

St Thomas More Forum

## **Changing the National Agenda for First Nations and the Role People of Faith Can Play**

**Keynote Speaker:**

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Western**

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I acknowledge Ngunnawal and Ngambri peoples on whose lands we gather. On many occasions they welcome us to these lands. They have done a great service to this Nation though the work they do to help educate many people of the significance of First Nations people.

I've come straight from the budget, so my head has been in another space.

But I have been asked to speak tonight about "Changing the national agenda for First Nations and the role people of faith can play".

In a world where we see racism and assimilationist view points on the rise, and where different faiths are in some cases demonised, we must never forget that we hold more in common than those things that divide us. We are human beings in a common world as part of a creation.

We should search for the principles that can unite people of faith.

## **Defining Principles for our Common Humanity**

Raimond Gaita, my friend and most brilliant writer and humanist has reflected on this concept of a common humanity, and writes:

*“To recognise the humanity of others we must rise to the humanity in ourselves, but to do that we must at least be open to seeing fully the humanity of all people.*

*In a similar way, the acknowledgement of human rights – rights that all people are said to possess merely by virtue of being human – appears to be interdependent with the acknowledgement of a common humanity with them.*

*The same is true for the recognition of the “Dignity of Humanity” to which, we are told in preambles to important instruments of international law, an unconditional respect is owed, as it exists, inalienably, in every human being.”*

When it comes to policy and the rule of law, we must be guided by the recognition of all people’s inherent dignity and inalienable rights.

The Universal Declaration of Human Rights adopted by the UN General Assembly in 1948, stated in its preamble that:

*The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*

## **Yawuru Concepts of Humanity**

The Yawuru people have concepts which are commensurate with this concept of common humanity. We talk about *Mabu Liyan*, *Mabu Buru* and *Mabu Ngarrungu*.

*Mabu Liyan*: is about individual wellbeing. Do I feel good inside my being?

*Mabu Buru*: is about the wellbeing of the country. Mabu Buru is about keeping the country healthy, keeping it rich in its diversity and uniqueness and keeping the stories of the country *strong*. It is about connectivity and what the physical attributes of country speak to my being and that of my family and community.

*Mabu ngarrungu*: is about how we are as a collective. How are we functioning as an entire community. This is about the quality and health of being in collective relationship and the precious nature of the collective itself for the joy of our common humanity.

*And so* who I am as a human being, the health of my country and the health of my community is interconnected – but this is not just for me, this is also for you in your uniqueness and the environment in which our societies collaborate.

**We are all connected through our country, our ceremony and our kinship relationships.**

These principles of *Mabu Liyan, Mabu Buru and Mabu Ngarrungu* go to the principle of *common humanity*. It is at the cultural and belief interfaces that shape our moral and political values where we are challenged.

St Thomas More is known as a Man for all Seasons and the Patron Saint for politicians was a man of faith, a lawyer, and is well known for creating the genre of Utopia writing.

Thomas paid the ultimate price for his commitment to social inclusion, the rule of law and conscience.

Thomas More was executed for his commitment to integrity and honesty, in my Yawuru way he stayed true to his Liyan.

Thomas More, by following his conscience against the force of societal demand for conformity and compliance with the Kings will, ended in losing his life.

He was beheaded although it is said he did ask the executioner to spare his beard.

### **Concepts of Utopia**

In his book, *Utopia*, he creates a self-contained world set on an island, in which communities shared a common culture and way of life.

He imagined a society governed by values of social inclusion and mutually adhered to principles.

There is the Christian narrative of Adam and Eve in the idyllic world of Eden, until they defined the prohibition not to eat a fruit from a particular tree.

This Christian narrative illustrates a primordial state of equality between humans, even though Eve was created from the rib of Adam she was his mate.

The setting was one of interconnectedness; humans, creation and their creator.

With the act of disobedience this was fractured, requiring, according to Christian theology, the necessity for the incarnation and the death and resurrection of Christ as an act of restitution and reaffirmation of God's love for human being and his creation.

The mission or purpose for life can be articulated as humans and creation re-connecting in a context of salvation.

However, humans have to grapple with the day to day challenges regarding their faiths, practices and realisation of this salvation in a very human context.

Faith therefore becomes distinguishable from logic and reason at the experiential dimension of lived life experience.

Justice Kirby in his excellent oration referred to some of the underpinning contextual realities judges in various jurisdictions can be faced with in the face of political regimes and administrations that are less empathetic to upholding universal values and sustaining human rights, standards but are still required to perform their duties in these circumstances in a manner meant to be respectful of the rule of law but under the shadow of great peril if they were to infringe upon the peril in which they operate.

Justice Michael Kirby was brought up in the Protestant faith, and did not know about Thomas More until he met Catholics at University.

Kirby noted the truism that the judges of today, in New Zealand and Australia, live in times of rapid social and legal change.

They do not face the dangers which More faced as Lord Chancellor of England.

In the modern world, to find the equivalents of such dangers, we have to go to other countries where judges uphold universal values at the peril of their own careers, at the risk of their lives.

In Cambodia, for the United Nations, Justice Kirby saw the great difficulties faced by the judges striving to perform their duties in circumstances of great peril.

They have no tradition of the rule of law or of unbending conscience to guide them and to inspire them.

It is in countries of that kind – this was also true in the Congo, in Rwanda, in Sudan, or in the Russia of Stalin or the Germany of Hitler - that we must look to find occasional brave parallels to the stand of Thomas More.

Yet Kirby sees that judges in Australia and New Zealand have their own challenges, including the failure of commentators and parliamentarians to understand the inescapable function of a judge of our tradition: to be Judges, like Thomas More, developing the law and its procedures in harmony with contemporary notions of justice and conscience.

It was the High Court decision in *Mabo* in 1991 that brought the Australian Common Law into harmony with contemporary notions of justice and conscience.

This decision, and the judges that made it, were subjected to a barrage of criticism and condemnation from commentators, politicians and even other judges.

Justice Brennan commented in 1994 that the decision would afford a “new, just and appropriate ‘skeleton of the common law’ concerning the title to land of its Indigenous peoples”.

Before the *Mabo* decision, the courts of Australia had accepted that customary Native Title, if it had existed at all, was extinguished when the British crown asserted sovereignty over the colonies of Australia.

*Mabo* brought the Australian nation to a realisation that their common law was not in harmony with the received wisdom of the colonists and the settlers of this nation. The common law was found in fact to have in existence the notion of native title, which was not dependent upon the largess of the crown and therefore a matter that however was still subject to the sovereignty of the Parliament.

So instead of seeking to negotiate a treaty with First Nations People whose lands have never been ceded or surrendered, but appears to have been taken by force, the response became one to reinstate the security of the legal architecture as had been previously known before *Mabo*.

The decision therefore exploded the common myth of *terra nullius*.

The thinking of the High Court was attacked by many commentators and politicians.

The judges were described as an unelected Body overthrowing the land tenure laws that had been in place for two hundred years.

In response to this decision, and the subsequent *Wik* decision, there were threats by conservative politicians to legislate, to ensure “bucketloads of extinguishment.”

For First Nations peoples, the decision was a long overdue recognition of our rights, of our existence as owners and occupiers of this land.

As Justice Brennan said “the fiction by which the rights and interests of indigenous people in land were treated as non-existent was justified by a policy which has no place in the contemporary law of this country.”

### **Current injustice of no recognition for First Nations people**

Now this brings us to another part of the puzzle for First Nations in contemporary Australia.

Our Constitution, the birth certificate of our nation, the foundation of our legislative and political system, is a product of the values, morals and ethics that were embedded in the the myth of *terra nullius*.

The challenge to people of faith butted up squarely with the pragmatism of their livelihoods, accentuated their fears and crystallised the hardening of arteries to a less generous response.

It is silent on the existence of our First Nations peoples.

However, their voices have not been silent in the demand for justice and recognition that ultimately requires the resetting of the relationship.

Just as the decision in *Mabo* provided a judicial stimulus to face up to the historical legacy of injustices inherent in our policy and legislation approaches to First Nations people's rights to land – but we stopped short of any cathartic change.

Our People were given no say in the drafting of this Constitution, and in the constitution today, we are silenced, voiceless and non-existent.

When the Constitutional Drafting Group met on the boat *Lucinda*, moored in the beautiful Hawkesbury River there were no First Nations people on board.

Our people watched the boat from the banks of the river, watching but not engaged.

Excluded from shaping our nation, yet holding knowledge of its ancient status.

In the current political climate, our lack of voice in the Constitution has gained a new stimulus.

Last year, a lengthy consultation process culminated at Uluru, in what was known as the Uluru Statement from the Heart.

It called for the constitutional entrenchment of a Voice to the National Parliament, a body that could provide advice and comment on legislation that affected First Nations peoples.

The main proposals of the Uluru Statement were -

- a national representative body with the power to advise parliament on laws that affect Indigenous peoples; and
- a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and undertake a public truth-telling process about Australia's history. Makarrata is a Yolngu word meaning "a coming together after a struggle".

I do not want tonight to go into the details of the proposed entity, it's pros and cons, how it might work and how it could be implemented in conjunction with the workings of the Parliament.

Those complex issues are the subject of a detailed consultation process I am Co-Chairing with the Government MP, Mr Julian Leaser, member for Berowra.

What I am concerned to point out are the parallels between **the *Mabo* moment and the Uluru moment.**

The *Mabo* decision was as I explained, attacked by conservative politicians, judges and commentators as an affront to two centuries of the established and unquestioned status quo.

The *Mabo* decision was claimed to be the work of an unelected Body overthrowing the land tenure laws that had been in place for two hundred years.

Similarly, the Uluru Statement was attacked as going too far.

On 26 October 2017, in a joint press release Malcolm Turnbull, George Brandis, Nigel Scullion largely rejected the major proposals by the Referendum Council.

The main concern they expressed was that an indigenous national representative body would "inevitably become seen as a third chamber of Parliament" and would not be supported by the majority of Australians.

Like the *Mabo* decision, the notion of a representative voice for First Nations integrated within the processes of our Parliamentary system does not break down the systems of our democracy.

First Nations people are asking our parliament for recognition of who we are and to respect our right to have a say over our lives and futures. This is not a threat to our democracy, but fundamental to the health of our democracy.

We are seeking recognition of our sovereign status.

We are seeking acknowledgement of our joint histories and the appalling injustices that we have suffered. We are sovereign peoples.

We are the First Peoples of this country.

The 45th Parliament is at a critical juncture on these issues, as the new joint select committee is established.

Its job will be to find an effective way to take on board what has been plainly put to us from Uluru and the Referendum Council about First Nations people having an effective Voice to Parliament on matters that affect our aspirations about truth-telling and agreement-making, and what has been put to us in prior reports.

We are working to go forward with the support of the government, the Opposition and the minority parties – and, most importantly, the First Peoples.

This is where people of faith have a role to play in holding the Parliament to account in ensuring First Nations People are recognised not only for their inalienable rights, but for their unique status as the Sovereign people of this country.

I return to the thoughts of his honour Justice Michael Kirby, on the model offered by St Thomas More. These reflections offer some guidance for men and women of faith who aspire to seek justice for our nation as a whole and for our First Nation Peoples.

He said:

*“It is in circumstances such as we face today, as never before, that we need reminders of the leaders of principle who went before us.*

*Brave people - braver than we are usually called upon to be. Reminders of the vivid image of Martin Luther nailing his propositions to the church door. Or of Thomas More offering the return of the great seal of the Kingdom to King Henry VIII.*

*Leaders who stood by principle as they understood it while the world about them was in turmoil.*

*Their steady example should inspire us, even today, nearly half a millennium later.*

*Martin Luther inspiring Catholic lawyers for his honesty and courage and love of principle.*

*Thomas More inspiring Protestant lawyers for his conscience and lesson in the independence of mind that is essential to the office of a judge.*

*All of us reaching out to serve every person, Christian and non-Christian alike, in a living reflection of these two remarkable contemporaries of long ago who showed what a powerful thing is conscience when allied to law.”*

All of us can be inspired by the life and work of men and women of faith that have come before us.

The challenge is how people of faith can transcend their ordinary biases and prejudices in the face of our robust polity and challenges to reappraise our foundations to restart, a new relationship with First Nations Peoples when the pre disposition of the majority has had little basis to contemplate anything different then the assumption to the propositions to which their knowledge and beliefs have been founded.



I propose we consider St Thomas More as one of those who should inspire us.

We should always be mindful that we are creatures in a creation in search of some form of fulfilment but let's remember that will not be achieved without recognition of justice for all humans and for respect for the environment in recognition of our connectivity.

Galiya

### **ENDS**

Senator Patrick Dodson was appointed by the Parliament of Western Australia on 28.4.2016 and was elected to the Senate in 2016.

Senator Dodson was ordained a Catholic Priest, Missionaries of the Sacred Heart in 1975. He has held many significant positions including as a Royal Commissioner into Aboriginal Deaths in Custody, 1989, and Chair of the Council for Aboriginal Reconciliation, 1991-97. He is a former Director of the Central Land Council and the Kimberly Land Council and former Member of the Council of the Australian National University.

Most recently, Senator Dodson was the Co-Chair of the Expert Panel for Constitutional Recognition of Indigenous Australians which reported in 2012. He is now the Co-Chair of Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples.

He is now the Shadow Assistant Minister for Indigenous Affairs and Aboriginal & Torres Strait Islanders.