



## **3rd Advancing Community Cohesion Conference – Western Sydney University**

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**Speech**

**E&OE**

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Can I begin by associating myself with the previous Acknowledgments of Country, and also add my respect, as previously given. But on a personal note, having read a very warm Welcome to Country from Auntie Sandra Lee of the Darug Nation, Vice Chancellor, if she's not in the audience here, can it be passed on that I felt very warmly received with that very gracious and generous welcome.

The Department of Home Affairs is delighted, Vice-Chancellor<sup>1</sup>, Professor<sup>2</sup> and other colleagues, to be the platinum sponsor for this conference. We have been supporting it since its inception, and I intend to support the next one too. So, I'll send you the cheque straight after the conclusion of the proceedings!

Social cohesion is such a critically important mission for my Department and it riffs almost directly off the comments that Dr Aly<sup>3</sup> just made and Minister Tudge<sup>4</sup> before. Following two elected members, it's always wise for a public servant to stick to methodology, questions of administration, broad delivery and effectiveness of strategies, rather than the actual policy content. So I will studiously avoid any position taking on a policy, I can assure you. But I do want to engage with some methodological questions that might be of interest to participants over the coming days.

# # #

My thesis indeed today is that social cohesion—for reasons, in fact, that have already been touched on by Dr Aly—goes well beyond recognising cultural, linguistic and faith diversity, and combating racism, xenophobia and extremism, crucially important objectives that they are. Multicultural policies and strategies are necessary, but not sufficient; as indeed are strategies for harmony, tolerance or acceptance (if you choose to use the alternative, inclusion) and participation. Lest, however, we reify (in the sense used by philosophers, that term reification) notions of “society”, “community”, “the state” and “the public”, we should take some time (if not as scholars, because I'm not a professional scholar but I try to keep up as best I can with the literature) to unpack these terms and understand what it is that these meta-framing terms might mean, such as might be relevant to these proceedings.

When I commenced thinking about this presentation, I actually went back to the speech I gave to the first conference, in July 2015, to see if there was anything still current in it; and at least to gain some reference points from it. In that speech, I stressed the idea that living in civil society—and I deliberately use that term quite differently from how civil society has become used, but more in its 18th and 19th century sense that philosophers used at the time, basically, the private domain, the private sphere—we are recognised, respected, protected and empowered to live as we please, within law. This is the domain of our private lives, beliefs, customs, traditions and cultural practices, our family relationships, our relationships of love, our network of friendships, and social connections, and our sense of being, as expressed through work and other forms of social activity. Civil societies are all about our relational character as humans.

I would contend, respectfully, that diversity is therefore not a policy end in itself. Because it pre-exists policy. It pre-exists the State. It is outside of the State. It is rooted in our very nature as humans. So, the diversity of us as dignified individuals—which pre-exists policy, and I'll come to the role of the State in a moment—is an expression of the reality that our human identity as individuals, and as social beings, is not bequeathed or authorised by the State or by policy, but is grounded in our personal experience, our outlook, our upbringing, our ancestry, our cultural formation, the effects of evolutionary biology to the extent they have a bearing, and so on and so forth.

I also made the point in that address in July of 2015 that the State—and I referenced the sense of the 'State' used by the German philosopher, Hegel—is the realm of public institutions and the law which produces and enforces the framing rules of civic and civil association and practice, but does not generate the content of the social or the private. Difference therefore, by that logic, should not be an objective in its own right—lest “otherness” and “alterity” become meta-functions which determine policy. We are always already different. We are always already social. (I'm beginning to sound like Jacques Derrida.) We are always already private and individual. And we are always already graced and dignified, within whatever faith or spiritual and epistemic framework that you wish to apply.

(There's a fabulous book that I recommend to those of you who were interested in pursuing this element of my talk—a wonderful book that'll be read in decades to come compared to some of the other competitors that are out there—by philosopher Owen Flanagan called *The Geography of Morals*, which contains decades of research and was published in 2016.)

# # #

If you take those two ideas, the “**socio-cultural**” and the separate realm of the “**politico-legal**”, we have to actually confront and engage the question that social cohesion needs some way of engaging with these two different senses of how human existence is formed. They are of course not hermetically sealed, and I'm about to make some reflections on that.

By that logic social cohesion, in fact, turns on a broad spectrum of measures and practices:

- Economic stakeholding – including employment, property ownership, retirement benefits—a sense that you're going to be comfortable in your retirement and that you'll leave a material legacy for our children—the equitable payment of taxation for the provision of public goods, the amenity of living. For instance, there's a debate around congestion that arises from rapid urbanisation which might not be properly integrated with infrastructure planning and

delivery, something that would be particularly of interest to citizens and residents in Western Sydney.

- There is social capital – that's an integral part of social cohesion. And Dr Aly and Minister Tudge have already touched on the strong sense of social capital that we've been able to draw upon; that strong sense of community in the face of those recent tragedies, both the bushfires and now the floods.
- There's also state effectiveness – that gives confidence to people and underpins and undergirds social cohesion, also as evidenced by the reassurance in those recent fires when the state could deploy its capabilities at a time when communities and subnational jurisdictions were being overwhelmed—such as when the Australian Defence Force appeared off coastal towns in Gippsland to evacuate people who, not only had a fear and a dread, but very much were in some cases close to losing their lives.

So these Two Concepts of Cohesion—the “**socio-cultural**” and the “**politico-legal**”—I contend need to be integrated.

And that takes us to the very, very difficult question: ‘what is the unit of cohesion?’ My contention is that the framing unit of cohesion is the nation-state (and I'll come to why I believe that in the moment). In this case it would be Australia—the nation-state that occupies this continent and its surrounding islands, a community of 25 million citizens, residents and temporary visitors is the operative unit of cohesion.

Now, why do you have to choose? Well, if you just limit yourself to a **socio-cultural** concept of cohesion, it's applicable to all social formations: sporting teams, religious organisations, corporations, families, professions, trades—and these are all the object of inquiry by sociologists, anthropologists, social psychologists and others. And in this sense cohesion is associated, properly understood of course, with ideas of collaboration, collegiality, shared purpose, mutual regard and respect, tolerance, inclusion, whereby differences are mediated within the frame of the relevant social formation.

But I would contend that the **politico-legal** concept of cohesion necessarily works differently. It's got a different mechanism, where cohesion is less an integrating force and frame which binds together the disparate and the differentiated through mechanisms of inclusivity and harmonisation— which are very important. Rather, the politico-legal frame of cohesion is a determining force, a template, a framework within which differentiation finds its space and is protected. This force is concerned with the apparatus of power and its legitimation. And if we ignore questions of power we ignore the elephant in the room.

The “Body Politic”, I would contend, is the unit of cohesion, signified in politico-legal terms by the recitations often found in the preambles of constitutions – “We, the People”, famously in the American Constitution and replicated in similar forms through many constitutions since. This signifies popular sovereignty, which emerged with the nationalistic movements of the 19th century which saw the agitation for self-determination and liberty against the bondage of empire by self-identifying, self-determining national groups. Think of the emergence of the Greek State for instance in that century.

Australia, of course, had a relatively more peaceful formation—but that is not to elide or ignore the violence of the frontier—whereby colonies were established in the 19th century by the British, became largely self-governing (at least internally, if not for external affairs) by the mid-point of that century, and were federated in 1901, whereby on 1 January 1901 a new body politic, the

Commonwealth of Australia (“We, the People” – have a look at the recitation in the preamble of the constitution) came into being, and through a process of graduated independence, with the adoption of the Statute of Westminster, which gave us more external independence, became adopted in 1942.

Our High Court has over the years formed a very clear view that the act of Federation was an act of popular sovereignty whereby the Australian “people”—they were defined at the time, very narrowly defined, with limited suffrage and with the exclusion of certain others—formed and constituted a Body Politic. That’s what our jurisprudence is saying to us. We have to engage with that. You can agree with it, or not agree with it, but that’s what the jurisprudence of our highest court says. And yes, it was a very narrow franchise. But if you time travel back to 1901, Australians, at the time, had a much more liberal and open view about franchise than just about anyone else on Earth, with the exception of our New Zealand cousins.

# # #

And so for the 4th Advancing Community Cohesion Conference—which I’ve already agreed to underwrite—I would respectfully suggest that legal scholars, constitutional experts, political scientists and perhaps even philosophers of government and the State, be also invited to address this other sphere: the politico-legal sphere of cohesion. Because we very seriously need to examine the notion of the Body Politic, and its constitution, which is the apparatus of power whereby—whether you agree with the substantive decisions, or not—policy decisions are made, laws and regulations are codified and enforced, administration is effected, courts determine criminal and civil liabilities, revenue is raised, markets are formed and regulated, and public goods are delivered.

We cannot ignore the empirical and historical fact that for now, and for the foreseeable future, public goods are organised and delivered on national lines. Whether it’s the making of the laws that I’ve just mentioned, the rule of law itself, taxation, welfare, public safety, immigration, border protection, education, health, the framing of labour markets and employment law, consumer protection and environmental protection, and so on and so forth. Yes, we can acknowledge that there are international obligations that affect our domestic decision-making. But at least, in the Australian constitutional context, these are all mediated through sovereign lawmaking by parliamentarians. And yes, nation-states often have to work in partnership with subnational jurisdictions at a state, provincial or local level.

If it’s contended that the nation-state is somehow an illegitimate expression of bigotry or racism, founded on and determined by some colonialist logic—and I did read with interest the submission of this University to the Senate Inquiry on Nationhood, from which I’ve paraphrased that foregoing sentence—then the very basis for the legitimacy of laws and public goods, and how we arrive at a consensus around the making of laws and the delivery of public goods and all else besides, is completely dis-established. So, what replaces it?

# # #

The nation-state has to be able to operate, in this world at least, as a sovereign unit, which is able to make laws and enforce them, and secure its borders. The cohesion of the national unit is proved when it’s tested in times of war and crisis—where our survival and our resilience is tested. Courts have found there is a significant constitutional capacity to act as required to ensure survival and

the continuity of essential functions of state. Courts have talked about the defence power, the executive power, and the nationhood power to these ends.

You saw recently the Prime Minister talk about an extended constitutional capacity to act in the circumstance of natural disasters, which create effects which are beyond the capacity of local communities to deal with, or sub-national units, such as states and territories—in partnership with them of course. This focus of dealing with climate disaster risk, using the constitutional capacity of Australia as a nation, will only intensify as climate risk intensifies.

Border controls related to the coronavirus have been mentioned a couple of times this morning. I would contend very respectfully—as someone who has been in all the key decision-making meetings and has advised along with the Chief Medical Officer on what should be done in this context—they are not a colonialist logic of biopower which are somehow inherently racist and oppressive. I can absolutely assure you that the considerations have all been solely connected with public health advice, with very careful consideration being directed towards the public interest, including in relation before they made the decisions that they made, about the potential impacts and the legitimate concerns that would be held by our Chinese Australian brothers and sisters in terms of the perceived features of the decisions that have been made. Minister Tudge himself referred, unprompted and spontaneously, to the fact that he is concerned about some of the signs that are emerging of people being vilified completely unnecessarily, unfairly and illegitimately. I meet and speak with him every day, and in fact, we provide data to him every day on how those issues are tracking. As the Minister indicated, we are very alert to these issues and are very engaged with our Chinese Australian communities throughout the land.

Now when we're focusing on crises, wars and strife, the State can utilise those constitutional powers that I mentioned earlier: to conscript, to acquire property with fair compensation, to suspend rights ordinarily available in peacetime, to detain persons, and to engage in military operations which, in international law, is sanctioned violence in the interest of the State in the name of “The People”.

Without a process and a framework to legitimate such actions and to ensure that they do not infringe liberty, that they are lawful—except to the extent that exceptional certain measures are warranted, in which case, the legal basis has to be very carefully considered and acted upon—then tyranny follows. So ignore the politico-legal dimension at your peril in discussions about the community and the society in which we live, and focus exclusively on socio-cultural dimension, again, at the peril of tyranny.

Beyond the exceptional circumstance of war and crisis, ‘nation-building’ itself—to use that phrase—is a long-term task of social and economic development. It's seen in infrastructure and transport programmes; urban development; immigration (in 1945, the Labor government at the time called the immigration programme a ‘nation-building’ programme); the development of agriculture, mining, manufacturing; the building of retirement wealth—that I mentioned earlier. These are all inter-generational policy objectives. And again, the policies are framed with the nation unit as the operative unit of cohesion. Laws are made, markets are regulated, and policy incentives are created.

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When we look at social capital—an essential ingredient of how the Body Politic works—trust and cooperation in the common interest creates that politico-legal consensus that I've been speaking of, which in turn generates a platform across time and space for building these institutions and assets for subsequent generations beyond, our immediate family.

Putnam and Fukuyama have focused over 20 or 30 years of research on the notion of sociability—grounded in our civic networks, our private associations and our working community groups—which create these communities of shared values, whose members are willing to subordinate private interests for larger social goals. These are 'moral communities', to use Fukuyama's phrase, that generates social trust and norms of generalised reciprocity.

But at a micro-scale, we could say the same thing about outlaw motorcycle gangs. We could say the same thing about the Mob, in real or as depicted in the movies. I've got to tell you that serious organised criminals that operate for real are much worse than anything you see in the movies. The movies actually dial-down their violence, but they've got very high levels of social cohesion. They've got high levels of social trust amongst themselves. And yes, it's enforced through violence for those who wish to break the code. But you could say the same thing about fascist Stormtroopers, who formed collective groups after the First World War, going around hunting communists and other adversaries, as they saw it, who were going to undermine the national order.

So, yes, high levels of social capital are vitally important. But directed to the wrong end can be toxic. That is why I urge all the scholars working in this area, and those who are engaged in these proceedings, not to make a fetish of, and not to reify social trust and social capital without context, lacking the frame of politico-legal moderation of power. And certainly not without what Fukuyama calls in his more recent work "creedal national identity", which are built not narrowly around shared personal characteristics, lived experiences, historical ties or faith communities, but rather around agreed core politico-legal values and beliefs. And I particularly refer you to his work on *Against Identity Politics*.

I would argue that Australia has a very powerful and organic cultural disposition to both collective action and freedom at the same time. It's deeply rooted in our colonial experience. Here is not the place to unpack the notion of the Australian Legend, first popularised by Russell Ward in 1958, other than to say, elements of it still endear and still suggest themselves. But it's incredibly narrow, built on a masculine notion of "mateship"; and certainly the Australian Legend needs to be increasingly broadened to include our First Nations brothers and sisters, the story of women, the story of migrants and refugees. However, there is something in the Australian Legend with its focus on private freedom, private autonomy, but coming together as a collective—the notion of mateship unpacked for its gender restrictions—that endears itself to us today.

# # #

Now, this is perhaps the more controversial and potentially more confronting part of my address, but it extends logically from what I've been saying:

The idea of the Body Politic carries with it, regrettably in this fallen state of the human condition, "exclusionary" features and capacities. You can't get around that. Consider the definitions and the etymology of terms such as 'sovereignty', 'jurisdiction', 'citizen', 'alien'—the word 'alien' is actually in our constitution at section 51(xix)—'territory', 'borders', 'quarantine', the 'armed defence' against

combatants known as the 'Enemy'. If we don't engage with these terms and put them in a framework where they can be moderated, controlled and ultimately decided through a democratic process, then the alternative is available: that is that these forces and functions are mobilised by non-democratic forces. So again, ignore the politico-legal dimension at your peril.

Let me finish with some, perhaps theoretical, observations that underpin these methodological observations.

If it's taken that social cohesion beyond our immediate social network of about 100 to 200 people—depends on which social psychologist or anthropologist you read, but we'll go with Dunbar's constant of about 150; as opposed say to the Facebook model of a social network, where apparently hundreds of millions of people are somehow connected, which in anthropological or social psychological terms just simply doesn't make sense—social cohesion has to imply a unity of Others (using a Self/Other distinction borrowed from psychology and philosophy) who by definition cannot know each other, because (in phenomenological terms) we're Strangers to one another. And yet, we can constitute an identifiable, if not bounded, finite group that owes obligations to one another, who recognise those obligations, even if those obligations are owed to strangers.

My contention has been, throughout this talk, that the elemental Group for the purposes of such politico-legal organisation of obligation—law making, rule setting, compliance and enforcement—is the nation-state. That's potentially controversial, but I would argue certainly not an unempirical observation. It goes without saying, the moral equivalence and inherent worth and dignity of all humans is accepted. But does it create the same level of obligation to all humans? Or does it ripple out from our family, our friends, to our neighbours, to our fellow citizens—many of whom are strangers; we don't know everyone in our community of 25 million people and it would be impossible to know them all—and then to humanity at large? To deny the existential reality of differentiated obligations and feelings of obligation creates, I would argue, the space for radicalised exclusionary discourses, which I suspect most, if not all attendees here today would find repugnant. If we are to avoid falling into the trap of calling some of our fellow citizens 'Deplorables' for being concerned or anxious about developments in their society, we have to think about ways to engage with all members of the society in the community.

It's my respectful contention to this audience that the best way in which to moderate power, to make decisions about future strategies, and to allocate resources is through the mechanism of the nation-state with all of the apparatus through the legislature, the executive arm and the judicial arm that comes with it. Power has to be mediated and legitimated through an apparatus of laws, regulations and administrative and judicial decision-making. And it has to be able to be contested without recourse to extra-constitutional action.

My contention is that social cohesion has to be generated and reproduced through structured practice, to which we grant consent, even if we disagree with the substantive outcomes. That is the genius—and genesis indeed—of liberal democratic institutions and practices.

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It just remains for me to wish all participants all the very best for this conference. I very much look forward to receiving reports, and indeed reading some of the papers that look, just on the face of their title, inherently fascinating.

I would urge some discussion, at least, about how do we reconcile and how do we bring together these different interests and perspectives. And if there is a different unit of cohesion to be settled upon, I certainly would like to hear about it.

Thank you for your time and attention and I look forward to hearing reports of what I'm sure will be wonderful conference.

Thank you very much.

[ENDS]

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<sup>2</sup> Professor Ozdowski (as above)

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