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“Uluru Statement from the Heart and the Constitution” 6th Sept 2022

Megan Davis has been deeply involved in the development towards constitutional recognition for the past 12 years, since her appointment by PM Gillard to the Expert Panel, then by PM Turnbull to the Referendum Council, through the consultation process with indigenous communities, to the First Nations Constitutional Convention in 2017, when agreement was reached on the “Uluru Statement from the Heart”. She became the first to read this final agreed statement in public.

Since then, she has remained deeply involved in the process through consultations with successive governments and the indigenous communities towards their wish to establish a Voice to Parliament and constitutional recognition.

We were indeed fortunate that she made time in her extraordinarily busy life (which also includes major responsibilities at UNSW, the Indigenous Law Centre, United Nations in Geneva, ARL, etc) to inform us about the process to date and point to the way forward.

In her address, she briefly reflected on the earlier history, which dates back to the 1820s, when elders are on record as calling for some participation in the democratic life in the community. From absence in the Australian Constitution at Federation, steps included the 1967 referendum, the 1999 referendum (when PM Howard included words of recognition into the preamble), the 2007 pre-election undertaking of Howard to hold a referendum in the next term of parliament, prior to the steps in which she became involved from 2011 onwards.

She also referred to some of the various models for First Nations recognition around the world, including treaties, designated parliamentary seats, autonomous territories/regions, or symbolic acknowledgment.

The Expert Panel found that indigenous communities rejected an earlier common thought that the recognition be just symbolic. They found this aligned with the same widely held view among non-aboriginals. Instead there was a common wish that if there is to be a referendum, a successful outcome should be a real improvement in the lives within the aboriginal and Torres Strait communities.

A focus of her talk was the thorough consultation process with communities throughout the nation to fulfil the Abbot and then Turnbull governments’ request and provide funding to find out what the aboriginal people wanted.

There had recently been considerable upheaval in aboriginal policy (incl centralisation of funding of all programmes, leaving many well-established health/law/cultural/etc programmes without money to continue, requiring each to reapply for funding, with consequent delays and disruption, plus a large portion of the new funding being directed through non-aboriginal managed programmes). This caused resentment and suspicion, adding to the complexity of discussing such an unfamiliar topic as the constitution, including in remote communities.

With lots of pre-planning and consultation, a trial was conducted among local leaders from around the country to develop a process. Notably facilitators were left out in order to encourage community opinion to emerge, rather than have external views imposed. Further tests were conducted with peak councils, health bodies etc

Separate dialogues were conducted, spanning a wide network of communities on country, with the cooperation of the various local federations, land councils etc. There were approx. 100 in each dialogue group (1,500 approx in total). Each community group was structured to comprise 60% elders, 20% local organisations reps, and 10% interested individuals.

Then about 10 representatives of each of these gathered at Uluru on 23-26 May 2017. These were grass roots locals, avoiding politicians, activists, lawyers (apart from Megan), lobbyists, health and other significant leaders, thus putting emphasis on a safe space for the emergence of community opinion, including the opinions of local women delegates. Lots of attention had to be given to translation of relevant information.

The communities represented were so diverse, there was prior realisation that there would be differences in needs and opinions. Notably there was renewed consensus that they did not want just a symbolic recognition in the constitution.

Each of the dialogues read out the summaries/conclusions of the meetings within their communities. These showed remarkable agreement that there was a wish to have consultation on key matters in upcoming proposed legislation that affects indigenous communities, ie a Voice. There was not a request for a treaty. The Voice does not involve a Veto; comments made will not bind parliament, whose parliamentary sovereignty remains unchanged, with no 3rd chamber (as some politicians falsely stated). There were 7 delegates who walked out of the room (getting lots of media attention). However, the remarkable news and the real achievement were that approx. 250 stayed and reached consensus on what emerged was the notion of a Voice, as enunciated in the Uluru Statement from the Heart.

A commission for truth telling about history gets publicity in some quarters, with Greens pushing for this to be addressed in detail before there should be any movement forward. It is noted that the telling of colonial history has often been one sided, without regard to the impacts of massacres and forced displacements on local aboriginal communities (eg on installation of the telegraph line through central Australia). But in fact here in Australia a lot of dialogue healing has been going at the local level throughout the country without fanfare. The stolen generation and forced resettlement to reservations etc are now well understood throughout the country. Thus, in the Uluru delegates' view, the situation is very different to South Africa where this process was used, or Latin America where there has been conflict. Hence it is felt unnecessary to have a long truth telling commission, which would simply repeat well known situations and delay the process to reform.

Hence the delegates felt that this is an opportunity to have a pragmatic practical correction to the way legislation is developed in future, providing a participative mechanism involving consultation on upcoming matters that impact directly on indigenous lives. This would be a major difference to not long ago, when the Dept of Aboriginal Affairs did not have a single aboriginal bureaucrat, and decisions were made without consultation nor real knowledge of feelings or potential impact on communities.

She ended by reading the Uluru Statement, which can be heard on the following link
<https://ulurustatement.org/the-statement/>

After a Q&A that clarified various queries, John Thom thanked Prof Davis for such a thorough review of the process that led to the emergence of the Uluru Statement and for educating us on these important issues.