

## DIALOGUE ON AUSTRALIA'S CONSTITUTIONAL REFORM

Garma Key Forum

Noel Pearson

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Wanhtharra thawunhgarr. (How are you friends?)

Ngayu Guugu Yimthirri yirrgaa, ganaa? (I'll speak in Guugu Yimithirr, if that is OK?)

Ngayu garrbunthirr buthun-gu yimu Yolngu bamawi bubu gadanu. (I am very happy to come here to Yolngu people's country.)

I first acknowledge the Yolngu of Northeast Arnhem Land. I bring greetings from that region that was first dubbed York Cape by James Cook, just before he claimed possession of the eastern seaboard of this continent on behalf of the British crown. He did so at Possession Island in the Torres Strait on 22 August 1770. The claimed land he called New South Wales. I thank my yabba Galarrwuy and the Yunupingu family for their invitation to talk today. Galarrwuy spoke on behalf of 60,000 years plus to the Prime Minister and the leader of the Opposition, who speak on behalf of 229.

60,000 to 229. He who speaks on behalf of the 60,000, offering makarrata to the 229.

On 30 June the Referendum Council of which I was a member delivered the Prime Minister and the leader of the opposition making two recommendations: one constitutional and one extra-constitutional. Let me reprise the constitutional amendment. That a referendum be held to provide in the Australian Constitution for a representative body that gives Aboriginal and Torres Strait Islander First Nations a voice to the Commonwealth Parliament.

The declaration reads: that an extra-constitutional declaration of recognition be enacted by legislation passed by all Australian Parliaments ideally on the same day to articulate a symbolic statement of recognition to unify Australians. I can do no better than The Australians editorial that week urging the correctness of the referendum council's recommendations. The editor wrote:

There is a compelling logic to the argument that if parliament is to have power over indigenous affairs, it should take advice from indigenous citizens. (...)

Few of us could reasonably suggest indigenous citizens should not have input into the administration of their affairs, such as native title, by the federal government.

The patient advocacy of hundreds of people involved in the recognition process thus far - weighing competing agendas from a minimalist focus on a preamble to the push for a treaty - is deserving of great credit. They have been sufficiently agile to adjust their demands and expectations in order to deliver a consensus around this recently devised compromise. (...) The proposition put to parliament now is starkly simple: forget other changes to the Constitution, just mandate an indigenous voice (advisory body) and deal with recognition in a separate document that can be endorsed by all parliaments: federal, state and territory. (...)

The declaration may be easier because it has been envisaged as recognising the crucial troika of indigenous heritage, British institutions and immigrant bounty: three strands around which the nation can unite.

As diligent and good-willed Australians, I urge you to reflect on this account. It provides a salient explanation of the case for the referendum council's two recommendations. These should be considered by the Parliament with appropriate pause and reflection, and then put to the people of Australia for their permission at a referendum with all necessary deliberation, but no undue delay. For amending the constitution of this Commonwealth lies in the gift of the Australian people.

What is Australia? And when did it come into existence? This question may seem impertinent, until we reflect upon it. At the beginning of the 19th century no-one called this land Australia, and certainly not at the time of the arrival of the first fleet. It was well into the next century when the name Australia gained currency. No event brought Australia into existence until Federation on 1 February 1901, when the Australian Constitution created the Commonwealth of Australia. Our Constitution was part of an act of the Parliament of the United Kingdom. Our country has retrofitted an unfactual myth of Australia under the events of 26 January 1788. It was no Australia in 1788, there was only the colony of New South Wales. There would be no Australian commonwealth until 1901. The events of 1901 gave legal effect to the legal idea of Australia. This birth was a legal event, born of its mother the British Crown. The founding fathers advised the British Parliament as to the terms of that act, which became the constitution of Australia. Unlike the United States of America, Australia was never declared. That was impossible and has been impossible since Federation.

For a declaration is not a legal event. The law can declare anything subject to its own authority, not so a declaration. Having no basis in the law, a declaration must stand on its own authority, its own validity and rightness, its own values and its own truth. A declaration of any standing worth and durability cannot be arbitrary. It cannot assert untruths or be willfully blind to truths. For the untruths and truths eventually become visible and erode convenient in time-limited definitions. What is Australia? Who are the Australians? These are questions we have never properly answered as an Australian people. That there is an Australian people, there is no question. That this continent and its lands are our land, there is no question, and when I say ours, I mean us, all.

But what Australia is the idea of Australia and who are the Australians we have never truly answered. We have only partial answers. We've never answered the idea of Australia because we have never properly faced the idea of Australia. How could the idea of Australia conjured in our mythic reconstruction of 26 January 1788 or the Federation of 1901 without contending with the pre-existing Aborigines of our land, be a proper answer to the question of Australia.

Furthermore, a Commonwealth of Australia that excluded the pre-existing Aborigines and banished the Chinese and other aliens under the White Australia Policy up until Prime Minister Holt, could never have been a complete Australia.

My argument today is that Australia cannot be defined in the absence of each of these three stories. So, let us consider the idea of Australia and who are the Australians. But first I want to assert that we Australians have an epic story. It is one of the great epic stories of this planet. We will recognise the epic scale of our story, when we recognize each other.

Let me turn to the first part; the epic trek out of Africa, the foundation of the planet's oldest continuing civilisation from 65,000 years ago.

The Prime Minister referred in his address to last month's media reports pointing to the latest research published in the journal Nature pushing back the date of aboriginal presence in Australia beyond 60,000 years.

Before I turn to the astounding stories illuminated by science, I first want to tell the epic story from within the mythologies of our people. Australia's greatest ethnographer, the late Bill Stanner, best described the Aboriginal concept of the Dreaming writing in 1953:

*The Australian Aborigines outlook on the universe and man is shaped by a remarkable conception, which Spencer and Gillen immortalised as the Dreamtime. Comparable terms from other tribes are often almost untranslatable or mean literally something like 'men of old'. Some anthropologists have called it the 'eternal dream time'. I prefer to call it what many Aborigines call it in English; the dreaming, or just dreaming. A concept so impalpable and subtle naturally suffers badly by translation into our dry and abstract language. The blacks sense this difficulty. I can recall one intelligent old man who said to me, with a cadence almost as though he had been speaking verse "white man got no dreaming, him go another way, white man him no different, him got road belong himself". Although as I have said the dreaming conjures up the notion of a sacred heroic time of the indefinitely remote past. Such a time is also in a sense still part of the present. One cannot fix the dreaming in time, it was and is everywhere. These epic stories of the continent are much, much older than Homer and are still held today.*

Science tells the story of commensurable epic scale. In this ground breaking study, a genomic history of Aboriginal Australians, led by the University of Cambridge, published in September 2016 reveals that Papua and Aboriginal ancestors left Africa around 72,000 years ago and then split from the main group around 58,000 years ago. They reached the supercontinent of Sahul that originally united Tasmania, Australia and New Guinea around 50,000 years ago. Papuans and Aboriginals then split around 37,000 years ago long before the continents were finally cut off from each other around 8,000 years ago.

This morning's acknowledgement by the Prime Minister is the first time I have ever heard our nation's leadership reflect on this profundity to us as Australians. That this has never happened before and that we do not think to do such things speaks to this great lacuna in our conception of Australia.

Let me now turn to a second epic aspect of our story. The epic voyage of The Endeavour and the establishment of British institutions in Australia from 26 January 1788. Australians well know the epic nature of Captain James Cook's voyage to the East Coast of Australia in 1770. Everyone knows of his role in our history, but the controversies over whether he was the first European to indeed discover the East Coast and the moral legacy of colonial annexation that followed his voyage in the claim to possession he made on behalf of the crown has diminished the appreciation of one of history's greatest seafarers.

I, of course, should not be saying this. Given the villainy I should properly attach to Cook. But the epic scale of his courage and captaincy is a matter of historical record. It was the equivalent of manned space

travel to the outer solar system. Cook limped into the country of my forefathers around after running aground on coral at the reef now called Endeavour into the harbor of a place we call Waymbuurr - what would thereafter be called Cooktown - on the banks of the Endeavour River, the place of my birth. That that twenty-four-hour long battle to refloat and save the stuck and leaking ship was an extraordinary struggle worthy of atlas. After seven weeks repairing the ship at Waymbuurr, Cook eventually led the Endeavour through a gap in the reef which he sighted from the top of Dyiigurra, Lizard Island, enabling the Endeavour to escape the clutches of the Barrier Reef. However, worse calamity faced the Endeavor as it approached the mainland of Cape Direction with the prospect of that bark shattering on the unforeseen reef was averted when a sudden gust of wind turned the ship of its fatal course. Cook's extraordinary reflection upon these dangers has the following passage:

*It is but a few days ago that I rejoiced at having got without the Reef, but that joy was nothing when Compared to what I now felt at being safe at anchor within it (...) such are the vicissitudes attending this kind of service and must always attend unknown Navigation where one steers wholly in the dark without any manner of Guide whatever.*

No epic is pure happiness and light. Epics are about tragedy and heroism, cowardice and courage, shame and hubris.

The arrival of the institutions of Britain upon the shoulders of the First Fleet which became the law of this continent is the second part of this epic story of Australia, commencing with James Cook.

I now want to turn to the third. The epic migrations from Auschwitz, Somalia, Italy, Vietnam, Beirut, and Tiananmen Square, and so many other places.

I want to tell one extraordinary story of my acquaintance Fong, whom I met in the course of my work. After the Communists take over Vietnam in 1975 young Fong was 5. Everyone who had anything to do with the previous regime was sent to re-education camps. He and his family were confined there for years. His mother and brother, and grandmother. Life was hard. Fong and his family eventually were let out with no money and food. They knew they had to take a perilous journey to the west for a better life. They took a boat across the South China Sea on a local fishing trawler crowded with people. An Australian delegation eventually came and chose their family to come to Australia. His family arrived in Brisbane in 1980 when he was 10 years old. This is a familiar story, but it is also unique. He works in policy and research in support of Australia's Constitution. He's a believer in the importance of Australia's constitutional order, because he understands the importance of stability, giving rise to stable institutions, accountable governance, transparency, fair elections, and elected leaders that are held accountable.

Such structures avoid the abuse of power, the arbitrary use of force, and political instability of the kind this young boy experienced in his homeland. He is a supporter of constitutional recognition because he thinks we should all have a voice in the constitutional order, and he says it seems reasonable and just that the first peoples of this land should be appropriately acknowledged.

A declaration of Australia, three versus, one song. A declaration will enable us to thread together these three epic stories into the one story of the Australian Commonwealth.

Finally, let me offer two political comments in response to the addresses by the Prime Minister and the leader of the Opposition. Galarrwuy Yunupingu asked whether we trust the Prime Minister and my instinct was adverse. Galarrwuy says yes, we should trust the Prime Minister and I follow my leader's wisdom and give trust to the Prime Minister. And I will hold him to that trust. I want to say that in relation to the *Uluru Statement From the Heart*, it is imperative that all of our political leaders with goodwill to the Makarrata and the *Uluru Statement From the Heart* that we all talk up the cause. It's imperative. We have not enough in the past two months talked up the for cause. We all know the scale of the difficulty. We all have completely real expectations about the task ahead. I just urge political leaders from both sides of the aisle to talk up our chances and to give hope to the Australian people that we can do this.

The second comment I wish to make in relation to Bill Shorten's proposed way forward. Bill, I think that it's important that we stage the agenda. First thing, is to get the voice up. Then, we have the means by which we can then negotiate a Makarrata. It's a two-stage process. It's a two-door process. The first door is to go through the enshrinement of the voice in the Australian Constitution and to establish it and then we will have the institution that can then go about constructing the framework for the Makarrata that can give rise to a treaty.

Thank you.