

**NOTRE DAME LECTURE**  
**AUGUST 2008**

Tonight I would like to begin by acknowledging and giving recognition to the generations of Yawuru people who have gone before us. The people who nurtured the land and seas around the modern day town of Broome and who were sustained in a temporal sense by the bounty of the country, the fish and the plants, birds and animals from the mangrove forests, the plains and the coastal waters. To acknowledge my ancestors who flourished in the strength of the laws, language and ceremony for millennia before the arrival of the visitors from other lands.

I acknowledge the presence tonight of the descendants of those visitors who have made their homes here on Yawuru land. Who have brought with them a different set of values customs and laws some of which have enhanced the lives of the Yawuru and some others that have had a less than beneficial outcome for the Yawuru.

The nature of the relationship between the descendants of the early colonist, missionaries and builders of empire and the Indigenous peoples of this continent was premised on the notion of one newly arrived, complex society who believed that their values were superior in their worth and therefore they could be justified in seeking to impose those values as well as their laws and languages on another society whose own laws, customs and languages whilst founded upon different philosophical and religious tenets were no less complex and whilst infinitely older no less valid , valuable and worthy. The new society were intolerant and so driven by the economic bottom line they failed to pay any regard to kinship and community relationship that were central to the ancient society that they encountered in the Kimberley.

The outcome in many respects was inevitable. Gospel, Glory and Gold prevailed, initially, over a society of hunter gatherers whose rights and responsibilities were made subservient to an alien crown. The Yawuru people's obligations to protect, nurture and sustain the lands, seas and water holes of their cultural domain were ultimately confirmed by the federal court in 2006 to have survived sufficiently to hold native title as against the whole world in much of their traditional domain despite this history of domination and forced compliance.

A people and a culture brutalised by the imperatives of the western society was still able to establish in the court that we had retained our laws, lands and social integrity against criteria and policy initiatives determined by the parliaments and the courts of the mainstream society.

The initial outcomes from the colonising enterprise for the Indigenous people of this continent were catastrophic in many respects. Lands were stolen, our religious and cultural

practices demeaned, our economies usurped and in many cases our children were removed from our care and nurturing.

This brutalization did not provide the outcome envisaged by A.O Neville and his fellow travellers that we were a dying race destined to be wiped out genetically and socially as an outcome of natural selection.

The laws of conquest prevailed and one society imposed itself on another and the inevitable disaster prevailed, a disaster in many ways for both our societies. The Indigenous society, because we have been drastically affected in so many ways and the mainstream society, because it is trapped in its own sense of superiority and angst for assimilation.

Thus on these foundations were the pillars of the new nation, Australia and its contemporary manifestations built. But Nationhood built on such shallow foundations and questionable pillars are destined to collapse.

Unless the structure of our society has more depth and is reinforced by values that are shared and acknowledged by our two societies it will remain unreconciled, unintelligible and meaningful only to the conquerors and those that wish to unashamedly emulate them.

At different times, in reflection on the various public policy espousals, one wonders what are the seminal words and phrases that bind, or purport to bind us together as Australians – Indigenous and non Indigenous.

Such things are not readily obvious or perhaps it is dependant on where you find your sense of place and comfort in the Australian polity that you can consider and express a view about these descriptors for yourselves.

The debate over social welfare reform and crisis intervention - practical reconciliation as opposed to a rights and responsibilities framework has to be recognised as a false dichotomy. Both matters have to be dealt with and both should involve the free choices of the Aboriginal peoples. Anything less is simply a further contribution to the ongoing destruction of what is left of our uniqueness as Indigenous people and our capacity to determine our own futures as equal citizens in an Australian democracy.

The taking of another's lands and the intentional destruction of their culture does have its consequences. So too does dependence created by governance frameworks and the denial of resources to respond to the sustainable needs of our community.

Oppression, constant domination and destabilisation brings with it loss of hope and increased anxieties over future survival. Serious debate and a new dialogue needs to be had over both these domains and we should not trivialise the trauma and angst that arises from it all by the simplicity that action is required now only in the social domain.

What is the Philosophical Framework that has been established to hold such a diverse group to the belief that their loyalties and allegiances should be to this nation and no other? The jingoism of some of this nation's media contributes to this illusion.

But beyond that superficiality, what philosophical frameworks determines the belief that there should be no culture or social value structure other than that ordained by those who assumed responsibility for the Nation and consequently for our future?

Are those principles, mantras and dictates trotted out at high points of conflict between us that are deemed to be this Nation's pre-eminent values and therefore entrenched forever in our National Framework?

The problem with this is that despite the best efforts of governments in this country we are not alien refugees in this land. We are from this land but have been made dispossessed and alien to the control mechanisms over our lives and destinies to the detriment of the nation.

The truth is that without redress to both the social and rights requirements we will perish or perhaps survive as poor replicas of our inheritance!

If there are such seminal words or philosophical frameworks what might we know them as?

There will be some who see the Monarchy, the Constitution the common law and the Separation of Powers where the Constitution institutionalises the division of the Judiciary from the Executive Government and the Parliament as the mainstays of our nationhood.

For some it might be the dilemma that Sovereignty resides in the Crown, the Queen of England and Australia, yet conversely in the people of Australia. So in searching for the resolution to this dilemma we must seek an accommodation of both aspects.

Many trust in the Judiciary to determine serious issues in accordance with the rule of law and in keeping with precedents set by past considerations on similar or related matters without fear or favour to any individual or institution in our Nation.

The High Court decisions about what the intentions of the parliament is at a given political moment or when a law is in need of interpretation often gives comfort to many as the determinations are by judges and not elected representatives of one persuasion or the other. And that gives a sense of impartiality.

Further comfort is drawn from the fact that other nation states that share in the British colonial history have jurisprudence and legal precedents that we can call upon in the face of difficult issues dealing with Indigenous peoples as well as other matters.

For others it might well be the intricate relationship between the monarch, her representatives the Governor General, the various State Governors and the elected parliaments and their leaders.

The fact that this relationship exists rather than the regular execution of the inherent power each may possess vis a vis the other may appear sufficient to prevent abuse of the role and function of each entity and thus contribute to the stability of the Nation. This perceived stability and sense of comfort often allows the nation to deny any need for serious change that may accommodate indigenous interest or indeed any substantive variation to the status quo.

These foundational pillars upon which the nature of the Australian democracy resides, operates and retreats to have been pivotal to the policy settings of the Commonwealth of Australia. This has worked to enhance the basic British traditions, customs and practices that pass for the norms and the supreme values of the Australian way of life. It is this dominance that we project to the International community and especially Asia and the Pacific.

Our flag still contains the Union Jack - the flag of the United Kingdom.

Those being invited into this country as refugees or migrants must comply with a monocultural social framework while being allowed to tangentially and superficially maintain aspects of their mother culture and place.

For Aboriginal people the seminal words of the mainstream rulers of our lands, our people and our country appear to be;

**“We are all the same so long as Aboriginal peoples exhibit the same traits and values as those whom are the dominant group.”**

Hence, the constant efforts to deny us our separate, unique identity and integrated status within the mainstream’s philosophical and legal framework. This is probably more recently demonstrated by the attack upon customary law as a defence in criminal matters or where its existence in Native title is made subordinate to every third party interest. Where it is deemed by others that our cultural subservience is considered to be “for our own good”.

The philosophical framework to date has been the constant mantra of assimilation into the mainstream of the British mould bequeathed to the colonising nation and coloured by the development of its own idiosyncratic ethos developments and existence over time.

The Australian model owes its local flavour to its servitude to the sovereignty of the British Crown, the prejudices of the early colonialists and landed gentry and its fear of being located in the geographic region of Asia and the Pacific. An Australian Constitution, sanctioned by the British Parliament validated the taking of the lands from the aboriginal

peoples and rendered our status as a displaced people on our own lands with all the attendant outcomes that colonisation brings – the cancers of social deprivation and the constant assault upon identity and integrity as a people.

That philosophical model bears no relationship to the Yawuru concept of the Bugarrigarra. The philosophical and spiritual framework that from time immemorial created the relationship between the Yawuru people, the land and the law that make intelligible the governance, social behavioural obligations and environmental management within seasons clear and certain.

Constitutional Acts of Westminster are nothing more than that. There has been no settlement with us as Indigenous people who have rights and responsibilities endowed to us well before the creation of Westminster or the development of British jurisprudence.

The obligations and responsibilities arising from the Bugarrigarra continue today and we are challenged by modernity to adapt and sustain ourselves without much empathy or understanding from the mainstream.

The dynamic of this dialectic is a reality continuing in existence today. It is the reality of the sacred and spiritual that testifies to this notion of our sovereignty to our country. This is true of other aboriginal people as well. The notion of the Crown is the construct to justify the ongoing dispossession, control and management of our affairs because it has no concept or appreciation of the sacred as a reality of distinction.

The Anglo manifestations and traits were made to be dominant on this land in a geographical location far from its origins and only because of colonialism has it any roots

Indeed it would seem that from the 200 or so years of the relationship between the Aboriginal people and those who consider themselves native born we have not found the common ground to our differences and discords in any honourable reconciled manner.

This debate does not put food upon the table but goes to the very heart of whether we are a part of the flora or fauna or should just be grateful for the usurpation of our lands. Perhaps we should make the most of becoming a mutant white man with no Bugarrigarra, land, law or people rather than assert our rightful place in the democracy.

We must seek a new dialogue about these points of disagreements between us, especially the seminal wisdom of assimilation if we are not to preside over the extinction of the oldest living culture on this earth.

Our intertwined history is more about the exercise of power and control over the Aboriginal people by those who command the resources and contemporary institutions like the parliament and the judiciary than what mutually brings us together.

These particular players are obviously sensitive to the needs and interests of international investors and to the notion of sovereign risk. More and more we are challenged to regularise and sustain the creaking status quo because of the market, security issues and globalisation. What is required is to establish a new platform of principles crafted for challenges beyond the traditional capacity of the nation to respond to on its' own.

As the Nation is embraced by the tide of Globalisation, the reality of climate change and the internationalisation of laws and institutions our responsibilities as global citizens does and will challenge the nature of the historic colonial status quo and demand that we confront the nature of the failed framework and praxis that has underpinned our society since the clash of minds and hearts that began on this continent with the arrival of an English sea captain 238 years ago.

Let us explore for a moment what the alternative paradigm for a National Social Framework might look like and what might be the steps that need to be taken to enable the Nation to be reconciled within itself. We must seek to create National Social Framework that will allow us to stand within the Global community as a Nation that has had the courage to confront the reality of its past and to deal with that reality within a renewed dialogue that has sought, through negotiation, to create a new Philosophical Framework for the future.

At the outset it is a task for us all. Some of the actions required are open to us immediately as a consequence of the Parliament's apology to the Stolen Generations. Whilst this was an important and necessary action and rightly the Government was applauded for its actions. The Parliament must look now to the issues of compensation for what it has acknowledged responsibility for - the attempt to destroy us as a race of people by taking away our children..

Our National and State Parliaments must look not only to its public policy on social issues but to its laws and the constitutions in establishing a new relationship with us the Indigenous peoples.

Our lawmakers must consider the inequities within the laws as they exist so that the rights and responsibilities of Indigenous people are enshrined in future laws so that never again will governments and parliaments be allowed to override statutes like the Racial Discrimination Act to the detriment of any one sector of the Australian society, least of all us the aboriginal peoples.

Our Parliaments should consider the concept of an Indigenous Bill of Rights that codifies the rights and responsibilities of Indigenous Australians because the Common Law has not provided the necessary protections and recognitions to date.

The model for this lies in the UN Declaration on Indigenous Rights that is still to be ratified by the National Parliament despite having been passed through the United Nations in September 2007.

It is now open for the government and the Parliament to negotiate with us how this International declaration is best domesticated into our legal framework but in a manner that just does not bury us again in the hole dug by Terra nullius and its pre existing legal context or the conscious or unconscious tendency to assimilation. The continued denial of our prior ownership, occupation, use and enjoyment of this Country in the face of this new International declaration should see Australia condemned as a pariah on the world stage.

**The Government managed to ratify the Kyoto Protocols in the first week after its election. The process is not that hard!**

As the nation considers in the coming years whether it will become a republic there will be another great opportunity for us to create a Constitution that embodies all of the successful elements of our existing constitution while including the views of those who were ignored by the colonial delegates in the 1890s – women, Indigenous people and other people of colour living in the colonies at the time of Federation.

Our Institutions of learning will be central to any changing of the Philosophical Framework that underpins the relationship between our two societies. Curriculum and programmes must truly reflect the historical reality of our past relations and be innovative and constructive about what is required beyond the inherited past and its limitations.

We must create partnerships of learning that recognise the values and knowledge that Indigenous society has to contribute to national knowledge and consider how these values and this knowledge can be incorporated into all aspects of learning and study. Where we are also prepared to re- educate ourselves to new perspectives and truths. The centrality of the human being and the allegiance to the primacy of community must be allowed to have a place in what is determined.

Our corporate citizens and their international partners must look to how they can maximise the human resources that are available to them from within the Aboriginal community and develop effective strategies that not only create employment but incorporate Aboriginal people and our philosophical and practical knowledge of the season's climates and changes in the shaping of the future. To incorporate the Indigenous understanding concerning the sustainable use and management on the lands, sea and rivers which have been put there from the Bugarrigarra and that are mined and planted for the produce and minerals that drive our global economies and survival.

There is a task for the nation in the achieving of a new Philosophical Framework that underpins the relationship between the settler peoples and the First Australians. The years of the Reconciliation Movement and the formal process of Reconciliation have been a solid beginning but like the campaigns of recognition led by Patten, Ferguson, Gibbs and other in the 1930's, the 1967 Referendum campaigners led by Jessie Street and Faith Bandler the Reconciliation process has been an important part of a continuing National Journey.

The Apology by the nation, through the Parliament has now, in my view drawn a line in the sand and I believe that the nation has now moved into the "Post Reconciliation" period. The period in which the Framework for our future relationship is to be negotiated and we must begin the Dialogue that is essential to that dynamic.

Australia has on many fronts begun a series of engagements and dialogue that are repositioning the nation in our relations to the rest of the world.

Modern leaders and thinkers have recognised that Globalisation has determined that the old paradigms of engagement that have been underpinned by conflict and trade disputes are no longer valid forms of engagement for the nations of the world - a world where global warming and the sharing of natural resources among nations will be central to our global survival.

For too long the conflict between the settler society and the nation's first peoples has been underscored by arguments on rights and responsibilities juxtaposed against assimilation and mutual obligations. We can bicker for another century as to whether Nugget Coombs was right or Sir Paul Hasluck really had the solutions to the health and well being of Indigenous people.

But this futile battle of ideologies will not improve the life of one single Aboriginal child, will not lower the percentages of Aboriginal people residing in our nations gaols and quite frankly will not assist Twiggy Forrest find 50,000 jobs.

The nation will be enhanced by the constitutional recognition it accords Indigenous peoples because governments need to be made accountable in their dealings with Aboriginal peoples. They need to justly and constructively engage via negotiation on the alleviation of the disastrous health, education and social ills bedeviling Indigenous Australians and embark courageously in dialogue on constitutional recognition beyond a preamble.

We will become equal partners in the negotiation of these outcomes not because we desire to but because we must because the solutions to these problems reside with us all. Our arrogance will not allow the International facilitation of what is deemed to be a domestic issue.

The nation will be enhanced by the full and proper recognition and protection of its Indigenous cultures and the nation will be truly enhanced when Indigenous people are able to fully participate in the economic life of the nation while being assured that they have not had to surrender their identity and cultural ways in the process.

These outcomes will require considered negotiation, honest partnerships based on good faith and the acceptance of the need for just outcomes but importantly it will require the recognition by us all that the Philosophical Framework of the past has failed us as a nation and a new approach underpinned by an Australian Dialogue is now required.

When we do begin the process of an Australian Dialogue we must not allow ourselves to be sidelined in debates about minimalist or radical constitutional change. We must have the courage to look towards what is just and right and reflective of a globalised world and the place of indigenous people within that world based on International insight.

The world's great constitutions are living documents that reflect the aspirations of its citizens and have a lasting and ongoing positive effect on the nation and its peoples.

Both our societies – the indigenous and non Indigenous must be prepared and willing to look at one another in a very different way from that of the past and recognise that while we each bring different gifts to the table the contributions properly balanced are capable of bringing mutual benefit to the nation and its position in the globalised world.

I'm sometimes criticized for my continuing reference to the beauty and strength of the post apartheid constitution of the Republic of South Africa but the reality is this – a nation that suffered through a century of racism and hatred by one group of citizens upon another was able to create a document and the structures that supported the intent of the document that reflects all the best aspects of tolerance, justice and human values for every citizen.

The fact that a number of individual Australians contributed to the process of creating that constitution fills me with great hope that we too might be capable of achieving a similar outcome sometime in the very near future.

Only then we will be proud to celebrate our efforts at Reconciliation and hold that achievement up before the whole world for other comparable nation states to emulate the challenge.

I would like to finish this by thanking the University of Notre Dame Australia for the opportunity to deliver the inaugural Nulungu Lecture, to congratulate the University on returning the name of Nulungu to the forefront of learning in the Kimberley and to offer for your contemplation the words of Lyndon Baines Johnston to the citizens of the United States when crafting the civil Rights Bills of the 1960's.

["We have talked long enough in this country about equal rights. ... It is time now to write the next chapter-and to write it in the books of law."](#) – Lyndon Baines Johnston.

What was true for the United States a half a century ago is appropriate for this nation today. Now surely is the time for Australia and its people to complete the journey into a Post Reconciliation world and to celebrate by enshrining the achievement into our laws and Constitution.

Kulia