

A Little Unintelligible Conversation **why the referendum questions** **must be more explicit**

I think paleface speak with forked tongue

(Tonto to the Lone Ranger, c.1950)

It has hurt us a lot to hear promises made to our faces only to see the promises betrayed. We watch those words. Those words were wiped away.

(Djaawa Yunupingu, Garma Festival, July 2022)

Late one afternoon in mid-July 1770 a group of Guugu Yimithirr people in far north Queensland waited patiently alongside the Endeavour where it had been undergoing repairs since running aground on the Great Barrier Reef a month earlier.

The Guugu Yimithirr were waiting for a response from James Cook and Joseph Banks to the overtures they had made for a peaceful resolution of a dispute over the number of turtles the Endeavour crew had been taking from the waters around the mouth of the river while reprovisioning their ship. Earlier that day this dispute had broken into armed conflict in which shots were fired and spears thrown and the British campsite had been set alight.

This explosive situation had been defused --- in no small part by the actions of a Guugu Yimithirr Elder who had bravely advanced between the musket-toting Cook and Banks and their sailors and the spear-wielding warriors. However, the significance of the diplomatic approach he adopted was not recognised by the British --- Cook merely reporting that *some little unintelligible conversation had pass'd ~~between us.~~*¹

Yet a contemporary reading of the journals of Cook and Banks leaves no doubt that the man was following traditional protocol in attempting to establish a formal agreement-making process between the disputing parties.

*The little old man now came forward to us carrying in his hand a lance without a point. He halted several times and as he stood employd himself in collecting the moisture from under his arm pit with his finger which he every time drew through his mouth. We beckond to him to come: he then spoke to the others who all laid their lances against a tree and leaving them came forwards likewise and soon came quite to us.*²

Despite the British ignorance of these protocols, the Elder's intercession had almost immediate effect. The warriors lay down their spears and coming forward sat down with the British and indicated that they would not again set fire to the British camp. However, rather than using this opportunity to resolve the dispute over the turtles, Cook and Banks merely handed out some trinkets and, through mime, impressed on the Guugu Yimithirr the deadly effects of musket balls.

However, the issue of the turtles had not been resolved. So the Guugu Yimithirr accompanied the British back to where the Endeavour was anchored and sat down and waited.

¹ Cook, 1768-1771; Journal entry July 19th 1770.

² Banks, 1768-1771; Journal entry July 19th 1770

But they waited in vain and, when a more positive response was not forthcoming, they left. Moreover, though a reasonably amicable relationship had existed prior to that day's dispute, they then avoided the British for the remaining days of their stay.

Oblivious to this wasted opportunity, or perhaps preferring to conveniently ignore the insights it should have given him, Cook sailed north and on August 22nd claimed one half of the Australian continent for the British Crown on the assumption that it was *terra nullius*.

For the most part, historians too chose to ignore the implications of this early incident in the history of contact. A long wait had begun for both *truth telling* in the nation's history and for the development of an effective process of agreement making between Aboriginal peoples and Government.

Then, 247 years later, in May 2017, Aboriginal people from throughout Australia gathered at Uluru where, at the National Constitutional Convention, they issued the *Uluru Statement from the Heart* -- an appeal to the nation to establish *a process of agreement making between governments and First Nations and truth telling about our history*.³

Five years later the nation's response to that appeal is yet to be finally determined.

However, at the Garma Festival⁴ in late July 22, Prime Minister Anthony Albanese announced the nature of the question to be put at the referendum he had promised in that year's election campaign --- and which is now anticipated for May 2023 or early 2024.

Though considerable popular enthusiasm was immediately evident there was little detail in Albanese's announcement. Indeed, all he suggested was that the actual question could be as simple as: *do you support an alteration to the constitution that establishes an Aboriginal and Torres Strait Islander Voice?* Significantly, the Prime Minister himself added the cautious proviso that *this may not be the final form of words, but I think it's how we can get to a final form of words*.⁵

Clearly, the exact nature of the proposal to be put to the Australian people is yet to be fully defined and, despite the early indications of support, there is no guarantee the proposal will be passed, particularly if it does not gain bipartisan political support.⁶

Moreover, it must be stressed that this is not the first occasion that Aboriginal people have sought to establish a process for negotiation with those who colonised their country and dispossessed them of their lands. Nor, indeed, is it the first time that governments too have made such proposals for such processes only to renege on them later.

As well as the frustrated attempts of the Guugu Yimithirr to negotiate with Cook in 1770 there are many examples in more recent history of governments becoming nervous of the political implications of their promises and disappointing Aboriginal people by ultimately resiling from them.

³ Uluru Statement from the Heart, 2017 Accessible at <https://ulurustatement.org/the-statement/>

⁴ An annual festival of culture held on Yolgnu land in Arnhem Land.

⁵ SBS News, 30th July 2022 *Proposed referendum question on Indigenous Voice revealed at Garma Festival*. SBS News <https://www.sbs.com.au/news/article/proposed-referendum-question-on-indigenous-voice-revealed-at-garma-festival/0hg0tp04m>

⁶ The difficulty of gaining a positive response to referendum questions in Australia is indicated by the fact that, since 1901, only 8 of 44 referenda on constitutional change have proved successful.

For instance, almost a century ago, the Yolgnu people who hosted Prime Minister Albanese at the Garma Festival, believed that the establishment of the Arnhem Land Reserve had given them control over their lands.

This reserve, established by a Northern Territory Ordinance in April 1931 had been intended *for the use and benefit of the aboriginal native inhabitants (sic) of the Northern Territory*. The significance of this reserve was reinforced by ongoing Yolgnu resistance to a growing non-Aboriginal presence along the coast - and to the protests of Aboriginal and non-Aboriginal supporters in the southern states about police treatment of the Yolgnu and threats of punitive expeditions against them.⁷

However, during the 1950s and 1960s, the rights presumed by the Yolgnu were overridden when the Menzies government when granted pastoral and mining leases there. This resulted in protests from the Yolgnu, including their bark petition to Parliament in 1963⁸, when the Swiss multinational mining company, Nabalco, established a large bauxite mining operation immediately adjacent to the Yolgnu settlement at Yirrkala.

Eventually the Yolgnu took this dispute to the Supreme Court of the Northern Territory but, in a landmark legal case, *Milirrpum v Nabalco Pty Ltd and the Commonwealth* (1971), Justice Blackburn found against the Yolgnu and mining was allowed to proceed.⁹

Aboriginal frustration at the unreliability of agreements that were believed to protect their rights continued during the 1980s when governments retreated from several proposals that appeared to promise self-determination or even treaty rights with Aboriginal people .

Hopes were raised, for instance, in 1983 when towards the end of the Fraser government, the Senate Standing Committee on Legal and Constitutional Affairs' tabled a report into the possibility of a treaty. But the defeat of the Fraser's Liberal government and its replacement by the ALP government of Bob Hawke saw these proposals shelved. Hawke's government initially shifted from this this policy direction and focused instead on the development of land rights. However, the lead up to the Australian Bicentennial saw renewed demands from Aboriginal communities for a treaty. There was considerable support for this idea, particularly among young Australians --- its popularity with the young encapsulated in Yothu Yindi's 1988 hit *Treaty*.¹⁰

Agitation for a treaty increased during the Bicentennial year of 1988. In the year leading up to the Australia Day celebrations that year, scarcely a day passed when issues involving Aboriginal people and their place in contemporary Australia did not feature prominently in the day's news.¹¹ On Australia Day itself the *Long March for Freedom, Justice and Hope* concluded in Sydney with a massive demonstration of Aboriginal people from all over Australia and their non-Aboriginal supporters.¹²

⁷ In September 1932 5 Japanese fishermen had been killed. Two non-Aboriginal fishermen were killed the following year and then Constable Albert McColl who had been sent to investigate. There were veiled threats of a police punitive expedition after the killing of McColl but these did not eventuate. Tuckiar was arrested, tried and sentenced to death after being found guilty of the killing of McColl. This was overturned on appeal. Tuckiar was released but disappeared while walking back to Arnhem Land. His body was never found. See HCA, 1934

⁸ These protests could be regarded as the beginning of the land rights movement.

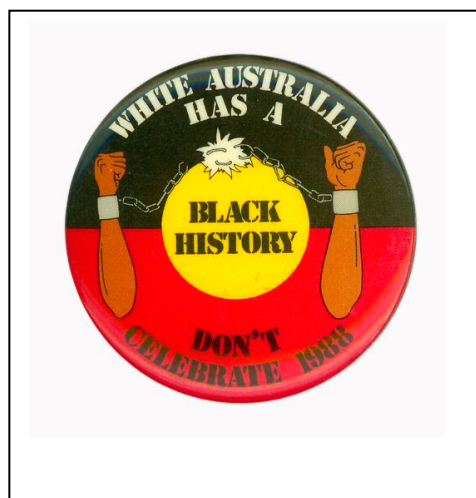
⁹ Blackburn, 1971

¹⁰ The song was written by Yothu Yindi in response to the Barunga Statement. Its lyrics are accessible at https://www.youtube.com/watch?v=Jf-jHCdafZY&ab_channel=YothuYindi

¹¹ Sydney Morning Herald, Editorial, January 19th, 1988

¹² Estimates of the number of protestors vary but it was generally agreed to be the largest protest in Sydney since the Moratorium Marches during the Vietnam War.

A theme of these protests was the lack of *truth telling* in Australian history which was succinctly summarised in the theme of the protests – WHITE AUSTRALIA HAS A BLACK HISTORY:



The Hawke government was well aware of this groundswell of support for Aboriginal claims and were reminded of this by activists like Gary Foley who honed in on this when he addressed the protestors in Hyde Park on January 26th.

*Let's hope Bob Hawke and his government gets this message loud and clear from all these people here today. It's so magnificent to see black and white Australians together in harmony. This is what Australia could and should be like.*¹³

By June that year, it appeared that Aboriginal demands for a better, more formalised relationship with non-Aboriginal Australia were close to fruition as Prime Minister Hawke pledged action when he was presented with the Barunga Statement.¹⁴

As the Yolgnu had done with their petition in 1963, those presenting the Barunga Statement asserted the primacy of Aboriginal culture by writing it on bark and calling for self-determination, national land rights, compensation, an end to discrimination, respect for Aboriginal identity, and the granting of social, economic and cultural rights.

*We, the Indigenous owners and occupiers of Australia, call on the Australian Government and people to recognise our rights.*¹⁵

Though wide ranging in its demands Hawke was not only sympathetic but responded with the quite specific pledge that it was his government's intention to proceed to negotiate a treaty during the life of the Parliament.

However, the ALP government in Western Australia was then facing an election and, under pressure from his State colleagues and the powerful mining lobby, Hawke backed off and the proposal was let slip from the government's agenda.

¹³ Gary Foley addressing Hyde Park rally, 26th January 1988. Museums Victoria. Accessible at <https://collections.museumsvictoria.com.au/articles/2835>

¹⁴ See Petrie and Graham, 2018. This took place at the Barunga Festival at Leliyn (Edith Falls) in the Nitmiluk National Park near Katherine Gorge in the Northern Territory

¹⁵ The Barunga Statement is on permanent display at Parliament House. It can be accessed at AIATSIS: <https://aiatsis.gov.au/explore/barunga-statement>

Other developments that appeared to promise better agreement-making processes between Aboriginal people and government were also frustrated or cut short during this time. In 1990, for instance, Hawke's government established the Aboriginal and Torres Strait Islander Commission (ATSIC). This was one of several attempts by the Commonwealth since the Whitlam era of the early 1970s to provide *a national representative voice to Aboriginal and Torres Strait Islander peoples and implement policies of self-determination and self-management*.¹⁶ Other bureaucratic vehicles established to implement these ideals included the National Aboriginal Consultative Committee (1973) and the National Aboriginal Conference (1977).

All these bodies proved short lived. Though divisions within the Aboriginal community and some instances of corruption and malpractice contributed to the demise of these organisations, the huge rock on which, one by one, they all foundered was uncertainty and confusion over *the extent of Indigenous control and whether the control was within the machinery of government, or outside of it*.¹⁷

However, the Howard government's 2004 decision to abolish ATSIC and declare that the experiment with indigenous self-government was over was more bloody-minded and ideologically based than the recurrent withdrawals of support for the organisations shown by earlier governments.

Several issues within the organisation at that time gave Howard all the ammunition he needed to sink ATSIC. In the end he made no attempt to hide his disenchantment with the concept of self-determination when he declared: *We believe very strongly that the experiment in separate representation, elected representation, for indigenous people has been a failure*.¹⁸

However, his decision was probably also ideological and politically opportunistic --- an opportunity to drive a wedge between his government and the ALP opposition by resorting to playing the identity politics that characterised his period in power. Indeed, he had to some extent already succeeded in this for the announcement he and his Minister, Amanda Vanstone, made on April 15th, 2004, was facilitated to some extent by an ALP announcement 3 weeks earlier that it too would abolish ATSIC if elected to government.¹⁹

With so many examples of agreements between Aboriginal people and governments being compromised or unilaterally withdrawn by government it should be easy to understand why many indigenous people might have an ingrained belief that the *paleface speak with forked tongue*.²⁰

¹⁶ Palmer, 2004; 5. The ideal of self-determination had been proposed during the Whitlam government. The defeat of Whitlam and its replacement by the Fraser government saw this ideal watered down somewhat to *self-management*.

¹⁷ Palmer, 2004; 5

¹⁸ Howard reported in The Age (Melbourne) April 16th 2004. *Howard puts ATSIC to death*. Accessible at: <https://www.theage.com.au/national/howard-puts-atsic-to-death-20040416-gdxoqw.html>

¹⁹ Pratt and Bennet, 2004; 1. Behrendt, 2005; 4

²⁰ Tonto to the Lone ranger, c.1950



**Jay Silverheels and Clayton
Moore in *The Lone Ranger* (c.1950)**

Even the promise held out by the Native Title legislation that resulted from the success of Eddie Koiki Mabo's in 1992 has been found to have significant limitations. The onus of proof on native title claimants is onerous and time consuming and, with native title organisations under-resourced, the playing field is uneven. Claimants face an enormous struggle to prove their continuing connection to country and it is often much easier for those opposing the claim to prove extinguishment of native title rights under law.²¹ Not surprisingly, for the majority of Aboriginal people who live in urban areas, the benefits of this historic but hard-won agreement have been minimal

Moreover, those who are successful in establishing native title often find that their rights are limited.

One of the most tragic and shocking examples of this occurred when the Puutu Kunti Kurrama and Pinikura people of the Pilbara region of Western Australia found themselves powerless, despite having a Native Title Lease, to prevent the mining giant Rio Tinto destroying the Juukan Gorge Cave as it extended its iron ore mining operation there in 2020. Quite incredibly, Western Australia's heritage laws allowed this destruction to proceed even though the cave showed 46,000 years of continual occupation and provided a 4,000-year-old genetic link to present-day traditional owners.²²

Experiences such as these have made Aboriginal people justifiably suspicious of the promises of government. Perhaps for this reason they want the current proposals for an indigenous *Voice* to Parliament enshrined within the Constitution.

However, despite the general jubilation that has greeted Prime Minister Albanese's Garma statement, much of the immediate comment following it, from both Aboriginal and non-Aboriginal commentators, it has amounted to little more than *unintelligible conversation*.

The most telling comments come from those from highly respected and experienced Aboriginal voices that greeted the Albanese announcement with some caution.

²¹ ANTAR, 2012.

²² Wahlquist, 2020.

Marcia Langton, a very well respected Aboriginal academic and seasoned campaign activist described his announcement as *good news* but also kept her powder dry by noting there was a lot of hard work to come. As well, she cautioned that she had not yet been able to fully consider the Prime Minister's proposal and that she intended *to wait for an informed opinion from a constitutional lawyer* before adopting a final position on it.²³

Even more telling, perhaps, was the comment of one of Albanese's hosts at Garma.

Djaawa Yunupingu recalled the unfulfilled promises made by previous Prime Ministers. While acknowledging that Albanese's words *are lifting our spirits*, he recalled previous promises made but later let wither by Prime Ministers Hawke, Abbott and Rudd.

It has hurt us a lot to hear these promises made to our faces only to see the promises betrayed, Yunupingu said. We watch those words. Those words were wiped away. . . . Now we are into 2022. We are (again) hearing words from a prime minister ...

History suggests that Aboriginal people are right to be cautious.

Indeed, we all should be; and the referendum proposals need to be spelt out in far more specific detail than the Prime Minister and the ALP have yet allowed. To not do so is to invite inevitable and tragic failure.

A Footnote for Teachers of History and Aboriginal Studies

Hopefully teachers and students of Aboriginal Studies interested in this current issue will also consider the other issue raised in the Uluru Statement --- the importance of *truth-telling* about all our shared history --- not just that aspect of our shared political history covered in this article.

In taking up the wider issue of *truth-telling* teachers might consider lobbying for a revision of the current Australian History Curriculum so that the relationship of Aboriginal and non-Aboriginal people can be considered in detail and depth in the senior years of schooling rather than being superficially skimmed over in the junior years as is now the case.

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Katoomba, 3rd August 2022

²³ SBS News, 30th July 2022.

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