**Patrick Dodson**

I acknowledge Joy’s wonderful welcome to the Wurundjeri peoples’ traditional lands in the land of the Kulin Nations, and on whose lands we are gathered and on which this fine university is built. I acknowledge the Chancellor, Adrienne Clarke, the Vice-Chancellor, Professor John Dewar, Professor Robert Manne, La Trobe University dignitaries, and other distinguished guests.

???? that’s hello and how are you in the Yawuru language. ???? my name is Patrick ??? Dodson. ???? I come from the land of the Yawuru.

There are many reasons to honour Robert Manne. We read about them in the Murdoch press, often, but not least amongst them is his recent part in bringing the selected works of W E H Stanner to a new audience in *The Dreaming and Other Essays*. In his introduction to this wonderful collection Robert observes W E H Stanner’s words changed Australia. In the anthropological exploration of non-indigenous Australia, writes Robert, Stanner’s great Australian silence was perhaps the most important discovery ever made. It provided the most vital clue to the puzzle at the heart of the Australian national identity.

One of the more deafening examples of this silence at an official level is in our Constitution. And I quote, that in the birth of the Australian nation, no sin had been committed. Rather than acknowledge complicity in the destruction of Aboriginal society and consequent remorse, it is far easier for Australians to avert their eyes, something Stanner called, or loved to call, sightlessness.

In reaching for pieces of this national identity puzzle, which might reflect a picture in which we might all see ourselves, the mainstream media exhausts itself, after references to a few consumer durables and a leather football, it is here in the world of the new media that we see the underbelly of this great Australian silence. If it was a coin, the flip side might be the great Australian ignorance. And we could find it in large doses, in the odious reading terrain of public comments, on any story that’s about blackfellas. When I find myself occasionally reading threads of causal abuse founded in ignorance, I wonder how these fellow human beings have come to hold close such abhorrent and in almost every case, ill-informed views. Are they thinking for themselves? Or is this the price we pay for institutional silence on the subject of the first Australians and our place in the nation?

Now, you’re in the blogosphere Robert. I'd be keen to know how you are enjoying exposure to a broad variety of criticism than usual, than you usually cop. And I do not envy you this day job. What I'd like to do now is simply present to you a copy on behalf of the Yawuru, the Yawuru cultural map of the Yawuru country and I do this with Mick, on behalf of all the Yawuru people.

[applause]

In keeping with the title of this conference, Thinking for Yourself, I want to share a story about what my own people, the Yawuru people of Broome, have been doing and thinking about and in the telling, I do not speak to the national, so much as to the local, though I suggest that the struggle of the Yawuru may have a broader resonance.

As Stanner observed of the great Australian silence, the written history of this country very seldom begins with the Aboriginal perspective. For the Yawuru people of Broome, Western Australia, where I was born, our history begins with the Buggaregara, what most westerners romantically call the Dreamtime. The Buggaregara encompasses the time well before western philosophy, religion and laws reached our lands. The Buggaregara is associated with events that created our world, deep at the beginning of time, yet it transcends time and space, to inform and give meaning to contemporary Yawuru life. For those Yawuru who still hold faith with the customary law, it is the spiritual force that shapes our cultural values and practices, our relationship with our country, and the responsibilities and obligations that we have to each other as Yawuru people.

The Buggaregara is the essence of the Yawuru native title. In 2006, the Federal Court of Australia found that Yawuru native title exists because the Yawuru had maintained their belief in Buggaregara and the cultural and social practices that flowed from it. Buggaregara was held ... it was held it was the source of the traditional normative system observed by the Yawuru community at and since sovereignty. The Buggaregara informs our contemporary native title in four key pillars, or ways. The first is our customary law which defines our relationship with our country and our ceremonial obligations as ordained by the Buggaregara. The second is community. We’re about 2,000 to 3,000 Yawuru people, who relate to each other through a common and shared cultural history, a resilient community is our aim. The third is country, our connection to country, how we use and occupy the seas and lands of the Yawuru country is fundamental to who we are as a people. The protection of our country is a primary imperative. As Yawuru we have to maintain good clear liyan with the country, within the modern, ever-changing world. And the fourth is liyan, a concept that relates to Yawuru peoples’ views and experiences of their lives and wellbeing.

Yawuru peoples’ connection to country and joy of celebrating our culture and society, is fundamental to having good liyan. Good liyan comes from our connection to country, our ancestors, our way of life. It reflects our sense of belonging to Yawuru society. Good liyan expresses our emotional strength, dignity and pride. This is our native title, the all-encompassing power and richness of Buggaregara and the inter-dependent elements of our world that flows from that, customary law, community, country and liyan.

The Yawuru lodged their native title claim in 1994 but it took twelve years for the Federal Court to hand down a determination. For many of those years, we were embroiled in litigation. This was because the state of Western Australia was not prepared to consent to our claim and insisted we prove our connection. The onus placed on Yawuru to show connection to our country was very heavy. As claimants, we had our identities, our lineages, our integrity as people, and our fidelity to our traditional customs and practices questioned in the adversarial court system. We were even attacked on the basis of bio-genetics that said our intermarriage with Asians and others had so modified us we could not possibly have sustained our Aboriginality, let alone by Yawuru.

The adversarial native title process, court process, reveals much about how the settler state has dealt with indigenous rights since Mabo. At the centre remains the principle of extinguishment, a principle that has its roots in the thinking that has informed the doctrine of discovery, and any questions about the skeletal framework of the inherited British and Australian laws, you’d better ask Mick, my brother, because he’s the lawyer.

The Yawuru were successful in proving that their cultural connection to country had remained intact and this was despite more than a century of sustained assault on Yawuru culture, by pearlers, pastoralists, missionaries, native protectors, and the press of modernity. However, much was found to be also extinguished.

After protracted negotiations with the state of Western Australia, we entered into an agreement with the state in 2010. Our native title agreement is a mixture of a financial settlement for economic development and cultural heritage protection, and land for a conservation estate encompassing terrestrial and marine areas which we’ll manage jointly with the state. It also includes freehold land, for residential and commercial development, which we received as compensation for the invalid extinguishment of native title in parts of the town.

The Yawaru’s objective in negotiating the agreement was to have a secure basis for income generation and to get government out of our lives, but this has not proved to be easy, particularly by the state. We are bound by the regulations and legislative frameworks of the state, local government planning, and revenue systems. While we sought concessions, they were emphatically denied at the negotiating table. The few gains we made in our native title agreement have been accompanied by imposts in the form of lands tax, shire rates and so forth. We also have to deal with the future act requirements, site clearances, town planning issues, to name just a few. This means we have to constantly deal with other people’s interests in using our lands and waters.

While the Yawuru received freehold land as part of our settlement, this was compensation for the invalid extinguishment of our native title rights. What it was not, was compensation for loss of rent of the land that our Yawuru ancestors were disposed of without consent. In truth, the notion of exclusive possession that we are entitled to use and enjoy an area to the exclusion of all others, is an illusion. Our authority, along with our native title rights, is limited and fragile. As revealed in the Ward case, there is a still a judicial reluctance to equate our traditional occupation and use of the land to ownership. The court instead requires native title claimants to particularise their native title rights, in relation to an area, and identify and show proof of the traditional laws and customs that gives rise to those rights.

It is difficult under this approach for native title claimants to establish a commercial right to a resource to the exclusion of all others, unless they can provide evidence that their traditional customs and laws at the time of settlement supported such an activity. It certainly arose in the Broome case when it came to pinctada maxima, the pearl shell.

Such a narrow approach tends to freeze our rights to those we can establish as practised traditionally, prior to settlement, which means the possibility that our traditional customs could have evolved and adapted to suit modern circumstances, is effectively denied us. This of course contrasts with the approaches taken in North America, and New Zealand, where there are treaties in place. Yet despite the limitations of native title, the Yawuru are endeavouring to use their native title rights as a means to regain our autonomy. The Yawuru emerge today not only as a prescribed body corporate but with their own company, Nyamba Buru. We have started the slow process of rebuilding our nation. What we have focused upon are four main pillars: know your country, know your story, know your culture, and build an economic prosperity.

We focus on these things so that we might live with good liyan, good wellbeing, and be proud Yawuru people. We are rebuilding and revitalising our community. For us, this involves relearning our language, developing cultural monitoring programs, that balance our cultural and ecological knowledge of country, and scientific and regulatory requirements, and reconnecting our youth with our country. We see our youth as our future. Our aim here is to reconnect our youth to the country, to encourage them to learn about their culture and heritage and the responsibilities that goes with that. Without the next generation of Yawuru to carry on our cultural ways, the native title rights that we fought so hard in the courts for, may well be lost, particularly if evidence of our ongoing connection to country is not forthcoming under challenge. For the Yawuru, our key goal is to generate a reliable prosperity, which means using our lands in a sustainable way. In contemplating this, the Yawuru have had to consider how to forge a middle way, that uses the benefits of modernity to underpin the ongoing cultural survival of our people. Our challenge is to balance development with our obligations to take care of our community and country, and to provide a sense of stewardship for the next generation of Yawuru people.

Developing economic prosperity has to find a place in the backlog of housing needs and social equity demands. The reality of Yawuru disadvantage is stark and at times overwhelming. The reality of indigenous disadvantage is, as I said, stark. Overcrowded housing, unemployment, poor educational outcomes, health issues, and higher levels of incarceration within the criminal justice system highlights the magnitude of the work that lies ahead for us. While we do not have all the resources to address these issues, we are attempting to develop housing strategies, educational support mechanisms, and support services for those in need in our community. We’ve not achieved all our aims, not as yet, but we have begun to think and to plan towards these objectives.

Having said this, building a prosperous community after a hundred years or so of exclusion and marginalisation, it is not without its challenges. Defining a vision for a people does not mean all will be wedded to it. There are of course different expectations about what can and should be delivered, a sense of individual and family entitlements must be balanced with the communal, or cultural objectives must be balanced with the economic imperatives to develop and generate an income stream.

Navigating this, along with the competing agendas, local politics, and vested interests, can make the task challenging to say the least. And if you add to this the proposed industrialised agenda for the Kimberley, the region is being affected by unprecedented plans for gas and oil development. While some of these developments are beyond the direct control of the Yawuru, there is little doubt that there will be an impact on our communities in the future. Recognition of our native title rights does not confer upon us a right to prevent mining on our lands. The Crown and right of the state holds rights to all the minerals. We are required to negotiate in good faith, but in reality it is quite difficult for native title holders to refuse mining on their lands, particularly when the term ‘compulsory acquisition’ is invoked to hurry along the negotiations.

The issue of resource development is a vexed one for the native title holders. Some see such projects as an opportunity to address the disadvantage experienced by Aboriginal communities in the area, while others see mining as the antithesis to Aboriginal cultural use and connection to country. There is no right or wrong answer. Provided that there is a consensus based on free prior and informed consent, how a native title group decides to leverage its native title is ultimately a matter for that particular group.

One wonders where we and other Aboriginal peoples may have got to if the assimilation and systemic denial had not been so dominant a driver in our relations since federation. If native title in its political and legislative form was not so pre-occupied with the concept of extinguishment, but with the celebration of its existence in perpetuity, within the land tenure doctrine, then the exit out of a dependency and mainstream domination could be a little bit easier.

Fundamentally, native title is a form of recognition that operates within the normative legal system imported by the British. It can be challenged in the future and extinguished if evidence to support its continued existence is not provided. Moreover, for those historically displaced from their lands and who are unable to establish an ongoing traditional connection to their country, native title delivers very little, if anything at all.

The British relied upon the doctrine of terra nullius to dispossess Aboriginal peoples of their land without compensation. Like the doctrine of discovery that was applied in North America, it was used by the British to legitimate sovereignty of the Crown and entrench the idea of extinguishment.

Aboriginal people were never given a chance to espouse any doctrine to support their own ownership, occupation, and institutional ways. There was no consent obtained and none was given by the Aboriginal people for the occupation and settlement of their lands by the British. There was certainly no dialogue between equals to arrive at an accommodation of each other’s presence. While Mabo overturned the legal fiction of terra nullius, it did not deal with the issue of settlement without consent. The courts of the settler state have stated that it is beyond their scope and jurisdiction to deal with the matter of sovereignty. Nevertheless, in the hearts and minds of many Aboriginal nations, sovereignty and treaty still remain live issues. Certainly the sovereignty of the Yawuru have never been ceded. To say otherwise suggests the Buggaregara, the supreme source of Yawuru sovereignty, was extinguished at settlement. Like my grandfather before me, I know that to be an untruth. Existentially, the absence or otherwise of a court declaration or a piece of paper acknowledging our sovereignty, or native title, does not diminish who we are as a people, or as peoples. In this respect, sovereignty is ultimately what we make of it. In this context, its existence and significance for us as a people is not contingent on decree by the court. However, there is a need to consider how we articulate our sovereignties as peoples. Getting our own houses in order is essential. If we are to tackle the bigger issues of treaty, governance and resource enjoyment, this will not be achieved by remaining in the paradigm we find ourselves in today, but by us developing a new framework around our own indigenous values and foundational principles.

As I see it, there is a need for a new narrative, an indigenous doctrine that articulates how indigenous people intend to assert their place in the modern world. Such a doctrine must be defined from local indigenous perspectives. It must fundamentally reflect and assert the values that indigenous peoples identify and aspire to. And it must of course, be crafted and driven by indigenous peoples themselves.

I do not wish to be prescriptive as to the content, but I am inclined to see such a doctrine as an intellectual and philosophical response that is post-colonial, insofar as it requires indigenous people to contemplate the nature and substance of a decolonised existence. The challenge for indigenous peoples will be to define what it is, what it means to be truly free, not just from the state of disadvantage, or oppression, or historical domination, but in our hearts, and our minds, and our being. Among other things, this will require us to think critically about who we are, what we aspire to, and how we are going to achieve this. It seems the Western doctrine of discovery underpins so much of the discourse between Aboriginal people and the government, but none of us has a clear idea about why and what we are trying to reconcile over, and set straight. More importantly, what it might look like, if ever we achieved a resolution of those matters that have kept us apart for far too long.

Our ultimate triumph over the likes of terra nullius and the doctrine of discovery comes when we can say that we have not only survived the past, and the attempts to conquer, dehumanise, and annihilate us, but that we are capable of navigating modernity, of enhancing it, and of being a resilient people in the world that we now inhabit.

The Yawuru have a saying, ????. Translated, that means, good spirit and good wellbeing, healthy country, strong community. This is what I wish for other indigenous peoples. As I say ????? Robert.

[applause]