2012 Wentworth Lecture
(Transcript)

Megan Davis
To recognise or not to recognise: The place of Aboriginal and Torres Strait Islander peoples' in the Australian Constitution

Russell Taylor

Good afternoon. My name is Russ Taylor and I have the honour of being the Principal of AIATSIS, the Australian Institute of Aboriginal Torres Strait Islander studies here in Canberra. I'd like to warmly welcome you all to what is a very significant event on the AIATSIS calendar, the 2012 Wentworth Lecture.

So of course let me begin by acknowledging country, acknowledging traditional owners. I pay my respects to our elders past and present and I acknowledge and pay my respects to the continuing practice and survival on country. I'd also of course like to acknowledge the AIATSIS Council Members, some of whom have travelled far and wide to be able to be here with us for this afternoon's activity. And can I also acknowledge somewhere in the audience my Deputy, Dr Ruth Taylor.

The Wentworth Lecture of course was established by AIATSIS to honour the contribution of the late Bill Wentworth and to recognise his contribution to Indigenous studies and also as a means to encourage all Australian to gain a better understanding of issues that gather at the heart of the Aboriginal [0:01:20.4] as a nation. I take particular personal pride this afternoon in stating that the AIATSIS Council is extremely pleased to have secured the participation of Dr Megan Davis to deliver this year's Wentworth Lecture. It's my pleasure to introduce our Chairperson, Professor Mick Dodson to say a few words and also formally introduce Dr Davis for this afternoons lecture. Thanks.

Mick Dodson

Thank you Russ and good afternoon everyone. I'd also like to pay my respects to the traditional owners on this part of our country and also pay my respects to their elders past and present and we of course are gathered today on their ancestral lands to honour the memory of the late William Charles Reid Wentworth. I would also like to acknowledge my colleagues on the Council of the Australian Institute of Aboriginal and Torres Strait Islander Studies, the members of the Institute and also our staff who are present today and indeed I would make a welcome to all of you who have joined us here today.

Today's lecture is proudly name in the honour of Bill Wentworth, a man before his time. Bill was the founding father to the Australian Institute of Aboriginal Studies which later became the Australian Institute of Aboriginal and Torres Strait Islander Studies. The establishment of the Institute in 1964 was the culmination of Bill's vision and his efforts to do this began in 1959.

His passion to advocate for the rights of Aboriginal people and his concerns and efforts of recording, and the preservation of Aboriginal languages and culture materials culminated in the establishment of the Interim Council of the Institute in December 1961. And that Council operated until the *Australian Institute of Aboriginal Studies Act* was passed by the Federal Parliament in May 1964 and indeed it had, unlike much of what we see today, had strong cross party support.

Bill was also the Minister in Charge for Aboriginal Affairs from 1968 until 1971 and in fact he was the first Federal Minister to had the sole responsibility for Aboriginal Affairs. I don't apologise for only mentioning Aboriginal people but this is a reflection on history and Torres Strait Islander weren't on the radar in those days so I'll apologise to my brothers and sisters from Torres Straits but they were very much invisible in this part of history I'm talking about. He was a known campaigner for the rights of Aboriginal people and other fronts as well. He introduced a private members bill in March of 1966 and its current today because his bill sought to amend the constitution and later of course he was active in getting the 1967 referendum up which was considered a watershed in indigenous affairs in this country.

Now we at AIATSIS with much pride established this lecture series way back in 1978 as a tribute to this contribution, this enormous contribution that Bill's made to Indigenous affairs, in particular indigenous studies in this country. His passion and advocacy for Indigenous peoples and his achievements in indigenous affairs stand I think as a great legacy to his memory. So now it gives me great pleasure to briefly introduce today's Wentworth Lecturer, Professor Megan Davis.

She's a member of the Cobble Cobble people of Queensland. She's an expert member of the UN Permanent Forum on Indigenous Issues, I should say that I think the first Indigenous person anywhere in the world to be elected to a UN people body by government. She's the Director of the Indigenous Law Standard and Professor of Law at the Faculty of Law, University of New South Wales, and she's an expert on public and international law. She was appointed law year by the Federal Government to the expert panel on the recognition of Aboriginal and Torres Strait Islander peoples in the constitution and as an expert member of the United Nations Permanent Forum on Indigenous Issues she holds the portfolios of Administration and Justice [0:07:11.2] and intellectual property and indigenous knowledge.

Professor Davis is also the [0:07:19.9] of the UN expert group meeting on violence against indigenous women in New York earlier this year. She has extensive experience as an international human rights lawyer and participated in the drafting of the UN Declaration of Rights for Indigenous People from 1999 to 2004. She's also a former UN fellow at the UN office of the High Commissioner for Human Rights in Geneva and has participated as an international lawyer in indigenous legal advocacy, UN working groups and expert seminars at the United Nations for over a decade.

So it's now my proud duty to welcome Megan Davis to deliver the 2012 Wentworth Lecture.

Megan Davis

Thank you Mick for that generous introduction. I think my career as, essentially Mick [0:08:24.9] Mick was the Director of the Indigenous Law Centre and now I'm the Director of the Indigenous Law Centre. Mick was a Professor of Law at the UNSW and I'm a Professor of Law at the UNSW and Mick was a member of the Permanent Forum on Indigenous Issues and I'm now a member of the UN Permanent Forum and next I'll be taking over the National Centre of Indigenous Studies, just a public pre-warning.

Professor Mick Dodson, Russell Taylor Principal of the Institute, AIATSIS Council Members, ladies and gentlemen. My country is Warra, I have connections to the [0:09:07.5] mountains in south west Queensland and I have family in Mackay and Sherberg, Harvey Bay and Eagleby and as a Cobble Cobble Aboriginal woman from south east and south west Queensland I would like to pay my respects to country, pay my respects to elders past and present of this country and the people of this country who are gathered here today. I'd also like to begin by acknowledging in the audience my little brother John Davis who has travelled down here today from Brisbane to represent my family and it's nice that my family always sends a family representative to support me at such events.

It's a special occasion really for John because he's the newly appointed inaugural Principal of Hymba Yumba which is a new Indigenous community school in Ipswich Queensland which is from Prep to Year 12. Hymba Yumba is a new Indigenous community school that are striving to achieve academic, sporting and creative excellence but also to foster in young Murray's, young Indigenous kids respect for self, respect for elders, respect for country and family and community. So we are very proud of John. We are five brothers and sisters and growing up in our family our mum was very strict about our education and our study work ethic. Mum instilled in us that the only way for children from low socio-economic backgrounds to achieve social mobility in Australia is through the education system.

And so it is, here we are today, it's a privilege to be invited to deliver the 2012 Wentworth Lecture. As you are all aware the Wentworth Lecture is named after William Wentworth who, in 1959 presented a proposal for the creation of a national institute of Aboriginal studies which is today AIATSIS. AIATSIS has played an important role in my own academic journey. In the early days of my doctoral thesis at ANU I held a visiting scholar position for four months at AIATSIS organised by and mentored by Dr Lisa Strelein and she helped me in those early days to develop my initial and very confused ideas for a doctoral thesis. And in addition I have benefited enormously from the support and encouragement of Professor Mick Dodson who is truly passionate about the ideals of AIATSIS and research excellence in Australian Indigenous studies, and for me personally I am eternally grateful that he was supportive of my PhD idea which in the words of Frank Brennan is radical and critical in examining the limitations of the right to self-determination for Aboriginal women.

So like me many, many Aboriginal and Torres Strait Islander scholars, people and communities have benefited from the work of AIATSIS and the legacy of Bill Wentworth. Indeed Bill Wentworth's legacy has been at the forefront of my own work as a member of the Prime Minister's expert panel on the recognition of Aboriginal and Torres Strait Islander peoples in the constitution. Many people we consulted over 2011 would refer to Billy Wentworth's proposal.

This was a proposal in 1966 of one which is very similar to one of the expert panel's recommendations and of which I will speak to later in the lecture.

Today I have chosen to speak about the idea, the discussion, the debate and the momentum toward recognition. My lecture is essentially in two parts. First I want to draw attention to the comprehensive work of the expert panel. Here I will provide an explanation of who has been advocating for constitutional reform, why constitutional reform is a poor aspect of unfinished business and also explain the origin and the methodology of the panel outlining the recommendation that we made in our final report to the Prime Minster. The report is an important contribution to a deeper understanding of the exigencies of constitutional change in relation to Aboriginal and Torres Strait Islander peoples in Australia.

Then second, I will pay tribute to Bill Wentworth by sharing with you my personal observations as a member of the panel travelling the length and breadth of Australia. Here I will explain why I am optimistic about the future of constitutional recognition of Aboriginal and Torres Strait Islander peoples. Consequently, rather unconventionally, I will speak to Billy Wentworth's legacy in the latter part of my talk rather than at the beginning. But I do hope that this lecture, in particular highlighting the recommendations of the expert panel, will contribute to an understanding of the technical aspect of constitutional reform but also provoke conversations in our communities about the importance of constitutional recognition.

Since the 1970's there has been advocacy for the alteration of the Australian Constitution to remedy the silence that exists in the text about the existence of first peoples in Australia. There have been many different and distinct suggestions for the inclusion of Aboriginal and Torres Strait Islanders in the text. These suggestions have included, although not limited to, provisions to protect Aboriginal and Torres Strait Islander peoples culture, heritage and language, suggestions for a treaty or agreement making power in the Constitution, the provision of designated parliamentary seats and the contemporary suggestion arguably rallied with the failed of 1999 referendum that there be recognition of Aboriginal and Torres Strait Islander peoples in the preamble to the Constitution.

In any event the impetus is for the shaping of the Constitution to reflect the unique status of Australia's first peoples and Australia's respect for Aboriginal and Torres Strait Islander peoples culture, and the contribution that this culture has made and continues to make to the identity of Australia. What it means to be Australian. The message is that generally it is a very well-crafted constitution and for the most part it works. But when it comes to Aboriginal and Torres Strait Island peoples it has not delivered in terms of fairness. This advocacy for constitutional reform has come from Aboriginal and Torres Strait Islander peoples themselves and can be found in, but not limited to, the work of the Council for Aboriginal Reconciliation, the Aboriginal and Torres Strait Islander Commission, the social justice package which was negotiated as a consequence of the Mabo decision, and by the many, many reports of the Australian Human Rights Commission, Aboriginal and Torres Strait Islander Commission's social justice reports.

In addition there have been a number of senate and house of representative legal and constitutional committee reports that have also recommended alteration of the Constitution to include again in a variety of ways Aboriginal and Torres Strait Islander peoples in the text of the

Constitution. That may be entrenchment on a particular right such as agreement making and/or recognition of the unique status of first peoples of Australia. And today political bipartisan agreement exists with respect to recognition in the Constitution. In the 2010 Federal election this was a feature of both the ALP and the Liberal Party election platforms. And in resolving the hung parliament the Greens and the Independent Rob Oakshot all included in their agreements with the Prime Minster the requirement that she pursue recognition of Aboriginal and Torres Strait Islander people in the Constitution during her term of office.

So there are many reasons for why we need constitutional recognition and they are canvassed extensively in the report of the expert panel. But one of the more compelling arguments I would suggest is that the utilitarian nature of the Australian [0:18:13.4] means that Aboriginal people's political and legal concerns are dwarfed by the greatest good for the greatest number. And so playing out in this majoritarian framework 2.5 per cent of Australia's population are tasked with the epic struggle of convincing Australian parliaments of the utility of passing legislative measures or adopting policies that benefit Aboriginal and Torres Strait Island people alone.

In those circumstances where such measures and policies were successfully passed they have been permitted with special measures under the *Racial Discrimination Act* which permit the State to effectively discriminate in favour of Aboriginal people in order to achieve equality. However special measures are only intended for a temporary period and are supposed to cease once their objectives have been fulfilled.

When more permanent measures are put in place, for example the *Native Title Act*, history demonstrates how easily these rights can be abrogated or appealed. And this is because is because of the principle of parliamentary sovereignty which means that the legislative agenda of one political party can be easily amended or abolished by the next, and with three year political terms in Australia Aboriginal rights are insecure and uncertain. So the argument goes that in order to have sustain intention on, for example, the chronic disadvantage that is suffered in Aboriginal communities across Australia, Aboriginal and Torres Strait Islander issues need to be taken out of the political arena.

Indeed I was struck by the preference of Aboriginal and Torres Strait Islander peoples for constitutional recognition because then a High Court of Australia will become the final arbiter on these rights. And this preference is understandable because of the way in which Aboriginal and Torres Strait Island people's interests are not often served well in parliament who can enact and repeal without accountability. Well accountability outside of the ballot box. We know that 2.5 per cent can't persuade the ballot box and so what do small margin groups do in liberal democracies. And indeed this is the conundrum of most Indigenous peoples living in a liberal democracies.

The majoritarian nature of our democracy is one main reason constitutional reform remains the central, but not the singular, pursuit of what is labelled unfinished business. In any event we are now in this point in our constitutional history because of the Greens and the Independents agreement with the Prime Minister in 2010. Some have fixated on this as evidence of a lack of commitment but both the ALP and Liberal Party had this issue in their election platforms. And

really in the history of constitutional reform no-one remembers how we got there if you get there, 1967 being the exception.

So in 2010 the Prime Minster asked for public nominations and consulted with the Opposition Leader, the Greens and the Independents to constitute a panel to consult with the Australian community and with Aboriginal and Torres Strait Islander communities about constitutional alternation to recognise the unique status of Aboriginal and Torres Strait Islander peoples of Australia. In the Prime Ministers press released so said that this constitutional recognition would be a significant step toward building an Australia based on strong relationships and mutual respect between Indigenous and non-Indigenous Australians.

The terms of reference that were given to the expert panel were very specific. They were to lead a broad national and community engagement program to seek the views of a wide spectrum of the Australian community including from those in rural and regional areas. We were also tasked with working with organisations such as the Australian Human Rights Commission, the National Congress of Australia's First Peoples and Reconciliation Australia which have existing expertise and engagement in relation to this issue.

And thirdly we were asked to raise awareness about the importance of Indigenous constitutional recognition by identifying and supporting ambassadors who would generate broad public awareness and discussion. So in developing our options for constitutional change the panel considered the range of views and were asked to propose options to the Prime Minister for change which have the best chance of success at a referendum.

[0:23:38.7] was that over the course of 2012 we developed and undertook an extensive consultation program to seek the views of a broad range of Australians. We published a discussion paper, we developed a website, we travelled around Australia hosting and participating in public discussions, we held a formal public submissions process and we sought advice from Aboriginal and Torres Strait Islander leaders and constitutional law experts. In addition, to test the community responses to our proposed recommendations the panel adopted a number of strategies including engaging News Poll to test the response of the Australian community. Probably the most important thing we did do from the outset was develop a methodology for how we would devise recommendations to the Prime Minister. And in March 2011 we agreed on four principals to guide the assessment proposals for constitutional change, namely that each proposal must; one, contribute to a more unified and reconciled nation; two, that the recommendations be of benefits to, and accord with, the wishes of the Aboriginal and Torres Strait Island people; three, that the recommendations be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums and; fourth, that the recommendations be technically and legally sound.

This methodology we took very seriously and indeed the report does contain chapters of content that we drew from submissions and public consultations which we decided as a panel were not capable of carrying the support of the Nation, or attracting multi-party support. And that is why issues of sovereignty and treaty were subject of individual chapters in the report but we decided not to carry forth with any recommendations in relation to sovereignty and treaty. They were not capable of carrying support.

There were five recommendations made by our panel. The first recommendation was that Section 25 of the Constitution be repealed. Briefly explain Section 25 is a provision in the Constitution which contemplates the possibility of State laws disqualifying people of particular race from voting at State elections. It is essentially a section concerned with federalism and a fair apportionment to each State of representation on the House of Representatives.

Because Section 25 is a dis-incentive for the passage by States of discriminatory laws the disenfranchise racial groups curiously there is a rebound action to reclaim Section 25 as some kind of unequivocal testament to the constitutional framers belief and racial equality as a small seed of civil rights. I reject this as being a historical. Even so there is multi-party support for the deletion of Section 25 and there is universal agreement that it out dated and should be deleted from Australia's Constitution. So there is no controversy in relation to Section 25.

The second recommendation was that Section 51(xxvi) be repealed. Section 51(xxvi) is a provision in the Constitution that many refer to as the race power. In order for the Australian parliament to make laws on any number of subjects it requires powers in the constitution to authorise it to make those laws. Again this stems from the nature of our federal system which sees the division of powers between the State and Federal Parliament as central to the constitution's structure. Many of you would recall that this section was amended in the 1967 referendum to remove the words other than the Aboriginal people in any State. This removal then conferred upon the Federal Parliament the power to make laws with respect to Aboriginal and Torres Strait Islander peoples.

The expert panel in its extensive deliberations with the Australian public were persuaded by the view that this section, as interpreted by the High Court of Australia can authorise or support the enactment of the laws that have an adverse application against a people of any race. So overwhelmingly we found that the judicial opinion was that this power authorised both beneficial laws and adverse discrimination.

If I digress for one moment this reminds me of the 1966 proposal offered by Billy Wentworth when he introduced a private members bill to repeal Section 51(xxvi) in 1966. His proposal was to confer on the commonwealth parliament how to make laws for the advancement of the Aboriginal natives of the Commonwealth of Australia but in addition contained a carve out that the section should not operate so as to preclude the making of laws for the special benefit of the Aboriginal natives for the Commonwealth of Australia. Wentworth worried that deleting the exclusion of Aboriginal people from Section 51(xxvi) could leave them open to discrimination, adverse or favourable. His Bill passed both Houses of Parliament but lapsed, it didn't go to referendum. Nevertheless his concerns were [0:30:02.3].

In any event, in the course of our work discussing and consulting with the broader Australian community the fact that the race power could support adverse as well as beneficial laws was a source of surprise and shock. However, for the repeal of this provision in the absence of a replacement power would result in an unsatisfactory situation where there would be no head of power under which the Commonwealth Parliament could pass laws for Aboriginal and Torres Strait Islander people.

So while our second recommendation was deletion of Section 51(xxvi) our third recommendation was the insertion of a new power for the Federal Parliament to make laws for Aboriginal and Torres Strait Islander peoples. This third recommendation is called Section 51(a). It is an innovative recommendation and structure within the constitution that serves two functions. First, it's a head of power replacement Section 51(xxvi) to make laws for Aboriginal and Torres Strait Islander people. But secondly it includes introductory words to the head of power a statement of recognition.

So why introductory preamble, why introductory words to Section 51(a). One of the main suggestions for recognition, especially politically, has been for recognition in a preamble. A hang over no doubt from the 1999 referendum where there was an attempt to insert a new preamble of the constitution with some form of recognition of Aboriginal and Torres Strait Islander people. We were persuaded by scholarly submissions that you cannot have a preamble to the UK Act. In addition you cannot simply place a preamble at the beginning of the Australian constitution because of interpretive challenges.

Also in our travels around Australia, Aboriginal and Torres Strait Islander communities almost universally did not want a preamble at the beginning of the constitution especially if it contained a no legal affect clause viewing such a measure as tokenistic. This is the path that has been taken by Victoria and Queensland and New South Wales. But no legal affect clause was similarly rejected in the consultations of the broader Australian community. They too felt that it would be a meaningless exercise to go to the effort of recognition yet at the same saying it has no affect. We were satisfied then that this option made our criteria, including that it must be of benefit and accord with the wishes of Aboriginal and Torres Strait Islander peoples and that it be legally and technically sound.

So our recommendation was for the insertion of a new Section 51(a), and you can see there the language that we chose for the introductory words recognising that the continent and its islands, now known as Australia, were first occupied by Aboriginal and Torres Strait Islander people. Acknowledging the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters. Respecting the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples. And acknowledging the need to secure the advancement of Aboriginal and Torres Strait Islander peoples.

The forth recommendation is a new Section 116(a). Section 116(a) is a non-discrimination clause or a racial equality clause. The submissions to the panel are overwhelming supported a racial non-discrimination provision and argued in favour of the principle of racial equality. And indeed it was our job to reflect what the community were thinking. Australia's commitment to the principle of racial non-discrimination is reflected in the *Racial Discrimination Act* and is accepted in legislation and policy in all Australian jurisdictions. The *Racial Discrimination Act* already binds what the States and Territories can do so they won't be a position that is very different to the current one. But the significance of this recommendation is that only the Commonwealth Parliament will have additional burden placed on it and the Australian people we spoke to quite liked that idea. In addition many argued that there must be allowance for measures to address disadvantage and ameliorate the effects of past discrimination as a necessary

aspect of a racial non-discrimination provision, as well as recognition of the distinct rights of Aboriginal and Torres Strait Islander peoples as a necessary path of ensuring equality.

Some have suggested that this provision, this recommendation, Section 116(a), is not recognition that it is outside of our terms of reference. I would argue that the panel, given its extensive consultations with Aboriginal and Torres Strait Islander communities developed an insight into the devastating impact of discriminatory policies upon Aboriginal and Torres Strait Islander communities. The practical need for this is based on real experiences of Indigenous people, of discrimination at the hands of the Commonwealth Parliament. The most commonly cited examples of community consultations were the Northern Territory Intervention and the Native Title Act with amendments. The view of one [0:36:17.2] member, the Director of the Cape York Institute Noel Pearson argued strongly that this Section 116(a) reflects recognition. He says, and I quote; *"Elimination of racial discrimination is inherently related to Indigenous recognition because Indigenous people in Australia more than any other group suffered much racial discrimination in the past. So extreme was the discrimination against Indigenous people it initially even denied that we existed. Hence Indigenous Australians were not recognised. Then Indigenous people were explicitly excluded in our constitution and still today we are subject to racially targeted laws with no requirement that such laws be beneficial and no prohibition against adverse discrimination."*

Noel Pearson has also said that if the race power was removed, which he strongly advocates, that an anti-racial discrimination clause was not included indigenous people would go backwards. He said and I quote*; "Whereas if you had an Aboriginal and Torres Strait Islander power and you prohibited discrimination that's the best result because all Australian's, regardless of race, would be free from racial discrimination."*

Finally, News Poll conducted national surveys of Australians on the topic of constitutional recognition and the final News Poll survey confirmed at the 28th of October 2011 that 80 per cent of respondents, 80 per cent were in favour of amending the constitution so that there is a new guarantee against laws that discriminate on the basis of race, colour or ethnic origin.

And finally, the fifth recommendation is that a new Section 127(a) be inserted which is a recognition of languages and this particular section responds to the deep concern that we found in the broader Australian community about the loss of Aboriginal languages.

In terms of the response to our recommendations it's been somewhat predictable. Those who are for and against rights generally shape the oppositional support and this will never change, it will be as it always has been and these matters will be sided in the political and public realm shaped by well-rehearsed positions on rights, indigenous rights, judicial activism etc. Generally though we should be glad for the restraint in which our politicians have not engaged on the issue. There appears to be a consensus that in 2012 and 2013 the political environment is too toxic to be able to support a referendum on Aboriginal and Torres Strait Island peoples.

In the meantime the Minister for Indigenous Affairs, Jenny Macklin, has funded a $10 million public awareness campaign on this issue to foster debate and discussion. In funding this program minister Macklin has essentially responded to the concerns of the expert panel where we raised

on behalf of the Australian people that we consulted with a great anxiety about the lack of knowledge of all Australians, including Aboriginal and Torres Strait Islander people, about civics and civics education and in addition there was a deep concern in the community about the lack of knowledge of Australian history, Aboriginal and Torres Strait Islander history.

So essentially they are the recommendations of the expert panel. In the latter part of the lecture I wanted to share with you my own experiences and thoughts having had the privilege of travelling around Australia, meeting people and discussing this issue because let's face it, the constitution and constitutional reform isn't the most riveting topic to walk into a community to discuss and we really did empty some rooms when we walked into the room. I travelled to many remote and regional towns, as well as cities during the consultation period. I was really struck by the generosity of the Aboriginal and Torres Strait Islander community and the broader community in their participation in our consultations but also in their honesty. Someone warned the expert panel that we will suffer from consultation fatigue hearing the same things being said over and over again. I can't speak for all of the expert panel but I don't for a second feel that way.

First of all, race relations or the relationships between Aboriginal and Torres Strait Islander people and the rest of the community in each region, in each town, in each State, they differ. It is a federal system after all and the impact of State or Territory legislation and policy upon indigenous communities revealed itself in a number of ways. Very differing attitudes across the country in Aboriginal and Torres Strait Islander communities toward the State Government, preference for or dislike for native title, attitudes towards police, they were extremely diverse communities. Yet on a more national and global level most Aboriginal and Torres Strait Islander communities we visited shared many of the same concerns and anxieties of other Australians including conversations about asylum seekers, terrorism, the introduction of Sharia Law, the economy, job security, the mining boom. It is this commonality, although not [0:42:48.7] that I found intriguing in my travels.

But there was one story that I did want to share with you in my experience. I recall one regional town that we went to consult with. The Mayor of this town was late and one of his Councillors turned up before him. This Councillor said oh I can't wait to get stuck into this, clearly unimpressed with the notion of recognition of Aboriginal and Torres Strait Islander peoples in the constitution and she came armed with a dossier which never got opened but I'm sure was stacked full of crime statistics, etc. The Mayor arrived and he took his seat and the first thing that he said was well, in my experience this town is racist. It has troubled race relations. He didn't deny the problems but he spoke about the enormous contribution that Aboriginal people had made to his town and he went on to describe in great detail his own childhood and adult life interactions and friendships with the Aboriginal people that grew up in his town.

What I found fascinating was the reaction of the Councillor. When at first he said this town is racist, she interjected, do you think it is? She was genuinely shocked. But as she sat and listened like the rest of us to the Mayor's speech her whole body language changed. And when her turn came to speak she spoke not of the bad things, not of the crime statistics, she spoke of her own contribution to the Aboriginal community through appointment on her property and the

contribution of Aboriginal people to her pastoral life. She spoke of their shared history and the interceptions and for me it was a really pivotal moment.

It made me think back to poem that my mum loved and used to read to us as children, *The Orange Tree by John Shaw Neilson*. This poem is about a young girl who sees an orange tree and tries to describe it to an adult. *The young girl stood beside me, I saw not what her young eyes could see, a light she said, not of the sky, lives somewhere in the Orange Tree*. The rational adult questions the young girl, to him it is just an ordinary tree. He tries to understand what the young girl was describing but through his own lens. He is unable to understand what she can see and she gets frustrated at his ability to understand what she is describing. *Listen the young girl said, for all your hapless talk you fail to see, there is a light, a step, a call, this evening on the Orange Tree*. I thought of this poem a lot last year because racism aside, each and every day Aboriginal and Torres Strait Islanders and the broader Australian community, we interact in the places that we live, there's a normality, an ordinariness to these daily interactions, everyone negotiates their own space through experience. No fanfare, just living. It's layered and it's complex.

Yet the relations between us are too often filtered through the lens of pollsters and opinion keepers, intelligencia and ivy logs and politicians and we're told time and time again, we don't trust each other, we don't like each other, we don't like special rights. There is more to this relationship than quantitative qualitative analysis, the [0:47:14.0], the bitter disputes over evidence based research, most of us don't live in the world of black and white, we don't have the luxury of being inflexible and righteous. And so on our travels around Australia so many Aboriginal and Torres Strait Islanders and Australians spoke to us about these stories, about these very Australian stories.

Growing up my mum also used to read a lot of Henry Lawson and Les Murray to us. My mum is an Aboriginal but when mum left my dad this is what she gave us. She schooled us in the history of Australian politics and literature, she loves Australian poetry and she loves Australian literature and that was inheritance to us. I recall one Henry Lawson story in particular that we were fascinated by as children. It's called *Water Them Geraniums*. This story is part of the Joe Wilson stories and in this particular story which traverses the solitude and the alienation and madness of the Australian bush, the only beauty that the main character Mrs Spicer who is past caring finds in her world are these geraniums. And before she dies she says *remember to water those geraniums*. And as a kid I used to obsess over Mrs Spicer, perhaps obsess is a bit strong but I remember distinctly in Grade Six thinking that it was the saddest thing in the world that someone would be past caring. But I also remember in the story reading this paragraph and I think the saddest and most pathetic side on the face of god's earth is the children of very poor people made to appear well. *The broken worn out boots polished or greased, the blackened inked pieces of string for laces, the clean patched pinafores over the wretched thread bare frocks. Behind a little row of children hand in hand, and no matter where they are I always see the warm face of the mother*. And I have that quote on my wall about my desk in Eagleby and one day I realised well, that was me, those children, that was me. My mum would hate me saying that. But I used to get great nourishment out of reading Henry Lawson and Les Murray.

I identified with it because I too was poor and then when I went to University I was told by my fellow Aboriginal English students that in fact Henry Lawson and Les Murray were racists. I tell you I got the shock of my life. But I do identify with Henry Lawson and I do identify with the poetry of Les Murray, that is me, that is my Australia and it doesn't replace my Aboriginality or my culture. And still people will say to me why do you love Les Murray so much? People who haven't read him and people who have long ago forgotten why it is that they were supposed to dislike him. We have this tendency to reduce each other to characiteurs and we become one dimensional. And this is the tendency of all groups to muzzle many sided human beings into one dimension through the inscription of singular identities.

The problem with the reductionist approach is that it disregards the importance of autonomy in our lives and the decisions that people do make about their lives. The decision of the radical activist to marry a non-indigenous woman, the decision of our white mother to marry our Aboriginal father, in fact the reductionist approach disregards the way that people actually live their lives today in Australia.

I suppose I share these things with you because that is what I saw as a member of the expert panel travelling around this country. Complex and layered identities, relationships that are really sophisticated. Like all relationships they will break down, boil over, they will forgive, but these relationships are textured and they are nuanced. This thesis is by no mean original of course, if anything this is what the Wentworth Lecture stands for. Many Australians have been captured in these complexities of the daily relationships between Aboriginal people and Australian people. Les Murray is one. I think of Bill Gammage whose incredible book just won the Prime Minister's Literary Awards. The beautiful essays of Nicholas Rothwell, [0:52:10.7], Grace Carskins, the Stories of King Scott and I said the man, many Wentworth Lectures that have gone before, like Peter Sutton's wonderful lecture on unusual couples or frontier pairings. Peter Sutton wrote, where deep cultural differences are involved it can be a tribute to the humanity of both parties that their efforts to connect can actual work. And so often have worked to contribute to the rich fabric of understanding an appreciation of Australia's cultures that has become so accessible. This is the kind of reconciliation that matters most.

And Martin Nakata who in his Wentworth Lecture said what is needed is a reconsideration of a different conceptualisation of the cross cultural space, not as a clash of opposites and differences but as a layered and very complex entanglement of concepts, theories, sets of meanings of the knowledge system. Martin Nakata says if this were to be our starting point then the deeply cross cultural encounters between different knowledge intersections that emerge every day in the communities, in health, in education, in governments and so on, could be approached, not ambivalently as heralding further cultural loss, but more robustly as the new source, as a source of new sets of negotiated meanings that may or may not look distinctly indigenous, but which connect with older traditions in ways which do not disrupt and alienate people from those traditions but continues them by enriching practices in ways to produce better outcomes.

It is these things that we don't spend enough time on, that we don't celebrate enough because it's easier to be adversarial and one dimensional and political advocacy thrives on reductionism. But it can't get us all of the way and it certainly won't lead us to constitutional recognition. What was overwhelming from the panels work was that Australians have a deep sense of respect for

the unique culture of Aboriginal and Torres Strait Island peoples. This was borne out in our consultation process and it borne out consistently in polls and public opinion research and the reconciliation Australia barometer. But what is so often overlooked, and the Australian reconciliation barometer establishes that there is much there that unites us than there is that divides us.

And Bill Wentworth contributed to this legacy in his advocacy for constitutional reform in his foresight that without beneficial protection Aboriginal and Torres Strait Islander people would in the future be subject to unfavourable discrimination. Wentworth presents us with the story of the complex layers of the interactions between indigenous and non-indigenous Australia and I AIATSIS embodies this.

To end with I frequently get asked how are you going to get this referendum up? How do you get Australians to engage in the technicalities and complexities of the constitution? Why constitutional reform? The brevity of the question why constitutional reform is disarmingly simple and requires and similarly brief and uncomplicated response. Indeed I would suggest this is the conundrum of the constitutional reform project today. This is not 1967, we can never replicate those socio-political and geo-political conditions. This is the era of polling and public opinion research and social media that demands immediate assessments or expressions of public opinion and those expressions of public opinion are delivered with characteristic opaqueness but tangible enough to be translated back to the public through the subjective lens of politically charged opinion makers and politicians. The reality of how things work in the media is no friend to the constitutional recognition project.

But returning to the question, how do you get Australians to engage with the complexity of the constitution? My only answer is that first you get the nation, you get Aboriginal and Torres Strait Islander people and the rest of the community to engage and recognise and understand about the complexities and the nuances of the relationships that they already have with each other.

Thank you.

[end of recording]