

Land, Language, Law and Culture

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A New Year brings an historic opportunity. Forget wild optimism or deep pessimism and focus instead on the slender but realistic possibility that our nation is capable of a change of heart.

Are we awake to the prospect that this might be a moment of political maturity in which Australia emerges from the division and denial of the past and sees the future through clear eyes?

Every thinking man and woman should relish the opportunity to join in this year's long and difficult referendum debate to contribute as a citizen to the process of Constitutional reform to establish historic recognition of the rights of Aborigines and Torres Strait Islanders.

The words we choose for our Constitution, especially the words we change, should matter a great deal to us all for they will define us as Australians, how we see ourselves and how the rest of the world sees us.

We need the right words to express the values of a modern nation that now includes some citizens who have travelled here from virtually every part of the globe. Yet our country persists with a Constitution that still carries the loathsome heavy baggage of racial exclusion.

Surely on this issue the left and right will agree that race powers allowing Government to suspend voting rights for some people is not a distinction most Australians would be comfortable with, once they realise that we are among the very few nations in the world to enshrine such delusional white supremacist logic.

The stain of racism and discrimination, largely the legacy of Colonialism and the White Australia Policy, can be removed from the Constitution by erasing Section 51 (xxvi) and Section 25.

Establishing the rightful place of Aborigines and Torres Strait Islanders as the First Peoples of the Land is not a question of race but acknowledgment of a fact of human history. Indigenous Peoples have been the Custodians of this land for 60,000 years or more, longer certainly than anyone knows.

The lie of *terra nullius* has allowed many Australians to ignore or dismiss the existence of Indigenous Peoples for over two centuries, excluding them from their rights to their lands, languages, laws and cultures.

For most of this time Governments have persisted with a relentless attempt to assimilate the First Australians, disempowering them, denying the value of their knowledge system, dividing and conquering.

What has been lost until now is any possibility of recognizing, respecting and celebrating in the legal framework of our society the rightful place of Indigenous people in this land.

The resilience, strength and beauty of the world's oldest continuous cultures are a unique part of Australia's heritage that Indigenous people have long offered us with open arms.

Do we want to know *the real Australian story*?

Is this the opportunity to find the words of truth, strength and inspiration?

I have proposed at the outset of this debate that our Constitution might begin...

Australia is a nation founded on Custodianship. All of the people of this land are equal and free.

This is a vision of a greater sense of nationhood because ***Custodianship***, a central concept in both Aboriginal and Torres Strait Islander knowledge, is based on the common good, genuine equality and a responsibility shared by everyone who lives here to contribute to the balance of life and the well being of all of our fellow Australians, including generations to come.

By imbuing the Constitution with this Indigenous wisdom we truly value the land and all of its diverse peoples. Our foundation stone would then be uniquely Australian.

The words themselves, like our laws, cannot guarantee justice and equality. This must be written in our minds, not merely in the Constitution. Equality must be practiced and made personal.

To end discrimination against Indigenous Australians and any others, the best prospect would be a clear Constitutional guarantee for the first time in our history barring discrimination. I hear some Constitutional lawyers already warning that this is far too difficult and way beyond us in a referendum scheduled to be held on or before the next Federal election in 2013.

On the contrary, I believe most Australians would approve of these words...***No Australian will be discriminated against on the basis of their age, gender, race, religion or culture.***

So far, so good, perhaps because we have been examining what is largely common ground.

The political fault lines in the Constitutional debate run deepest across the issues of who is going to control the exploitation of lands legally owned by Aboriginal and Torres Strait Islander Peoples.

It is no coincidence that the most bitter and divisive Indigenous policy disputes of late are over control of Northern Territory remote communities, abandonment of government support for traditional homelands, compulsory acquisition of Aboriginal lands for mining and settlement offers that fall way short of just compensation.

While the Declaration on the Rights of Indigenous Peoples and other international covenants insist governments must consult Traditional Owners and gain prior, informed consent, Australia's parliaments have flouted these responsibilities and brazenly ignored condemnation by the United Nations' leading human rights advocates.

Self-serving politicians who dangle like puppets on the strings of miners and developers are the most likely to poison this part of our nation's political progress towards an enlightened sense of how this wealth of the land could be used to transform the disadvantage of our poorest citizens.

I doubt that many in our federal parliament have the courage to propose that a revised Constitution should include the right of Indigenous people to consult Australian Government on a series of treaties to ensure that their mineral wealth and the eternal value of their land and sea remains in the hands of the First Peoples.

It is why the fortieth anniversary of the Tent Embassy in Canberra will focus us all on the limitations of Constitutional change so far. We must seize the opportunity. It's a very long road to equality and the Struggle will go on way beyond our lifetimes.