nothing to do with mainland Aborigines, an ethnically and culturally distinct people.
- At no time throughout was **any** evidence led bearing on the mainland.
- Statements by at least two Justices (Deane and Gaudron) revealed that their joint judgment had been influenced by the writings of historian (sic) Henry Reynolds, even though those writings were not before the Court and were therefore unable to be challenged.
- In its dealings with the *terra nullius* doctrine, the Court had simply fallen into error.

Summing up, Hulme said: "With no mainland issue, with no evidence as to the mainland, with no parties concerned with any mainland issue, without argument as to any mainland issue, the High Court proceeded to destroy what Deane and Gaudron

JJ. described (175 CLR at p.120) as 'a basis of the real property law of this country for more than a hundred and fifty years' ".[13]

I also mention opinions of two other eminent jurists, both of them former members of this Society.

In an address launching the inaugural volume of our Proceedings, the late Roddy Meagher, then an outstanding Justice of the New South Wales Court of Appeal, said: ". . . in the *Mabo Case*, the judgment of Brennan J . . . . said there were two ways of approaching the question of whether the natives in question owned the land in question. One way was to apply the existing legal authorities. . . . But his Honour spurned such an approach and thought it more palatable to invent a new law".[14]

In a foreword to a book of essays about *Mabo*, the late Sir Harry Gibbs described the decision as "judicial activism" in "departing from principles that were thought to have been settled for well over a century". The Court, he said, "applied what some of its members perceived to be current values" of the Australian people: but "the further question arises whether in fact those values are widely accepted in the community".[15]

Finally, and particularly troubling, was the claim by the perpetrators of this judicial outrage that the case was decided as a matter of common law. The common law, comprising the accretion of judge-made decisions (as opposed to statutory law, based on legislation enacted by Parliament), is by definition a body of law built up slowly over time by small alterations to previous judgments. In its very nature it has never, in any national jurisdiction in which it prevails, involved revolutionary change. Yet in *Mabo (No. 2),* six Justices of our High Court not only effected a revolution in our settled property law, but subsequently also had the effrontery to describe that judgment as a common law decision.

No wonder that, from that day onwards, those six Justices, and the High Court as an institution, have been widely held in contempt.

The *Native Title Act* 1993 (Cth)

Since *Mabo (No.2)* was not decided on constitutional grounds, the Keating Government could have legislated to over-rule the Court's destruction of Australia's previously settled property law. Instead, it doubled down on the Court's behaviour by enacting the *Native Title Act* 1993 (Cth), which rendered the new form of title a much more serious threat to Australia's future well-being than the original form invented by the Court.

In particular, by providing that Aboriginal holders of native title to a land-holding would have a "right to negotiate" with anyone that wanted to come onto that land to do business, it ushered in a governmentally-condoned form of blackmail and officially sanctioned extortion. This became a matter of particular concern to mining companies seeking to explore for, or subsequently mine, mineral deposits, for whom being delayed in those endeavours was costly. The handouts thereby extracted were a clear example of "go away money".

Four years after *Mabo (No.2)*, the High Court was confronted with another almost equally important decision in the *Wik* case, when the northern Queensland Wik people brought an action claiming native title over a property held under pastoral leasehold title. The *Mabo* decision had made it clear that once Crown land had been alienated by granting it as freehold, native title was extinguished, and it was understood that this also applied to alienation via grants of leasehold. Indeed, during the passage of the *Native Title Act* 1993 through Parliament, Prime Minister Keating had unequivocally assured the nation to that effect. In *Wik*, however, the Court now found otherwise.[16]

Apart from the outcome itself, two things were notable about that decision. First, it was reached by a 4-3 majority, with Chief Justice Brennan (Mason's successor) in the minority.[17] Second, the decision, although anticipated for some months in late 1996, was only released on Christmas Eve – the sort of action usually associated with politicians with something to hide, rather than with putatively upright Justices of our highest Court.

The shock of this decision reverberated throughout the pastoral industry and beyond. This time, however, the situation differed from 1992: John Howard had become Prime Minister. Unlike Keating, who had moved to make things even worse than the Court had, Howard moved to overturn *Wik*. By enacting the *Native Title Amendment Act* 1998, his government, while not completely reversing *Wik*, at least mitigated many of its worst effects.[18]

The "Stolen Generation" myth

There had long been claims that, earlier, State government authorities had removed part-Aboriginal (and some wholly Aboriginal) children from their parent(s) against the latter's will, and that these removals originated in racist motivations aimed at "breeding out" Aboriginality. In 1995, the Keating Government set up the National Inquiry into the Separation of Aboriginal and Torres Strait Island Children from their Families, chaired by the head of the Human Rights and Equal Opportunity Commission, Sir Ronald Wilson, QC,[19] assisted by another Commission member, the Aboriginal Social Justice Commissioner, Mick Dodson.

To say that the *Bringing Them Home* report of this inquiry was a travesty would over-rate it. To say that a former High Court Justice could lend his name to the processes involved, and the recommendations flowing from them, would normally invite disbelief.

During a 17-month inquiry, Wilson and Dodson heard what they loosely described as "testimony" from 535 Aborigines, and received submissions from a further 600. Noting that "between 1910 and 1970, up to 100,000 Aboriginal children were taken from their parents and put in white foster homes", the Report described this as "genocide". As usual in Aboriginal affairs, its recommendations[20] focused on monetary compensation. This was to be "widely defined to mean 'reparation' ", and be available not only to "individuals who were forcibly removed as children" (never mind the reason for removal), but also to "family members who suffered as a result of their removal", and to "communities which, as a result . . . suffered cultural and community disintegration", as well as "descendants of those forcibly removed . . . ."[21] Among many other demands was that a national "Sorry Day" should be initiated, "to be celebrated each year to commemorate the history of forcible removals and its effects".

As distinct from this pack of lies, what were the facts? Here are a few:

- Wilson and Dodson made no attempt to check the veracity of the "testimony" of those 535 Aborigines, and those responsible for the alleged "thefts" were given no opportunity to defend their reputations.
- Subsequent court cases, brought by Aborigines to establish their "stolen" status, have all resulted (except in one case) in their claims being dismissed as groundless.
- Since those behind bringing these claims would certainly have chosen those most likely to succeed, the others clearly had even less foundation.
- In the one case where the claim was upheld, the Aboriginal boy in question was **not** originally "stolen", but brought to an Adelaide hospital for

treatment. When his parents failed to visit the hospital to reclaim him, and efforts to locate them had failed, a government welfare officer arranged for a State authority to place him with a foster family. Although this placement was well-intentioned, it was none the less illegal because consent was not sought from his parents. Accordingly, the court found he was "stolen", and awarded significant "compensation" to atone for the error of attempting to give him a happy life.[22] As they say, "The law is an ass".

- While the number of Aboriginal children removed from their parent(s) during 1910-1970 may well have been broadly accurate, that says nothing about the reasons for removal. Keith Windschuttle's magisterial work, *The Fabrication of Aboriginal History*,[23] shows that in every case cited the reasons involved protecting the child from the dangers to it in its Aboriginal community.
- Were any further proof needed, note that almost 50 years later the number of Aboriginal children being removed each year today from their Aboriginal parents to protect them from physical (including sexual) abuse actually exceeds the earlier annual numbers. That is despite the authorities' extreme reluctance to do so, for fear of being again accused of "stealing" those children.

Despite the intellectual poverty of the "Stolen Generation" myth, it has remained firmly entrenched in the national consciousness. The only bright spot in the 20 years since the Report was delivered was that, despite unremitting pressure to do so, John Howard refused to make any "national apology".

The 1999 "Preamble" referendum

Having just praised John Howard, let me now criticize him. In 1999 he was persuaded by Noel Pearson that the Preamble to our Constitution should be amended to mention our original inhabitants – the first step in what has since been called the "Recognition" project.

The Society's then President, Sir Harry Gibbs, presented a notable critique of the ensuing bizarre Referendum proposal to the Society's 11th Conference. In his paper, "A Preamble: The Issues",[24] he said: "It must then surely be agreed that only those things should be said [in the Preamble] which would meet with the general approval of the Australian community. Clearly, a statement affirming the original occupancy and custodianship of Australia by Aboriginal peoples would not meet this test".[25]

Nevertheless, the Howard Government did put its proposal to a Referendum, concurrently with that for making Australia a Republic. The conflagration that consumed the latter was severe enough: but it was as nothing to the inferno that devoured the Preamble proposal, with a national "No" vote of 60.66 percent recorded. Not only was it rejected in every State and the Northern Territory, but even rejected in the ACT.

Apology for the "Stolen Generation"

On 13 February 2008, Kevin Rudd delivered to Parliament a so-called "National Apology" to the "Stolen Generation". In a *Quadrant* article, "Time to Stop the Dreaming", I said of this that "the more one thinks about the Prime Minister's recent apology, the more it resembles" the 1967 Referendum. "Both were marked by an upwelling of emotion, a storm of generally uninformed media chatter, an event reverberating for a few weeks, and subsequent failure both then and (I predict) now to address the real problem".[26]

Rudd's apology, I wrote:

> . . . fully accepts, without question, the tissue of lies, half-truths and evasions that constituted the *Bringing Them Home* report . . . . The statement also parades, as fact, one untruth after another. For example, 'between 1910 and 1970, between 10 and 30 per cent of all Indigenous children were forcibly taken from their mothers and fathers'. In fact, while some children were 'forcibly taken' by welfare officers – almost always to protect them from the dreadful consequences if they were not – a great many were voluntarily handed over by their mothers (or sometimes, as in Lowitja O'Donohue's case, their fathers). . . . This massive lie, now publicly sponsored by no less than our Prime Minister, will now be recycled over and over again with the stamp of his authority upon it . . . .
> Even more important, however, is Mr Rudd's statement that 'Symbolism is important, *but unless the great symbolism of reconciliation is accompanied by an even greater substance, it is little more than a clanging gong'*. [My original italics] . . . . as they listened to these words, the compensation crowd must have been hugging themselves.[27]

Rudd's "National Apology" was built around those same elements which, time after time, have characterised the Aboriginal industry: historical fabrication, street theatre, demands for money under the pretext of "compensation" for historically untruthful wrongs, and evasion of the real problems besetting Australian Aboriginality, stemming from the very nature of Aboriginal culture itself.

National Congress of Australia's First Peoples (NCAFP)

As mentioned earlier, in 1990 the Hawke Government created the Aboriginal and Torres Strait Islander Commission

(ATSIC), which became formally responsible for overseeing government programs as they affected Aboriginal people. Having led to one public scandal after another – and they were only the ones we came to know about! – this corrupt body was abolished in 2004 by the Howard Government, with Labor's support.

ATSIC's abolition removed all those well-paid jobs that for 15 years had sustained so many high-on-the-hog lifestyles for those in charge of, or employed by, it. Clearly, this would not do. Predictably therefore, in April 2010, one of the last actions of the (first) Rudd Government was to establish a new national representative body for Aboriginal Australians, the National Congress of Australia's First Peoples.[28] Set up as a private company, it was to "give advice, advocate, monitor and evaluate government programs". In practice, its chief function was to restore some of those well-paid sinecures that ATSIC's abolition had removed. Successive governments funded this institutional waste of space until, in May 2016, even the Turnbull Government ran out of patience, and government funding was cut off. Although the NCFAP still formally exists, it seems likely that, so long as there is no longer a taxpayer-provided honeypot, little more will be heard of it.

The "Recognition" Project

(1) The Recognise Campaign

In 1991 the Hawke Government enacted the *Council for Aboriginal Reconciliation Act* 1991, under which the Council for Aboriginal Reconciliation was established. Ten years later, the Council established a new private (that is, incorporated) body, Reconciliation Australia (which subsequently superseded its creator). This body pursues a bewildering array of "initiatives" and "programs" in workplaces, schools (including "early

learning" centres) and Aboriginal communities, including organising annually a so-called National Reconciliation Week from 27 May through 3 June.[29]

In 2006, Prime Minister Howard and Professor Mick Dodson launched the Reconciliation Action Plan, to be administered by Reconciliation Australia. Chief among its activities has been the "Recognise Campaign", aimed at boosting support among Australians for recognising Aboriginal and Torres Strait Islander peoples in the Constitution.

The "Recognition" Project

(2) The Expert Panel on Constitutional Recognition of Indigenous Australians

On 8 November 2010, Julia Gillard proposed a referendum to amend our Constitution to "recognise the special place of our first peoples". She appointed an Expert Panel on Constitutional Recognition of Indigenous Australians, co-chaired by Professor (now Senator) Pat Dodson and Mr Mark Liebler, with terms of reference "to report to the Government on the options for constitutional change and approaches to a referendum that would be most likely to obtain widespread support across the Australian community".

In *The Australian* a fortnight later I asked, "What is it about our politicians (from all sides) that moves them to these flights of faux-symbolic fancy?", and "Whatever became of that once famous Australian national characteristic, a keen eye for bullshit?".

Recalling the fate of the 1999 Preamble Referendum, I noted that:

> This constitutional corpse was disinterred in 2007, when a desperate John Howard, clutching at a straw proffered to him by an opportunistic Noel Pearson, promised to revive it if re-elected. He wasn't, and we were spared the embarrassment of seeing an otherwise highly respected Prime Minister twice make a fool of himself on the same subject.[30]

On 16 January 2012, this Expert Panel reported, recommending a "package of measures", including:

- Removing Sections 25 and 51(xxvi) from the Constitution.
- Recognising Aboriginal and Torres Strait Islander peoples in the Constitution through a new head of power to make laws on their behalf (Section 51A).
- A new provision specifically relating to recognition of Aboriginal and Torres Strait Islander languages (Section 127A).
- A new provision removing any future capacity on the part of the Commonwealth, the States or the Territories to discriminate on the imputed ground of "race" (Section 116 A).[31]

The "Recognition" Project

(3) The Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples

After considering the Expert Panel's report, the Gillard Government next moved to establish a parliamentary Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, "to inquire into and report on

steps that can be taken to progress towards a successful referendum on Indigenous constitutional recognition". This was agreed by Parliament on 28 November 2012 but no action ensued until a year later under the Abbott Government, when the Committee finally got under way under the chairmanship of two Aboriginal parliamentarians, Ken Wyatt and Senator Nova Peris.

The Joint Select Committee produced three reports – an Interim Report in July 2014; a Progress Report in October 2014; and a Final Report on 25 June 2015. It recommended, inter alia, that Section 51(xxvi) of the Constitution should be repealed, saying, "The Committee heard that Aboriginal and Torres Strait Islander peoples will accept nothing less than a protection from racial discrimination in the Constitution".[32] This bold statement notwithstanding, the Committee's actual recommendations consisted of a series of "options for consideration" by the Parliament.[33] To say that this was unhelpful would seem an understatement.

The "Recognition" Project

(4) The *Aboriginal and Torres Strait Islander Peoples Recognition Act* 2013

Given the snail's pace at which, otherwise, the "Recognition" project was moving, politicians (from both sides) proceeded to do what they do best – utter wordy declarations – by enacting the *Aboriginal and Torres Strait Islander Peoples Recognition Act* 2013. By this enactment, on 27 March 2013, Parliament "affirmed its support for constitutional recognition". In voter-land, people yawned.

The Act, which "ceases to have effect at the end of 2 years after its commencement", was chiefly aimed, as Gillard said, at

fostering "momentum for a referendum for constitutional recognition of Aboriginal and Torres Strait Islander peoples". To that end, it provided $10 million towards a propaganda campaign by "Recognise". It also required the minister to "cause a review to commence within 12 months of the commencement of this Act",[34] to "consider the readiness of the Australian public to support a referendum to amend the Constitution to recognise Aboriginal and Torres Strait Islander peoples".[35]

The "Recognition" Project

(5) The Act of Recognition Review Panel

That review was duly initiated by the Abbott Government on 27 March 2014. Chaired by former Deputy Prime Minister John Anderson, it reported on 19 September 2014. Unlike most of its counterparts, this body not only carried out its work with business-like expedition, but also seemed to retain some contact with reality. Among its more important conclusions were:

- "That levels of awareness and understanding of why change is needed, and what it would mean, are still low".[36]
- "There is evidence that we are losing momentum and awareness is drifting".[37]
- "Crystallising the question to be put to the Australian voters lies at the heart of the referendum".[38]

This was, perhaps, the first official intimation that the more electors were told about "Recognition" (at taxpayers' expense), the more disenchanted they were becoming; and that

among the welter of proposals contesting for pride of place in a referendum, electors were disinclined to favour any one of them.

The "Recognition" Project

(6) The Referendum Council

On 7 December 2015, Malcolm Turnbull and Bill Shorten announced appointment of the Referendum Council, co-chaired by Patricia Anderson and Mark Leibler. Its task was "to consult widely throughout Australia and take the next steps towards achieving constitutional recognition of the First Australians".[39]

The Council first produced a Discussion Paper. Six months of meetings then ensued of various Aboriginal groups around Australia, all at taxpayers' expense. Apart from expressing their opinions on the Discussion Paper's options, these meetings elected "delegates" to attend a so-called First Nations National Constitutional Convention at Ayers Rock[40] in May 2017.

Meanwhile, however, the usual suspects were at work "shaping the battlefield". In particular, Noel Pearson, aided and abetted by two members of this Society – Julian Leeser, now the Liberal Party Member for Berowra, and Dr Damien Freeman – produced the concept of a new, constitutionally entrenched, Aboriginal "advisory" body, to sit alongside Parliament and with the right to "advise" on any legislation it might consider affected Aborigines. It requires little imagination to see that quickly being construed to cover almost all legislation. All principles apart, consider the procedural nightmare resulting from any such arrangement. More importantly, this body would effectively institute another "right to negotiate", on an even more massive scale than the already existing, extremely damaging one created by the *Native Title Act* 1993. The kindest word to describe it is "ridiculous"; but, as just noted, its ramifications would go far

beyond procedural complexity and into the world of extortion with which the Aboriginal industry is already so familiar.

Nevertheless, when those 250 well-fed Aboriginal delegates foregathered at Ayers Rock, this proposal was to figure centrally in their demands.

The Uluru "Statement from the Heart"

Those demands emerged as a so-called "Statement from the Heart" and a Media Release "issued on behalf of the Referendum Council's Indigenous Steering Committee" by Pat Anderson on 26 May 2017. Both documents voiced numerous emotional assertions along with three substantial proposals, which were:

- "Establishment of a First Nations voice enshrined in the Constitution";
- "A Makarrata Commission to supervise a process of agreement-making between governments and First Nations"; and
- A Declaration "that includes truth-telling about Aboriginal and Torres Strait Islander People's history".[41]

Consider some of those emotional assertions:

- There is first the claim that "Aboriginal . . . tribes were the first sovereign Nations of the Australian continent . . . more than 60,000 years ago". While nobody disputes Aboriginal habitation of our continent prior to European settlement, describing those tribes as "sovereign Nations" is nonsensical.
- "Sovereignty" connotes ownership, and mere occupation is not ownership. "Ownership" comes from settlement, and there was never any settlement by Aboriginal nomadic tribes. "Settlement" connotes

(inter alia) agriculture, and a Stone Age hunter-gatherer people had no agriculture.

- Indeed, the Statement itself admits that "this sovereignty is a spiritual notion" – that is, not a legal one. Claims that this sovereignty (sic) "has never been ceded or extinguished, and co-exists with the sovereignty of the Crown", are piffle. Were this "sovereignty" claim not so sinister, it would be laughable.
- Next we are told that Aborigines "are the most incarcerated people on the planet"; that "our children are alienated from their families at unprecedented rates", and "our youth languish in detention in obscene numbers". Colourful language apart, these statements are broadly true; but the questions they invite have nothing to do with our oppression of our Aboriginal fellow Australians, and everything to do with the latter's own behaviour – including, in particular, behaviour towards their own children.
- Report after report over the years has spelled out the relevant facts in invariably agonizing detail.[42] To say, as the Statement does, that "when we have power over our destiny our children will flourish", invites derision; and to add that then "their culture will be a gift to this country", when it is that same violent and payback-ridden culture that is at the root of the evils previously enumerated,[43] has the same smell about it. If ever there were a case of "Physician, heal thyself," this is it.[44]
- As for the demand for "truth-telling about Aboriginal . . . people's history", will that serve to correct all the lies about extensive "massacres",

"frontier warfare", "Stolen Generations", the romanticised "Dreamtime", and so on, to which we (and our children and grandchildren) continue to be subjected?

- The Statement concludes with the rhetorical flourish that, "In 1967 we were counted, in 2017 we seek to be heard". Am I the only person already half-deafened by the past 50-year-cacophony of complaint?

The response to Uluru

To judge by the sharply divided responses to the Uluru proposals, public controversy over them will make the Republic debate seem harmonious. I set out below three categories of response: some supportive ones; some critical ones; and a few by "dissident" Aboriginal commentators.

(a) Responses in support: In *The Australian* newspaper we quickly saw supportive articles from, among others:

- Paul Kelly, saying that the Statement "deserves a respect and evaluation by the political classes befitting its seriousness". "Immediate rejection", Kelly wrote, "betrays contempt for the diligence, realism and revisionism this document embodies".[45] That is absurd, and any referendum will not be the plaything of "the political class", but a matter for decision by real Australians living everywhere but Canberra. As for describing these fantasies as "realism", I must be using a different dictionary.[46]
- According to Kelly's article, Julian Leeser, MP, has "called the Uluru Statement the 'big breakthrough' ", saying that, "looking at the structures of government

and offering a voice in policymaking, reflected the thinking of Griffith and Barton and their colleagues who framed the Constitution, had they turned their minds to this issue".[47] This displays the same disrespect for the reputations of those no longer present to defend themselves, as the notorious suggestion during the Republic campaign that, had Sir Robert Menzies still been alive, he would have been urging a "Yes" vote.

- Father Frank Brennan, SJ, began his response by suggesting that "Australians of goodwill" would endorse all those emotional passages in the Uluru Statement. From that unpromising start, however, he conceded that "Australians will not vote for a constitutional First Nations voice until they have first heard it and seen it in action".[48] Just why Aborigines should be effectively given two votes in our parliamentary representational processes is unclear. In passing, Brennan also says that, "Presumably, this new legislated entity would replace the National Congress of Australia's First Peoples" – doubtless a shock to the seat-warmers still controlling that body. His conclusion is, "There is no quick fix . . . . Successful constitutional change acceptable to the indigenous leaders gathered at Uluru won't be happening any time soon".[49] Amen to that.
- In reply to a Greg Sheridan article urging the Liberals to "join Barnaby Joyce's Uluru rejection" (see below), Noel Pearson launched a venomous *ad hominem* attack on Sheridan. Describing his article as "an appalling commentary", and "offensive and obscurant", Pearson alleged that "his contempt for

Aborigines is palpable and nauseating". His "intellectual dishonesty is flagrant", and his "idea of liberal democracy . . . is just an ideological fantasy . . . that assures Sheridan that his culture and heritage are reflected in it, but no one else's".[50] There was more, but you get the drift.

It may be appropriate here to note that Pearson has serious form in the personal abuse stakes. In 1996 he described John Howard's government as "racist scum".[51] In 2014, then senior *Sydney Morning Herald* journalist Paul Sheehan, commenting on Tony Abbott's recent appointment of Pearson as a special adviser on indigenous affairs, detailed incident after incident when Pearson had delivered foul-mouthed tirades where "he dropped the 'c' bomb", often coupled with a racist epithet.[52]

Pearson is reported to have exercised those same talents at a meeting of the Referendum Council on 25 November 2016 attended by the Prime Minister, the Leader of the Opposition, the Minister for Aboriginal Affairs, and four Aboriginal members of Parliament (including Ken Wyatt and Pat Dodson). At this meeting Pearson is said to have pressed for acceptance of his proposal for constitutional entrenchment of an Aboriginal "advisory" body, but, after this was rejected as "unlikely to be supported by Australians", he is alleged to have abused Turnbull, Wyatt and Dodson in the foul-mouthed terms noted earlier by Sheehan. Pearson has denied this report, but the Member for Leichhardt, Warren Entsch, whose electorate includes most of Pearson's

Cape York homeland, has said that, although not at the meeting, he was told what happened by "witnesses that were", adding that this was "the way Noel operates".[53]

- Three weeks after his earlier article, Noel Pearson wrote again, this time in conjunction with Shireen Morris and principally to object to criticisms raised earlier by several Aboriginal spokespeople (see below). This article took a more conciliatory line, seeking to portray the Uluru Statement's central demand as "simple", "modest" and "not new", having been first proposed in Pearson's 2014 *Quarterly Essay*. "It is", they said, "about self-determination".[54] That is part of the problem.

(b) Critical responses: Some critical responses were:

- An immediate response, and an important one since it seems to be generally agreed that a referendum will have no hope of success unless it has unanimous support from all major political parties, was given on 29 May 2017 by the Leader of the National Party and Deputy Prime Minister, Barnaby Joyce, who said the proposal for a constitutionally-enshrined body to influence policy in Canberra was "not going to fly".[55]
- The Leader of the Australian Conservatives Party, Senator Cory Bernardi, went further on 31 May 2017, saying that the Uluru demands were so divorced from reality one might almost think "the people behind this process actually want any referendum to fail". The responsibility of non-Aboriginal Australians "is to question the tens of billions of taxpayer dollars spent on aboriginal

communities with virtually nil effect on health, domestic violence, education and well-being outcomes. No constitutional change will ever address this reality . . . . Put simply, we need to deal with the issues of today, not continually revisit the problems of the past".[56]

- Greg Sheridan began his article (subsequently attacked by Pearson) by praising "the common sense and good instincts of . . . Barnaby Joyce", whose "straightforward rejection of the recommendation of the Uluru gathering . . . ought to put the matter to rest". The Aboriginal leadership over the past ten years, he wrote, "has taken a terrible wrong turn in seeing continuing political and constitutional change as the main engine for advancement of Indigenous people". All the proposals emanating from the Uluru meeting "are wrong in principle and would be profoundly damaging in practice". In short, "any departure from the single treatment of all Australians as citizens is bad in principle and would be damaging in the real world".[57]
- In my own published criticism I first acknowledged that "one worthwhile point did emerge from last Friday's Statement – namely, its dismissal of the so-called 'minimalist' proposals advanced by such gullible (in this context) people as John Howard, Tony Abbott and (originally) Bill Shorten". As to the proposed constitutional provision, I asked: "Has there ever been a more arrogant proposal from any quarter? The only one . . . that even begins to approach it was the Vernon Committee's 1965 recommendation to set up an Economic Advisory Council. As Sir Robert Menzies said when

comprehensively dismissing" that recommendation, " 'the power to advise is the power to coerce' ". "The bottom line", I said, "is this. *We are all Australians.* We are not, and we never should become, First Australians and Second Australians".[58]

- Andrew Bolt began, "Say no to racism . . . to this latest plan by Aboriginal activists . . . to divide us by race". The Uluru Statement, he said, "is founded on a lie: this poor-us claim that Aborigines are voiceless . . ." Our politicians "should reject it instantly".[59]
- Senator James Paterson, noting the Statement's "dismissal of symbolic recognition as a viable path forward to a referendum", said, "This overturns the loose Canberra consensus that recognition, perhaps in the form of a statement in a preamble, was the right proposal . . . . It's also a spectacular repudiation of the official Recognise campaign . . . ."[60]
- Peter Westmore, National President of the National Civic Council, pointed out that our Constitution "is not a document that refers to rights, but one that defines the division of powers . . .", and that "there are fundamental difficulties with these proposals". They "cannot fix the real problems" besetting Aborigines, "and may even be obstacles to fixing them". In short, "the proposals . . . fail the fundamental test of persuading their fellow Australians that constitutional amendments or a treaty are the way forward".[61]

(c) "Dissident" Aboriginal responses: Several prominent Aboriginal voices have been raised against some or all of the Uluru Statement:

- The most comprehensive discussion of it was given by Warren Mundine[62] who, on 30 May 2017, issued a lengthy analysis supporting a "Makarrata Commission" to initiate and supervise making treaties (note the plural) "between governments and First Nations groups", but disagreeing strongly with the proposal for "a First Nations voice enshrined in the Constitution". On that, he said, "I've always disagreed with this proposal and still do. . . . Every Australian law impacts Indigenous people. . . . Why should Indigenous people have a constitutional voice other Australians don't have on laws that affect everyone? There's the 'No' case right there". "A 'First nations voice' is a solution looking for a problem".
- Labor Senator Pat Dodson described the Referendum Council report emanating from the Uluru Statement as "a bit of a bolt from the dark", which earned him the previously mentioned "respectful correction" from Pearson and Morris.[63]
- Labor MP Linda Burney, by contrast, was rather less "respectfully corrected" in the same Pearson/Morris article after describing the recommendations[64] as "limiting" and providing "no clear line of sight" to a referendum, urging instead a referendum "dealing with" the race powers (sections 25 and 51(xxvi)). Describing her as "completely misguided", Pearson and Morris said, "Uluru and the Referendum Council moved on from the race provisions" and "Burney should too".

The aftermath to Uluru

Since the Uluru Statement, there have been two developments. On 30 June 2017 Pat Anderson and Mark Leibler presented the *Final Report of the Referendum Council* [65] to the Prime Minister and the Leader of the Opposition. In a Foreword they described its "consensus" recommendations as "modest, reasonable, unifying and capable of attracting the necessary support of the Australian people".[66] All four claims – particularly the last – are, in my opinion, groundless.

To be precise, "the Council recommends:

1. That a referendum be held to provide in the Australian Constitution for a representative body that gives Aboriginal and Torres Strait Islander First Nations a Voice to the Commonwealth Parliament. One of the specific functions of such a body, to be set out in legislation outside the Constitution, should include the function of monitoring the use of the heads of power in section 51(xxvi) and section 122. The body will recognize the status of Aboriginal and Torres Strait Islander peoples as the first peoples of Australia.

2. That an extra-constitutional Declaration of Recognition be enacted by legislation passed by all Australian Parliaments, ideally on the same day, to articulate a symbolic statement of recognition to unify Australians."

On the proposal for establishing a Makarrata Commission, the Council "recognizes that this is a legislative initiative for Aboriginal and Torres Strait Islander peoples to pursue with

government." However, while "the Council is not in a position to make a specific recommendation on this because it does not fall within our terms of reference", it notes "that various State governments are engaged in agreement-making".[67]

My own views on these proposals have been stated earlier in my response to the Uluru Statement[68] and I shall not repeat them here. However, I have sighted an advance copy of an imminently forthcoming *Quadrant* article[69] by Keith Windschuttle addressing the Council's recommendations. Here are three of his comments:

- On the first recommendation, "This proposal alone, not to mention the political baggage of treaties and sovereignty in its train, would divide our nation permanently. Its advocates also seriously underestimate the difficulties their structure would pose for the workability of parliamentary democracy".
- On the matter of sovereignty, Windschuttle quotes Sir Harry Gibbs: "The contention that there is in Australia an aboriginal nation exercising sovereignty, even of a limited kind, is quite impossible in law to maintain".[70]
- "This is a political proposal that would benefit no one except a small number who will get to strut their stuff on the national political stage".

I noted earlier that the Council's proposals were described as "consensus" ones. One Council member, former Minister for Indigenous Affairs[71] Amanda Vanstone, lodged a "qualifying statement" in which, while maintaining sympathy for Aboriginal aspirations for appropriate constitutional recognition, she says

quite flatly that, at this time, these "relatively new" proposals would be unlikely to command support in a referendum.[72]

In early August both Turnbull and Shorten attended the annual Garma Festival, where they were asked to respond to the Referendum Council's report. Turnbull's response was, characteristically, temporising. Rather than say, flatly, what he knows (or should know) to be the truth, namely, that there is no way in which the Australian electorate will ever support such a referendum proposal, he lamely spoke of needing more time to give it "careful consideration". There were "many practical questions about what shape the advisory body would take", and "whether it would be elected or appointed".[73] In short, weasel words and waffle.

Shorten, by contrast, could hardly have been more reckless. "We support a Declaration by all Parliaments, we support a truth-telling Commission, we are not confronted by the notion of treaties with our First Australians".[74] Incredible though it may seem from one currently expecting to become Prime Minister, the Leader of the Opposition committed his party, hook, line and sinker, to the Referendum Council's power grab. Poor fella, my country!

One final post-Uluru development should be briefly noted – namely, Reconciliation Australia's reported "quiet abandonment" of the "Recognise campaign", on which $30 million taxpayer dollars have been spent on public brainwashing since its initiation by Gillard in 2012. Welcome though this reported decision would be, it remains to be seen whether it will be maintained.

Conclusion

My conclusions are:

- The 1967 Referendum outcome, reflecting the then enormous fund of goodwill on the part of non-

Aboriginal Australians towards their Aboriginal fellow Australians, was nevertheless a mistake, allowing Canberra to take power in a jurisdiction where its policies over the following 50 years have consistently ranged from failure to disaster.

- The *Mabo (No. 2)* High Court judgment clearly ranks as the most legally indefensible decision in that Court's history.
- Paul Keating's *Native Title Act* 1993, despite John Howard's *Native Title Act Amendment Act* 1998 rectifying some of its worst features, has none the less proved a millstone around the necks of business corporations – particularly but not only in the mining industry – seeking to pursue potentially profitable enterprises. The opportunity cost to our economy in terms of projects either delayed, abandoned or never initiated, is literally incalculable; but if a figure of $100 billion were to be hazarded (that is, $4 000 per person today) that would almost certainly be conservative.
- Moreover, by end-March 2016, processes under that Act had led to 30.4 percent of the Australian continent being covered by native titles, with a further 31.7 percent under claim and thought likely to be mostly granted.[75]
- Despite the countless millions of dollars showered upon our Aboriginal population over the past 50 years, there is little to show by way of improvements to the real problems in such fields as health, education, domestic violence and, above all, care for children.
- There never was anything that could truthfully be called a "Stolen Generation", and the only

consequence of assorted politicians' "apologies" for it has been to provide a basis for yet another demand for monetary "compensation".

- The recent proposal to entrench, constitutionally, what would become a "second house of review" alongside our Parliament is nothing less than a naked grab for power that would institute another "right to negotiate" on an even more massive scale than the existing, extremely damaging one contained in the *Native Title Act* 1993.
- By the same token, the proposal for a Makarrata Commission to "supervise" treaty-making with so-called "First Nations" should be dismissed out of hand.
- Nobody disputes that Aboriginal tribes inhabited our continent prior to European settlement. Those nomadic Stone Age tribes never had any claim, however, to sovereignty over what we now know as the Australian nation.
- Trumped up claims to sovereignty, such as those contained in the recent Referendum Council report, should be flatly rejected.
- Attempts to separate Australians into two categories – First Australians and Second Australians – should also be flatly rejected. *We are all Australians.*

I finish where I began. This 50-year-long Aboriginal industry denigration of Australia and their fellow Australians, and the depressing culture of Aboriginal complaint it has fostered, must end. Enough is enough!

Endnotes

1. Alan Anderson, "How Judicial Appointments Reform Threatens our Democracy", *Upholding the Australian Constitution*, Proceedings of the 21st Conference of The Samuel Griffith Society (2009), 219.

2. I was serving as Executive Director for Australia, South Africa and New Zealand in the Executive Boards of both the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD) (commonly known as the World Bank).

3. For an excellent discussion of the legal validity of that view, see Keith Windschuttle, *The Break-Up of Australia*, Quadrant Books, Sydney, 2016, 216 *et seq*. For any one interested in this general topic, this book is required reading.

4. *Little Children are Sacred*, Report of a Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Northern Territory Government, Darwin, 2007. A Co-Chair of this Report, Patricia Anderson, recently co-chaired the gathering at Ayers Rock resulting in the so-called "Statement from the Heart", which inter alia rhapsodized about Aboriginal culture. Ten years earlier, the first recommendation of her Report was: "That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory governments, ..."

5. In practice, even those programs, despite having since multiplied like rabbits, have done little (other than fritter away taxpayers' money) in terms of their practical improvements to the problems they ostensibly addressed. See the later discussion of this general point under **Apology for the "Stolen Generation"**.

6. They gave it an Aboriginal name, a *Makarrata.*

7. It was widely reported at the time that one driving force behind this move was the desire of the then Minister for Aboriginal Affairs (and, incidentally, head of Labor's Left faction), Gerry Hand, to rid himself of direct ministerial accountability for the scandal-plagued and otherwise thankless portfolio.

8. Such was the cynicism generated among Aborigines themselves by the self-serving behaviour of ATSIC Councillors that they devised another meaning for the acronym, namely "Aborigines Talking Shit In Canberra".

9. On customary Aboriginal violence, see Jacinta Yangapi Nampijinpa Price, "Homeland Truths: The Unspoken Epidemic of Violence in Indigenous Communities", Centre for Independent Studies Occasional Paper 148, Sydney, 2016.

10. Or, to give him his full style and title, the Right Honourable Sir Harry Gibbs, GCMG, AC, KBE, QC.

11. Gibbs's retirement was a malign result of the 1977 constitutional amendment whereby federal judges appointed from that time onwards would be forced to

retire at age 70. Although Sir Harry had been appointed to the High Court before that date, his subsequent elevation to Chief Justice in 1981 rendered him liable to the new provision. Thus was the nation deprived of his outstanding services for the years between his retirement in 1987 and his death in 2005.

12. S.E.K. Hulme, QC, "The High Court in *Mabo*", *Upholding the Australian Constitution*, Proceedings of The Samuel Griffith Society (1993), 111-165.

13. Ibid., 113.

14. Justice Roderick Meagher, Address launching *Upholding the Australian Constitution*, Volume 1, Appendix 1 to *Upholding the Australian Constitution*, Proceedings of the 3rd Conference of The Samuel Griffith Society, 1993, 145.

15. Sir Harry Gibbs, Foreword to M.A.Stephenson and Suri Ratnapala (eds), Mabo*: A Judicial Revolution*, University of Queensland Press, St Lucia, xiii. I am indebted to Keith Windschuttle's book (*op. cit.*, 61) for drawing these remarks by Sir Harry to my attention.

16. For a forensic assessment of the Wik case, see S.E.K. Hulme, QC, "The *Wik* Judgment", *Upholding the Australian Constitution*, Proceedings of the 8th Conference of The Samuel Griffith Society, 2007, 261-289.

17. Along with Dawson and McHugh, JJ. Notably, McHugh said that, had he thought that the decision in *Mabo (No.2)* did not extinguish native title on leasehold as well as

freehold properties, he would never have assented to that decision.

18. For another fine but more light-hearted account of the Wik case and its ramifications, see Dr John Forbes, "Amending the *Native Title Act*", *Upholding the Australian Constitution*, Proceedings of the 8th Conference of The Samuel Griffith Society, 1997, 201-237. In all, Dr Forbes presented no less than eight highly readable papers to the Society dealing with the increasingly malign effects of the invention of native title.

19. Wilson, who had been appointed to the High Court in 1979 by the Fraser Government, resigned his commission in 1989 on the remarkable grounds that he wished to become Moderator of the Uniting Church. Having presumably rather quickly repented of that decision, in 1990 he accepted appointment by the Hawke Government as head of the Human Rights and Equal Opportunity Commission.

20. *Bringing Them Home*, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Island Children from their Families, Human Rights and Equal Opportunities Commission, Sydney, 1997, Appendix 9.

21. *Ibid.*, Recommendation 4 (Claimants).

22. The case in question is known as the *Trevorrow* case or, more formally, *Trevorrow v. South Australia* (No.5) [2007] SASC 285 (1 August 2007).

23. Keith Windschuttle, *The Fabrication of Aboriginal History*, Volume 1, "Van Diemen's Land 1803-1847", Macleay Press, Sydney, 2002; and, more particularly, Volume 3, *The Stolen Generations 1881-2008*, Macleay Press, Sydney, 2009. (Volume 2 is, I understand, forthcoming). These volumes are essential reading for anyone wishing to learn the evidence-based truth about the mythology that, since 1967, the Aboriginal industry has so profitably foisted upon Australians (and the world).

24. Sir Harry Gibbs, "A Preamble: The Issues", *Upholding the Australian Constitution*, Proceedings of the 11th Conference of The Samuel Griffith Society, 1999, 85-100.

25. *Ibid.*, 94.

26. John Stone, "Time to Stop the Dreaming", *Quadrant*, Sydney, April 2008, 49.

27. *Ibid.*, 51-2.

28. The notably derivative nature of this body, like so much else in the world created by the Aboriginal industry, can be seen in its title, which clearly apes that of its US counterpart, the National Congress of American Indians.

29. These are the dates on which, respectively, the 1967 Referendum was held, and the *Mabo (No.2)* judgment was delivered.

30. John Stone, "Another divisive referendum out of tune with national thinking", *The Australian*, 22 November 2010.

31. Final Report of the Expert Panel on Constitutional Recognition of Indigenous Australians, Commonwealth of Australia, Canberra, 2012, 226.

32. Final Report of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, Commonwealth Parliament, Canberra, 2015, vi.

33. *Ibid.,* xiii-xvi.

34. *Aboriginal and Torres Strait Islander Peoples Recognition Act* 2013, Commonwealth Parliament, Canberra, 2013, section 4(1).

35. *Ibid.*, section 4(2)(a).

36. Report of the Act of Recognition Review Panel, Commonwealth of Australia, Canberra, 2014, 3.

37. *Ibid.*, 4.

38. *Ibid.*, 5.

39. See Referendum Council Discussion Paper, 26 October, 2016 at www.referendumcouncil.org.au/resources/discussion paper.

40. Or, as the Aboriginal industry insists on calling it, Uluru.

41. Referendum Council Media Release, issued on behalf of the Referendum Council's Indigenous Steering Committee, Uluru, 26 May, 2017, 2.

42. For a more recent comment on the tragedies imposed upon so many Aboriginal children by their families, see Andrew Bolt, "Aboriginal kids need us to break the cycle", *Herald Sun*, 9 August 2017.

43. On the situation of children in Aboriginal communities today, see Jacinta Nampijina Price, "Greens should shut up, listen", *The Australian*, 16 August 2017.

44. See, on the hypocrisy involved on this "culture" issue, Dr Anthony Dillon, "Cartoon's message still carries the sting of truth", *The Australian*, 4 August 2017. Dillon, whose father, Col Dillon, was Australia's first Aboriginal police officer (and, by all accounts, a very good one), is a post-doctoral fellow at the Australian Catholic University, Sydney.

45. Paul Kelly, "Indigenous compromise deserves effective response", *The Australian*, 31 May 2017.

46. To be fair to Kelly, after his opening obeisances, he does go on to acknowledge (albeit in words that are far too deferential) many of the objections that people of common sense will bring against these proposals should they ever be called upon to vote on them.

47. Paul Kelly, *op. cit.*.

48. Father Frank Brennan, SJ, "Let's take time to get this right", *The Australian*, 31 May 2017. Frank Brennan is widely credited (sic) with having had a large hand in influencing the lead judgment delivered by his father, Justice Sir Gerard Brennan, in the 1992 *Mabo* case.

49. *Ibid.*.

50. Noel Pearson, "Resistance to full embrace jars 25 years after Mabo", *The Weekend Australian*, 3-4 June, 2017.

51. Recalled by John Howard in an interview with the Howard Sattler program, Radio 6PR, Perth, 3 April 1998. See pmtranscripts.pmc.gov.au/release/transcript-10770.

52. Paul Sheehan, "Dropping bombs and stoking feuds: the other side of Noel Pearson", *The Sydney Morning Herald*, 18 August 2014.

53. James Thomas, "Noel Pearson alleged to have unleashed foul-mouthed tirade at Prime Minister over Indigenous constitutional recognition", ABC News, Canberra, 2016 and updated 5 June 2017. Accessed at www.abc.net.au/news/2017-06-05/pearsons-alleged-tirade-at-pm-over-constitutional-recognition/8583158. Further evidence as to Pearson's foul mouth is provided by a *Guardian Australia* report by Joshua Robertson dated 28 November, 2016 accessed at www.theguardian.com/australia-news/2016/nov/28/noel-pearson-used-foul-abusive-language-says-queenslands-education-head?CMP=share_btn_link.

54. Noel Pearson and Shireen Morris, "A modest yet profound way to give the Indigenous a say", *The Weekend Australian*, 22-23 July 2017. Shireen Morris is employed by Pearson's pretentiously-titled Cape York Institute for Policy and Leadership to "lead the Institute's constitutional program".

55. Fergus Hunter, " 'It's not going to happen': Barnaby Joyce rejects push for Aboriginal body in Constitution", *The Sydney Morning Herald*, 29 May 2017.

56. Cory Bernardi, "Your weekly dose of common sense", 31 May 2017, at www.conservatives.org.au.

57. Greg Sheridan, "Liberals must join Barnaby Joyce's Uluru rejection", *The Australian*, 1 June 2017.

58. John Stone, "The Recognition Racket", *The Spectator Australia*'s Flat White blog, 1 June 2017.

59. Andrew Bolt, "This new racism is just apartheid", *The Herald Sun*, 2 June 2017.

60. Senator James Paterson, "Our Constitution already gives First Nations a say", *The Australian*, 2 June 2017.

61. Peter Westmore, "Aboriginal recognition in the Constitution?", *News Weekly*, 17 June 2017.

62. Warren Mundine, "We don't need an Indigenous treaty. We need lots of them", *The Australian Financial Review*, 30 May 2017. Mundine describes himself as Nyunggal Warren

Mundine and as Managing Director of Nyungga Black Group.

63. "Parliament Indigenous voice a challenge – MP", *The West Australian*, 18 July, 2017. Accessed at http://thewest.com.au/politics/referendum-council-wants-indigenous-voice-ng-s-1749477. Recall that Dodson had been allegedly much less respectfully "corrected" by Pearson at the 25 November 2016 meeting with the Referendum Council mentioned earlier.

64. *Ibid.*. In fact, however, the remark about providing "no clear line of sight" seems to have been uttered by Dodson, not by Burney.

65. Final Report of the Referendum Council, Commonwealth of Australia, Canberra, 30 June, 2017.

66. *Ibid.*, iv.

67. *Ibid.*, 2.

68. As well as, of course, in my earlier article, "The Recognition Racket", *op. cit.*.

69. Keith Windschuttle, "Aborigines Want More Than a Voice in Parliament", *Quadrant*, September 2017.

70. *Coe v. Commonwealth* (1979) 24 ALR 118, at 129. Interestingly, Sir Harry's judgment is quoted by George Newhouse, in "How Aboriginal Sovereignty In Australia Has Been Legally Extinguished". Newhouse, who can hardly be accused of being unsympathetic to the

Aboriginal cause, says that, "Some of the confusion arises from the High Court's decision in *Mabo (No.2)* which . . . overturned the legal fiction of 'Terra Nullius' . . . [but] it did not reinstate Aboriginal sovereignty over our nation. In fact, that proposition was explicitly rejected by the court". Newhouse refers to three post-*Mabo* High Court cases affirming this view: *Coe v. Commonwealth (No.2)* (1993) 118 ALR, Mason CJ at 193; *Walker v. New South Wales* (1994) 182 CLR, Mason CJ at 45; and *Members of the Yorta Yorta Aboriginal Community v. Victoria* (2002) 214 CLR, Gleeson, CJ, and Gummow and Hayne, JJ, at 443-444.Accessed at: georgenewhouse.blogspot.com.au/2016/01/how-aboriginal-sovereignty-in-australia.html .

71. More precisely, Minister for Immigration and Multicultural and Indigenous Affairs.

72. Final Report of the Referendum Council, *op.cit.,* Appendix E, 65-67.

73. "Indigenous referendum 'ambitious': Shorten", *Sky News*, 5 August 2017. Accessed at: www.skynews.com.au/news/topstories/2017/08/05/leaders-attend-opening-of-garma-festival.html.

74. *Ibid.*.

75. See Keith Windschuttle (2016), *op.cit.*, 44-45.