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OPINION

Response to Warren Mundine on constitutional recognition

[by Mary Graham and Morgan Brigg]

Mary Graham, Kombumerri woman and Adjunct Assoc Prof at UQ acknowledges 'Warren Mundine has introduced crucial and sorely needed insight to national debate. Image: ChonicleLive

On the eve of a momentous Indigenous gathering at Uluru, Warren Mundine has introduced crucial and sorely needed insight to national debate: progressing meaningful constitutional

reform requires not only support by Indigenous people, but recognition of Indigenous governance and political systems.

Mundine is in some respects simply reading the writing on the wall arising out of the twelve First Nations Regional Dialogues that will culminate in the Uluru Australian First Nations Constitutional Convention 23–26 May. Indigenous people will not accept a minimalist form of constitutional recognition. But when Mundine references the need to recognise the 'kinship systems and governance' of 'the mobs to which each of us still belongs' he crystallises a further important insight.

As Mundine notes, 'there were hundreds of distinct societies across Australia' at the time of European arrival. He could have added that they had developed sophisticated systems of kinship and Law, and a custodial ethic governing relationship to land. These systems supported an ordered existence that was recognised among mobs through diplomatic protocols and complex systems of trade and exchange.

Aboriginal people, in effect, ran the country. Despite this, debate about constitutional recognition has paid practically no attention to Indigenous political systems or governance. Instead, debate has been conducted predominantly on European-Australian terms that perpetuate the claim that the constitution, and white law, rules the Australian continent.

The constitution and white law are, of course, superordinate in terms of the exercise of raw power – Australia is a settler-colony. But the debate about constitutional recognition of Indigenous people is much more about political authority than it is about raw power. It is about what sort of a political community and future we – Indigenous and non-Indigenous – can fashion for ourselves in the 21st century.

To the extent that constitutional debate and reform proposals solely reference the political roots of the existing constitution the prospects for bringing about meaningful reform for all Australians are profoundly compromised. A debate conducted in these terms cannot find ground in Indigenous Australia, and this is one of the reasons that Indigenous people havereclaimed the debate in recent regional dialogues.

Debate on the colonial terms of European-derived governance also destines non-Indigenous Australians to monologue rather than dialogue. Without engaging Aboriginal governance there is no scope for growth or change; for finding a footing and peace in this continent that is forged in defensible relationship with First Nations.

Constitutional reform on settler terms represents the perpetuation of a fundamentally colonial constitution rather than its reform. It has no moral authority. To focus primarily on making a deal, whether by courting constitutional conservatives or pursuing minimalist change misses this fundamental truth and short-changes everyone.

In this prickly situation Mundine offers a suggestion which is simultaneously profound and workable, including for constitutional conservatives.

Constitutionally requiring parliament to recognise local or regional Indigenous mobs, rather than seeking to create a national body, connects directly with Aboriginal governance systems. This is a fundamental form of recognition that is, as Mundine points out, ‘anchored and accountable to an identifiable group of people’ but does not provoke objections about a divide between Indigenous and non-Indigenous Australia.

Mundine’s proposal is also practical in other ways. Aboriginal governance has been disrupted and, among many mobs, severely damaged by colonialism. Efforts to re-strengthen Indigenous governance are underway, but time is needed before tackling the challenge of how to best engage with the state and develop nation-wide forms of representation properly grounded in Aboriginal Law and political systems.

The strength of Mundine’s proposal is that it makes a fundamental step that links directly with Indigenous Law and political systems without taking anything off the table about what might come down the line in terms of further engagements between the setter-state and Indigenous groups, and without scaring conservatives.

Our claim is not that there is no merit to progressing treaty, or other strong suggestions such that have emerged through debate thus far. However, Mundine’s suggestion provides the pathway for both recognising and re-strengthening the fundamental building blocks that are necessary for meaningfully addressing settler-indigenous relations in Australia and bringing about meaningful political reform.

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