

## **BETRAYAL: THE TURNBULL GOVERNMENT HAS BURNED THE BRIDGE OF BIPARTISANSHIP**

The Monthly  
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December 2017

**“Don’t get mad, get even.”**

This was Paul Keating’s advice when I made what only he could so aptly describe as a “jerky move”, channelling my febrile anger at the Howard government’s “Wik 10 Point Plan” into a naive and momentary impulse to join the Labor Party.

This was 20 years ago and John Howard’s vandalism of the Keating project, his conjuring of the bleak spirits of Hansonism that yielded the member for Oxley in the flesh, was all playing out. Keating warned the country would change with a new government, and here it was, burning before us like Ash Wednesday.

In 1997 it was not at all clear Howard would succeed in subverting the Keating vision with his promise of relaxation and comfort: the soul exchanged for lifestyle. The dog whistling that turned Australians against Australians in the 1996 election, prosecuted with barely subtle severity in the months and years since, was only registering: there was a chance the country would abjure the moral abyss it faced under the new government if only they could see it for what it was.

But Kim Beazley’s failure to face the Howard project and Labor’s renunciation of Keating – which it maintained for the next decade – cruelled the 1998 campaign. Beazley came close but he should have won.

Howardism needed to be stopped from taking hold of the nation. It was not, and Howard’s prime ministership went on to define this country in the 20 years since. In the wake of the defeat of Wik, with Brian Harradine’s betrayal in the Senate in 1998 – advised by Frank Brennan and Catholic lawyers intent upon saving blackfellas from a “race election” – Beazley’s defeat left only deep despair.

In the early days of the post-1996 insurgency, Howard described me as an “ALP man”. He was wrong. I was in truth a Keating man. I was a disciple of the 24<sup>th</sup> prime minister’s vision for Australia, the fundamental contours of which remain vivid and valid to me today.

If we are not the country Gough Whitlam and Keating urged us to be – independent, reconciled, confident, creative people fully realising their talents, a true commonwealth with an economy that serves its people – then what and who are we?

In 1999 I shed my partisanship because I decided Beazley and post-Keating Labor would not dislodge Howard after the 1998 defeat. I sublimated my grief over the change overwhelming the country. I understood as the new order the now almost weekly manifestations of officially sanctioned bigotry and obscurantism. In the face of the history wars and the interminable war

against political correctness (ignoring Robert Hughes' original identification of the other PC peddled by the right: patriotic correctness), I fell silent.

Can we now believe the country feted former communist and Pol Pot sympathiser Keith Windschuttle as a public intellectual, let alone national historian? And people like former Labor minister Gary Johns who came to be fonts of policy and political wisdom when they were such failures in the real game? They should have slunk off into befitting obscurity.

It was an era when political leaders were routinely strong against the weak, and weak against the strong. There were shades of Joh Bjelke-Petersen's cruel premiership of my home state of Queensland in my youth, when kicking the black dog was not even politics, just sport.

All of this I felt keenly, and like almost everyone I suppressed any temptation to say something. The abuse of blackfellas went largely unanswered.

But the hegemony of the Howard era intimidated contrary voices into near silence. The Keating project was exenterated all over the nation. Keating was pariah number one – not least to his former party who declined to mention his name.

This was my state of mind in 1999. First, I thought it useless to be partisan with a Labor Party in severe regression. The party John Button later described in his excoriating 2002 *Quarterly Essay* 'Beyond Belief' was a pallid shadow of its former glory. Second, I developed a theory that some battles are 51% battles – when partisan agendas are prosecuted through the government of the day, and reform is steered through parliament by force of numbers. The *Native Title Act 1993* was a classic example of the 51% battle. Others – such as constitutional amendment requiring “a majority of voters in a majority of the states” – are 90% battles. These require bipartisanship. This led to a third conviction, gained from Dick Morris' account in *Behind the Oval Office* of the 1996 Clinton comeback: on some issues Nixon has to go to China.

Aboriginal reconciliation (to use the omnibus if ambiguous term) was a progressive, leftist issue, by definition anathema to the right, which would need a leader of the right to go to China, so to speak.

Bill Clinton's and Tony Blair's triangulation political strategy underpinned the so-called Third Way adopted by social democratic parties across the globe in the 1990s – also attempted but miserably executed by Mark Latham in his brief what-the-fuck-was-Labor-thinking period as leader in the early 2000s – but Hawke and Keating were its originators. Stepping to the centre and pushing their opponents further and further right was the Labor two-step in the 1980s and early 1990s. Keating has since come to describe his political orientation in retrospect as the radical centre. He is correct. The Australian Labor Party in government held the commanding heights when it cleaved the radical centre. Keating was the radical centre's most astute navigator and relentless captain.

Pursuit of the radical centre necessitated transcending the left-right polarity in Indigenous affairs, the one policy zone that most concerned me then. This was my theoretical framework.

Looking back, I am astounded at the pragmatism and discipline I mustered in giving voice and life to my convictions about bipartisanship and the radical centre. Notwithstanding the shitstorm of opprobrium from the left. I have never been an opportunist. My detractors allege otherwise, but this was for me all about the long game. The long game of trying to get good-willed Australians from across the political and cultural divide to support ambitious Indigenous reform in the radical centre.

On Thursday, 26 October 2017, with his rejection of the Uluru Statement from the Heart, Malcolm Turnbull burned the bridge of bipartisanship and my long game – a 17-year odyssey – ended. There will be those who will say “but you were not realistic” and others who will say “we told you so”. Schadenfreude and pity-your-foolishness abound.

When Howard’s reign finally ended in November 2007, Keating said he felt like he had to take a shower. This month, belatedly, I had a bitter cold shower with the harshest old scrubbing brush and a long yellow slab of Sunlight soap, finally shedding the grease and grime of a long and dirty experiment that failed.

This essay is not history. It does not purport to tell the story of our people’s struggle in any objective way or with a wide lens. Rather it is a handheld camera account of a personal journey, the only story I can tell – with full apologies – from my point of view. It is jaundiced and self-referential, but it may explain some things.

### **It was a close-run thing**

Renee Viellaris from the *Courier-Mail* broke the leak on the cabinet’s rejection of its own Referendum Council’s recommendation: that the Constitution be amended to establish an Indigenous voice to the parliament. This was early in the morning of Thursday, 26 October. Viellaris claimed Attorney-General George Brandis and Minister for Indigenous Affairs Nigel Scullion had sponsored a submission to cabinet supporting the Referendum Council proposal earlier in the week, where it was rebuffed by a hostile prime minister and other cabinet members.

I don’t know whether Viellaris’ report on Brandis and Scullion is accurate. If true, then it is testament to the voice proposal that it got as far as the cabinet submission. From meetings held by my colleague Shireen Morris with the attorney-general’s advisers, I would not be surprised if Brandis had been open to, and perhaps even supportive of, the voice. His most senior staff were enthusiastic, and saw it as constitutionally far safer than the non-discrimination option. For them it was the most sound proposal.

On Thursday morning I sent a text to Turnbull: “PM, I’ve seen the *Courier-Mail* report on cabinet’s rejection of the Referendum Council’s recommendation. Would be good if we could talk soon as.”

I received no response.

There had been rumours for weeks a cabinet submission was being prepared, but we had no idea of its timing or content. I heard of no consultations with anyone.

I had come to the conclusion that there was no pathway with Turnbull even if he supported the voice personally, which I knew he did not – despite telling Morris and me the proposal seemed sensible, and offering to help promote it, two years prior. After he became PM, all that had gone out the window. Turnbull was unable to find and prosecute a political solution to get his government on board.

In a two-day conference with close colleagues almost three weeks before, I explored a second pathway to a referendum – dubbed the “red-line road-map” in response to the whiteboard drawing that showed the current pathway in blue. This would delay the referendum to the end of the process, which would see the establishment of a voice under legislation, and the establishment of a Makarrata Commission as proposed by the Uluru Statement.

My colleagues were loath to switch to the red line without giving the blue line a concerted go. My instincts told me we had to switch. I texted Scullion: “Minister, I’d like to talk to you about an informal idea on constitutional recognition, preferably in person soon.”

He usually answered. This time nothing for more than a week, but I heard through an intermediary he owed me a call.

When we spoke the following week, he said he couldn’t speak about constitutional recognition because it was subject to a cabinet process. I thought it strange he wouldn’t have a political conversation, but I left it.

A week later my worst fears were realised.

On the Thursday morning of the *Courier-Mail’s* story, I told colleagues that constitutional reform was in flames and we needed to see whether the red-line roadmap could pull it out of the fire. I called Scullion. He told me about the opposition within cabinet on the “inequality” of Indigenous people having a voice to parliament compared with the rest of the country. It was staggering. I thought of the people out in the red dust of Mutitjulu and these privileged, powerful, white cabinet ministers complaining about inequality. Here were the most unequal people in the country, asking for a voice in their own affairs.

Nevertheless, I explained to Scullion there was a pathway that deferred a referendum to the end of a roadmap rather than the beginning. I told him: this is what I wanted to talk to you about. He said he would see what he could do.

But I heard nothing more from him or Turnbull.

When the statement from Turnbull, Scullion and Brandis was released on Thursday, 26 October, not only was the chance of Indigenous constitutional recognition burned to a cinder but its still-warm ashes were being scattered in the wind.

The press release is a historic document, presenting as it did on behalf of a prime minister who declined to front the Australian people. It is an egregious document, replete with self-conscious untruths and calculated misrepresentation. Its sheer dishonesty is breathtaking. The methodology of the hacks dispatched to write it is plain to understand – to win the public argument through gross misrepresentation – but the more striking thing is a prime minister’s

preparedness to authorise such a tawdry document to form the record of a momentous event. History will ever remind Australians that at a crucial juncture of our history the prime minister lied, and his lie was a slur on the country's most unequal people – its First Peoples.

More than a week later Turnbull finally spoke to the press and doubled down on the lie in his government's response to the Uluru Statement, that a representative voice of Indigenous peoples was "contrary to principles of equality" and a "third chamber of parliament" – this was the same proposal Turnbull supported in 2015.

The equality rhetoric was pure Institute for Public Affairs (IPA) pabulum – an unprincipled pastiche of right-wing demagoguery more redolent of the equality rhetoric of US-style corporate libertarianism than genuine philosophical liberalism. Keep this thought: liberalism, of the Adam Smith kind properly understood, applies to individual human actors in society. The vicious ideological strain of libertarianism peddled by the corporately funded IPA is primarily about *corporate*, not *individual*, liberty. From inception, the IPA was the handmaiden of its corporate backers, notoriously the old Western Mining Corporation under Hugh Morgan and his henchman Ray Evans, and venal tobacco companies insisting on the human rights of corporations rather than real humans. When they speak of liberty and freedom they mean of corporations. Adam Smith's and John Locke's sacred bones long since writhed their way out of their graveyards, with outfits like the IPA claiming philosophical descent from classical liberals.

Turnbull's incineration of Indigenous recognition was informed by these marauding orcs. The IPA prepared the torch and Turnbull lit it.

## **Recriminations**

The man is not a republican, this much I can tell you. If anyone insists he is, then Turnbull's idea of a republic is one that excludes the First Peoples of Australia as much as the current constitutional monarchy does, and one we should decline to be part of. I now remember the reason for my disinterest in Turnbull's republic.

We should have recalled this. Turnbull championed a republic that proposed symbolic recognition of Aboriginal and Torres Strait Islanders in a preamble to the Constitution. Essentially a brass plaque screwed near the front entrance of the country's constitutional structure: mere tokenism.

The minimalist model of Indigenous recognition that formed part of Turnbull's model for the republic failed at the 1999 referendum.

And yet this is ultimately what he wanted in 2017. He wanted to reprise his 1999 failure.

"This was not what was asked for, or expected," he told the Referendum Council at a meeting in July, after the council chaired by Mark Leibler and Pat Anderson delivered its report recommending constitutional enshrinement of a voice to the parliament representing First Nations. The country's prime minister cannot even hear his own words. He appears incapable of understanding that he simply cannot say such words. He established an independent

council to provide a report making recommendations for constitutional reform, and then he complains that this was not what he expected or asked for?

My notebook records him bristling about “big change”, “big idea”, “heroic failure”, “column of smoke”, and the voice being a “latecomer”. He is seething and can barely conceal his fangs. The meeting concludes with the insult that the council has left him “no wiser but much better informed”.

His arguments against the report are spurious, and despite the fact that I know he has heard their refutation before, he is impervious to contrary facts and arguments. It is explained that parliament would be responsible for defining the body in legislation, following usual processes of promulgating a bill. I specifically pointed out that the principle of parliamentary supremacy means the parliament determines the details of the proposed body through legislation. You can't have it both ways: insist on parliamentary supremacy and then complain the Referendum Council has not determined all of the details of the body.

He makes the argument that the Indigenous senators and MPs now in parliament are the Indigenous voice to parliament. Former NSW premier Kristina Keneally points out, with due respect to the Indigenous politicians present, that they represent their respective political parties and the seats and states that elected them. In the same way Nick Xenophon was not the voice for Greeks in the federal parliament but represented the people of South Australia.

This is how low level and, frankly, asinine the quality of Turnbull's objections are – and he has heard rational answers to all of them before. But still he persists, oblivious to rationality and the truth. He was given (and from the annotations I saw at a meeting the previous week, appeared to have closely read) a design report prepared by Shireen Morris and myself on behalf of the Cape York Institute. The report, commissioned by the Referendum Council, sets out an outline and options for what the body could look like.

I don't know how Turnbull maintains that the Indigenous voice to parliament was a “latecomer” proposal. Morris and I briefed him about it on 2 June 2015. He was the second cabinet minister briefed on the proposal, after the then prime minister, Tony Abbott.

Turnbull seems to have erased this meeting from his political memory as an inconvenient truth.

Morris and I were doing the rounds of Parliament House and had a scheduled appointment with the then minister for communications in his suite. He was dressed in a brown cardigan and drank green tea from an elegant Asian metal teapot. His chief of staff was with him, and glancing at his card I realised he must be the namesake descendant of the famous lawyer of colonial Sydney town, Richard Windeyer. I knew him instantly from Henry Reynolds' 1998 book *This Whispering in Our Hearts*.

The title is taken from ‘On the Rights of the Aborigines of Australia’, a speech Richard Windeyer made in 1842. Reynolds described it as “perhaps the most sustained and intellectually powerful attack on Aboriginal rights ever mounted in early colonial Australia”. The *Sydney Morning Herald* reported:

[W]e believe it to be the unanimous opinion of the members, that the speech of Mr Windeyer, for the negative, was the most argumentative and logical ... He ... distinctly proved not only that the Blacks have no right to the soil of Australia for want of settled

occupancy and cultivation; but that they have no right even to the kangaroos more than we have, the game laws of England agreeing precisely with the great law of nature, that wild animals not confined by enclosure are not, and cannot be the property of any man.

Yet Windeyer's conscience asked: "How is it that our minds are not satisfied? ... What means this whispering in the bottom of our hearts?"

Windeyer was a parliamentarian and barrister. He attended the meeting that established the Aborigines' Protection Society in 1838; in the same year he defended the white stockmen in the Myall Creek trials, where seven were hanged for the massacre of up to 30 Aborigines on the Gwydir River.

His descendant was witness to our meeting with the politician who in three months would become the 29<sup>th</sup> prime minister of Australia. The Indigenous voice to the parliament was the subject of that meeting. An oversized portrait of Lucy Turnbull dominated the room, omnisciently witnessing her husband tell us the voice was "a sensible idea". He understood the objections to the non-discrimination provision proposed by the previous Expert Panel, and agreed with them.

Turnbull not only declared the proposal sensible but also agreed to host an event on constitutional recognition to help promote it in his electorate ("I like having events at a pub"). I was disconcerted by that large portrait, though. There is no shortage of great art owned by the parliament to adorn politicians' offices. What message was he sending with his choice of indiscreet spousal portraiture in a building of public democracy? It seemed more aristocratic than republican to me, a penchant for the personal good, over the public. That worry has proven correct.

Turnbull, as prime minister, has chosen to lie about his prior knowledge of the proposal for an Indigenous voice, and indeed his endorsement of it as sensible more than two years before he rejected it. Richard Windeyer's descendant and Morris are witnesses to this lie.

Turnbull supported the Indigenous voice to parliament when he was not prime minister, but then ended up calling it a "third chamber of parliament" when he was, knowing full well that was a gross untruth.

He did this because he was trapped by his political situation: devoid of capital, hostage to the conservatives whose leader he had stabbed in order to gain the prime ministership, and without the gumption to break his captivity. The truth may well be that he was never a supporter and only opportunism caused him to tell me he supported the voice in 2015 – that in his heart of hearts he wanted to re-run his 1999 failure – but my colleagues and I had also sought to leave him no room for minimalism. He capitulated his prime ministerial leadership to the man he deposed.

Tony Abbott ended up using Indigenous recognition as a stalking horse in his campaign of vengeance against Turnbull. Minimalism was a risk before he lost the prime ministership, but became a clear and present danger following it.

Abbott turned away from ambition and principle. When he had political capital he seemed genuinely inspired by the achievements of his wife Margie's homeland of New Zealand. Abbott signalled this inspiration in his surprising speech in response to then minister Jenny Macklin's *Aboriginal and Torres Strait Islander Peoples Recognition Bill* in 2012. He said, "We only have to look across the Tasman to see how it could have been done so much better. Thanks to the Treaty of Waitangi in New Zealand two peoples became one nation."

Then he squandered his capital in one indulgent atavistic spree, deeming Prince Philip the most worthy recipient of his personally revived knighthood. Some of that capital could have been for blackfellas, for recognition. Instead it was spent on that dumbass knighthood, the fulfilment of some inconsolable fantasy about dungeons, thrones and *Downton Abbey*. A Catholic boy's nose pressed to the aristocracy's stained glass. Discuss.

Whereas previously Abbott told me his preference was for designated Aboriginal and Torres Strait Islander seats in the Senate – a simpler proposition, he wrongly thought, than the voice to the parliament – all of the indications were that he had shrunk back to extreme minimalism.

Prior to Abbott's visit to north-east Arnhem Land in September 2014, the *Australian's* Dennis Shanahan reported that consideration was being given to the idea of designated Senate seats. This was a day after Abbott spoke about it to me, parked on the side of the highway to the Sunshine Coast to take his call. This was when I had first outlined the concept of the voice to parliament developed with constitutional conservatives. I was dismayed at Abbott's simplistic response that designated seats might be more saleable to the punters.

The next day Shanahan had floated the anonymous balloon and exploded it himself, in the same article. By the following week I was sitting with Abbott at the Garma Cultural Knowledge Centre at Gulkula with him expressing regret that today's conservatives lack compassion. Abbott had gone from designated Senate seats to a three-sentence bronze plaque in less than a week.

I sensed the huge scale of our challenge, but nevertheless we had to keep going.

In the end Tony Abbott proved, like Turnbull, to be an opportunist. Not a conservative. One of the devisers of the voice-to-the-parliament proposal was the lawyer and philosopher Damien Freeman, principal author of the recent book *Abbott's Right*. Indeed, it was Abbott who initially encouraged Freeman to work with us to forge common ground – back when he was feeling ambitious. We found common ground, and Freeman established with Liberal MP Julian Leeser the conservative organisation Uphold & Recognise, dedicated to Indigenous constitutional recognition via the voice to parliament. Freeman is a true conservative. But Abbott moves from conservative to reactionary according to what suits him at the time.

Despite a number of discussions since his descent to the backbench, with me and also Freeman and others, Abbott declined to publicly state his position. Which meant Turnbull knew he would be stalked on this issue as much as any other. Then, during the dialogues and after the Uluru convention, Abbott told Freeman, as well as Shireen Morris and me, that he was not opposed to the voice proposal, but he made no public statement.

Abbott finally revealed his position following Turnbull's rejection of the Uluru Statement and the Referendum Council's recommendation, stating on Facebook:

In my judgment, the government has made the correct decision not to proceed with the establishment of a separate, constitutionally entrenched body to represent Indigenous people ...

I know that this decision will disappoint many fine Australians, especially those who put so much work into the "From the Heart" statement, but am sure that it's right for our long-term national unity.

It turned out neither man was worthy of their ambitions. Their ambitions they held only for themselves and not for the country.

### **Don't look back in anger**

This essay is in part a meditation on anger and political crusade.

The title of DA Pennebaker's documentary about Bob Dylan's tour of England in 1965, *Don't Look Back*, has been looping through my mind.

I am full of regrets.

About the years of work on the part of so many people. The hope we urged from our people. At the optimism we told our mobs we should have. That we needed to turn up and make our destiny. At the light we saw on the horizon. I had been one of those urging this work and hope.

About the mistakes I made. Litanies of them. They can't all be offset against other people's mistakes and miscalculations and the thousand things that were done, the million things that were not done. I take responsibility for my fuck-ups and misplaced faith.

Anger is for the future, not the past. Anger for the past is corrosive and burns hope. Only anger to action makes sense: this is anger for the right. Righteous anger at injustice is the fuel for future justice. Otherwise we just retire to lives of relaxation and comfort while anger destroys our people from within.

This agenda will not die. It is the agenda for the future. This setback at the hands of these two people who never lived up to the leadership they sought is not our destiny.

### **From bipartisanship to partisanship**

The radical centre is still the place to hunt. What I have learned is that only those with power can take the country to the radical centre. Activists on the outside can advocate for the brilliant centre but only those who command the structures of power can cause the tectonic shifts.

My critique of progressive thinking still holds. The leftist confusion of ends and means still remains. We share the end of social justice, but the means by which that justice is secured is still the subject of dispute.

My strategy of reaching out to the political leadership of the right availed us nothing in the end. This is the bitter truth I learned these past 17 years.

The political leadership of the right is to be distinguished from their constituency. As with the far left, the right has its ideologues and extremists. But the bulk of the Australian people incline to the radical centre if and when it is presented to them.

So I have lost faith in the political leadership of the right but not its constituency. This constituency is ill served by its leadership, as surely as the nation is.

Without the radical centre, bipartisanship is just the lowest common denominator. The radical centre is the sweet spot between realism and idealism, the real meaning behind the truism that politics is the art of the possible.

When faced with the question of whether we predicate our struggle on the political right finding compassion or the political left finding its brains – I now know the answer. The left have an altruism the right will never muster. Every progress we make will have to be fought for, and every battle will be partisan. Bipartisanship is dead.

The day after Turnbull's betrayal, my friend, the doyen of the *Australian*, Paul Kelly, came down from his mountain at Holt Street with those heavy tablets of stone declaring the correctness of Turnbull's call. Kelly is one of the principal trustees of the Idea of Australia and I thought that we had persuaded him to shift from his original opposition. He had congratulated Morris on one of her TV altercations with Andrew Bolt propagating the IPA-style equality objection. Kelly knew it was bogus, and encouraged us. Then, after Turnbull's rejection, Kelly reverted to type. His opinion was horrific and brutal in its moral certitude.

I telephoned him that morning. I said there were two powers of federal parliament having unique application to Aboriginal and Torres Strait Islanders: section 122, the territories power, which disproportionately affects our people; and section 51(26), the race power, which was an exclusive Indigenous power, used only for our people. I asked why people subject to such special powers should not have a voice, non-binding at that, in respect of what parliament might propose.

Kelly said something startling. He understood the voice proposal was not a third chamber, and Turnbull was wrong to describe it as such. The startling thing he said was that the voice, even though only having an advisory function, would operate virtually as a veto on parliament. A body without the legal power to direct parliament would hold some sort of non-legal veto over the parliament. *Really?* This late in our history and here is a great old white man conjuring a great old white fear about Indigenous voices. A stalwart defender of free speech, now saying he opposes the mere expression of an Indigenous opinion, for fear it might influence Indigenous policy. Discuss.

He told me he supported recognition. I responded by saying that if not a non-discrimination provision or an institutional voice, then what is the recognition he has in mind? He said with some chagrin, I think, "I don't know."

And there ended my long lesson in the politics of justice.