

*Andrea Mason**

WHERE DO A BIRD AND A FISH BUILD A HOUSE? AN ALUMNA'S VIEW ON A RECONCILED NATION¹

I INTRODUCTION

As a former student of the University of Adelaide Law School, this law school's gift to me was buckets of guidance on how to think critically about the foundations of Australian society, to find a way through complex issues and to stimulate new perspectives and ways of thinking, drawn from these reflections.

All Australians are connected to Aboriginal and Torres Strait Islander Australians through our shared history, but not every individual Australian has personal stories of friendship and understanding of Aboriginal and Torres Strait Islanders hopes and dreams.

This being the case, how do we elevate the discussion on Indigenous reconciliation and recognition in our nation, when many Australians are sometimes two or three degrees separated from friendship or family connections with Aboriginal and Torres Strait Islander Australians.

We may not all have the deep connection of family, but as Australian citizens, we are members of Australia's democracy and so there are values connecting us to each other. These values are mutual respect, tolerance, fair play, equality between men and women, compassion and equality of opportunity regardless of race, religion, or ethnicity.² Importantly, these values are embedded in Australian laws.

* BA (UniSA), LLB (Adel); Former CEO, NPY Women's Council; Current Commissioner for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

¹ This article is based on a speech given to the University of Adelaide Law School on 7 September 2018. I would like to take this opportunity to acknowledge the Kurna people, the traditional owners of the lands on which the speech was given. I would like to thank them for their love and care for country. I honour their elders as well as their young people, who one day, will take their place as leaders in this proud Aboriginal nation.

² These values are listed in government documents provided to prospective Australians, see, eg, Department of Immigration and Border Protection, *Life in Australia: Australian Values and Principles* (Report, 2016) 4 <https://immi.homeaffairs.gov.au/support-subsite/files/life-in-australia/lia_english_full.pdf>.

However, I put to you that there is a value missing from this list: the value of governance operating rhythms.³ The first governance operating rhythms did not arrive in Australia in 1788, but evolved thousands of years prior to this date. As of today, Australia is yet to give Indigenous governance operating rhythms a proper place of honour in Australia. These rhythms are anchored to common foundation pillars: land, law, language and family. These four pillars like the legs on a table, held the network of tables of Indigenous societies on an even and balanced footing. These structures are, quite simply, pure Australian structures to enculturate in Indigenous nations peace, order and good governance. During the period of first contact, these pillars were attacked, brutalised, dismissed and even ridiculed. Even though this is the history, Indigenous nations have in their own way and through different means, nurtured, maintained and re-established their nations' tables. The foundation pillars are critical because they give effect in Indigenous societies to the interconnection of men and women, to families, to identity, to responsibilities, to authority, to vision, to hope, to dreams, to qualifications to speak and to tell. Importantly, they connect Indigenous nations to each other and these nations to modern Australia.

So, how can a fish and a bird make a home together? Or, from another angle, *where do a bird and a fish build a house?* I have thought about this question a lot in recent years. On face value, a solution seems impossible, because of the different environments these animals inhabit.

I first heard this phrase while watching *Corrina, Corrina*,⁴ a 1994 film set in an American city in the late 1950s. It is about a businessman of Jewish heritage, Manny, who hires Corrina, an African American, as housekeeper and nanny to care for his daughter after the passing of his wife.

Manny and Corrina, played by Whoopi Goldberg, begin to form a close friendship, which slowly develops into deeper feelings. Manny's mum observes her son's interactions with Corrina and begins to worry about the direction the friendship is heading in. One day she pulls her son aside and, in an attempt to express her concerns, she says, 'how can a fish and a bird make a home together?' Or, how can a Jewish man make a life with an African American woman, from another class and neighbourhood?

³ At first contact Australia was described as terra nullius, an empty, uninhabited land; this of course was a wicked lie. At the time of first contact, there were many, many nations living on the continent with their own laws, traditions, trade rules and protocols based on their country, their language and their unique social structures. These were nations that relied on a complex set of principles and protocols such as *ngapatji ngapatji* (giving and receiving of obligations and responsibilities) and *Kutuku mukulyangku* (a protocol regarding kindness). These nations did not exist in isolation, they were interconnected through knowledge super highways called Songlines. Songlines held multiple libraries of knowledge ensuring through word and song that knowledge of lands, heavens, seas and their ecosystems was passed down from generation to generation to ensure everyone knew their place, and every place knew their nation. All of this and more I describe as governance operating rhythms.

⁴ *Corrina Corrina* (New Line Cinema, 1994).

Something about these words has captured me over the years. It is not so much the phrase itself, as what it represents — how a belief can be a powerful force to resist change, and how a belief that is entrenched so deeply can be deconstructed in someone’s heart and mind and allow new beliefs to be established.

Such a reflection feels like a good way for me to start this speech on Indigenous Peoples’ experiences around reconciliation in Australia, the agency of all Australians in what has occurred and the possibility of change, for the good of all Australians.

II IT IS WHAT GOVERNMENTS DO THAT IS IMPORTANT

Australia has many beliefs about Aboriginal and Torres Strait Islanders and many of these beliefs were formed over two centuries ago. Australia’s founding fathers were a product of their times and their actions are now our legacy to address. Fred Chaney has commented on the importance of valuing government action over rhetoric: that it is not what governments say, it is what governments do that is important.⁵

All nations have a historical record and it is important that we learn from the past — from our successes as well as our failures. Nations also carry a moral record and when we reflect on both our historical and moral record, each generation has the opportunity to pause and consider whether, as a society, we could do better — based on our times, our growing knowledge and our understanding of the past. The historical record and the moral record also gives insight on the economic record of a nation and its people. The current economic situation of Aboriginal and Torres Strait Islanders does have a back story, it’s important to acknowledge it and, importantly, to remove race based discriminatory barriers where they still exist.

I learned about the history of race and racism in Australia, not during my high school years, but during my first stint at university in the late 1980s. Processing this information for me was twofold. Firstly, I was trying to understand my personal story as one thread in the historical and moral history of Australia. Secondly, I was trying to understand how public institutions were agents in this history. Today, I continue to be open to understanding these matters.

The concept of race was invented in the 18th century in an attempt to ‘categorise new groups of people being encountered and exploited as part of an ever expanding European colonialism.’⁶ This practice was no different in Australia and by the 19th century, Australia was busy with attempts to categorise people into races.

⁵ Fred Chaney, ‘The Hon. Fred Chaney on First Australians and Dysfunctional Government’ (Cranlana’s Governor’s Oration, Melbourne, 7 June 2018) <<https://cranlana.org.au/fred-chaney-cranlana-2/>>.

⁶ Darren Curnoe, ‘The Biggest Mistake in the History of Science’, *The Conversation* (online, 20 December 2016) <<https://theconversation.com/the-biggest-mistake-in-the-history-of-science-70575>>.

Such categories inevitably gave rise to theories of the racial and cultural superiority of one race over another.⁷

It is my view that such theories are, at their core, about control and power.

According to Cohen,

[r]ace is the object of racist discourse and has no meaning outside of it; it is an ideological construct, not an empirical social category; as such it signifies a set of imaginary properties of inheritance which fix and legitimate real positions of social domination or subordination in terms of genealogies of generic differences.⁸

Australia's founding fathers appropriated the contemporary opinions on race to further cause Aboriginal people to become invisible, which can be seen in the absence of legal agency for Aboriginal people in our *Constitution*. This then provided justification to a range of laws and policies throughout the 20th century including the *Aborigines Acts*⁹ and the policy of assimilation.

Many Indigenous and non-Indigenous leaders believe this policy, and the underlying ideology is still threaded through various policies in Indigenous Affairs.

In 1975, the Australian Parliament took steps to put this past behind Australia, when the *Racial Discrimination Act 1975* (Cth) was enacted. This domestic law was created because, earlier in the year, Australia had ratified the 1966 *International Convention of the Elimination of All Forms of Racial Discrimination*.¹⁰

I have been in the ministry of Indigenous reconciliation and recognition all of my adult life. I do not remember the day the light was turned on, but when it was, I became conscious of my identity and difference and that it mattered to me and my family.

⁷ David Hollinsworth, *Race and Racism in Australia* (Thompson Social Science Press, 3rd ed, 2006) 80–4.

⁸ Phil Cohen, 'The Perversions of Inheritance' in Phil Cohen and Harwant Baines (eds), *Multi-Racist Britain* (Macmillan, 1988) 9, 23, quoted in Hollinsworth (n 7) 27.

⁹ For example, the *Aborigines Act 1911* (SA). This was replaced by the *Aborigines Act 1934* (SA), as repealed by the *Aboriginal Affairs Act 1962* (SA). On the history of this, and other discriminatory South Australian legislation, see 'South Australia: Legislation / Key Provisions', *Australian Institute of Aboriginal and Torres Strait Islander Studies* (Web Page) <<https://aiatsis.gov.au/collections/collections-online/digitised-collections/remove-and-protect/south-australia>>.

¹⁰ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

Moreover, I knew reaching out to generous Australians to confront discrimination and racism was the right thing to do, alongside working with all Australians to structure out these divisions.

I have always felt discussions on reconciliation and recognition were important.

III FAMILY HISTORIES

Like the United States, we have had our era of slavery. One example being the South Sea Islanders who were transported to Australia between 1863 and 1900, with records showing that over 60,000 Islanders were transported.¹¹ These men worked in Queensland and Western Australia as laborers in sugar cane plantation fields, among other things. While some came voluntarily, many men were tricked or kidnapped — a practice termed ‘blackbirding’.¹²

These men were required to serve out fixed-term contracts as indentured laborers. In this regard, South Sea Islanders have said that it is more truthful and accurate to refer to these men as ‘sugar slaves’.¹³

As we know, the ground swell towards federation in 1901 had a number of drivers but one of the central policies was the exclusion of all non-whites. After the Commonwealth was formed, many South Sea Islanders who were not exempt — for example those married to an Australian — were deported whence they came.

It does make me pause when I read that South Sea Islanders at the time were seen as racially superior to local ‘Aborigines’, because they were thought to be well-behaved, industrious and religiously minded.¹⁴

When I read such views, I think about the war of resistance in Australia carried out by Aboriginal people against settlers. I think of the tough mindsets of Aboriginal

¹¹ Tracey Flanagan, Merideth Wilkie and Susanna Iuliano, ‘Australian South Sea Islanders: A Century of Race Discrimination Under Australian Law’, *Australian Human Rights Commission* (Publication, 2003) <<https://www.humanrights.gov.au/our-work/race-discrimination/publications/australian-south-sea-islanders-century-race-discrimination>>.

¹² On the history and continuing impacts of blackbirding see: Lincoln Hayes, ‘The Tangible Link: Historical Archaeology and the Cultural Heritage of the Australian South Sea Islanders’ (2002) 20(1) *Australasian Historical Archaeology* 77; Clive Moore, ‘The South Sea Islanders of Mackay, Queensland, Australia’ in Judith M Fitzpatrick (ed), *Endangered Peoples of Oceania: Struggles to Survive and Thrive* (Greenwood Press, 2001) 167; Wal Bird, *Me No Go Mally Bulla: Recruiting & Blackbirding in the Queensland Labour Trade 1863–1906* (Gindinderra Press, 2005).

¹³ Imelda Miller, ‘Sugar Slaves’, *Historical Atlas* (Web Page, 22 October 2010) <<https://www.qhatlas.com.au/content/sugar-slaves>>.

¹⁴ Moore (n 12) 172.

people and reflect that resistance to oppression comes in many forms, including passive resistance.

Of course, we have a more recent example of the power of belief. We still have members of the Stolen Generation living among us and they continue to speak of the impact of those laws, which separated them from their family.

At the Garma Festival in 2018, I heard the remarkable William Tilmouth speak powerfully of the devastating impact on his life of being removed from his mother in Alice Springs and taken away to the Top End region of the Northern Territory to live in an institution.¹⁵ He spoke of the loss of language, connection to family and, today, a lack of recognition through native title.

What I have taken away from the 1997 *Bringing Them Home* Inquiry is that government policies have had a deep and lasting consequence on Australia.¹⁶ Often the lives of the people affected cannot be fixed or reconciled, even with an apology or redress. While the apology to the Stolen Generation was an important moment in the history of our nation, it was not an instant cure-all.

My own family story, although not directly of slavery, is connected to the same thread of federation and the policies that flowed thereafter.

My parents, Benjamin and Bernice, experienced the government's management of exclusion through the regime of protection and assimilation: they were mission kids and therefore wards of the state in Western Australia.

Every Aboriginal and Torres Strait Islander child who had a welfare file from 1901 to 1967 experienced exclusion from their community either in part, or forever and it is difficult for me to process the impact of their experiences. For example, my father is buried in the cemetery of the mission he grew up on in what is today the Mount Margaret Community, because of the deep affection he held for this place.

That said, during most of his life, Dad was an exceptional man who carried himself with dignity. He was a proud Aboriginal man, he valued education, was bilingual, and he was an agitator, as well as an articulate rights campaigner in the tradition of Christian civil rights activists. For his service to Aboriginal people in Western Australia, he was awarded an MBE in 1978.¹⁷

¹⁵ William Tilmouth, 'I Will Share Some of My Truths' (Speech, Garma Festival, 4 August 2018). See also William Tilmouth, 'Indigenous Children Don't Need to be Fixed — They Need Rights and Opportunities', *The Guardian* (online, 7 August 2018) <<https://www.theguardian.com/australia-news/2018/aug/07/indigenous-children-dont-need-to-be-fixed-they-need-rights-and-opportunities>>.

¹⁶ Human Rights and Equal Opportunity Commission, *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, (Final Report, 1997).

¹⁷ United Kingdom, *The London Gazette*, No 47419, 31 December 1977, 37 <<https://www.thegazette.co.uk/London/issue/47419/supplement/37>>.

In Professor Fred Hollows' autobiography, he talks about the resistance his team experienced in Western Australia to treating Aboriginal people.¹⁸ During a meeting of people from the health sector in Kalgoorlie, Fred arrived in the town hoping for support to get his team out to where Aboriginal people were in dire need of help. It was the mid 1970s and Kalgoorlie was a rough old place.

My Dad was also at that meeting, with a group of Aboriginal people from the local community. Dad effectively hijacked the health meeting, challenging bureaucrats who were more focused on minute taking and items on the agenda than on the solution at hand.

Fred wrote the following:

I don't remember much more about the meeting... Not a peep from the chastened white fellers and the proceedings came to an end. Later Ben Mason told me what it had all been about — a concerted attempt by conservative bureaucrats and threatened health workers to keep us out of the state.¹⁹

He then gives tribute to Dad, saying that it was largely thanks to Dad's direct action, that this attempt to derail Fred's team did not work.

Following my dad's passing in 1994, I have often thought about where his passion came from. I truly believe it came from hundreds and hundreds of moments of exclusion and his experience of the power others exercised to control solutions, like in the story I have just told. His experience of exclusion, and what it tried to change in him, evolved into a passion to kick such exclusion out of his way and out of the way of other Aboriginal people.

In 2017 the Uluru Statement From The Heart²⁰ expressed this desire for greater inclusion as Indigenous people wanting their voice to be heard.

The *Aborigines Act 1905* (WA) governed the lives of all Aboriginal people in Western Australia for nearly 60 years.²¹ Mount Margaret Mission taught my father the operating rhythm of British society. There, among other things, he learned to read, write, and follow the British Christian and social calendar: Easter, church, Sunday school, Christmas, funerals, weddings, cricket season, tennis season, raising sheep

¹⁸ Fred Hollows and Peter Corris, *Fred Hollows: An Autobiography* (Kerr Publishing, new ed, 1992) 133–6.

¹⁹ *Ibid* 134–6.

²⁰ Referendum Council, *Uluru Statement From the Heart* (26 May 2017) <<https://www.referendumcouncil.org.au/final-report.html#toc-anchor-ulurustatement-from-the-heart>>.

²¹ Under the Act, the Governor could declare any Crown lands as 'reserves for aborigines': s 10. The Minister could then force any 'aborigine' to be removed or kept within the boundaries of such reserves; any person who refused such an order was guilty of an offence: s 12.

and goats, fund raising, learning band music, attending school and eventually joining the workforce. Most importantly, my dad learned about the RM Williams store in Percy Street, Prospect and the clothes you needed for all these social and business events.

My parents never talked about ever getting exemption from the Act in Western Australia.²² I feel my dad may have had exemption given the travel he did in New South Wales during the 1950s, as well as travel he did to New Zealand.

As a child growing up after the 1967 referendum, in the 1970s and '80s, I had a front row seat to the new dawn of self-determination. Lawmakers were changing discriminatory laws and everyday Australians were challenging social norms to give Aboriginal and Torres Strait Islanders a seat at the decision making table. I personally experienced the effort of non-Aboriginal people and governments to create equal opportunities for me. These offerings focused on closing the inequity gap in housing, employment, health, early childhood, and education. In those days, it was called affirmative action and, like today, school attendance was a hot topic.

In the '80s, as an incentive to keep Aboriginal kids in school, every Aboriginal secondary student in years 8 to 10 received a fortnightly \$3 cheque. In years 11 to 12 the incentive increased to \$6 a fortnight. I am not sure if the \$3 and \$6 cheques were the hooks that got me over the line, but I did finish year 12.

Realistically, it was more about my mum driving me to school every day, and then becoming an Aboriginal education worker at Nailsworth High School. I am convinced she did this so she could keep one eye on me and the other on the school. My sister and I had a friend who ended up working in our local Commonwealth Bank as a teller, which made it a little more embarrassing for us when the time came to cash the cheque that arrived in our letterbox every fortnight.

I would go up to him and the conversation would go something like this,

Hello Andrea, how are you?

Yeah, good thank you. I'd like to cash this cheque.

OK, great. How would you like it, a two and a one?

And as Australians are prone to do, we gave him a nickname: 'Three Dollars'.

My family history and other personal experiences of racism and prejudice, and these interesting policy offerings motivated me towards working in areas that advanced reconciliation, rights and recognition.

²² Such exemptions could be granted to any Aboriginal person who was employed, a woman married to a non-Aboriginal man, or who had a permit to be absent from a reserve: *Aborigines Act 1905* (WA) s 13.

IV NEXT STEPS

In 1999 after spending ten years in the South Australian public service, I could not push away the thought that I was a passive bystander, and that I needed to do more to influence law and policy through Parliament. I experienced some life changing moments in the years before 1999 that were influential in showing me that some change was happening for the good, such as Aboriginal employment, housing and education programs offered through government departments in the Commonwealth, States and Territories.

Similarly, there were events that showed racism and assimilation were still entrenched in Australian society: the protests of the bicentennial anniversary in 1988, the Royal Commission into Black Death in Custody 1987–1991, and the push for constitutional reform in 1995.

Applying for a place at Adelaide Law School in 1999 was a serious step for me.

I took part in lectures and tutorials, in exams and assignments, in subjects and electives such as International Law, Constitutional Law and Australian Legal Studies and Aboriginal People and the Law. What unfolded for me there was the concept that Australian ‘modern’ laws are a *malpa* — the Pitjantjatjara word for friend — to the ancient protocols, manners and rules I had learnt about in my Aboriginal community and life education. And I realised that these rules needed greater prominence when talking about Australian laws.

It is my perspective that Indigenous law is not a part of Australian modern law, but that Australian modern law is a continuation of the Indigenous laws that have kept peace, order and good governance in the Australian continent for thousands of years.

These public rules and protocols I am speaking about have many different names depending on whom you speak to in the Indigenous community. In the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (‘NPY’) region in Central Australia, these rules are bundled up in the word *Tjukurpa*.

Tjukurpa is sneaky, hiding itself in the oral tradition of storytelling, in art, in songlines, in the landscape and in everyday decisions. This is the wonder of our legal system. It is transportable, visual and is akin to an ecosystem or an operating rhythm; the sum parts keep harmony.

This rules-based, rhythmic order has maintained peaceful governance for 5000 generations and still exists today. Invasion, settlement, institutions and racism, poor laws and policies have endeavoured to stifle *Tjukurpa*. It has been challenged and despite this, it is still here today.

Over the past 10 years, during my time at the NPY Women’s Council, I have worked with the senior women of the region. I have seen senior practitioners of *Tjukurpa* apply their minds to complex issues, with the same style of forensic thinking as legal practitioners from other places. They have used a high bar of probity, integrity and

oversight to maintain peace, order and good governance to find a balanced position that is inclusive of culture and the modern world. I have observed a high standard of cultural acumen, a significant knowledge of culture that enables good consideration and decision making.

I formed the view in this law school, that the rules-based order, or governance operating rhythm, from my Indigenous nation, stood as a friend, and not an inferior system to Australian laws.

Surely good law finds good law in other places, especially when the result is the maintenance of peace, order and good governance for all. Surely, in our modern democracy, the benefits of enabling Indigenous Australians to have a co-governance arrangement are clear. To enable the Indigenous governance operating rhythm and the mainstream government operating rhythm to work in a synergistic relationship is for the greater benefit of all Australians.

The Uluru Statement from the Heart offers Australians an opportunity to anchor Indigenous governance operating rhythms to constitutional recognition.

The Statement says the following:

With substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia's nationhood.

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. This is *the torment of our powerlessness*.

We seek constitutional reforms to empower our people and take *a rightful place* in our own country. When we have power over our destiny, our children will flourish. They will walk in two worlds and their culture will be a gift to their country.

We call for the establishment of a First Nations Voice enshrined in the Constitution.

Makarrata is the culmination of our agenda: *the coming together after a struggle*. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.

We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history.

In 1967, we were counted; in 2017, we seek to be heard. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future.²³

V A RECONCILED FUTURE

What is stalling us from moving into this reconciled future is the same situation faced by the South Sea Islanders and the Stolen Generation. We, as a nation, are too comfortable with the status quo. As David Morrison said, ‘the standard we walk past is the standard we accept’.²⁴

The opportunity for Indigenous constitutional recognition, intertwined with the notion of voice, offers Australians a chance to discard the concept of exclusion of colour and move to embrace colour, to inform and create a better nation and to allow knowledge from Indigenous governance operating rhythms to raise the bar of better law in Australia.

In 1982, five Indigenous Meriam men, Eddie Koiki Mabo, Reverend David Passi, Celuia Mapoo Salee, Sam Passi and James Rice, began their legal claim for ownership of their traditional lands on the island of Mer in the Torres Strait.²⁵ They claimed their people had continuously inhabited and exclusively possessed their lands, lived in permanent settled communities and had their own political and social organisation.

In June 1992, the Meriam people won the case. The High Court ruled that they were entitled to possession, occupation, use and enjoyment of most of their lands. The judgement of the High Court inserted the legal doctrine of native title into Australian law and drew a line across the legal fiction of terra nullius.²⁶

The Law of Malo and the Stars of Tagai helped to explain Eddie Mabo’s right to ownership.²⁷ This knowledge was drawn from his ancestors’ knowledge, passed

²³ Referendum Council (n 20).

²⁴ David Morrison, Department of Defence (Cth), ‘Chief of Army’s Message Regarding Unacceptable Behaviour by Army Members’ (Media Release, 13 June 2013) <<http://video.defence.gov.au/play/2937#>>.

²⁵ ‘Mabo Case’, *Australian Institute of Aboriginal and Torres Strait Islander Studies* (Web Page, 11 September 2015) <<https://aiatsis.gov.au/explore/articles/mabo-case>>.

²⁶ *Mabo v Queensland (No 2)* (1992) 175 CLR 1 (‘Mabo’).

²⁷ The Law of Malo is the law of the land, and the law of the Stars of Tagai is the law of the heavens. These stars are, to some Torres Strait Islander Peoples, representative of their ancestral sky hero. The use of these stars by Torres Strait Islander Peoples for navigation, agriculture, and telling the seasons was used by the Court in *Mabo* as evidence of the Meriam people’s ongoing connection to their land — it proved that they were not nomadic: Ragbhir Bathal, ‘How Astronomy Paved the Way for Terra Nullius, and Helped to Get Rid Of It Too’, *The Conversation* (online, 14 October 2016) <<https://theconversation.com/how-astronomy-paved-the-way-for-terra-nullius-and-helped-to-get-rid-of-it-too-66703>>.

down through the ages. The Law of Malo and the Stars of Tagai explained the Meriam people's governance operating rhythm. A rhythm that gave structure to their laws and social organisation and, in Mabo's case, their ownership or title to country.

This is the quality of insight needed to create better laws and policies. Advice from Indigenous leaders, with an understanding of Indigenous operating rhythms, advising the Parliament by providing insight by drawing out more knowledge for better laws.

I believe the result would be better laws giving Indigenous people and communities a greater chance of activating individual and collective agency of our lands, language, law and families.

Is this not the nation Australians seek to share with Indigenous Australians? Critically, this approach would keep the Parliament and the government from taking top down approaches with Indigenous Australians.²⁸ It would activate an Indigenous approach to negotiating change and seeking solutions through an inside-out approach. In addition, it would encourage speaking to agents in Indigenous communities who are best placed to give agency to solutions. I believe this is a fuller expression of what was spoken of in the Uluru Statement from the Heart.

Without a movement involving all of the Australian people, this constitutional change may not happen. My concern is that if things do not change, the default position will remain and the exclusion of Indigenous people in many and varied forms will continue indefinitely: casually, passively, actively, and structurally.

This does not have to be the case, but it will be if nothing changes. I believe in the ability of the Australian people to discern between hatefulness and ambivalence, and kindness and justice. I stated at the beginning of this article that all Australians are connected to Aboriginal and Torres Strait Islander Australians through our shared history, but not every individual Australian has personal stories of friendship and understanding with Aboriginal and Torres Strait Islanders. Our shared history is our story to own as well as to reflect on. Our past helps us to understand the present, and why there is hatefulness and ambivalence as well as kindness and justice in our country. Our history helps us to feel what it is like to live with and without these qualities and, more importantly, that it is in our power to choose our nation's qualities.

More than ever, Australians have to discern these differences. Sometimes it is like splitting hairs, but I believe we are up to the task: to lean, step towards and then walk on the right side of history.

Do Australians see a representative voice enshrined in the Constitution as a way of changing the power structure for Indigenous Australians? Do Australians accept that there are power structures limiting Indigenous agency, because of how policies and laws are structured? What is the cost to all Australians for this powerlessness to continue? Importantly, is there a benefit to all Australians if, in

²⁸ See Chaney (n 5).

this generation, we address constitutional recognition? These are all important questions.

I have been an Aboriginal person all of my life. As I age, I am more comfortable with who I am and the people who give me meaning and purpose. I am a member of an Australian Aboriginal nation whose relationship with country goes back 65,000 years. This reality is a wonder to me, it grounds me and it anchors me.

When Australian leaders in the business, social and services sectors discuss reconciliation and recognition, these conversations are genuinely positive. However, for the federal government, the current default position seems to be equality under the law. This stalls conversation in infancy, with the argument that one group cannot have a greater voice over another in Australia. From my perspective, this argument misses a critical element, that the exercise of equality is no longer equality when the effect is inequality.

I think the best example of this that I can give was when, in 2013, the former Prime Minister, Tony Abbott, took primary responsibility for women's issues, along with Indigenous affairs, deregulation and national security. Abbott held his position as Minister for Women for about two years. I do not need to explain how confusing it was for Australian women to have a man as a figurehead for women's progress and empowerment. As women, we have our operating rhythm constructed from personal perspectives on a daily basis.

This does not take away from the Australian value of equality between men and women, but on matters important to women, women should lead. So if men and women are equal, what is the role or influence of culture? Does this need to be factored in?

Of course, we know culture can provide a framework for understanding ourselves and the world around us. This is definitely my experience as a Ngaanyatjarra and Kronie woman. Can culture be a way to strengthen peace, order and good governance in Indigenous communities? In my experience I think it can, if it is understood to be part of a broader governance operating rhythm.

Our federal Parliament is a 'WEIRD' Parliament; it is full of mostly people who are Western, Educated, Industrialised, Rich and Democratic.²⁹ When I was named the 2017 Northern Territory Australian of the Year, I said that Central Australia is the heart of the nation and if the heart is healthy, then the nation is healthy. If Central Australia is where our national heart is, then where is the brain and how healthy is it?

Taking this idea one step further, I would have to say that our brain is the federal Parliament. The question today is, 'what is the Aboriginal and Torres Strait Islander

²⁹ Tom Hendriks et al, 'How WEIRD are Positive Psychology Interventions? A Bibliometric Analysis of Randomized Controlled Trials on the Science of Wellbeing' (2019) 14(4) *Journal of Positive Psychology* 489.

cultural neuroscience of our national Parliament?' Do members understand the cultures of Australia's Indigenous peoples and their unique governance operating rhythms? Do they understand their cultural worldviews? Are our law makers understanding of the balance needed for Aboriginal and Torres Strait Islanders to walk well in two worlds and how this balance is struck in law?

I would have to say that at times their understanding is satisfactory and other times unsatisfactory. Our Federal Parliament could be aiming for even better laws and policies for the benefit of Indigenous and non-Indigenous Australians.

Well time is up, the genie is out of the bottle. Aboriginal and Torres Strait Islander Peoples are asking the nation to change and this change is a gift that Australian people can give to Indigenous Australians. Indigenous Australians want to move from knocking on the doors of Parliament to moving inside the institution — validated by law and through the will of the people — to give voice to the aspiration and hopes of our people and communities for the benefit of all Australians.

VI CONCLUSION

In conclusion, I want to say that Eddie Mabo gave a great gift to this nation by challenging the notion of terra nullius. He freed all of us. And we know that he did this by drawing on his people's governance operating rhythm to demonstrate his unbroken title.

The use of Malo's Law and the Stars of Tagai in *Mabo* helped to bring the Meriam people's governance operating rhythm from invisibility to visibility. These laws and practices had served his people well for thousands of years.

Imagine hundreds of Indigenous people who understand the balance, considering complex issues, drawing from their own operating rhythms as well as the laws of modern Australia, and speaking through an enshrined representative voice and under a framework of probity, integrity and transparency. Could this reality be possible in the third decade of the 21st century?

I hope it matters to Australians that in our commitment to reconciliation and recognition, a central mission is to see better laws for our communities. Laws based on, among other things, the best of our operating rhythms, of both western and non-western traditions. An Australian democracy that embraces co-governance because both traditions seek to anchor progress in our identity, history and our humanity.

So where do a bird and a fish build a home together? It is built where the bird and the fish can both live in the house; it is built on the land and in the sea.