

Noel Pearson Presentation CCJP June 16 2021

Mr Noel Pearson is not a stranger to any of us. He comes from the Guugu Yimithirr community of Hopevale on South Eastern Cape York Peninsula.

He is a lawyer, founder and Director of Strategy of the Cape York Partnership and founder and co-chair of Good to Great Schools Australia. He also co-founded the Cape York Land Council and helped to establish Apunipima Health Council, Balkanu Cape York Development Corporation and Indigenous Enterprise Partnerships. Noel served as a member of the Expert Panel on Constitutional Recognition of Indigenous Australians and the Referendum Council.

He came to prominence for most of us as an advocate for indigenous Australian rights to land, a position he maintains. Since the end of the 1990s, his focus has encompassed a range of additional issues. In November 2019, it was announced that Noel Pearson would be one of 20 members of the Senior Advisory Group set up to help co-design the indigenous voice to government. In 2021, the Sydney Peace Prize Foundation for the first time named a statement, the Uluru Statement from the Heart as the winner of this year's prize.

The citation reads, "For bringing together Australia's First Nations Peoples around a clear and comprehensive agenda; for healing and peace within our nation and delivering self-determination for Aboriginal and Torres Strait Islander Peoples, that enables Australia to move into the future united and confident."

Accepting the 2021 award in November will be the First Nations leaders and courageous drivers of the Uluru Statement from the Heart Professor Megan Davis, Pat Anderson and Noel Pearson. Noel, we are delighted you are giving of your time, passion and expertise to us this afternoon.

NOEL PEARSON:

Thank you very much Anne for that introduction and thank you everyone from the Coalition for this great invitation. I pay my respect to the First Nations from all around the country and bring greetings from our First Nations in Cape York

Peninsula. I want to talk about my own personal views about social justice in the first instance. It's something I think about a lot. It's been a driving agenda in my public life and in my community and I've been working with my people in the Cape and in my hometown on agendas of justice and with colleagues from around the country, other First Nations colleagues around the country.

The first agenda for justice that I worked on as a university graduate, fresh out of Sydney University, was the agenda of land. I'd been following the Mabo case as a law student at Sydney University, a law and history student. I was aware of all of the historical and legal background of that case and what it was seeking to argue and I literally finished my studies at the time of the Mabo decision. And I became convinced, like most everyone else, that Mabo offered an opportunity for us to come to grips with this fundamental issue of justice being land rights.

I had, towards the end of my university studies, worked with my elders from Cape York Peninsula in establishing a land council for our people. We were the last region in the country to get organised politically. We had been rather isolated in the history of mission and government settlements and had not had the experience of the Northern Territory or the Kimberley or other places in Queensland that have got organised on land rights. So when I established the Land Council with my elders in 1990, we were starting late in the day. Nevertheless, those first 10 years of my life working with my elders, who are now almost to the last gone, were really a blessing in my youth.

Thirty years later I look back and we're very happy with the progress we've made with turning Mabo into the opportunity that it represented for us. In two years' time we will settle the last of our land claims in this region, a region the size of the state of Victoria. And from where we were 30 years ago, it's been a tremendously hard but successful battle for justice in relation to the question of land, the social justice of land rights.

Ten years into that work however, I became very conscious that we needed to work on the social and economic dimension of our crises. I was very concerned about the deteriorating social circumstances in my home community and in my neighbouring communities in Cape York. I worked with other people to focus on the social and economic problems even as I handed the baton to other Cape York leaders to continue the justice fight for land rights.

So I was concerned about social breakdown in the communities, families in crisis, children being removed from families at increasing rates, the rise in incarceration and juvenile detention, the rolling crises of substance abuse and all of the attendant health and mental health problems caused by those epidemics and substandard progress in education and employment and economic opportunity. So that became the focus of my work from about 1990 onwards.

My thinking about social justice is that its achievement requires battles on two fronts. One, battles that aim to reform the big structures of society so that they enable marginalised people to take a fair place in the country and in the economy. That they're able to husband good families and communities and have the resources to what later became a byword for us, the words of the Nobel Laureate Economist Amartya Sen, who really articulated for me the most succinct purpose of policy. And I think it is, as Sen put it, that all our people should have the capabilities to choose lives we have reason to value, and that has been our byword for the last 20 or so years.

We want our people to have the capabilities to choose lives they have reason to value and what was very much foremost in my mind is that as well as the structural challenges that we faced, there's also a personal agency that we've got to tackle if we want to achieve social justice. We've got to tackle the problem at both ends. We've got to reform structures and these structures are legal, they're political, they're about power, they're about government, they're about laws, they're about institutions. They're also cultural in the fact that it is embedded in the thinking of the society and the country and the nation.

So in the pursuit of justice, we naturally have to face some of these structural barriers to people being able to enjoy a good life, being able to choose lives they have reason to value. But at the same time, I became very convinced that agency was also the other end of our challenge, that our people needed to get up and take charge and that we needed to understand that structural reform alone wasn't ever going to solve our predicament and we needed both.

We needed personal agency in our communities, in our families as individuals and as a family and as a community. We needed to rely on our own agency and build our own self, our own sense of empowerment and so I've been very strong about that in our work in Cape York. We need to build families in the most basic

ways. Basic needs of families need to be addressed so they can have power. Their domestic and material needs need to be attended to.

So my work over the last 20 years has centred around five basic things that we think every family needs. We think every family needs financial resources and to manage the resources that they have so that they've got solutions for the most domestic basic needs. If I can support a family in that most fundamental of ways, to husband the resources of the family so that they can have solutions with food, shelter and all that they need to provide for their family, I see that as the starting point.

Then we need to attend to the health of all the family members and usually that is as much about engaging in the health services that are available and taking action as families, as parents to ensure that we're availing ourselves of health solutions.

Thirdly, that we get behind the children in their education. Absolutely fundamental, starting with attendance at the school every morning. Supporting the children in their education. Every illiterate and uneducated parent can nevertheless lay the foundations for their children.

The fourth thing is a prideful and safe home, a home that you have pride in, a home that is safe and a home that gives you all of those things other than a roof. Not just a roof. A home is more than just a roof against the wind, a roof against the elements. A home is more than that and I think families deserve that and need that. And of course all of that around parenting and the ability to earn income so that the things that families need and desire, they're able to get together in a basic way.

So that's our work in Cape York Peninsula, starting around the family table. Let's do a budget. Let's make sure we attend to the family's health. Let's back the children in their education and let's live in a prideful home. And let's start with parenting. Let's show parents that if you get these things together, your children can fly. Really, you're going to build children who are going to be able to then take on the structures. Educated children are the ones who are going to be able to combat and confront and reform structures. Empowerment and social justice have at its most basic grass roots form the empowerment of families in the most basic ways.

So that's been our theory in Cape York, that we need to build the thing from the ground up, even whilst we're pursuing justice in relation to land and we're thinking about the structures that impede good people. I know as well as anyone that there's lots of good striving people who are impeded by structures in Australia, structures of disempowerment, structures that block people from being in a position to choose lives they have reason to value.

So our work began 20 years ago on the agenda of structural reform, even as we faced our own community and said we need to take personal agency. There was some worry about our agenda in Cape York in the sense that we talked about responsibility. But our view of responsibility is that it is the first power. If you want the power, you must first take responsibility. And the power of self-determination as indigenous peoples is rooted in the idea of responsibility. People taking back responsibility for their destiny because the structures of Australia have turned us into mendicants and disempowered us. It has been government that has determined what our place in Australia should be and what should be done about us as a problem. What should be done about us as a problem?

My thinking was very much inspired by Bill Stanner's work, his age old observations about our place in Australia and the torment of powerlessness that Bill Stanner wrote about in his famous Boyer Lectures. So we began thinking about how is it that a three percent mouse of First Nations Australia is able to deal on a level playing field with a 97 percent elephant?

The single characteristic of our situation as indigenous peoples in Australia is that we are an extreme minority. We're a minority but not just that. We're an extreme minority. With three percent of the country's population, we can never participate in an empowered way in the current design of our nation's democracy. Spread out over electorates, there are very few situations where indigenous voters in an Australian electorate can determine representation in either a provincial or a Commonwealth Parliament.

Nevertheless, this issue of the extreme minority status has got to be confronted and we need an effective voice that is heeded in relation to policies and laws that affect us, so that we have some say over the structures that affect our destiny.

Parliament doesn't do enough work for us. It is very difficult. I've been involved in 30 years of public life as an advocate for my people and I can say that very rarely over those 30 years have I seen either the Queensland Parliament or the Commonwealth Parliament put in the time and attention to do some work on behalf of its indigenous citizens. I think the last time there was any kind of substantial law relating to indigenous peoples is a very long time ago.

If you propose anything that might need the attention of the law making powers of the Commonwealth, you have to join a very long queue and your subject matter is of a very low priority. The current discussions about a Voice structure, a Voice representative body is the first time in ages that the Parliament is engaged in a process of potentially considering making new laws on the subject of indigenous affairs.

And I could think of a number of areas where I saw a need, a long and outstanding need for the Parliament to do some work on behalf of its indigenous peoples. So a Voice that had a role to speak to the Federal Parliament in relation to the exercise of its law making functions that particularly relate to indigenous people is a long and outstanding need.

I thought there was a chance that we could get constitutional reform during the time of the Howard Government. Because of the nature of our constitution, it requires a majority of voters in a majority of the states to vote yes in a referendum. You particularly need the planets of the Parliament and the country to line up in a way where bipartisanship is possible.

My own view has been, and still is, that you need Nixon to go to China on indigenous reconciliation and constitutional reform. In other words, you need a conservative leadership to lead it. If the conservative leaders aren't leading it, they spoil the chances of advocacy by progressives. If you look at the Australian constituency around the clockface from left to right, it seemed to me very plain that if we prosecute constitutional recognition as a left side of the clock to the right side of the clock issue, we kind of hit the point of confrontation around midday or should probably call midnight and we have a confrontation between the left and right. We have to enjoin people on the right side of the clock.

So our strategy has been to talk with reasonable people at 4 o'clock. There's no use me going to Glebe and West End and Fitzroy. That's 7 o'clock in the morning. We have to go to 4 o'clock in the afternoon and try to get decent Australians from the right end of the clockface to say, "Yes, I can and will support this recognition."

This is just the reality of us trying to get not 51 percent of the vote. Our aim has got to be to get 90 percent of the vote. We have got to imagine how it is that we can get 90 percent of the country on board in a referendum and that means we must pitch our argument and we must be mindful of the counter arguments from the right. I think we make a grave mistake if we think that we can win this thing as a 51 percent proposition from left to right. This has got to be an 80, 90 percent proposition from the right to the left. We've got to aim our strategy towards around 4 o'clock on the clockface.

So I thought on the basis of that, that there was a chance after the 2004 election that the most conservative political leader in the country's recent history was the one that had to be persuaded to lead on constitutional recognition and I actually thought we had a moment there where that could have been possible. The moment wasn't seized but nevertheless I want to remind you what happened.

John Howard went to the 2007 Federal Election with a commitment that within 18 months of the election, he would put a question at a referendum of the Australian people to recognise indigenous Australians. It was his first speech of the campaign at the Sydney Institute and the speech was entirely about making the case for doing this. The first speech of the election campaign was about indigenous recognition.

He proposed a strict timetable of 18 months to move to a referendum. Of course he didn't win and we had the Labor Government of Kevin Rudd and then Julia Gillard and Julia Gillard set up the expert panel process in 2011. We now have gone through 10 years of parliamentary and public inquiries, at least three processes, four Prime Ministers. I think we're on to our fifth one. There's been a pretty extraordinary policy process involving parliaments and governments since 2011.

Every conservative government, Liberal/National Party government that has gone to an election in these 10 years has had recognition as part of its agenda, as part of its policy commitment, including the most recent election where Scott Morrison's LNP have an explicit commitment to recognition and that explicit commitment was reiterated at the opening of this Parliament. The Governor General spoke to it and \$160 million was set aside for the conduct of a referendum in the forward estimates and \$7 million was set aside for the design, the legislative design of the voice which Minister Ken Wyatt has been undertaking over the past 18 months.

Our polling is telling us, and we use Crosby Textor, the LNP's pollsters, Crosby Textor tell us that the time is propitious for a successful referendum. The number of Australians that would vote yes in a referendum and those who are undecided has diminished in favour of people who are in favour and the number of people saying no has grown smaller. Our big challenge is the party room. Liberal voters are telling our pollsters they would vote for a voice to Parliament but Liberal politicians are equivocal about whether they would allow this question to go to a referendum.

It is a very difficult situation where people are ruling out whether or not the government and the Prime Minister in particular has dismissed the voice referendum as an option. Our view is that the game is still very much alive and that our best scenario is that both parties will make a commitment at the next election to proceed to a referendum within 12 to 18 months of the election. That is the best case scenario for us that both sides of politics will commit to a referendum timetable at the next election.

I'll say one last thing before I go to a discussion and that is that one of the crucial questions is whether the legislation that gives the details and the structure, the meat on the bones so to speak of the Voice, that legislation, whether it should precede a referendum or follow it and my argument along with many of my colleagues is that the legislation must follow the referendum.

If we go to a referendum after the voice has been created, I don't think that's possible. The thing will have been dealt with in law and a referendum will become redundant. We will have simply legislation like ATSIC and like the five other models that have preceded ATSIC. We will just have a body that has been set up by the Parliament that is vulnerable to extinguishment, vulnerable

to repeal. It certainly would not fulfil the aims of the Uluru Statement from the Heart.

So there is this issue that I'm at odds with Father Frank Brennan and other advocates who say that we should try before we buy. That's the argument. Let's try before we buy and I have very firm views against the advisability of that. We will miss an enormous opportunity, that has been in the making for, if you count 2011, for 10 years. If you count 2007, well that's 14 years and if you count all of the work that had to go in to bring John Howard to the position he got to in 2007, you're talking about 20 years of work that would go down the drain if the try before you buy people prevailed in this strategy.

So I'll leave it there. I hope that's not been a too tedious recapitulation of the history of this issue. I just think from a personal point of view, that what we're trying to do from the grass roots and to empower our people, to give them agency in their own lives, to take charge of their families, to take responsibility for their communities and their futures and their young people, even as we're building that responsibility from the bottom end, we need the structural reform at all levels, but particularly at the apex. Apex is the constitution. If we don't deal with this issue of recognition, then the whole disempowering effect of that lack of recognition cascades down the entire pyramid in a way that

Questions

Angie

Noel, thank you so much. I learned so much just then about the history of how everything's been moving along at such a snail's pace. I cannot get over your resilience and your tenacity. I really want to help in any capacity I can and listening to you, I was just wanting to know what are the counter arguments that people would put against the constitutional change?

I think the line that opponents of recognition have been putting out since the beginning is whether this is a racial initiative, whether recognition of Aboriginal and Torres Strait Islander people is a racial initiative or whether it is a recognition of indigenous peoples' initiative. And of course I saw that it's a recognition of indigenous peoples. This is not a racial initiative.

If we were like the Saami people of the North Pole, we would be blonde and blue eyed and campaigning for recognition. Indigenous peoples all across the planet are a great diversity. They're not separate races. They're from a single human race, even as ethnically and culturally they may be very different to each other. It is the thing that makes us indigenous to the land that is the basis of recognition.

But our opponents like Andrew Bolt and the Institute for Public Affairs have been and are quite dishonest in that they say, "Oh, the recognition you're seeking is a racial recognition and you're seeking to set up racial separatism in the constitution." So that is the argument, but when you turn around and say, "Well no, we're seeking recognition of the fact that we're indigenous to the country," they won't honestly answer that. They realise that setting up the argument of racial separatism is a potent argument for them. They know that it is a potent argument for them if they get Australians to take on the idea that recognition is something to do with race.

Now the truth is that we do have racial provisions in the constitution. In fact, the Aboriginal affairs law making power is a race power. It's very unfortunate that the 1967 referendum included us in the law making power of the Commonwealth on the basis of what Section 51(26) calls race. It's the race power and so the constitutional reform that we are seeking would actually move beyond that antiquated idea of race and recognise indigenous people as indigenous people, not as a separate race.

In fact, a tidying up of the constitution would preferably get rid of Section 51(26) reference to race. It should be an Aboriginal affairs power or an indigenous affairs power, not a race power, because that old race idea and the power that the founders of the constitution conferred on the Commonwealth Parliament, today, the only category of people that that power is exercised in relation to is Aboriginal and Torres Strait Islander people. The race power is only ever used by the Parliament to sustain laws directed at First Nations.

So I think we are most vulnerable because the IPA and Bolt -- they make this all separate. What you're seeking is separate racial institution in our constitution and it is not that at all. It is a very transparent and dishonest argument but as I say, it's a potentially very potent argument.

Anne

Noel, one of the most challenging things for me was you're talking about how we must engage with the right and your explanation about how you dealt with John Howard. But part of our problem as a group, as CCJP, we try to engage with them but they won't engage with us. Engagement has to be a twoway exercise. I suppose if we were Noel Pearson it would be all right but if I'm Anne Lane, they're not particularly interested in listening to me. Any thoughts for those ordinary ones of us, as we Catholics say, in the pews. How do we get to engage with the right?

I think your job is to muster up the big middle. They're trying to get the big middle and you have to get the big middle and you've got to get the people in the pews understanding that this is our best chance to bequeath to our children an Australia that has finally recognised that the country has a history that goes back 60,000 years. Australia cannot be just the country of the last 250 years. Everybody knows that Australia can't be just what happened in these past two and a half centuries.

Let me tell you how I think about racism against indigenous people because it will explain something of what you've asked me and when I get asked about the treatment of Adam Goodes and other examples of strange kind of atavistic eruptions in the Australian body politic when it concerns black fellas, I say there are three dimensions to racism.

One is the original sin. The original sin of racism that was very much part of the founding of the country in its early years is still a big current but it's not the main or only current. Original sin that regarded indigenous peoples as inferior and despicable and so on, that original sin is a part of Australian racism but it is not all that there is and it certainly I don't think today is a big driver of the problem that we're dealing with.

The second aspect of Australian "racism" is the country doesn't know how to deal with the black fellas. It's really an expression of uncertainty on the part of white Australians about how indigenous people should fit into their concept of Australia. It's like if we recognise the indigenous peoples, are we kind of de-recognising ourselves? Are we repudiating our own history and identity?

I think Australians are very troubled about this. They don't know how to fit the black fellas into their idea of Australia and that troubles them and we've never been provided with the kind of leadership ... White Australians have never been provided with the kind of leadership to resolve this uncertainty and fear in the right way and so I see a lot of the eruptions against indigenous peoples as coming from that source, this source of uncertainty about the place of indigenous peoples in the idea of Australia.

When we want to put on a show for ourselves or for other people, we're very quick at inviting indigenous peoples to show that different side of Australia, which doesn't seem to match.

Can I say the third part of this problem, with the race problem and the place of indigenous peoples, is it's white versus white over black. White Australia is at conflict with each other over the black fellas. Progressive Australians versus conservative Australians over the black fellas and that's a big issue. Progressives and conservatives are at odds with one another over a wide range of issues other than indigenous issues and there's a dynamic between the two camps that means that whatever the progressives are proposing, the conservatives are allergic to and vice versa and that is a dialectic that I don't think we can solve.

It's an ingrained part of our society and the two tribes when you're trying to get bipartisanship. If you're trying to get bipartisanship and you're trying to transcend the two tribes, the fundamental conflicts between the two tribes, we need to think carefully about how is it that we stop the one part of the clockface just locking against the other part of the clockface? There are some issues that require us to be able to unlock that polarisation and that natural tribal conflict and try to find a way of transcending that conflict so that we can get a bipartisan result.

I think it's possible on reconciliation certainly. A lot of conservative people support reconciliation and recognition. There's a vast wellspring of support amongst progressives but I think it's a mistake if we pursue the thing, as I say, as simply a cause in which the progressives must defeat the conservatives. It can't be a cause in which we seek to defeat the conservatives. We must see our cause as one of bipartisanship with the conservatives.

Colleen.

What about the truth telling? What are people afraid of?

I think the Uluru Statement called for a sequencing of these ideas. We can't just throw all of our ideas in a bucket and just toss it out there. We've got to try to be clever about how we sequence things and the Uluru Statement is premised on the idea that we first have a Voice. We establish indigenous Australians as a Voice in our polity, a Voice that's able to speak to the Parliament and the government of the day and to the rest of the country.

And then we want to move to a Makarrata, to come to a settlement about these issues that relate to our rights as indigenous peoples but also the empowerment that we seek in the Australian society and in the Australian economy. The recognition of our languages and the fact that the landscape is written in our languages.

I think the Prime Minister will go to Cooktown at some point over the next month as part of the observance of Captain Cook's alighting at the Endeavour River. One of the problems with Cooktown, which is where I come from, is that there's not one Aboriginal place name within 100, 200, 300 kilometres of the hill that Captain Cook climbed upon in Cooktown township 250 years ago. To this day, there's not one Aboriginal place name.

And I can tell you, if I took you to the top of that hill, I'd be able to point to 100 places within view that have a name, that have a name that goes back hundreds and hundreds and thousands of years. Even in a place like Cooktown You go up to that same hill I'm talking about, you'll see a half a dozen if not a dozen names put by Cook 250 years ago and yet the local Guugu Yimithirr and Guugu Yalandji names that are still alive have no formal recognition.

And yet place names have been part of the reconciliation process right across the world and yet we are so slow here in Australia to do some basic things like recognise that the landscape is an indigenous landscape. I would say there's hundreds of thousands of place names across the continent that are crying out for official recognition.

Phillip

Noel, you've been speaking about a question to be put to referendum and speaking about a Voice to Parliament and these are sort of very nebulous. I'm just wondering can you suggest some forms of question that could be put to referendum? What might the question be? And the second one, what shape would the Voice to Parliament have?

The last parliamentary committee that was chaired by Senator Pat Dodson and Julian Leeser, a Liberal MP from Sydney, they canvassed I think 40 or so proposals from different people and organisations about the form of the amendment but one version that was put forward by myself and Professor Megan Davis and Pat Anderson I'll just read you. It's very short.

It proposed a Section 21(29) with a heading The First Nations Voice. Clause 1, there shall be a First Nations voice. 2, the First Nations voice shall present its view to Parliament and the Executive on matters relating to Aboriginal and Torres Strait Islander peoples. 3, the Parliament shall, subject to this constitution, have power to make laws with respect to the composition, functions, powers and procedures of the First Nations Voice. That is essentially what was proposed. There's different versions of words like that and the question would relate to that provision.

Thanks Noel. What I'd be thinking is that we here at CCJP could pull those actual words out of the recording and put them as also written remarks on our web page when we get your recording up on our web page just as something that people can see that's wonderful and succinct.

It's time we let Noel go but before we do, it's hard to think of the words to say thank you to Noel, not just for today but for all of your years of hanging in there. As Angie said in her question, the resilience of the Aboriginal and Torres Strait Islander peoples never ceases to amaze us. You keep on offering the invitation and while we individuals may love that invitation, we clearly have a lot of work to work with our conservative brothers and sisters to change what is happening in our place. Your ease in speaking never ceases to amaze me and it's always coming from the heart. So thank you so much for your time with us today.

Thank you very much for this opportunity.