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## WENTWORTH LECTURE

### BEYOND THE MOURNING GATE - DEALING WITH UNFINISHED BUSINESS

**Patrick Dodson**

Greetings to the Ngunnawal.

In 1938 Australia was sitting at the tail end of the great depression, a calamity that created enormous suffering across great sections of the Australian Community.

Those Australians who survived the Great War and the Depression would soon hear the ominous sounds of another human disaster being cranked up in Europe and Northern Asia. Little wonder then that the prospect of a party in Sydney to celebrate **the 150<sup>th</sup> anniversary** of the arrival of the First Fleet was seen as a welcome diversion from the threat of another world war and the difficulties of life that continued to weigh upon them.

A programme of festivities was planned to celebrate the foundations laid in the Colony along British lines, its glorious achievements and its triumphs over the alien environment and the original owners of the land.

The highlight was to be a re-enactment of the arrival of Governor Phillip and a party of his sailors at Port Jackson. It was planned that a replica of the ship, HMS Supply would anchor at Farm Cove and a rowing boat would bring a group of actors led by Frank Harvey, playing the part of Captain Phillip, to the western side of the point at Lady Macquaries' Chair.

The official programme for the event reported that "The first boat to land will carry a party of men who will put the aborigines to flight". Captain Phillip was to arrive in the second boat.

Twenty five Aboriginal people from Menindee had been brought to Sydney by the Aborigines Protection Board to play the part of the fleeing Sydney Natives. They were billeted at the Redfern Police Barracks who were under strict instructions from the Board to deny them any contact with disruptive influences from outside the timber barracks of the Redfern Police Compound.

No doubt the organizers of the gala reenactment felt that using Menindee people was a safer option than using local Sydney Aborigines. The Menindee group would need no encouragement to head for home. The Sydney mob however had declined to flee in 1778 and would have stayed put again in 1938.

While the rest of Australia was either preoccupied with the pleasures of the summer break or those who were in Sydney planned how they might participate in the upcoming Australia Day Celebrations, a group of Aboriginal people with a belief in the need for justice and equality were hard at work with some plans of their own.

**The Aborigines Progressive Association** with leaders like Jack Patten, Bill Ferguson, Pearl Gibbs, Jack Kinchela, and Helen Grosvenor were planning an Australian Aborigines Conference. The event was to be called a "**Day of Mourning and Protest**". It was to be held on Australia Day Wednesday 26<sup>th</sup> January. They circulated a motion for debate at the meeting:

' WE, representing THE ABORIGINES OF AUSTRALIA, assembled in Conference at the Australian Hall, Sydney, on the 26<sup>th</sup> day of January, 1938, this being the 150<sup>th</sup>

Anniversary of the white men's seizure of our country, HEREBY MAKE PROTEST against the callous treatment of our people by the white men during the past 150 years, AND WE APPEAL to the Australian Nation of today to make new laws for the education and care of Aborigines, and we ask for a new policy which will raise our people to FULL CITIZEN STATUS and EQUALITY WITHIN THE COMMUNITY.'

They met at the Australian Hall at No.148 Elizabeth Street now a site of significance to all Australian people, thanks to the efforts of Jenny Munro and others.

The "Day of Mourning and Protest" Conference was attended by Aboriginal people from up and down the eastern seaboard. All Australian Aborigines were invited. The views expressed and the arguments put forward were diverse reflecting the backgrounds and histories of the people involved. The issues though were agreed and clear: Equality and Recognition – The Right To be Aboriginal People along with the right to enjoy the equality, responsibility, and quality of being an Australian citizen.

It was not a trade off - one set of rights for another. It was about improving the living conditions of Aboriginal people so that they might survive as human beings and break the domination of government regulations and prescription.

In the minds of the leaders at that time both realities could co-exist and be enjoyed. There was no need to extinguish what remained of the Aboriginal uniqueness and heritage after 150 years of the white man dominance of the land and lives of the Aboriginal people.

The architects of the assimilation policies of the time had a different view. They had their own ideas about what would be best for the Aboriginal peoples. The future for Aborigines would be in their hands and constructed towards their goals. It would not require our consent – so our consent was never sought.

Maybe some of today's Aboriginal leaders believe that we have moved on since the Day of Mourning and Protest. Maybe they no longer see any point in remembering the stories and deeds of those who came before. Perhaps some Aboriginal leaders of today have a way of accommodating and remaining at one with their traditions while neglecting their own history.

For many Aboriginal people, however, story telling, remembering and paying respect to those who led the way in the past is part of our traditions. It is part of intergenerational accountability and responsibility for our traditions, customs and values. If we lose our sense of value and meaning in the Aboriginal world then we become a successful clone of what the assimilation policies and strategies sought to achieve. If we become no more than what the white man has tried to make us into since his control of this land and our affairs then what value do we add to the Nation in our assertion as the First peoples of this Land.

What right do we have to call upon governments for respect and recognition?

The call for recognition of 'full citizen status' and 'equality within the community' by the Leaders in 1938 recurs in the numerous reports that we have seen from the Human Rights Commission, The Social Justice Commissioner, ATSIC and the Council for Aboriginal Reconciliation. Gradually, others outside of the Aboriginal organisational structures are also taking interest in how we are being managed. Some are seeking an understanding of the use of the public purse to address the lack of formal equality. Some are seeking to get their hands on that public purse. Some, even many of us are concerned at how that public purse is allocated and used. We appear however to be a long way from stronger broader community support or informed debate on the key issues of fundamental equality.

The question of rights asked in 1938 still echoes in the halls, unanswered by governments.

It has echoed in the Yirrkala Bark Petition, the Barunga Statement, the Eva Valley Statement and the Boomanulla Oval statement.

The Redfern Speech by Prime Minister Keating and the agreement by Prime Minister Hawke to a treaty process at Barunga were visions of what might be shared and realised for all Australians. They were prepared to lead so that a majority of the citizens might be inspired to follow. Why was it so hard to seize those moments and deliver real and lasting change?

Will we again fail as a nation to grasp this opportunity to change the political architecture of the country? To rise above the mediocrity that ties us to seeking incremental change through short term stop gap bureaucratic solutions? Or can we work towards realigning the relationship between us?

The Aboriginal leaders who were involved in the Day of Mourning and Protest events took the Conference outcomes to Prime Minister Lyons. They called on him to respond to the motion that was carried at the 'Day of Mourning and Protest' conference and to deliver on a petition before Cabinet organised by Bill Cooper.

Mr Cooper's petition sought from the Government "some political representation" by providing for a seat in the Federal Parliament so that "an Aborigine might represent their interest".

The Prime Minister had written to Cooper offering to meet a delegation on January 31<sup>st</sup> 1938 to discuss the petition and other matters. History tells us that the petition and the representations bore little fruit, at the time.

Why has it been so hard for the larger questions of justice to be answered by Governments in good time so that Aborigines can achieve some freedom and dignity in their own lifetime?

This same fundamental question is at the heart of the current reconciliation dynamic today.

I am fairly sure that the Prime Minister does not want my advice. However if he wishes to retrieve the current situation, he needs to state clearly that he is fully prepared to interact with Aboriginal people. Then he may be able to make the Council for Aboriginal Reconciliation presentation in May really worthwhile. It is simply not in any way acceptable that the Council statement was redrafted in his office to satisfy his own personal or political needs. He has to meet and talk before the May presentation. If not, then why attend? That is the question for me. Others have different reasons for attending and I encourage them to do so and wish the Council well on the day.

The leaders of the Day of Mourning and Protest in 1938 confronted the legacy of the past and they paved the way for the later successful 1967 Referendum. These campaigns have a history for us all and the people involved have my greatest admiration. We should remember that the process of achieving the referendum was not always supported. The people themselves were often subjected to ridicule and obstruction. Their persistence in the face of this adversity has achieved results that are still significant today.

The Referendum changes to the Constitution are symbolically important but they have not measured up to the high hopes that our leaders of the day wished for: To end the discrimination and allow the Aborigines proper enjoyment of citizenship and Aboriginality. The dignity to be Aborigines in their own Country. The reality was that we became slaves to a series of government programmes and policies that continued to determine our political and social lives. A sort of "assimilation with consultation". The same bureaucracies that supplied the Native Protectors provided us with policy mandarins and with field officers.

Many Aboriginal leaders of the time believed that the head of power achieved through the 1967 referendum would be used by the Federal Government to make things right between us. That they would override the States if the States proposed policies and practices detrimental to our rights as Aboriginal people and as citizens.

Alas a forlorn hope.

We have the legacy of the 1967 Referendum, the Common Law recognition of Native title, and the findings of the Bringing Them Home report. There are other legacies that relate to the way Aboriginal people have been dealt with by Governments, its institutions and the broad

community as well. These dynamics were brought to the fore in the Aboriginal Deaths in Custody Royal Commission Reports in 1991. It outlined the underlying issues and explained the impact of the criminal justice regime on the lives of Aboriginal people especially when in custody.

It is hard to be optimistic when such reports and their recommendations rely upon Governments hearing them, adopting them and driving forward to achieve the intended outcomes.

It is one thing for the Council to make the strongest possible statements and recommendations but quite another matter as to what the Government and the Parliament commit to doing about them. This is the aspect of the current reconciliation process that I am most concerned with. This is the relevant period of the process of reconciliation when outcomes have to be focused upon and made real. We should not be distracted by political posturing but argue for an effective Government response.

The fact that there is a peoples movement associated with the formal process of reconciliation at the present time may add to the optimism but is no guarantee that their goodwill and resolve will be any more rewarded than that of the Council itself.

The Prime Minister has successfully convinced the nation and the council that the deadline of January 1 2000 was not appropriate and has offered little to pick up the momentum and address the seriousness of the moment. His emphasis on practical reconciliation involving health, housing education and employment are matters government should be concerned to address in its normal responsibilities to its citizens. All Australians want to see an improvement to the social conditions we experience as Aborigines and hope for outcomes from public expenditure. But there is more to consider.

Reconciliation involves beneficial resolution of our status as the first peoples of this country and restitution for the way our inheritance as owners and custodians of the land have been taken from us. It also requires us meeting our obligations and responsibilities in the changed world of contemporary Australian society. It also requires us meeting our obligations and responsibilities in the changed world of contemporary Australian society.

What will Governments say? How will they respond to these issues? Who knows now what the role of the Prime Minister should be? How will he respond to the document, Towards a Document of Reconciliation, when he and the Governor General receive it from the Council for Aboriginal Reconciliation and the people of Australia?

Justice requires that the efforts of all involved in the reconciliation process and over the past two hundred years or so have some reward. The reconciliation dynamic involves truths in both fields of practical and spiritual domains in order for the ongoing cause of discord and division between us to be resolved. The Council's May events will highlight what is still required to be done before there is a proper reconciliation between us. The Council could not possibly present the total indigenous position and by its nature is not required to do so.

Hopefully its references to a treaty and self determination will give these matters some credibility with those who will march in favour of reconciliation. What matters is whether there is a way for the Aboriginal people to advance these matters with the Government. There has been nothing from government that indicates its preparedness to respond in any innovative manner to the issues of reconciliation beyond its concern with practical reconciliation. Such a response requires a commitment from the Prime Minister that he will enter into the spirit of this direction and negotiate their meaning and application with the Aboriginal people. To date he has not given any such commitment.

The Council cannot deliver the results on the issues that it highlights. It does a service to all of us to bring them to the forefront of the Nation's consciousness. It is for Government to commit to finding the path of lasting reconciliation. Its hour has come. Will we again see, as so often in the past, when Aborigines protested and mourned that there is no action? Will Government simply revert to its traditions of superiority rather than face a new spirit of reconciliation and lead the nation to the healing and unity it requires?

In the main our intertwined history since 1788 can be put into four divisions.

The first is the British instruction to 'take possession of the continent with the consent of the Natives'. An instruction that was never followed! Instead there was a penal colony established at Sydney Cove. The legal fiction of terra nullius provided the basis for the ongoing justification of reducing the Aboriginal people to a disinherited and destabilised race of people in our own land.

The second was made up of 'the darkest deed of colonial Australia and the incremental dispossession' that accompanied it. This allowed for the murder, poisoning, rape, and enslavement of the Aboriginal people in the name of expansion and development of the Colonies. There has never been any redress except those pieces of land rights legislation that today are seen as maybe having given too much to the Aborigines and therefore the rights that they enjoy under these laws should be removed or taken away now so that others might again peacock the land and its resources.

The third set of the activities involves those with good intentions that were motivated by assimilation and salvation in their relationship with the Aboriginal people. They bowed to Government authority and participated in the process of eliminating indigenous belief and thinking. The land had been taken from the people so now the battle was between the rival Christians, Governments and other groups for the mind and hearts of the Aboriginal people. Their roles played a major part in destabilizing and traumatising the Aboriginal peoples. The dynamic to control our hearts and minds in this context.

In the last decade there has been a fourth dynamic, that of Reconciliation. For the first time as a Nation the Parliament allowed us a formal process over ten years to make right our relationship by addressing the legacies that causes and sustains discord and division and to found a new basis for our future. One that expresses the truthfulness of the reconciliation we might mutually agree upon.

Throughout these phases of our intertwined history there is good and bad, enlightenment and ignorance, joy and great sadness, pride and shame. However, woven through all these periods is an alarming virulent dynamic that has persisted on the non Aboriginal side, enabling it to reject the legitimate status of who and what the Aboriginal people are, what we represent and what rights and interests we might enjoy.

For successive Australian Governments, whether colonial, federal, territory or state the four divisions of our intertwined histories have been about their solutions to us as the problem!

The problem of our being here.

The problem of our disposal!

The problem of our assimilation!

And the problem of having us appreciative of all that governments have done "for our own good"

For Aboriginal Australians the search has always been for Governments to enter into serious dialogue about our position in the Nation and for the Constitution to recognise us as the First Australians with our Indigenous rights, obligations and responsibilities respected and recognized. There has never been any agreement about how we might progress this fundamental dilemma. They have been met with obstruction and deferral. The reasons often given have been that the electorate will not support them to do so.

The Day of Mourning and Protest like many other gatherings held by Aborigines since has always been about rights. Most if not all have had little success in achieving lasting security and protection of the rights that we have sought. The priority on the Governments side of the equation has been about securing the non Aboriginal voters. For the people's movement for reconciliation to count, this is where it will have to make a difference. Our interests and rights simply just do not count in the context of Government ideology and political pragmatism. It has been on very rare occasions that governments have led the community against the contrary view of the polls.

The demands and petitions may have varied in language but never in content and intent. The Harris delegation that met the Western Australian State government in 1928 sought the same rights as the Day of Mourning campaigners. The people of Noonkanbah and the Pilbara Strikers sought only to protect the rights and responsibilities that they had in the law and the land.

The history has not been told of all the occasions that Aboriginal people throughout Australia have protested or mourned their stories. Most of these occasions appear to have fallen upon half hearted or empty responses. Their comfort has come from their fellow Australians who have shared in our pain and disappointed.

No more or no less the Aboriginal people who have survived the theft of their lands, the removal of their children and the destruction of their law and languages are seeking the guarantee of their rights to live within our law and culture. To have recognition and respect in the Australian law that has assumed its power over our ancient rights and people. To be able to carry out our laws, customs and traditions through a formal accord recognising our equal status alongside the Australian law.

The Government wishes to drive a wedge between the concepts of rights and welfare but also between those who advocate a rights agenda and those seek relief from the appalling poverty. This is an attempt at a new spin on a very old wicket of divide and rule. If it were a matter of rice bowl politics it might not be so bad but it is far more sinister than that. It is about removing the centrality of community as the life center and models on the individual as the essential unit of society. This is not our way. With all our social problems the answer is not to attack the foundations of our community by putting the individual before the community.

Aborigines have never wanted to be the same as the white man. What we have sought is to have substantial equality so that as human beings there might be a quality of life that we can enjoy in keeping with our own values and societal ways. Lives for our peoples, similar to that of the majority in Australia but lives uniquely ours not ones that the Governments wished to impose upon us. Lives where we meet our obligations as citizens but where we are accommodated also as Aborigines. Lives where our human and cultural rights are respected by the Governments that have told the world they would respect them.

We have been an affront to the foundational thinking and perceptions that underpins the British mould of Australian institutional principles of society. The confidence of the Nation to celebrate with some pride its achievements is always tempered with the concern that the issues of unfinished business between us would surface and detract from the moment. This inevitably sends the message to those who observe us, as a Nation divided in the one Country. It further highlights the inability of a modern democracy to come to grips fairly and respectfully with its indigenous peoples.

From a cultural position the only way that the mourning period can be ended is when the proper protocols and practical arrangements have been carried out. When the people who have had a wrong or an injustice done to them have been accommodated by the action of those responsible. Then we can come together as friends and mates.

What are the protocols to provide the relief to the causes of the mourning and trauma flowing from the intertwined history? There is no easy cultural match up. This is not about a fresh event, it is about a continuing state of being for the Government and the society. If this were a matter of a singular recent event in everyday life then the cultural leaders amongst us would know what to do. But this is beyond that relatively simple situation. We have offered on occasions the deepest secrets of our societies to those in highest authority who claimed to be seeking empathy and understanding only to have that encounter and the gift to be diminished, as of no account.

The cross cultural learning has not happened. Everything about us has to be subject and subordinate to the rules, practices and values of the dominant society. Customary Law details

of the initiation business is not immune to the Native Title processes of our courts. Lawmen are forced to violate their own law to the superior demands of the Australian court proceedings and rules to highlight connection and continuity for the benefit of the other parties including the government without necessarily securing the title to their lands.

At the day of Mourning ceremony after the meeting in 1938 flowers were thrown into the sea as a sign of respect and remembrance of all the Aboriginal Peoples who died since the white man's arrival. It was also an expression of the pain, hurt and frustration that the people had witnessed and experienced in their time and before that. It was also about their underlying fear for their future.

Those leaders of 1938 saw the loss and destruction of their peoples over the 150 year period as a sad and painful episode. The prospects of this past continuing required the leaders to look with hope to the future. They would give up their sons and daughters to the god of war in a matter of months in defense of a nation that had rejected them. They would go on into the life of the Nation with great contributions of citizenship when they had none of the rights that go with being a citizen. One went on to become a State Governor but only after being forced to sleep in the sheds of country pubs in towns where he had gone to compete in athletic events.

But more than this these leaders who had the temerity to challenge those who would seek to prolong the suppression of their cultural, political and human rights have demonstrated that no matter how the policies of assimilation, cultural genocide and exclusion have impacted on our people. We have survived. The need to defend our rights for our children and out of the obligations to our people and the land remains.

What then is the focus of this year's Reconciliation week?

It has to do with the culmination of the ten year process of Reconciliation provided by the Parliament through the Council for Reconciliation Act 1991. This Act gave to the Nation the first serious opportunity for us to make a fundamental appraisal of the relationship between us and to establish a new foundation to the way the relationship in the future would be expressed and acknowledged in the law, societal practice and constitution of this country.

The Council for Aboriginal Reconciliation will present to the Australian People the fruits of it's labour of reconciliation over the past nine or so years. What it presents will no doubt be what it has been able to agree on a cross party and cross cultural basis as the best way forward for the Nation to advance Reconciliation. That in itself will be no mean feat because consensus will have guided the content of their recommendations as well as the thrust of those recommendations and not just numbers. It delivers an Australian agenda for reconciliation, not an exclusive Aboriginal one.

The nature of the Council's recommendations to the Minister we will have to wait and see. Some of you might know them already. However to the majority it is not clear what if at all the Council is recommending as per it capacity under the functions set out in Section 6 *g&h* of it's Act. The sections that deal with a Document or documents of reconciliation and the nature and content of the document(s). Also the manner by which such documents need to be given effect.

Getting a set of words right is a difficult task but achieving their adoption and implementation is the real issue here. With all due respect to the celebratory events the Council has planned for May 27& 28<sup>th</sup> . We do not know what Government will do with its endeavours nor do we know how Government will progress matters with the Aboriginal peoples.

Let there be no misunderstanding the anger and disappointment that many Indigenous Australians have with the way the content of the "Towards a Document of Reconciliation" proposal is being handled is not with the Council for Aboriginal Reconciliation. We are angry and disappointed at the cynical manipulation of the process that has been employed by the Federal Government and in particular the leader of that Government. A manipulation that is

an affront to the millions of Australians of goodwill that have sought a genuine reconciliation between our peoples. A Reconciliation that is based on equity and justice for all of us.

On other occasions I have endeavoured to outline to people of this country what I believe are the key principles that must be addressed in any legislated framework agreement or Treaty between our two peoples. Core principals the extent of which must be negotiated between us.

They come under these core headings:

- Political representation
- Reparations and compensation
- Regional agreements
- Indigenous regional self-government
- Cultural and intellectual property rights
- Recognition of customary law
- An economic base.

In common with all other Australians we must have the right to maintain our unique cultural identity without having our entitlements as Australian citizens held hostage to the social imperatives of Governments and their leaders unable to comprehend the value of the contribution that we bring to this country as first Australians.

It may well be beyond the imagination of this current government to grasp the consequences of what the continued denial of the rights of the first Australians will be. To grasp the importance in the same way that so many Australians who have come to terms with the truth of our past and are seeking to provide a shared future of justice for all our children. But one thing the leaders of 1938 taught us is that unless we have the courage to persevere and confront the denial and prejudices placed before us a just future for our children will not be secured.

I am proposing today that with the completion of the work of Council for Aboriginal Reconciliation only seven months away that they place before the parliament of this country the following proposal.

Before the councils May 27<sup>th</sup> 28<sup>th</sup> event the Prime Minister needs to make it clear that he will accept what the Council has put forward and that he will commit to a process with the Aboriginal peoples of finding practical, legal and political ways of advancing all aspects of the Council's recommendations.

Secondly the governments response to the Councils recommendation to endorse forty distinguished Australians – 20 from each side and commission them with drafting a Treaty between the Australian Government and Aboriginal peoples based on the matters raised by the Council's recommendations and those other matters relayed to it during the course of its life as the ongoing causes for discord and division between us.

The Government to nominate half the dignitaries and ATSIC to nominate the Aboriginal dignitaries.

Thirdly that the Aboriginal people and the government nominate their respective representatives to negotiate the draft Treaty. This process of negotiation should be overseen by all past Prime Ministers, High Court Judges and former Heads of State and an equivalent number of senior Aboriginal representatives.

An independent Treaty Commission should be established, independent of the government and the bureaucracy. And resourced appropriately

If there is no agreement reached between the government and Aboriginal negotiators the government should put the question of a treaty with Aboriginal people to a referendum.



If there is a positive result from the negotiations or the referendum the government should adopt the treaty as part of our modus operandi and legislate into existence.

Just the other day I received a lovely letter from a 73 year old non-Aboriginal Tasmanian woman, full of kindness but also with a vision.

Her kindness was in seeking advice on changing her will to fund a scholarship for future Aboriginal legal students. Her vision was one of reconciliation. She lives next to a conservation zone. She said in a PS to her letter:

Hope the pelicans helped to ease your heart. I witnessed a riotous event one day. A pelican paddled in with a seagull on its back. The seagull hopped off at one stage and the pelican continued on its way. Realising he was alone, the pelican turned and paddled back to the gull. I could almost hear him saying, "Hey are you coming or not? The gull hopped back on and the twosome continued on their navigation of the area."

In my home country, an event witnessed in the natural world such as this is can be read as a vision of spirit, or *rai*. The pelican gliding across the water is like the spirit of reconciliation, black and white together moving forward. The seagull, is in some ways, like the Governments of the day, forever changing, coming on and off the process, flying off to scream loudly before one day returning and joining the voyage, navigating towards a new future. This future is our future, if we have the courage and will. Otherwise, as the Irish saying goes, "Bigots and begrudgers will never bid the past farewell" and we will be trapped in our history.

Thank you once more to the Australian Institute of Aboriginal and Torres Strait Islander Studies for the opportunity to speak to you today, and thank you for hearing my views.

Kulia