

## Noel Pearson, Declaration launch speech, 13 April 2015

Let me pay my respects to the Indigenous peoples of this fine city, one of the greatest in the world. Let me thank Damien and Julian for their efforts for approaching the question of Indigenous recognition with intellectual rigour and open-heartedness.

Professor Greg Craven is correct in his characterisation of the political challenge that is at hand. A successful referendum on Indigenous recognition requires a meeting of minds between Indigenous people on the one hand, and constitutional conservatives on the other. This can't just be an agenda championed by those traditionally supportive of Indigenous rights. A referendum will only succeed if it is championed by both the Left and the Right.

When I first started trying to have conversations with conservatives about this issue, I have to admit, there was trepidation. It is not easy to meet with people, and try to persuade people, who in effect carry veto power over this referendum's success, and therefore over the future of reconciliation in Australia. You can mount a no case and kill the referendum. There were those calling the Expert Panel members 'extremists' for recommending what some conservatives felt was a 'one clause bill of rights'. I was taken aback by that reaction.

The Panel members and I felt that protection against racial discrimination was of utmost importance for Indigenous people. Look at the history of racial discrimination that Indigenous Australians have endured, under our constitutional arrangements. Yet here were conservatives saying judges should not be empowered to decide what is discriminatory or not. That is easy to say when one has never been subject to racially discriminatory laws. For Indigenous Australians, there is a legitimate desire for real constitutional change, to put measures in place to do things in a better way. I was born a non-citizen, not counted as an Australian under the Constitution. I grew up seeing discrimination first hand. Constitutional recognition needs to provide some answer to that problem. Many times in these conversations, when conservatives have said no to the idea of constitutional recognition, I have thought: listen, this is our country too. *This is our country too*. We deserve to have our interests constitutionally recognised. We deserve to now be made part of the constitutional compact from which we were excluded in 1901.

This has often been the difference of historical perspective that can hinder progress in this conversation. Conservatives want to maintain the integrity and nature of the Constitution as a minimalist rule book for Government. But for Indigenous people, since William Cooper, since the bark petitions, the Makarrata, the Barunga Statement, the post Apology Yolgnu petition – this has always been about finding a way to constitutionally protect Indigenous rights and interests.

So when I first started talking to Freeman and Leeser about this issue, there was very little common ground between us. They thought the issue was just about symbolism, but for us it wasn't, and it never has been. For constitutional conservatives, the Constitution is not the

place for values, aspirations and rights clauses, which would in their view hand too much power to the judiciary. Clearly there are very important rights the Constitution does protect, but I have been largely persuaded by their broader point. The Constitution is a rule book for government; it is the place where important national power relationships are articulated. It is not necessarily the right place for rich symbolism and poetry.

I have come to agree with Freeman and Leaser's argument, but for different reasons. If we are going to have constitutional change, it needs to do more than just insert poetry into the Constitution. It needs to do something about the rules governing Indigenous affairs in this country, to make life practically better for our people.

Damien and Julian's idea that symbolic statements recognising the indigenous history and heritage of the nation can occur in a Declaration is therefore one that has great merit as an important element of a package of reforms, including constitutional reforms, to effect Indigenous recognition. As I argued in my Quarterly Essay, poetry and symbolism can happen outside the Constitution. But practical reform needs to happen within it.

Statements of great symbolism and aspirational value can help promote national cultural and political change. The Declaration of Independence had a profound impact on the American national identity, setting in place values of human equality that have had deep political influence. The Treaty of Waitangi in New Zealand is not of itself legally enforceable unless incorporated into legislation, but its principles have come to capture the nation's imagination. These days, the treaty is taught in schools, and Maori culture is celebrated as the New Zealand culture. Maori is declared an official language in legislation. Place names carry both their English and Maori names. Maori culture is included in citizenship ceremonies. It demonstrates that declarations of national values can have lasting impact. I have come to see the value in pursuing symbolic and poetic recognition of the nation's Indigenous history and heritage in a Declaration. It can happen in a richer and fuller way outside the Constitution.

But equally, if the Constitution is a rule book which gives Parliament its powers and also incorporates rules and procedures to restrain the abuse of that power, then where are the rules and procedures governing the relationship between Indigenous people and the government? This is our country too. Where are the constitutional rules and procedures ensuring that Indigenous Australians are heard by the majority might of Parliament? Currently, the only articulation of this important relationship is through discriminatory race clauses, implying that the relationship is one of exclusion of our people. Those discriminatory clauses should be removed, and the Race Power replaced with an Indigenous power, to support necessary laws for Indigenous affairs. And the relationship between Indigenous peoples and government should be constitutionally articulated so that it is just and fair, rather than characterised by exclusion and discrimination as was the case in the past.

This need not mean judicially adjudicated rights clauses or symbolic statements in the Constitution. But it could mean practical rules and procedures to ensure that Indigenous people get a fair say when Parliament makes laws and policies about us. After all, our federalism is based on the principle that minority interests should be heard. This is what the check and balance of the parliamentary process is all about. The Constitution ensures even the most sparsely populated States get an equal voice in the Senate. Australia has no bill of rights. The Constitution mostly protects citizen's rights through democratic procedures and federal power sharing. It creates a productive interplay of competing interests.

Mechanisms recognising Indigenous interests should be part of this check and balance system. There should be a procedure to ensure Indigenous people get a say in the parliamentary process. This would be a way of procedurally and democratically protecting Indigenous rights and interests, in keeping with the practical and procedural nature of the Constitution. Parliament could be procedurally required to consult with and consider the advice of an Indigenous body in its law-making for Indigenous affairs. A handsomely drafted and highly practical new Chapter of the Constitution would address Indigenous concerns to be better heard in government decisions affecting our interests, and also conservative concerns to maintain the primacy of the political process over judicial review. Rather than letting unelected judges decide what is in the interests of Indigenous people, it would give our people a chance to constructively engage with Parliament, when laws are being made about us.

Such a reform could yield real practical benefits for our people. Indigenous policies could be greatly improved if Parliament had ways of properly heeding the advice of and engaging in genuine dialogue with Indigenous people. We would have a voice in the national system. To me this is the shining prospect.

I started this conversation asking conservatives: "If you are saying that a racial non-discrimination clause in the Constitution is not the answer, then what is a better solution? What can be done to ensure things are done in a better way, and to help ensure the discrimination of the past doesn't happen again?" I think there is a reasonable answer to that. There is a sensible solution. We can do things in a better way. I am grateful to Damien and Julian for their work on this and their ongoing commitment to achieving something good for Indigenous Australia and the nation.

Indigenous Australia will also be crucial to this process. Indigenous people have a range of different views and ideas, as all people do, which need to be properly discussed. There should be national Indigenous conventions so that Indigenous people can grapple with these ideas and express their views on the package of reforms they would support. Any constitutional recognition package needs to have the endorsement of Indigenous Australia.

Finally, I want to observe that there is real good will in conservative Australia, and Australia at large, towards Indigenous people. I urge Australians to keep engaging with this question

with intellectual rigour and open-heartedness. I think that if we continue to work together, we can achieve something better for the nation.