

The Nuts and Bolts of Race

By Professor Marcia Langton

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This the first part of [a speech](#) given by [Professor Marcia Langton](#) of the University of Melbourne to the Melbourne Writers Festival on 26 August, 2012.

(IA will be publishing this speech in three parts.)

Indigenous exceptionalism and the constitutional 'race power' (Part 1)

Constitutional recognition of Indigenous Australians is a fraught topic presenting legal as well as moral challenges, and involves a large set of issues beyond my scope here. I want to talk here about the problem of how to recognize Indigenous Australians in the Constitution, a matter given much thought by the members of the Expert Panel appointed by Prime Minister Gillard in December 2010.

Upon the release of the Expert Panel Report in January this year, some commentators made extraordinary and mistaken claims about its recommendations and findings. One person contended that Aboriginal child bride practices would be legalised should the government accept these recommendations. Another claim was that it was a racist attack on Australians. None of this is the case, of course, but the hysterical response to the propositions of the Expert Panel, well founded in Constitutional law and history, tells us something. Most Australians know very little about our Constitution, and few have read it, and even fewer understand it. The main challenge for those who

agree with our findings is the poorly understood friction between bringing Indigenous Australians firmly into the national polity and maintaining their exceptionalist status as inexorably different. I hope to suggest a solution to this dilemma; it is not original but is a new synthesis of a powerful idea drawn from human rights theory and the Expert Panel's work.

I am arguing that defining Aboriginal people as a 'race', as the Constitution does, sets up the conditions for indigenous people to be treated, not just as different, but exceptional, and inherently incapable of joining the Australian polity and society. The history of legislation and policy applied to indigenous people demonstrates this in a number of ways – not citizens until after the 1967 Referendum; the shameful effects of the nearly half century old Community Development Employment Program (a work-for-the dole scheme); the NT Emergency Intervention; and this is only to name a few of the exceptionalist initiatives that have isolated the Aboriginal world from Australian economic and social life. In turn, many indigenous people have developed a sense of entitlement, and adopt the mantle of the exceptional indigene, the subject of special treatment on the grounds of race. My experiences across Australia during the last fifty years has impressed upon me how this exceptionalist status, to which many Aboriginal people have ascribed unwittingly, involves a degree of self-loathing, dehumanisation, and complicity in racism.

As the exotic, indigenous people are not required to be normal, such as attending school regularly, or competing in a meritocracy (except in the AFL and NRL and some other sports codes). In the slowly building campaign for constitutional recognition of

indigenous people, it is vital that we broaden the understanding that the constitutional tradition of treating Aborigines as a 'race' must be replaced with the idea of 'first peoples'. By this I mean simply what is proposed in the UN Declaration on the Rights of Indigenous People: It recognizes that

'Indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.'

The very next part of the Declaration states:

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

The problem is not 'race' but racial discrimination. Indigenous people define themselves according to their lineages and cultures that tie them to places and ways of life that existed long before colonization. If we accept these principles of defining the status of Australia's indigenous people, then the power that nineteenth century race theories have had on our society through our Constitution and scores of legislative acts becomes null and void. Not immediately, of course, but over time. This would not be a simple task, I need to say.

During the consultations that we Expert Panel members conducted throughout Australia, I found myself with two other Aboriginal members facing an angry crowd in the hall at Maningrida in Arnhem Land. They were under the impression, thanks to various advisers, that we had come to talk about the Northern Territory Intervention. Quite a number appeared to be high on kava, the drug of choice in those parts. In various rambling speeches by men who purported to be leaders, we were harangued about their racial purity: "I am a full blood," one repeated mantra-style during a half hour exposition of his entitlement to sovereignty, freedom, government largesse, his resentment of our presumed wealth, how only "full bloods Aborigines" had real culture, and other matters that seemed to

be of great importance to him, but which I could not fathom. It was not difficult to figure out that their diatribes at us were arguments for unfettered access to alcohol and stimulants. They felt that they were being racially discriminated against in having restrictions placed on access to alcohol. Outside the Northern Territory, similar restrictions apply to everyone. Others at the meeting joined the refrain and the four interpreters who were contracted to explain the reasons for our visit, as valiantly as they tried, were unable to communicate effectively with the rambunctious, inebriated men who dominated the meeting. The interpreters gave up and sat at the back silently. I explained to the gathering my own Aboriginal background, and the conditions of our

appointment, not as public servants, but as ordinary citizens who were employed in other fields – Mr Burrarrwanga in his tourism venture, Lauren Ganley at Telstra, and myself at a university. At this point, two of the men recognized me through their kava haze – I had worked with them in the 1980s on various ventures. Suddenly, a man I have known for many years, one of the so-called 'half castes' of the community, came to the front, took the microphone and pleaded with us not to use the term 'half caste' in our report.

I answered him, and addressing myself to the meeting, said, "I guarantee you that the term 'half-caste' will not be used in the report." In that meeting, the social poison of race theories, imparted by the early protectors and native affairs officials to the ancestors of these people over 60 years ago was revealed in the tirades against us who were thought to threaten the bizarre privilege of being a member of a community established and maintained to preserve racial purity. The history and purpose of these race theories, deployed in Australia since the nineteenth century in ongoing policy experiments, such as isolating and controlling remnant, unwanted populations to deprive them of citizenship of the Australian polity, was not a subject that had penetrated the intellectual life in these parts.

This passionately defended sense of entitlement based on racial ascription has been argued throughout the Aboriginal world in various ways.

The 'Bolt case' argued here in Melbourne before the court by the legal counsel group of Aboriginal litigants accused of falsely claiming to Aboriginal to obtain financial and other benefits, is a diametrically opposed and extreme manifestation of this phenomenon; 'racial' appearance of the litigants – all of them fair-skinned as the Justice Mordecai put it – did not fit the stereotype of the Aborigine and hence their skin colour was the grounds for the mish mash of half truths and gossip published about them in *The Sun Herald* in Andrew Bolt's column.

Justice Mordecai Bromberg ruled that by communicating words to the public that are reasonably likely to "to offend, insult, humiliate or intimidate another person or a group of people" and doing so "because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group," they have committed an unlawful act referred to in the *Racial Discrimination Act* (18C) as "Offensive behaviour because of race, colour or national or ethnic origin." It is alarming that Tony Abbott supports Andrew Bolt's campaign for "freedom of speech" – his presumed right to express racial hatred – and amendment of the *Racial Discrimination Act*, especially the removal of Section 18C.

Bolt and his defenders are crying about an imagined right to unrestricted "free speech." This argument works if you don't know about the legal protection against defamation, or the legal protections offered by the *Trade Practices Act*, for instance, with regard to false claims about products, or the duty to report factually and in accordance with legislation relating to public information in a prospectus or similar document relating to commercial or company matters. But this is, in an underhanded way, Bolt's point. Only people of a 'race' – never defined, of course—or adopting a 'racial ascription' and having an approved skin colour to match the stereotype are entitled to such protections, if I am to understand his arguments. His claim to the right of unlimited "free speech" also works with his followers if the presumption is that "white people" like him and his followers are not members of a "race," but normal. These are not explicitly stated beliefs but the undertow of a set of beliefs and attitudes that are so often difficult to

fathom if one is aware of modern day evolutionary theories about our species, *homo sapiens sapiens*.

It is a very common belief in Australia—only the undesirable "others" are members of a "race," and hence, being a member of a "race" is constituted is inherently a bad thing. This thinking is not so much spoken out loud but the silent assumptions of a code of "racial hygiene" that is older than this nation itself. It was ideas about 'racial purity,' 'racial hygiene,' 'the master race,' 'the inferior races,' a perverted idea about 'the survival of the fittest' and other such nonsense that led to the incarceration of Aboriginal people in reserves in the 19th century to prevent 'mixing' of the 'races' and later, the segregation laws that specified where and how 'half castes' and other 'castes' could live.

Many more attempts were made to destroy the identity of Aboriginal people.

In effect, they used various policies to cause terror.

People who live in fear, they thought, would not identify as Aboriginal and continue the struggle to hold onto their lands and their homes. These policies were used in every Australian jurisdiction in different ways, and continued in many places until the 1970s.

For those people who persisted in identifying as Aboriginal, however 'fair skinned' they were, to use the words of Mordecai Bromberg, life was miserable. As every person who has been raised by an Aboriginal parent or parents knows, we must be 'twice as good as the white man' to finish school and get a job and suffer the endless racist slurs while doing so; those 'fair skinned' Aboriginal people raised by an Aboriginal parent or parents must be twice as good and also suffer the endless racist slurs implied by idiots who say things like 'You don't look Aboriginal. Why don't you identify as white?'

What are our children and grandchildren to say to these fools? Deny their mothers, fathers, siblings, grandparents, and other family members because one of Bolt's ilk is offended by their Aboriginal identity? Why do some Australians believe that they

can intimidate and terrify Aboriginal people into sneaking away and pretending to be 'white,' to deny their Aboriginal parentage and upbringing and the values and worldview learnt in an Aboriginal family. There were many Aboriginal people who were so intimidated and did sneak away and pretend to be 'white.' They were the ones who sneaked back to take advantage of the miserable 'benefits' that came with policy reform in the 1970s. They identified only on paper when they filled in a form. They did not identify as Aboriginal in the community.

Many Aboriginal people called them 'very late identifiers.' I call them 'part time Aborigines.' And the reason is obvious: identifying as Aboriginal is almost certainly likely to lead to being run out school by racists, unemployment and jail. Why would you deliberately choose this as your fate if you didn't have to, or looked a certain way so that these misfortunes were not visited on you because of the way you look. The statistics tell the story.

That's what the 'Close the Gap' campaign is aimed at: reducing the Third World rates across almost every socioeconomic indicator.

What Andrew Bolt cannot suspect is that is that many Aboriginal people, including myself, are just as cynical and skeptical about all the claims made to 'Aboriginality' or, to use the even more modern and meaningless phrase, 'Indigeneity', by people raised in relative comfort in the suburbs. They cannot be described as disadvantaged, unless you take seriously the racist proposition that one is automatically disadvantaged by having an Aboriginal ancestor and a trace of Aboriginal 'racial' characteristics. Yet, they *are* eligible for special Aboriginal non-government scholarships, and, yes, as Bolt argued although in a highly defamatory way about the particular individuals he targeted, special consideration for enrolment in universities. I have served on scholarship selection committees, and I contend that economic disadvantage must be one of the grounds for selection, and not simply identifying as indigenous. It is nonsense to hand out scholarships funded by philanthropic efforts to people who are not economically disadvantaged. Being descended from an Aboriginal or Torres

Strait Islander person who lived before British Annexation of our lands is not sufficient reason by itself to hand out money to people who make a claim to being indigenous. This attitude of entitlement is poisoning Aboriginal society just as much as it poisoning Australian attitudes to indigenous people.