

The Incurable Flaw

GALARRWUY YUNUPINGU IS one of the most consequential men of his generation. He was just 30 when he was appointed Australian of the Year in 1978, jointly with Alan Bond, a young entrepreneur. It was a pairing that embodied the unresolved polarity at the heart of the Australian story, between ancient custodians and ne'er-do-well arrivistes with big dreams. Within a few years of immigrating from England as a child, Alan Bond, aged fourteen, was charged with theft; four years later he was arrested again for planning a burglary. Within a few decades he was an extraordinarily rich man. Like many immigrants, he was a dreamer who put his faith in the power of reinvention. Alan Bond's dreams were bigger than most, and his flamboyant bravado captivated those he did not betray—until his career imploded under a mountain of debt. His name was not removed from its plinth on the walk of Australians of the Year beside Lake Burley Griffin even when the bankrupt billionaire was jailed for fraud. Three and a half years later he was released on a constitutional technicality.

Constitutional technicalities did not work so well for the man with whom he shared the Australia Day honour. Galarrwuy Yunupingu is a

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traditional man born to leadership, a former chairman of the Northern Land Council and leader of the Gumatj clan of the Yolngu Nation in the north-eastern corner of the Northern Territory, on the edge of the Gulf of Carpentaria. His father, Mungurrawuy, taught him to be both grounded in tradition and to navigate the modern world, and as he was dying gave his chosen son his clapsticks and his authority.

Fifteen years earlier, in August 1963, after the Menzies Coalition government approved plans for a bauxite mine in north-east Arnhem Land, twelve Yolngu leaders crafted and signed the Yirrkala bark petitions. The carefully typed petitions, each mounted on a traditionally painted bark, ‘humbly pray[ed]’ for respect, the recognition of sacred sites, and the recognition that the Yirrkala peoples had been living on the land since time immemorial. Bauxite had, by the late 1950s, become the new gold, the essential element to a new, fast-paced, globalised age of multinational business. When refined with vast amounts of electricity, bauxite produced the aluminium that was needed for the high-rise buildings, cars, planes and consumer electronics that were proliferating all over the world in the new industrial age.

Geologists had known for decades there were vast supplies of rich ore on the fringes of the far north, but in the years after the Second World War its value increased. Australian governments overseeing both coasts of the Gulf of Carpentaria wasted no time signing agreements with ambitious international mining companies. Legislation was changed so there was no consultation or compensation for the traditional owners, or for the missions on which they lived. The Yirrkala petitions sought them and a parliamentary inquiry.

The same story played out more brutally 600 kilometres across the gulf, where the Dutch had made landfall in 1606 to the north of Duyfken Point. Rights to a vast bauxite deposit near Mapoon had been granted to Comalco by the Queensland government, also without consultation or compensation. This was just three months after four copies of the Yirrkala bark petitions were lodged in Canberra. In November

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1963, Queensland police arrived at the impoverished Presbyterian mission at Mapoon with orders to remove the remaining families. They were loaded onto boats, their houses destroyed. Some were sent 80 kilometres south to Weipa; others who had spent their lives in the searing heat and humidity of the tropical north were despatched to Stanthorpe, the coldest place in the state, nearly 3000 kilometres away.¹ Fifteen years later, in what the First Nations advocate Noel Pearson has described as ‘an act of gross political violence’, the Queensland government undertook another ‘colonial takeover’ with the support of the Privy Council. Brisbane and Canberra combined to strip the Uniting Church of its effective and valued administration of the Aurukun Mission. By giving rights to the bauxite to a French company, Australian governments threw the Wik people into ‘their descent into hell’.²

Mining reshaped everything, but it also triggered protests that would eventually change the law and mark the beginning of a new start for the nation. The Yirrkala bark petitions signalled the public beginning of the modern land rights movement. The typewritten plea by the First Nations elders now hangs in Parliament House. In 2013, Labor prime minister Kevin Rudd described it as the Aboriginal Magna Carta.³

ALAN BOND TURNED his fame and ambition into personal wealth and power. Galarrwuy Yunupingu’s dreams, marked for decades by petitions, small victories and major setbacks in winning rights, were about recognition for First Nations peoples. Often his negotiations were with men and women who, in his assessment, recognised the moral flaw at the heart of the nation but felt paralysed, unable to do anything about it.

When Alan Bond’s yacht *Australia II* won the America’s Cup in 1983, the recently elected Labor prime minister, Bob Hawke, in a flush of excitement, declared a national holiday. Still wearing his heart on

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his sleeve on his last day in office eight years later, he wept as he hung the Barunga Statement in Parliament House alongside the Yirrkala bark petition. Like the Yirrkala petition, the Barunga Statement is a typed plea for recognition, rights and a treaty, wrapped in a beautifully detailed bark painting rich with symbolism. Bob Hawke signed it at the end of the bicentennial year and promised a treaty by 1990. It was a promise he did not keep, like his 1983 promise of national land rights legislation. Mining companies in Western Australia, which feared they had much to lose, vigorously campaigned against it. The state premier, Brian Burke, who was also president of the Labor Party, heeded their call. A treaty became politically impossible. Brian Burke was later jailed for corruption, but not for his moral cowardice.

When Hawke, as outgoing prime minister, unveiled the beautiful Barunga bark and its embedded statement in Parliament House, it became yet another symbol of the failure to resolve the original sin at the core of the nation. Still, Galarrwuy Yunupingu, the heartbroken Yolngu leader, remained generous to Hawke. ‘I am sure that his tears are for his own failure,’ he said. ‘We have no treaty; his promise was hollow, and he has not delivered—but they are genuine tears from a genuine man who tried leadership and was caught out by politics.’⁴

The pattern had repeated for centuries. Galarrwuy Yunupingu kept trying, just as Aboriginal leaders had always done, ever since Bennelong first negotiated with Governor Phillip. The Palawa, exiled to Flinders Island, petitioned Queen Victoria to remove the abusive supervisor; Kulin leaders put the case for their land to Queen Victoria through the governor of the colony that carried her name;⁵ eleven years after the Federation parliament denied Aboriginal people the vote, David Unaipon, the polymath genius who fronts the 50-dollar note, called for Ngarrindjeri autonomy over the Point McLeay mission; and 25 years on, William Cooper petitioned King George V pleading for legal status and land rights—a petition the Australian parliament refused to forward, on another constitutional technicality. Then, another

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decade later, Pastor Doug Nicholls beseeched Labor prime minister Ben Chifley for Aboriginal representation in federal parliament.⁶ Over and over the case for a respectful relationship had been made, only to fall on deaf ears or be beaten by the politics of fear or denial.

The toll on those First Nations leaders who accepted the responsibility of leadership was immense; many found it overwhelming. The responsibility and repeated failure grew heavier with the years. ‘I am seeing now that too much of the past is for nothing,’ Galarrwuy Yunupingu wrote in 2008:

I have walked the corridors of power; I have negotiated and cajoled and praised and begged prime ministers and ministers, travelled the world and been feted; I have opened the doors to men of power and prestige; I have had a place at the table of the best and the brightest in the Australian nation—and at times success has seemed so close, yet it always slips away. And behind me, in the world of my father, the Yolngu world is always under threat, being swallowed up by whitefellas.⁷

At the time he wrote this heartbroken plea, the most senior *delak* (representative forum) of East Arnhem land had once again ‘humbly petition[ed]’ the prime minister ‘as the chief adviser to Her Majesty Queen Elizabeth the Second’ for constitutional recognition. He followed the line of authority to London, the seat of the original flaw, again to no avail. Those with political power at home were still captive to the politics of fear that their predecessors had assiduously cultivated and rarely challenged for more than a century. As historian Tim Rowse observed, ‘a surviving and articulate Indigenous population provokes a morally troubled imagining of the nation’.⁸ It remained unresolved.

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YEARS OF INTERMINABLE, unproductive, bureaucratic process, of expert groups, advisory councils and crocodile tears, provoked a change of tactics. In 2017, another moving and respectful request was developed, this time after an extensive consultation with First Nations leaders and communities across the country. Rather than appealing to the queen or prime minister, this time the request for recognition, the *Uluru Statement from the Heart* and its three-pronged proposal of an enduring structural means to end the ‘torment of our powerlessness’, was addressed directly to the Australian people.⁹

A new generation of First Nations leaders had emerged. Some already had high profiles; many had felt the sting of betrayal and the frustration of preparing reports that had been filed away and forgotten. This was a chance to change the public conversation, and it was led by people who had learned to play the Canberra game: the charismatic Noel Pearson, whose brilliantly analytical and unflinchingly powerful speeches could inspire and infuriate, owed some to a childhood listening to Lutheran ministers at the Hope Vale Mission on Cape York; Megan Davis, a Cobble Cobble woman whose determined mother moved the family to Brisbane’s ‘black belt’ and inspired her to become not only a professor of constitutional law but the first Aboriginal person appointed to a United Nations body and chair of its Permanent Indigenous Forum; Pat Anderson, the co-author of the *Ampe Akelyernemane Meke Mekarle: Little Children Are Sacred* report into child abuse, who after a lifetime of public service felt betrayed when the Howard government used it as a cover for the Northern Territory intervention; and Rachel Perkins, the brilliant filmmaker who, as Charles Perkins’ daughter, had been raised for a life of advocacy. These men and women, and many others, had learned the lessons of the past. Their education, and their professional, cultural and personal experiences, meant they could walk in both worlds with confidence and authority. As the Canberra process spun its wheels, they spent the latter part of 2016 arranging dialogues in First Nations communities all over the continent. They wanted to inform, listen, and learn how to

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address the failure that had festered for so long. It was clear to them, and anyone who paid attention, that the wound Jeremy Bentham described in 1803 as ‘incurable’ needed to be healed for the nation to mature.¹⁰

This was an exercise in true consultation. It was deliberative democracy, rather than a ratification of solutions drafted by anonymous officials in air-conditioned offices. The thirteen meetings were held in community centres in cities, towns and remote communities over five long hot months from December 2016.¹¹ Each dialogue followed the same intense, three-day agenda, with 100 delegates chosen to represent traditional owners and community members, leaders, young and old, men and women. As the meetings progressed it became clear the solution needed to be both symbolic and practical—to address the past and provide a robust framework for the future. To have one without the other would be meaningless.

After months of meetings, on the day before the final statement was prepared, Noel Pearson realised that the words alone would not be sufficient. Rachel Perkins then began the search for a painting that would encapsulate the spirit and intent of the statement. The Anangu communities in the Uluru-Kata Tjuta area are home to some of the nation’s most renowned desert artists, but a painting that conveyed this complex, sophisticated and haunting message was not something that could be conjured overnight. Instead, the *Uluru Statement from the Heart* was signed on a blank canvas in the red desert sand by more than 250 delegates at the First Nations National Constitutional Convention on 26 May 2017, the fiftieth anniversary of the referendum that started to repair the Constitutional flaw. It is an eloquent, considered and heartfelt plea *to the people of Australia*.¹² The poetic words were crafted in a final all-night session, distilling years of debate and discussion, frustration and hope. Later the canvas was filled with paintings by renowned Anangu artists to become a beautiful object, continuing the tradition of synthesising art, history and law. It called for a constitutionally enshrined Indigenous Voice to Parliament,

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a Makarrata Commission to supervise a truth-telling process, and treaties that would truly be ‘a coming together after struggle’.

The Uluru Statement turned years of rejection, disappointment and bureaucratic obstruction into a triumph. The process was almost as interesting as the outcome; it was as Megan Davis, the scholar who actively guided the process, wrote, ‘an example of the transformative potential of liberal democratic governance through civic engagement beyond the ballot box’.¹³ As one obstacle after another blocked meaningful recognition, it took a leap of faith to take the question of the best way forward to the people who were most affected.

As a result, and an infuriating frustration to the leaders in suits who thought they knew it all, the outcomes changed. The process of deliberative democracy engaged with the local, respected opposition and when, at last, a tearful, emotional agreement was reached, an enduring political treatise and cultural object was created. To unite the disparate voices and perspectives was an extraordinary achievement. When the delegates emerged from the meeting room at Yulara, near Uluru, to read the invitation to the nation to walk with them, it was an astonishing moment. Survival is not an end, but an essential first step. As Megan Davis wrote in an essay describing the process that marked an important milestone, ‘Uluru is the beginning of the process, the coming together after a struggle.’¹⁴

The process of creating the Uluru Statement was a breakthrough of epic proportions for people who had been subjected to calculated policies of divide-and-rule since 1788, and a legacy of internalised shame and lateral violence. A few delegates walked out of the Convention and refused to sign, but most remained, overwhelmed by emotion and the achievement centuries in the making.

We, gathered at the 2017 National Constitutional Convention, coming from all points of the southern sky, make this statement from the heart:

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Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This our ancestors did, according to the reckoning of our culture, from the Creation, according to the common law from 'time immemorial', and according to science more than 60,000 years ago.

This sovereignty is *a spiritual notion: the ancestral tie between the land or 'mother nature', and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty.* It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.

How could it be otherwise? That peoples possessed a land for sixty millennia and this sacred link disappears from world history in merely the last two hundred years?

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.

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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.¹⁵

Quandamooka man Dean Parkin, who became the director of the From the Heart campaign, later recalled ‘people who had previously been arguing furiously with each other embraced with tears in their eyes’.¹⁶ In time, the beautiful statement will hang alongside the Yirrkala and Barunga barks in Parliament House. Hopefully that time will not be too far hence, and will celebrate success, not mark another failure.

Opinion polls showed that their fellow Australians welcomed the statement almost immediately, and their support continued to grow and consolidate as time passed and it was bounced like a piece of kryptonite from one committee to another, from one inquiry to the next.¹⁷ Politicians prevaricated and then brusquely rebuffed its recommendations. Unlike his predecessor, Prime Minister Malcolm Turnbull did not shed a tear when he announced that his government could not accept the Uluru recommendations. As if to rub salt into the wound, his timing was rich with powerful negative symbolism. His rejection of the recommendations was reported on 26 October 2017—the 32nd anniversary of Uluru’s return to its traditional owners, a date that was more often celebrated as a marker on the road to recognition. In the manner of modern political information management, half-truths were leaked to the press, playing to racially

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charged fears. The misstatements included claims designed to frighten, assertions that accepting the recommendations would produce a ‘third chamber’ that would weaken the authority of parliament. This phrase had been refined by the Institute of Public Affairs, the free-market think tank that counts Gina Rinehart and Rupert Murdoch among its most prominent supporters. It has more often sought to highlight Aboriginal dysfunction than facilitate structural solutions that necessarily challenged the status quo that had served them so well.¹⁸

Prime Minister Turnbull knew—and he knew personally and painfully better than most who have occupied that office—that the Commonwealth of Australia was the product of constitutional conventions. Yet his opposition to the intent of the statement was unwavering. The reasons were unclear. Was it because his historical imagination could not embrace this more inclusive and representative 21st-century convention? Because it suggested a restructure of power that went back to the incurable flaw at the heart of the nation? Or had his ego been bruised by the process that sidestepped his own envisioned solution of a technical constitutional amendment? Or had he lost ambition as he struggled with his opponents? The man who had said the country’s heart was broken when John Howard played the politics better than him and killed the republic referendum that would have severed the link with the Royal Family did not resile. At the time he was preoccupied with the fraught practical politics of holding power within the ideologically divided Coalition. The *Uluru Statement from the Heart* was, he wrote later in his memoir, ‘a beautiful piece of poetry, a cry for a say, for agency, for respect . . . but contained no detail about how such a Voice would be designed’. Having found the limits of his prime ministerial power, he washed his hands of the ‘incurable flaw’ rather than seek to mend it, declaring: ‘Social problems centuries in the making cannot be resolved in any one government.’¹⁹

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THE PARALYSIS OF politics suggested to the shrewd Yolngu leader Galarrwuy Yunupingu that it was time to revive an old strategy. Respectful pleas to local politicians had repeatedly fallen on deaf ears; maybe it was time again to go to the source. The nation may have been a product of colonial ambition and nineteenth-century conventions, but it was ultimately formed as a gift from the elected representatives of enfranchised men in the British House of Commons, and from a monarch in Buckingham Palace.

The Yolngu, like traditional owners in other territories colonised by the British, understand the dynamics of hereditary power probably better than those raised in a world of representative democracies. In the homes of many old First Nations aunties, the portrait of a young Queen Elizabeth has pride of place, just as it had in the homes of the latter-day bush poets I visited in the 1970s.

For centuries the Indigenous peoples of colonised lands had known it made more sense to negotiate an agreement with a monarch than to try to pin down the moveable feast of those who held fleeting political or bureaucratic power. Signing treaties—reluctantly, enthusiastically or under duress—has always been the business of kings and queens. British politicians were well aware of this as the empire grew, negotiating treaties, paying compensation or leasing land via agreements signed by the Crown. International law was clear. The first of the 70 treaties in Canada were signed in 1701.²⁰ Over the border, in 1778 the newly independent United States signed a treaty with the Delaware Indians, the first of some 370 treaties with Native Americans signed by 1871. The lessons learned by the failure to reach an agreement in the Australian colonies in part inspired the 1840 Treaty of Waitangi between the Crown and Māori leaders, which became the foundational document of New Zealand.

The failure to do the same when Arthur Phillip landed in Sydney Cove, or subsequently as the penal settlement and colonies expanded, and battles were fought and lost, was not just a result of forgetfulness.

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His brief to ‘conciliate’ with ‘amity and kindness’ was framed by the expectation, fostered by Joseph Banks’s recollections, that the Great South Land had very few inhabitants, and that those who were there would ‘speedily abandon the Country to Newcomers’. One of Phillip’s first despatches to London highlighted Banks’s error: ‘the natives are far more numerous than they were supposed to be’. It was shaping up to be an ‘audacious territorial appropriation’.²¹

As the settlers moved beyond Sydney Cove, this truth became ever clearer. It is now accepted that the population of the continent numbered at least 800,000 people, and probably more than a million.²² Still the policy that determined there was no need for a formal, compensated settlement because the land was unoccupied did not change, despite recommendations from the British Colonial Office. An increasingly humanitarian ethos was developing in London, with campaigns to end slavery and transportation. But the flaw was not addressed in Australia. John Batman’s problematic and deeply flawed treaty with the Kulin Nation in Victoria was rejected for fear it ‘would subvert the foundation on which all Proprietary rights in New South Wales at present rest’. By the time the colonies became self-governing and, later, when the Commonwealth of Australia was formed, the ‘misunderstanding had crystallised into expedient deceit’, and the First Nations population reduced by 90 per cent.²³

Despite their lack of active consent in the process of nation formation, First Nations people are citizens of the nation that emerged from this imperial project. Since 1984 they, like all other Australians over the age of eighteen, have been compulsorily required to vote. But Galarrwuy Yunupingu and the clans of East Arnhem Land ‘acknowledge no king, no queen, no church, no state’.²⁴

While Australia remains one of the few Commonwealth countries that still recognises the British monarch as head of state, time-honoured traditions suggest hereditary leaders should meet. For centuries kings and queens have played a role in allocating the spoils of war, dividing

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and aggregating territory by birthright and marriage. Australia has been the destination of countless royal tours since Prince Alfred, Duke of Edinburgh, first visited the colonies in 1867, but no king or queen has suggested a treaty, even after meeting First Nations leaders. Queen Elizabeth II was welcomed to Alice Springs in 2000 by Arrernte elder Max Stuart, then chairman of the Central Land Council. He presented her with a submission, but it went the way of so many others. Stuart was in the final stage of a life he could not have imagined in 1959, when he had been jailed and sentenced to death. Stuart's case gave Rupert Murdoch his first taste of media power when his newspaper, the Adelaide-based *News*, campaigned successfully to have his death sentence overturned. By the time Stuart met the queen, he was regarded as an elder. 'I thought she'd talk in big language but really [she was] like one of us, really like a bush woman,' he recalled. There was no discussion of a treaty.²⁵

In the 21st century, notwithstanding the Brexit fantasy that the British Empire might be restored, its most visible remnant is the Commonwealth Games, when athletes from the former colonies run, jump, swim and play against each other, presided over by a ranking royal. In 2018 it was the turn of Queensland (another state named for Victoria) to again host the Commonwealth Games, this time under the watchful eye of the Prince of Wales.

As the political response to the Uluru Statement foundered on harsh ideological shoals, Yolngu leaders from north-east Arnhem Land invited the prince to visit while he was in Australia. Prince Charles had been familiar with the country since his days at Geelong Grammar in the 1960s, and he had once hoped to become Australian governor-general.²⁶ He and Galarrwuy Yunupingu were both men born to leadership. They were contemporaries, arriving in the world just five months apart, who might have been classmates at Timbertop, the bush campus of Australia's most elite college, had Galarrwuy's father not decided against sending his brilliant young son to the school on the south edge of the continent.

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The ageing prince's sixth visit to the Northern Territory was quite different to the flag-waving, flower-giving, baby-kissing tours of the past. Local elders met him and his entourage at the Mount Nhulun sacred site, with its panoramic views, and a story of the spirit man Wuyul who journeyed through the land searching for *guku* (honey), and greeted the prince with respect and formality. He was given a dilly bag and a traditional headdress—gifts from one head of state to another—and television cameras captured the unlikely images of the pale, elderly prince, in a beige linen suit, wearing a white-feathered headdress and walking with a group of children whose faces and bodies had been painted with ochre. After a spectacular traditional ceremony, a 'diplomatic meeting' took place. At that private exchange, the Yolngu Nations Assembly presented the heir to the British throne with a message stick. It reiterated the Yirrkala bark petition: the Yolngu were a sovereign people who had never been conquered. 'It's probably about time,' an organiser told *ABC News*, 'the great, great, great, great grandson of the person who ordered someone to stick a flag in and claim the whole continent fronted up and actually met the landowners.'²⁷