

## 2018 Hal Wootten Lecture

*Noel Pearson*

*The Law Theatre, University of New South Wales Sydney*

*6 September 2018*

### Introduction

Thank you, George, for that kind introduction and thank you everyone for your presence here this evening. I am going to first give some acknowledgments to our first nations of this place and to first nations across the country who are with us here this evening. It's of course my privilege to speak in honour of Hal, who has been a great friend of Aboriginal and Torres Strait Islanders first nations for many many decades. I have a long association with Hal going back probably more than twenty years. Hal and I worked on a project in Cape York Peninsula trying to work out a retrospective settlement of issues that we had with a major mining company on the west coast of Cape York.

I want to acknowledge the University of New South Wales Law School. I had inquired with late Professor Nettheim whether I would come to this school, I ended up going to Sydney University Law School and spent a completely miserable lonely time there and I regretted that I didn't take up Garth's invitation to come to this law school. I suspect it's a source of some hesitation on the part of Sydney University Law School because I always recite this story, I think I have one friend in all of my years there. I was chronically shy and lacked of great deal of confidence but never the less I'm not here to really speak on behalf of any great legal knowledge this evening, I'm going to talk about the politics of self-determination and I just want to say that it was of course a great sadness to hear of Garth's passing and his great spirit was one that I encountered again as a young man and he was a great blessing to our people.

I'm also dismayed that Sir Anthony is not here this evening, he sent his apologies to me and I am one of his great fans, I think back on a Mason and Brennan courts as that era we had when West Indies reigned in the late seventies and early eighties. Sir Anthony was like Clive Holding and Sir Williams was like Vivian Richards and Sir Gerard was kind of the Gordon Greenidge of the side. Australian jurists have never been better than those two courts.

I want to talk about how I view our challenge and I go from the deepest depth of despair to some irrational hope about our prospects, and so I alighted upon this nostrum to lift me out of my gloom in relation to our challenge with constitutional reform and our rightful place in this country.

When I thought about the idea the other week that what we should think about this is that when they have nothing to lose and we have everything to gain, I think that's the way we should think about it.

### **When they have nothing to lose and when we have everything to gain.**

I'm energised by this idea because that is the nature of our challenge. White Australians have got nothing to lose, they are not going to concede anything to us because they have nothing to lose, but we have to remember that we have everything to gain. If we think through our predicaments and we alight upon strategies and actions, that ever seek a better place for our people in our own country.

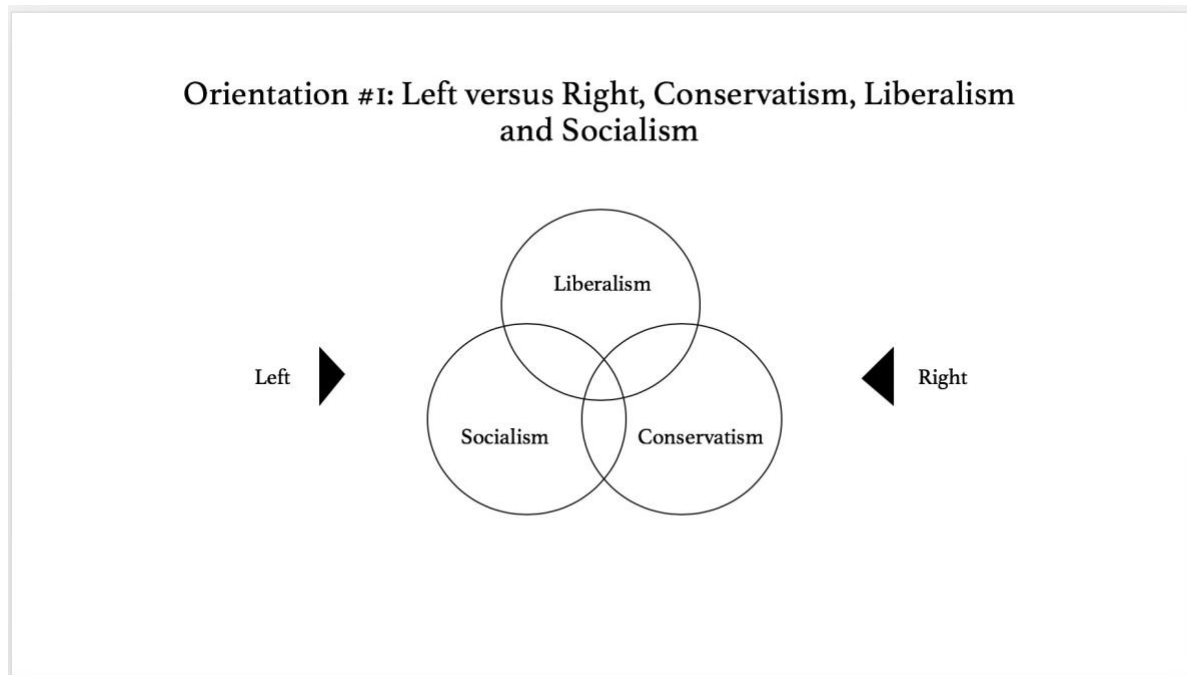
I think it's wrong for us to act as we too often do, as if we're the ones with nothing to lose, no, we have everything to gain and therefore we have to be smarter, we have to be more convicted, we have got to be utterly hopeful of success, we can't let despair darken our horizons, we've got to be realistic but we have everything to gain and there is every reason for us to face Everest with a determination that it requires, that it demands of us.

Too often, struggles on behalf of the poor and wretched are struggles that are conducted as if we got nothing to lose. I think that's the wrong mentality, the mentality we have to have is that we have everything to gain and our opponents have got nothing to lose and that should mean, and we have got to get them to understand that success for us does not mean they lose anything, they indeed can gain.

At the moment my assessment is that white Australia thinks they're going to lose everything if they concede to us, if they concede to a just settlement something is going to be lost on their side of the Ledger and that is a recipe for prolonging this torment of powerlessness for another 200 years if we're not careful. So, I think with all of our setbacks and all of our disappointments we have to look forward and we've got to keep our eyes on the prize for we have a world to gain.

I'm partly here on advice from my friend and colleague Professor Davis that this is a hotbed of progressivism and I better start by explaining myself I feel like I've turned up at the Pigsty like the Prodigal Son and I've got some explaining to do so let me try with this first orientation.

## Orientation #1: Left versus Right, Conservatism, Liberalism and Socialism



This is the way I think about the world between the binary of the left and the right. I actually think the important orientations are conservatism, liberalism and socialism and all societies have some kind of amalgam of the three.

I don't come from any of these traditions so I've been able to suspend my fierce tribal loyalty to any of these dispositions, it's been easy for me to understand that I am a conservative, how could I not be, coming from a culture that's 60,000 millennia old, a strong conservative instinct towards the maintenance of ritual and tradition and the importance of structures of society and family and law could not but be my tradition and, of course, my mission upbringing and membership of a religious community means that my predilections are in some respect highly conservative, conservatism is the richness of societies.

Conservatism preserves memory, they represent a respect for some of the most important things that explain great mysteries to human beings, so I don't abjure conservatism simply because political conservatism is distasteful, I understand the conservative's argument in relation to conservatism, and I appreciate much of it.

Of course, the socialists are right about the importance of regard for others and the importance of spreading opportunity across society and that life should not just be a question of preserving privilege. So, I get the socialist argument, I think it's innate to human beings, to have other regard to have a moral sentiment in favour of others in society.

But, I also understand the liberal's argument, I can't deny the fact that I too am motivated by a burning magnesium flame of self-interest in my breast.

I am like everyone else, I have a jealous regard for my own first, my children today are my first consideration and prospects for my family motivate me to seek a better life for them, this is a natural regard for my own, it becomes an engine of motivation to seek something better and I notice everyone else has that same motivation too, including the socialists.

The Liberals are right, self-interest is a great engine, it is a great engine for the good, dare I say it to this audience, Adam Smith was right, good things come when we pursue our own best interests. I reflect upon this because daily I ask myself how are poor and wretched going to rise up in the world and take a better share of it, that's my question, how do the poorest get a better share of the privileges of this world and this country, and I can't deny the importance for progress of the Liberal motivation to pursue one's own interests and that of your own family as a starting point.

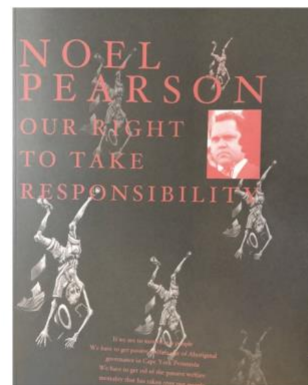
Self-interest is not selfishness, it is a natural human motivation for the good so I am at one with the liberals on that, but I seek the radical centre of these positions, I seek the right amalgam, I seek the right balance between a respectful conservatism and understanding of the importance of liberal self-interested choice, but also never denying the importance of social instincts and obligations, that's my first orientation.

## **Orientation #2: Our Right to Take Responsibility and Self Determination**

### **Orientation #2: Our Right to Take Responsibility and Self Determination**

My own perspective on the meaning of self-determination came from Lars Emil Johansen, the indigenous Premier of Greenland, who addressed the Regional Agreements Conference organised by the Cape York Land Council in Cairns in July 1994. He explained: "Self-determination is the right to take responsibility. Self-determination is hard work."

This is a critical insight for those concerned with Aboriginal policy, at the highest levels and at the grassroots: in claiming the right to self-determination, we are claiming the right to take responsibility. We need to restore the importance of responsibility in our understanding of our problems and in our understanding of the solutions, otherwise we are kidding ourselves and our people.



The second orientation I want to talk about is Our Right to Take Responsibility in self-determination.

This was a pamphlet I published in 1999, when I began my post land rights trajectory in indigenous policy, and for me, my emphasis on responsibility was explained in my treatise as follows: I wrote,

*My own perspective on the meaning of self-determination came from Lars Emil Johansen, the indigenous Premier of Greenland, who addressed the Regional Agreements Conference organised by the Cape York Land Council in Cairns in July 1994. He explained: "Self-determination is the right to take responsibility. Self-determination is hard work."*

*This is a critical insight for those concerned with Aboriginal policy, at the highest levels and at the grassroots: in claiming the right to self-determination, we are claiming the right to take responsibility. We need to restore the importance of responsibility in our understanding of our problems and in our understanding of the solutions, otherwise we are kidding ourselves and our people.*

Of course, it was at that point in my minor contribution to indigenous policy thinking that I lost the progressive left. There was a completely allergic reaction to my discourse about responsibility and my hope that people would understand by argument that at the heart of true self-determination lies an assumption of responsibility unfortunately did not take place.

I did not succeed in widening and understanding that a responsibility agenda was an important agenda for our self-determination, but it is my abiding orientation.

### **Orientation #3: Structure versus Agency**

The next thing I want to talk about is the importance of both structure and agency, of course both dimensions determine our prospects, we are captured by structures and our prospects are influenced by structures, but we also have human agency. Not everything is about structures, as much as the structures represent real limitations on our capacity for agency, it is a struggle.

The structures are of course institutional and governmental and until we reform many of the institutional and governmental structures that affect our prospects as indigenous peoples, we reform them, we're going to struggle to make progress. We will never close the gap unless there is structural reform, but these structures of course are not just institutional and governmental. They're cultural, ideological, they're psychological, in the entire superstructure that affects the lives of individuals, individual human beings, their families and communities, these structures are sometimes so overwhelming and impossible to conceive of reforming even though they work such harm to people.

We have structures of Education that routinely deliver to Aboriginal children in remote communities absolute certainty that 25% of them will never learn to read. The structures of education, institutions representing teachers, government departments, representing school delivery, ministerial and governmental structures that are supposed to fulfil the rhetoric, that every child deserves education and never the less routinely deliver to Aboriginal an absolute certainty, 25% of them we'll never learn to read and will therefore end up in jail. Another 50% will read poorly and 25% may gain some rudiment of literacy. How do you turn these structures that do such harm around and the poor end and the migrant and the Aboriginal and the South Pacific Islander and the Africans received such poor education?

These structures are hard to change. I work in the stony fields of indigenous education, I work almost on a daily basis in those fields and I can tell you it is completely perverse, the structural forces that condemn tens of thousands and hundreds of thousands of the country's most disadvantaged black white yellow children condemns them to lives of under-achievement and failure.

How do you turn it around, those of the structures? But, human agency can turn structures around, many of these structures are underpinned by law and public law reform initiatives can change these structures for the better. Law reform has a role as a in reforming structures, and human beings at the end of the day are capable of reforming structures and making them less harmful in more enabling of human flourishing.

I say to my young leaders in Cape York, I think the way to understand the different contributions of agency and structure to the prospects of human progress is to say that 51% lies with agency and 49% with structures, we've got to believe that. We have to believe that concerted human determination to reform structures and to prevail over the limitations of structures, will enable us to make progress. It's an optimistic calculation but, at the end of the day, we have to believe that with concerted action real human beings can have the agency to prevail over structural impediments.

#### **Orientation #4: Human Rights: Public Law versus Social and Economic Development**

The next orientation I have is about human rights and the whole question of public law versus social and economic development.

When I began my reform work in Cape York Peninsula, I was sceptical of how far the public law of human rights would take us. I was more interested in social and economic development. I wanted human rights to materialise in reality, I wasn't interested in human rights fiat, I wanted the human rights of a child to be reflected in a good bed to sleep at night, freedom from violence, the opportunity to go to a good school, the opportunity to go to university, the opportunity to get a job and to participate in the economy and take a fair share of the country.

I was always sceptical about the limits of public law to deliver these changes. Of course, we needed law to remove impediments and to create enabling institutions and opportunities and a reform structures but, by themselves, that weren't going to give a hungry child a full belly. That required social and economic action and, yet, I reflected upon the fact that too much of the discourse of human rights seem to leave things at the point at which the fiat was accomplished, once the fiat was issued somehow it was going to materialize in a better life, and it doesn't work like that.

Lawyers seem not to understand this, lawyers seem to think that if I get the fiat right the society will change for the better. Fiat is only part of it, there's got to be real social and economic action. I want to know when the rights of the child are enjoyed by the child, I want to know when the rights of the women are enjoyed by the women and what practical action do we need to take so that they enjoy it not in 10 years' time or 50, but tomorrow night, so that's my other orientation.

### **Orientation #5: The meaning of Social Justice and the Radical Centre**

My fifth orientation is the meaning of social justice and the radical centre, and politicians and political parties of the left routinely talk about social justice and, in my view, they don't know what it is. We harbour this idea that social justice is some kind of ephemeral thing that would only come about if only we had a better leader or a less gutless government. The right kind of Prime Minister, the right kind of political leadership will somehow result in social justice.

This idea that there's some kind of major forklift that can be stuck into the Australian population at the bottom to lift the wretched off the floor. I always ask myself what is the machine of social justice that we always talk about? When I hear politician of the left talk about social justice, I wonder what is meant, because the only way I see progress happening in nations and societies across the world is when Mum and Dad clutch their children to their breasts motivated by their own self-interest to climb a few rungs to put themselves in a better position.

What societies that have advanced throughout the 20th century absent that formula?

So, in Cape York Peninsula we had a major rethink. We asked ourselves, how is it that the disadvantage and the excluded and the poor and the poverty-stricken, how do they advance in the world? And so, our staircase metaphor for society came into being. A staircase has foundations, strong foundations, and those foundations of social and cultural norms that keep families and communities in a good position even poor ones, even poor ones, are served well by strong foundations of social and cultural norms that prioritise the formative development of their youth. They're really important, those norms explain why Asian Americans and Asian Australians do so well notwithstanding their backgrounds of poverty and mean opportunity, strong foundations where parental responsibility and family obligation are premium.

The second part of our staircase metaphor concerned the underpinnings of the staircase, the infrastructure, what Amartya Sen laureate called capabilities, strong capabilities, good health, good education, good infrastructure, freedoms, all of the things that humans need to flourish, the underpinnings of the staircase are social redistribution of opportunity and the building of capabilities.

Finally, the third part of our metaphor is that real human beings have got to climb stairs. There is no magical forklift that can lift entire communities to a better life. Yes, we can mobilise major government provisioning and redistribution for capabilities, but at the end of the day, it is real human being climbing to a better life, clutching their children to their breast, and jealously wishing for them a better future, that's where progress takes place, that's how development happens.

And, so for me, the Eureka moment was to understand that it was completely an illusion, that somehow some great leftist leader was going to one day, command the great big diesel engine of the forklift to lift our people doing better life. It never going to happen, it's an illusion, the Illusion of social justice. What is real social justice is when people climb to a better life with their own legs, in pursuit of their own interest, and yet we tell the poor self-interest is not for you, jealous regard for your children is not for you, it is for my children, but not for you.

More material prospects, better earning opportunities, that's not for poor people, poor people deserve our charity, poor people deserve a hand out. There is something dirty about self-interest, what kind of poverty program do we run in our modern Australian society that is predicated on the idea that the poor are just like us, they want better things for their children too. They want better material lives.

That's my orientation, social justice is merely the sum total of a whole lot of individual progress. of course, we need large redistribution to build capabilities and provide opportunity, but we get the whole question of justice wrong if we predicate all of that on the basis of charity and hand out rather than motivating the natural interest that people have in pursuing better lives.


The Labour Party does not understand this. How can you be a party of social attack if you don't understand that the engine of change is the magnesium flame of desire, desire for something better? Social justice is the sum total of a whole lot of individual progress supported by redistribution.



## Orientation #6: Oppression: Race, Class and Gender Trap

Orientation #6: Oppression: Race, Class and Gender Trap

Stratification in the skewed pyramid: class, gender, race



Vulnerability to Class, Race and Gender Oppression

|             | Class Oppression | Race Oppression | Gender Oppression |
|-------------|------------------|-----------------|-------------------|
| White men   | Yes              | No              | No                |
| White women | Yes              | No              | Yes               |
| Black men   | Yes              | Yes             | No                |
| Black women | Yes              | Yes             | Yes               |

My next orientation, and I have to say this the one that I have not broken through in relation to my own thinking, and I get defeated every time I try to think about it, but it is the problem of oppression.

I don't want to be negative about this because we have to think our way passed this problem for the wretched. But, we are in a massing trap, we are in a massive trap of race, class and gender. And every time we try to make progress, the left support us on something and the right oppose us on something and when we try to make progress on the other front the right support us on that the left bitterly oppose us. It's like we can't win.

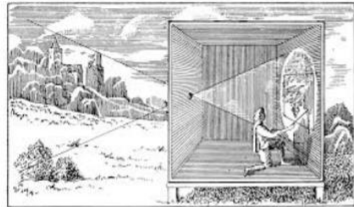
We have enemies on both sides restraining our progress and abjuring the idea that, perhaps, sometimes these contrary ideas are both necessary. I work in stony fields, I tried to thread our way through the thick of these impediments, these ideological impediments. Most of the impediments to our reform work in Cape York Peninsula is not locally inspired, most of our impediments come from the outside, from the wider ideological and cultural discourse in the wider Australian community, and our people get terribly divided and confused about what it is that we need to do in order to make progress.

Because we are located in a much larger storm about these things than our own community, and so it seems that every time we make progress large currents and forces come to bear based on illegitimate ideas of race, the forces of class and, of course, the particular impediments faced by women.

So, my little table there, this skewed pyramid of course, my little table there says that white men, many of them experience class oppression but they know nothing of race and gender oppression. White women experience class and gender oppression but not race oppression. Black men experience class and race oppression but not gender oppression. And of course, black women experience all three.

### **Orientation #7: Progressivism, Ideology and The Camera Obscura**

#### Orientation #7: Progressivism, Ideology and The Camera Obscura



IF IN ALL IDEOLOGY MEN AND THEIR CIRCUMSTANCES APPEAR UPSIDE DOWN AS IN A CAMERA OBSCURA. THIS PHENOMENON ARISES JUST AS MUCH FROM THEIR HISTORICAL LIFE-PROCESS AS THE INVERSION OF OBJECTS ON THE RETINA DOES FROM THEIR PHYSICAL LIFE-PROCESS.

- KARL MARX -

A rule of thumb in relation to most of the programs and policies that pose as progressive thinking in indigenous affairs, is that if we did the opposite we would have a chance of making progress. This is because the subservience of our intellectual culture to the cause of class prejudice and stratification is so profound and universal. What we believe is forward progress is in fact standing still or actually moving backwards.

My next orientation is progressivism ideology and my most important idea I take from Karl Marx is the *Camera Obscura*<sup>1</sup>. The world appears upside down, black is white red is blue, north is south.

And, this quotation from the German ideology is, I think, Marx's most important observation about the way forces of class play out in society, in all ideology men and their circumstances appear upside down as in a *Camera Obscura*. This phenomenon arises just as much from the historical life process as the inversion of objects on the retina does on the physical life process. My own humble version of that insight was in a lecture I gave in the year 2000, for the Light on the Hill Oration at Bathurst. I wrote in that lecture that a rule of thumb in relation to most of the programs and policies that pose as progressive thinking in indigenous affairs is that if we did the opposite we would have a chance of making progress.

---

<sup>1</sup> The 'Camera Obscura' - <http://www.internationalsocialist.org.uk/index.php/2012/12/fundamentals-of-marxism-1-marx-is-method/>

This is because the subservience of our intellectual culture to the cause of class prejudice and stratification is so profound and universal what we believe is forward progress is in fact standing still or actually moving backwards. So, that's my rule of thumb that I say to our mob in the Cape, whatever the progressive say we should do something approximately the opposite. And, that has not endeared me to progressives.

But it is remarkable, and I say this in absolute seriousness, it is remarkable how often that rule of thumb works out. When you logically suspend yourself from the kind of subjective analysis of a policy to an objective appreciation of, well what does that produce? I'm grieving over a school I lost thanks to the ABC, three years ago, grieving. And of course, the school is gone to the dogs now that the department has taken that school back. And of course, the Premier that intervene said that she wanted the school to be just like any other Queensland School, which is what I feared.

But even then, the ABC story of two days ago was about their Flexible Learning, they have a Flexible Learning model, where you can turn up at the PCYC and undertake some activity blah blah blah. None of us would send our children to a flexible learning school. None of the people teaching that program, none of the politicians who have sanctioned that programme would ever send their children to a flexible learning school, but the kids at Aurukun apparently deserve that.

Marx would say to us, if we're truly from the left it can't just be a subjective thing, we've got to take an objective view about what's happening, what is really happening here.

Let me now get to strategy.

### **Strategy #1: Radical Strategy versus Radical Chic in the Age of Twitter**

Let me now get to strategy, my first strategy is the radical strategy versus radical chic, in the age of Twitter.

It's my big quarrel with the indigenous rights movement. We're too prone to radical chic, as if Tom Wolf<sup>2</sup> never wrote about it, 50 years ago. Of course, the modern aboriginal advocacy movement thinks that all you have to do is tweet. The praxis of political activism and advocacy has given way to social media and I ask myself well who is fighting to get the next 100 hectares of land back? Who is actually fighting Rio Tinto or BHP for justice? Who is fighting a government that wants to strip Aboriginal native title of any commercial development? Who is fighting the Palaszczuk government when they want to subject all Aboriginal lands to environmental lockup?

---

<sup>2</sup> [https://en.wikipedia.org/wiki/Radical\\_chic](https://en.wikipedia.org/wiki/Radical_chic)

There is livelihood and economy at stake. There is an agenda of getting out of poverty at stake. There is an agenda for employment at stake. Who is fighting the greens? Who's fighting the Wilderness Society? Who's fighting the Australian Conservation Foundation to preserve Paul Keating's achievement of the native title ACT?

Nobody wants to join us in that fight, we must be on the wrong side of it. Everybody who should understand the true meaning of land rights, which is that the traditional owners should finally have a say over what happens on their own lands, principal number one of land rights, and yet we've allowed that to fall away so that Labour governments in Brisbane can get elected on them, inner city vote, and our land rights are sold out to the politics in George Street.

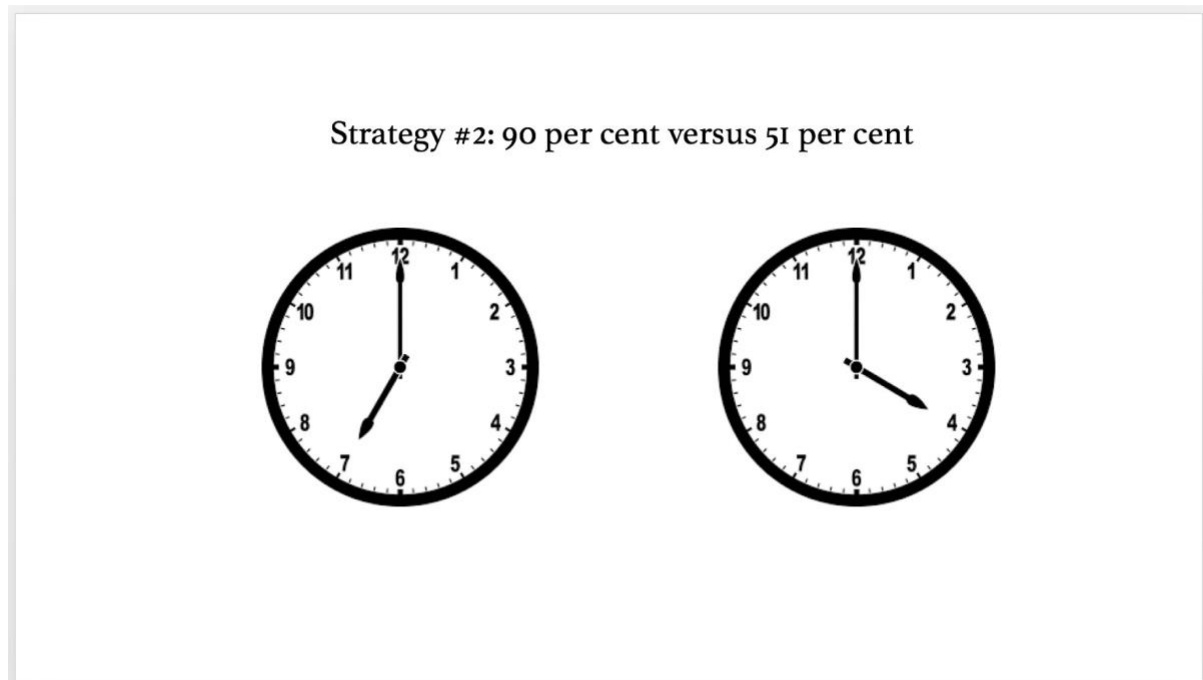
And, Labour get offended when we point that out, when we point out the fact that native title and Mabo and the Native Title ACT was supposed to be a Labour achievement. Since when has land rights only meant that we should say no to everything? And of course, it is the milieu in which modern Aboriginal activism, social media activism, is located.

Nobody wants to be seen to be at odds with the greens, no black fella wants to distance themselves from the progressive milieu which they work and live and study. Nobody wants to be put through that discomfort. But, if you want to protect Aboriginal land rights in 2018, if you're a black fella and you want to take true radical action to preserve the principle of land rights, then you're gonna have to think seriously about saying to the greens we have a right to say yes and no.

That's the meaning of land rights. We say what is the difference between Rio Tinto or Conzinc Rio Tinto as it was, manipulating traditional owner groups 30 years ago, 50 years ago? What is the difference between greens today doing the same thing? Busting up families and communities in pursuit of their agendas.

So, if we want a real radical strategy, we've got to wake up to the fact that we can't be all chic.

## Strategy #2: 90 per cent versus 51 per cent



Next strategy is the 90% business 51% strategy, that I want to talk about obviously some of our challenges require us to persuade 51% of the Parliament or those in government to run in favour of our agenda but some of our challenges such as constitutional reform, require a 90% strategy.

We've got to enjoin the entire Australian community in favour of constitutional reform, a majority of voters in a majority of the states, and each of those challenges require different strategies. We can't just pursue constitutional reform with a 51% headset, we will get nowhere. If we want constitutional reform with a majority of voters in a majority of the states, we have got to have a strategy to get 90% of the country on-board, it can't be a partisan push from the left.

The Native Title Act was a 51% victory, but the constitutional recognition is a completely different challenge. Some poor bastard has got to go to four o'clock on the clock and hunt. My complaint is that everybody wants to hunt at 7 a.m., at the Glebe town hall or wherever. That's easy, you have got to go out to Roma, you have got to go out to Musgrave and you have got to go to where the National Party and the liberal constituencies live, if we are going to have a 90% of Australians joining our cause.

### Strategy #3: Nixon to China

#### Strategy #3: Nixon to China



So, we woke up to the fact that some of us have got to hunt at four o'clock and we can't all be gathered around on the left side of the clock. Related to that principle, of course, is that you need Nixon to go to China. And I've played a long game in relation to this, and I've have come upon bitter disappointment, but I still hold that the principal is still decisive. The principle is still decisive, you still need Nixon to go to China.

You need decent conservatives and liberals to embrace the cause. And, our long game with the conservatives was smashed on the shores of Malcolm Turnbull's prime ministership and his weakness. I went to see him in 2015, with a colleague of mine, when he was Minister for Communications and I put to him that an alternative for constitutional recognition would be some kind of representative body and shine in the constitution.

And, he said to me "that sounds like a sensible idea". But, when the Referendum Council reported, and he was being politically stalked by his predecessor, all of a sudden, he'd forgotten about his commitment.

But, I can swear on my parents' grave that he had told me that it was a sensible idea, but that liar then turned coat, and all that rhetoric about a 'third chamber of parliament' and an affront to the principle of equality came gushing out. Has there been a worse Prime Minister since Billy McMahon than Turnbull?

#### **Strategy #4: Voice then Treaty and Truth**

Next strategy. Voice then treaty and truth.

First precondition to a treaty is for us to have a voice and the voice to negotiate such a treaty, it's common sense. We talked about it in the dialogues that Professor Davis and Pat Anderson chaired in 2016 (2017). Every Black Fella understood this, every Aboriginal and Torres Islander delegate to the dialogues of 2016 (2017) understood that there's a sequence here, we get the voice enshrined and then we move to a treaty negotiation and truth-telling. That was an important part of the strategy.

#### **Strategy #5: Reconciliation versus RAPs, Sorry versus Reparation, Recognition versus Minimalism, Treaty versus Service Delivery Agreements**

We also have to come strategically to grips with this question of reconciliation versus Reconciliation Action plans. You know, black fellas have got to wake up, we can't keep giving way to emotion, we can't keep giving way to cheap sentiment, this is highly serious business.

So, in 2008 we allowed the country to say sorry to us and we deferred the question of reparation and yet, when white Australia went through its grievances about institutional abuse, they got reparations. How smart are we? We let the country get away with it, because we wanted to give way to sentiment before hard-headed strategy, we should have extracted out of the Rudd government a proper scheme for reparations, rather than simply accepting the words as important as those words were.

The struggle we've had in the past two years has been a struggle between recognition versus minimalism. Both of the major parties were prejudiced towards minimalism and without our advocacy Labour would not have turned around. Labour had a minimalist disposition, they would have cut a deal on minimalism with Turnbull had there not been indigenous objection.

Minimalism is raising its ugly head again. Some kind of idea that some lame preamble statement combined with the removal of the word race and its replacement with either nothing, or with the words indigenous or Aboriginal and Torres Strait Islander, would somehow be something substantive. We objected to minimalism.

When it came to same sex marriage though, voices in favour of minimalism were shouted down. Nobody would have accepted anything other than full marriage, and yet, when it came to our business we were being told we should accept some kind of minimalist outcome, not full recognition.

And there's a lot of talk about treaty around the country side, every other state government and territory governments using the word. Yet someone as antipathetic to our cause and our people as Gary Johns could see the light that we couldn't, when he described one of the states so called treaty negotiations as essentially being about service delivery. Johns could see plainly what we could not. Treaty has got to be more, it has got to be about more than simply service delivery. I fear, as the opportunity arises for us after we have done the voice and get into treaty discussions, that those who easily use the word treaty are talking about some pap concerning service delivery.

The first question for a national treaty. There are provincial processes going on, one of which has been shut down quite correctly in South Australia. I beg forgiveness for making a commentary about a jurisdiction that I am not part of, but I think Premier Marshall was completely correct when he described those negotiations as gesture politics. Every other Labour jurisdiction is engaged in gesture politics concerning treaties. They're using the word in completely insincere terms. Because the first question for a national treaty is whether we want to have treaties at the state and territory level, or whether we want an exclusive jurisdiction with the Commonwealth. That's the first question for a treaty. Should indigenous affairs be an exclusive Commonwealth jurisdiction? We have to answer that question first before we get misled by the Palaszczuk government or the Gunner government in relation to their so-called cheap treaty processes.

Of course, the Uluru Statement from the Heart sets our agenda out and really was a magnificent achievement by Meghan and Pat Anderson and the team from the University of New South Wales. They really carried that whole process. Megan designed a brilliant method for regional dialogues. I only attended a minority of dialogues around the countryside, the sheer weight of that process was carried by Meghan and Pat Anderson and the team from the University of New South Wales that supported her in which I believe was a high-water mark of self-determination, no less.

That's the thing that distresses me the most. The fact that we don't recognise what an achievement in self-determination Uluru was. An extraordinary process of dialogue, debate, discussion, hard-headed thinking about policy, legal and strategic issues and hard-headed choices being made about which direction we should pursue. Complete attention to the realities but, at the same time, maintaining an ideal for a better future.

And that statement there is the product of that process and, in my view, if that is not self-determination then what is it? What is the indigenous self-determination if not that? There was no more a rigorous than that which was undertaken. And, yes there was argument and debate and difference of point of view but the level of consensus that was achieved through that process and the hope that was invested in that outcome was truly remarkable.

Of course, that weekend following the 26th of May 2016 (2017) was completely disappointing. The response of the politicians from both sides of the aisle, if you go back and look at the record of media responses that weekend, and in the days following, was disheartening. After all that long six-month process of work there was a really mealy-mouthed response, even from our indigenous politicians, to the outcome at Uluru.



Of course, when I look back of the history of events that followed Uluru it is a classic case of progressists and leftists not understanding that, if we had to seize the opportunity of a once in a lifetime's opportunity to achieve justice, we are going to be a bit more disciplined. We got a bit more serious. This wasn't a game that was played out at Uluru, this was deadly serious business and the mealy-mouthed response of the politicians in the days following, gave us great harm. And of course, many many organisations have come in behind us, right across the country, Professor Greg Craven said:

*"This is an idea that grows over time most ideas die a slow death, but Uluru is an idea that is growing overtime"*

But, some of the organisations that should have gotten in behind us, forthwith, didn't. They stuffed around, they took time, they didn't contribute to the political momentum that we needed. The Law Council didn't publicise their support for the Uluru Statement until the day after cabinet rejected it, three months later. How was that going to contribute to a proper outcome from the Cabinet and the Turnbull government if one of our strongest supporters doesn't make its decision known for three months?

The Australian Council of Trade Unions was no better. The Maritime Union of Australia were in with us from the beginning, but ACTU can't bring itself to even utter the word Uluru and, only recently, in a mealy-mouthed way endorsed it, long after the AMA had.

We had two ducks in a row in the middle of last year, we had Uluru in May and then we had the referendum council's report, at the end of June, and those ducks were in complete alignment. And, what we didn't have was the party of the political left lined up as a third duck behind our position, it was wobbling. It wanted to talk about amending race clauses. It wanted to talk about the need for a preamble provision. It wanted to talk about resuscitating a prohibition against racial discrimination, even though the black fellas had debated the prohibition against racial discrimination, uphill and down dale, and chosen the Voice. No, there had to be a wobble, the third duck was not in alignment, and how were we going to prevail, with all the challenges we had to try and get the liberals and the conservatives behind Uluru, when, supposedly, the sympathetic political party was on a wobble.

In my view those who quibbled with Uluru, without accepting the act of self-determination that it represented, did us an injustice, they did us great harm.

Finally, the agency of empowerment, as well as structural reform, we've got to understand that we ourselves have got to save ourselves.

You know, that Kevin Gilbert book was never more truer when he said that "because the white man will never do it". We've got to do it ourselves: we've got to have agency and a big part of our empowerment is about our agency in pursuit of our own destiny. And of course, we want the country to embrace our culture, it is a gift to our country, that it what the Uluru Statement says, we have a culture that should be owned by the Australian people.

Finally, I want to do a very immodest thing, as if the whole thing wasn't immodest, but anyway. The Referendum Council proposed a declaration be developed outside of the constitution, simply as a declaration. And that it have no legal footing, but it will declare something about Australia and something about recognition that was inclusive of everybody. So, I have decided to kick the ball off in proposing my own words, on a declaration of Australia, with which I'll close my lecture.

**DECLARATION OF AUSTRALIA  
AND  
THE AUSTRALIAN PEOPLE**

**W**HEREAS THREE STORIES MAKE AUSTRALIA: the *Ancient Indigenous Heritage* which is its foundation, the *British Institutions* built upon it, and the adorning *Gift of Multicultural Migration*:

*And whereas* Aboriginal and Torres Strait Islander tribes were the First Nations of the Australian continent and its islands, possessed under ancient laws and customs, according to the reckoning of culture, from the Creation, according to the common law, from time immemorial, and according to science for more than 65 millennia. This is a spiritual notion: the ancestral tie between the land, or mother nature, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with their ancestors. We recognise and honour the First Nations who discovered Australia as their sovereign possession, the oldest continuing civilisation in the world.

*And whereas* those who sailed the First Fleet landing at Sydney Cove carried upon their shoulders the common law of England, when the sovereignty of the British Crown was proclaimed. The rule of law, parliamentary government and the Australian English language have their provenance in Britain. From eyes on board ship, this was a settlement, and from eyes on shore, an invasion. We recognise the eve of the 25<sup>th</sup> and the dawn of the 26<sup>th</sup> January 1788 as a profound time for all of us, when Ancient Australia became the New Australia. We recognise and honour the Britons and Irish – convict and free – who founded our institutional heritage, making our Commonwealth from 1901, a great democracy of the globe.

*And whereas* peoples the earth over brought their multitude of cultural gifts to Australia. That we celebrate diversity in unity makes us a beacon unto the world. We recognise and honour our New Australians. When we renounced the White Australia policy, we made a better Commonwealth. We show that people with different roots can live together, that we can learn to read the image-book of others, that we can look across the frontiers of our differences without prejudice or illusion, because interesting things happen at the interface between cultures.

**N**OW THEREFORE, with earnest and open hearts and strong desire to fill the lacuna, after more than two centuries, we make this *Declaration of Australia and the Australian People*, to see our reflections in each other, and recognise one and all:

**OUR HISTORY IS REplete** with shame and pride, failure and achievement, fear and love, cruelty and kindness, conflict and comity, mistake and brilliance, folly and glory. We will not shy from its truth. Our storylines entwine further each generation. We will ever strive to leave our country better for our children.

**WE WILL HONOUR** the Uluru Statement from the Heart and make good upon it. Whilst English is the shared language of our Commonwealth, mother tongues name the country and sing its song-lines – and we do not want for them to pass from this land. They are part of the cultural and natural wonder of our country that is the campfire of our national soul, and the pledge of care and custody we owe our ancestral dead and unborn descendants.

**AFTER THE BATTLES** of our frontier wars fell silent, diggers from the First Nations joined their Settler and New Australian comrades in the crucibles of Gallipoli and Kokoda, and there distilled the essence of our values:

- That our mateship is and will always be our enduring bond.
- That freedom and the fair go are our abiding ethic.
- That our virtues of equality and irreverence give us courage to have a go.

- That we know we can and always will count on each other.

### **THREE STORIES MAKE US ONE: AUSTRALIANS**

Thank you.