

Resistance to full embrace jars 25 years after Mabo



Prime Minister Gough Whitlam pours soil into the hand of Gurindji elder Vincent Lingiari in August 1975.

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Today it is 25 years since the High Court of Australia ruled in favour of Eddie Mabo and his Meriam people in rejecting the old fiction that Australia was terra nullius: a land without owners.

Murray Island in the Torres Strait finally brought this country into line with the common law of England that had long recognised native title throughout the British colonies in North America, Asia and Africa.

Indeed, native title was part of the baggage of law the putative settlers of the First Fleet carried on their shoulders to the new colony of New South Wales, which fell to the soil and became part of the law of the land. This account is core to understanding the reception of English law into new colonies. The US had its Mabo decision in 1823; New Zealand in 1847.

Our country, Australia, was the last to own up to the truth that Englishmen accord certain legal recognition to human beings who occupy land. Englishmen presume that occupation of land gives rise to a right to possession under the law. Indeed, native title gives expression to the nostrum that possession is nine-tenths of the law.

I can think of no more redeeming myth for our nation than this one: that it is the law of England that provides the opportunity to put right the grievance of the dispossession of the original owners from the homelands they held under their own sovereign title since time immemorial. But we have so far renounced this idea.

How could people who exclaim the fundamental importance of the British-derived system of Westminster government and the rule of law then object to native title, a fundamental institution of English common law? But object they did, and to this day the Australian nation has yet to embrace the truth and meaning of Mabo: the intersection of native law and the imported law of England.

Almost a quarter-century after this newspaper made Eddie Mabo its posthumous Australian of the Year, the Australian people have not embraced Mabo as the national hero he truly is. He was our Martin Luther King. And as long as we fail to honour his achievement appropriately in our national life, we will fail to understand the opportunity he gave us.

This week this newspaper's foreign editor, Greg Sheridan, wrote an appalling commentary on the matter of constitutional recognition of Aboriginal and Torres Strait Islander Australians. For sheer lack of grace, Sheridan's article was breathtaking, offensive and obscurant.

Sheridan imagines himself a 19th-century liberal with a John Locke treatise under his arm, pith helmeted astride an elephant in an exotic convoy of the British Raj. His commentary has the intellectual ballast of Andrew Bolt, except Bolt at least has a business model that drives him: what's Sheridan's excuse?

The first book that fired me about the worldwide indigenous crisis was about a small Ojibwa indigenous community in Ontario, Canada, written by social geographer Anastasia Shkilnyk, describing the alcohol, suicide, child neglect and abuse into which this community descended in the 1970s. Dante would have struggled to tell this story. Shkilnyk called her book *A Poison Stronger Than Love*, the words of a neglectful parent of Grassy Narrows explaining the superior power of alcohol over the love of her children.

Sheridan's response to last Friday's Uluru Statement from the Heart is to say no, the truth is that Aboriginal parents do not love their children. How unworthy is his cheap offence. His contempt for Aborigines is palpable and nauseating.

Sheridan's rhetoric about his belief in the lodestar of liberal democracy betrays a wilful ignorance. His article (Opinion, June 1) continues previously made arguments identifying the US as the embodiment of the colour-blind, race-neutral system of government. Except the perfectly equal citizenship of liberal democracy does not exist anywhere in the Western world.

If Australia were truly terra nullius and there were no indigenous peoples, then Sheridan would be right. If there were no Native Americans, then Sheridan's naive description of the US also would be correct. If there were no Maori in New Zealand, then Sheridan's imaginary perfect, cookie-cutter version of simple liberal democracy would be the truth.

But it is not. Not in the US, not in New Zealand, not in Canada, or anywhere else throughout the Western world.

The US struck treaties with its indigenous peoples. The constitutional law of America exempts them from the jurisdiction of the states. The Supreme Court accords them the status of something it calls “domestic dependent nations”. Their distinct native rights to land and jurisdiction were recognised in the 19th century.

Similarly in New Zealand. The Treaty of Waitangi was struck in 1840 and today governs the unique relationship between the crown and Maori tribes.

When these apparent departures from the pure model of liberal democracy extolled by Sheridan are pointed out, there is no response. The fact such Western nations have come to grips with the presence of indigenous peoples within their borders, whose presence preceded colonisation, and made their accommodations to reflect the unique status of these original peoples, is completely ignored by Sheridan.

The intellectual dishonesty is flagrant, and exposes the fact that the idea of liberal democracy harboured by Sheridan and others like him is just an ideological fantasy. It’s a desperate desire to bleach the democracy into the kind of uniformity that assures Sheridan that his culture and heritage are reflected in it, but no one else’s.

Of course liberal democracy is the highest principle of national compact, but not as defined by Sheridan.

The liberal democracy created by Thomas Jefferson and America’s founding fathers, and rededicated by Abraham Lincoln, is more accommodating of pluralism than Sheridan’s whitebread version. Liberal democracy is the inheritance of immigrants and indigenes alike. It is an idea of our democracy that is not as mean and exclusive as Sheridan would have it.

The greatest challenge facing our turbulent planet is how thousands of distinct peoples can coexist within less than 200 nation-states.

Cultural demographers count between 7000 and 10,000 distinct peoples who live within and form part of the nation-states with varying degrees of harmony and common identity.

These distinct peoples mostly identify with the nation-states within which they are located, but they retain their distinct ethnic and cultural identities.

Relations between peoples and nation-states, and between peoples within nationstates, which go back into history, involve oppression, discrimination, conflict and grievance.

There is no future in further national fragmentation and the creation of new nationstates. There is no future for separatism. The state of Palestine will be one of the last new nation-states when it is created. The world has reached the end of the decolonisation process that followed World War II and the fall of the Soviet Union.

Harmony and peace must needs come from recognition, reconciliation and development. Co-existence is our future, and the world needs more examples of

nation-states that can transcend the grievances of their histories, free minorities from oppression and enable them to take their rightful place in the nation.

Fragmentation of nations is one extreme. Sheridan's kind of chauvinistic insistence on the unitary state, oblivious to the fate of minority peoples within its borders, is the other extreme.

Harmonious nations that retain their national cohesion while recognising the reasonable aspirations of distinct peoples within their borders: that is the middle path. Allegiance to liberal democratic nationhood, insistence on an indivisible common citizenship, and the obligation to embrace the Enlightenment as the universal culture of the nation are not inconsistent with the kind of pluralism that truly reflects diversity in unity.

The world is descending into fundamental identities, rather than citizens understanding they have layers of diverse identities relating to geography, history, ethnicity, religion and many more bonds of identity.

The problem with Sheridan's monocultural view is that it too is fundamentalist.

Nobel laureate Amartya Sen's concept of individuals harbouring many identities within their breasts is more apt. We should take Robert Putnam's idea of bonding and bridging associations and apply them to identity.

We need strong bonds within our identity subgroups, but we also need strong bridging identities. Where would Indian identity, or Australian identity for that matter, be without cricket?

Of course our common citizenship must be the universal bridge that transcends and connects all bonds.

Sheridan decries identity politics, but his is a simplistic critique of the stupidities that have evolved in Western societies.

As egregious as these politics are, monocultural nativism is not the answer. Yet Sheridan perpetuates the Boltian falsity that recognition that certain peoples are indigenous to a place is a racial category.

There are white people called Sami who are indigenous to the Arctic Circle. And Sweden, Norway, Finland and Russia recognise the Sami in various ways in the legal structures of their nations.

Robert Hughes was the originator of the critique of political correctness of the left, in his 1993 book *Culture of Complaint*, but he equally lacerated its counterpart PC: patriotic correctness. It was the conservative Samuel Johnson, after all, who told us patriotism is the last refuge of scoundrels.

Seventeen years ago I wrote in my manifesto, *Our Right to Take Responsibility*, about some of the idiotic identity politics in indigenous policy:

“Related to the impediments to Aboriginal education which some poor ideological thinking seems to have caused, is the impediment which prescriptive identity politics

represents to the development of our people. There is now a tendency for Aboriginal people to be told what their identity should be.

“There are a lot of prescriptions about what behaviour, work, interests, endeavours, writing, art, poetry, ambitions, dreams, aspirations are essentially Aboriginal and those that are not.

“We need to seriously think about the effect of these prescriptions on the possibilities for our children. The autonomy, individuality and creativity of our children should not be stifled by nonsense concepts of ‘true identity’.

“Such prescriptions are mostly peddled by people who are uncertain and unconfident about their own identities. Our children in Cape York Peninsula must be completely confident in their identity and their right to express their identity in the way they choose.

“It is their values and relationships which bind them to us — not the political or identity straitjackets which are imposed upon them.

“After all, our traditional society allowed for great eccentricity of personalities and often fierce personal autonomy.”

Sheridan’s monocultural, unitary state is too miserable for a plural world. It is a myopic vision that offers no hope to Aceh. No solution for West Papua. No hope in so many similar situations across Asia and indeed around the world.

When we as Australians show a middle way involving recognition, reconciliation and inclusion in the life and opportunities of the nation, we will be a beacon to the world.

Greg, Australia is your country and that of the readers of this great newspaper, on whom the nation’s future in no small way depends. I have no illusions that my arguments here will alter your view. But let me tell you something about those who gathered at Uluru last week and issued that Statement from the Heart on behalf of their tribes and communities from across the nation. This is their country, too.