

# A Fair Place in Our Own Country

On 2 June 2004, **Noel Pearson**, Team Leader of Cape York Partnerships presented a public lecture for the Castan Centre entitled 'A Fair Place in Our Own Country: Indigenous Australians, Land Rights and the Australian Economy'. This is an edited version of that speech.

It was late in the long campaign against the 10 Point Plan and many indigenous leaders who had been involved in the politics of the *Native Title Act* in 1993 were absent from Canberra in the crucial weeks and days before the passage of the Howard Government's legislation in response to the Wik decision. I arrived in Canberra with ominous indications that Brian Harradine would make a deal with the government to pass the legislation. Earlier we thought we had won the day when the delegation of Wik People led by Richard Ahmat, the Chair of the Cape York Land Council, together with other indigenous leaders working the corridors of Federal Parliament, had persuaded the Senator to oppose the government's Bill. When I heard the news back in Cape York Peninsula and saw the images of the Senator dancing with the Wik People on the lawns of Parliament House, I was ecstatic. I had no problem with the failure of the Bill leading to the much-feared double dissolution 'race election'. But then Harradine recommenced negotiations with the government.

The afternoon I arrived in Parliament House I was walking down the corridors with Ahmat and Terry O'Shane from the North Queensland Land Council, when we bumped into the Senator. He was to inform us, no doubt thinking that it was the very news we wanted to hear, that he had made a deal or was very close to concluding a deal with the government for the passage of the Bill. We were non-plussed. The game was over and the 10 Point Plan was heading for the statute books with some ameliorations extracted by Harradine. The concessions secured by Harradine did not make an unjust Bill just, and the Senator was responsible for allowing a fundamental tilt of the pendulum away from the native title rights of indigenous people, which continues to this day.

Faced with the inevitability of the passage of the Bill that evening in the Senate, I decided on a last desperate strategy. Invited to appear on the 7.30 Report I decided to endorse the passage of the Bill and to give the impression that Harradine had won huge gains for indigenous people. My hope was to incite the lunatics from the far right of the Coalition - Senators O'Chee, Lightfoot et al - so that they would reject the

Bill, in much the same way as they had done to our advantage, in 1993. The metaphor that was in my mind was like trying to push some livestock into a pen. I thought a sudden scare just as the stock were at the mouth of the pen would have two possible consequences: there was a chance they would take fright and run off down the paddock, or they would run straight through the gate and into the pen. I was prepared to take the risk in the hope that we could snatch victory from the jaws of the defeat which Harradine had sprung for our own good to supposedly save us from a race election. Barry Cassidy knew what I was trying to do, Kerry O'Brien did not, and when I did the interview with Kerry he was bewildered by my support for the passage of the Bill later that night.

Alas, my gamble did not work. The coalition senators knew they had secured victory for the Australians they felt they represented and they dutifully voted in unison. All I had achieved was that I had defused the whole debate following the passage of the 10 Point Plan. Federal politics moved on to the next issue on the very next day.

Let me now turn to another story going back to 1997-1998 when the 10 Point Plan and commitments by government leaders to secure 'bucketloads of extinguishment' consumed the nation.

Ron Castan QC had long spoken to me about the need to move the momentum from *Mabo* from the plane of litigation and the courts to the plane of a larger political and economic settlement. Ron had warned that reliance upon the law alone was not sufficient. The furore that arose in the wake of the High Court's *Wik* decision in December 1996 underlined Ron's view, and the bitter debates that raged during 1997 underlined the need for an alternative solution.

At the same time the former, notorious leader of the CLP in the Northern Territory, Ian Tuxworth, and his colleague who had become a good friend to us in far northern Queensland, Jim Petrich, commenced a discussion on the far right of rural Australian politics questioning whether the 10 Point Plan would deliver the kind of resolutions that were needed, particularly in the relationship between traditional owners, pastoralists and resource developers. It was the workability of any imposed legislative regime which they doubted.

Ron, Ian and Jim decided to bring together the parties that were furthest apart from each other in the raging national debates about Wik and the 10 Point Plan. Ron

brought together key indigenous leaders from the Land Councils, and Tuxworth and Petrich brought together key leaders from the National Party and farmers representatives. They secured Michael Costello, former diplomat and then CEO of the ASX, as the facilitator who would help the two sides see if they could find common ground.

We did. And this common ground was set out in a number of principles which were set out in a draft Heads of Agreement. The preamble to these Heads of Agreement began as follows:

“For tens of thousands of years the Aboriginal people settled and owned this land. They were part of it in a unique and primary way. For the Aboriginal people, the land was the essence of their culture, and their culture was the essence of their being. To deny their ownership of the land is therefore, to deny their very existence. It is for this reason that of all the wrongs done to the Aboriginal people over the centuries since European settlement, none has been more profound than the assertion of the doctrine that this land had been owned by no-one before 1788.”

The document went on to set out the following points underpinning a workable framework:

- The prior settlement and ownership by Aboriginal people to be recognised.
- Valid Crown titles to be recognised and a fair procedure devised to ensure any necessary validation of post-1993 grants of title.
- Existing Aboriginal land including Aboriginal Reserves to be recognised and placed under appropriate title as soon as practicable.
- Aboriginal interests in national parks and their involvement in park management and development to be acknowledged.
- Native title to have no effect where a valid freehold or exclusive leasehold title exists, but to have full effect over unalienated Crown land.
- Native title can co-exist with a pastoral lease, but only to the extent that it does not interfere with the rights of the leaseholder under that lease.
- There are separate economic rights on pastoral leases from non-economic (or cultural) rights held or claimed by Aboriginal people.
- There is a difference between the provision of compensation for the relinquishment of economic rights and the provision of resources to address the ‘citizenship’ entitlements of Aboriginal people in health, education, housing and welfare.

It was therefore agreed:

- a) That in compensation for the relinquishment of economic rights an annual payment will be made to Aboriginal people for [x] years. The amount of this annual payment will be [either (\$x) or a figure calculated according to an

agreed formula, for example annual mineral production or GDP]

The payment will be made in such a way that it provides a long term capital base for all Aboriginal Australians through which they can participate more fully in the economic development and prosperity of the broader economy, and can sustain their culture.

- b) That ‘citizenship’ entitlements will be properly funded and administered through arrangements to be agreed.

The next challenge was to see if the same principles could gain the support of the miners. Ron and I met with the then Chair of the Minerals Council in Brisbane, but the miners were banking on the 10 Point Plan to deliver certainty and workability for them. Similarly, representatives from the teams that had developed these Heads of Agreement briefed members of the government and the opposition in Canberra, but without the miners there was little prospect of the Federal Government changing course. So what was at the time called the Bennelong process was put aside, and the parliamentary process of the 10 Point Plan continued.



*Noel Pearson*

Ron Castan taught me a critical lesson in 1998. He illuminated for me what I have since called the “80-90% strategy” of indigenous advocacy, as opposed to the “51% strategy” with which I was familiar. It was Ron who would get me to see that there is more common ground between indigenous people and people from the right of Australian politics and society than conventional politics would have it. People from the rural and regional right of Australia have many interests in common with indigenous people. They have an understanding of the issues and problems. They have many genuine friendships and relationships with indigenous people - and they may be unsentimental or inelegant in their demeanour, but

many of the ones to whom I am referring are fundamentally decent and have goodwill. What I understood is that much of the Right's objections to Aboriginal aspirations were rooted in their objection to these aspirations being identified as Leftist moralizing. I came to see how much the form in which indigenous issues were presented disproportionately determined the responses of the two sides of Australian politics and society, rather than necessarily the *substance*.

Many take from the legacy of Ron Castan QC AM true succour for the cause of human rights, because there was no more deft an advocate nor one who had achieved so much for the cause of human dignity and equality than he. But let me speak testament to another side of this man: he was an unreserved believer in the need for and entitlement of indigenous Australians to share in the wealth of their own country. There was not a skerrick of equivocation about this in him whatsoever.

Ron Castan was unusual; he was a great champion and fighter for Aboriginal people's rights, but he was completely free of romantic foolishness about Aboriginal people. Unfortunately, the vast majority of those who have seen themselves as allies in the political struggle have had utopian tendencies in their thinking about indigenous people.

One such romantic idea is the idea about the Aboriginal struggle being just one aspect of an environmentalist agenda. It is of course excellent if Aboriginal advancement can go hand in hand with good environmental and conservation policies, but the problem is the idea that Aboriginal people desire to take themselves and their lands anywhere else than to the forefront of economic development in the global economic marketplace.

A second romantic idea is one that has most clearly been expressed by Frank Brennan: the notion that about Aboriginal people must find a way other than "secularism, materialism and individualism".

In our work in Cape York Peninsula we have many strategies that superficially resemble the romantic environmental and spiritual notions about the development of Aboriginal society. We are working for environmental goals and we seek a spiritual and cultural revival of our communities. But our fundamental goal is complete and equal social and economic inclusion in the Australian mainstream and in the global economy. We do not see it as our main mission to be an environmental conscience or a custodian of spiritual values in a materialistic world.

What plan does Frank Brennan have for the secularists, materialists and individualists who occupy the long and depressing rows of Aboriginal people who have their own land, languages and their cultures considerably intact, playing poker machines in the Alice Springs casino, and in RSL clubs from Cooktown to Broome?

The liberal consensus during the social justice era was that Aboriginal disadvantage was caused by the denial of self-determination and denial of rights and services, and by discrimination. Many reforms that have had deleterious consequences (such as the right to drink and equal pay in the cattle industry which led to unemployment) were unavoidable consequences of equality, but there was no discourse about Aboriginal responsibility in this new situation. Nor was there any awareness that many elements in the positive advancement programme were flawed. Policies for recognition of culture and language - correct in principle - marginalised indigenous people instead of making them fully integrated citizens with a strong cultural identity. Legal aid policies and criminological theory did nothing to reduce crime or help the victims of crime.

Today, the real story of indigenous affairs is no longer containable. The liberal/progressive interpretation of indigenous affairs is not standing up to scrutiny: it is half right, but also half wrong.

*For further information on the work of Cape York Partnerships go to [www.capeyorkpartnerships.com](http://www.capeyorkpartnerships.com).*



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