## No progress without wide support

By Noel Pearson
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Writing in The Sydney Morning Herald this week, academics Megan Davis and Sarah Maddison criticised my alleged opposition to what they said was the main outcome of the indigenous stream in the 2020 Summit: the “unfinished business” of constitutional reform recognising indigenous people and laying out a clear relationship with the state.

I have no such opposition. I do object, however, to the failure of contemporary proponents of old concepts to do the work of answering the hard questions as to why concepts such as constitutional reform and treaties failed to gain traction in the past.

Dead horses are ritually dragged out for another flogging, rather than people doing the hard calculus: what are the details underlying the slogan, why has it not been supported in the past, who do we need to support this and how do we get this support? If Davis and Maddison lament my political influence or that of other leaders such as Marcia Langton or Galarrwuy Yunupingu, then they ought to work out how to develop their own influence.

If I have one suggestion for Davis and Maddison, it is this: you need to decide whether you want to go down the easy path of being “right-on” with those from your own side of progressive politics or whether you are going to get serious about questions such as, how can I present my case in a way that conservatives can give serious consideration to our argument?

When it comes to a treaty or constitutional reform, a refusal to engage with this political reality will mean that your advocacy will continue to be confined to the kind of 30 per cent support such concepts have attracted in the past.

I learned this lesson 10 years ago when the debate over the Howard government’s Wik 10-point plan consumed the nation. Ron Castan QC, who had been senior counsel to the Murray Island plaintiffs in the Mabo case, and conservative former Northern Territory chief minister Ian Tuxworth brought together a small group of indigenous leaders and key leaders from the Nationals and farmers’ representatives to see if the deadlock could be broken. These meetings became known as the Bennelong process, not to be confused with the Bennelong Society, established later.

These representatives from opposing poles of the political spectrum reached an agreement that both sides were prepared to advocate if the opportunity presented itself. It became obvious that there was more common ground between indigenous people and people from the Right than conventional politics would have it.

People from the rural and regional Right have many interests in common with indigenous people. They may be unsentimental or inelegant in their demeanour, but they have many genuine friendships and relationships with indigenous people.

What I understood was that many of the Right’s objections to Aboriginal aspirations were rooted in its objection to these aspirations being identified as leftist moralising. I came to see how much the form in which indigenous issues were presented, rather than necessarily the substance, disproportionately determined the responses of the two sides of Australian politics and society. It became clear to me that we needed an 80 to 90 per cent strategy of indigenous advocacy – winning the support of the decent Right – as opposed to the 51 per cent strategy of sole reliance on the political Left.

The astounding thing about the 1998 Bennelong process was that the conservatives and indigenous leaders agreed that a national settlement (called a domestic treaty in the document that was developed) between the first Australians and the federal and state-territory parliaments on behalf of the Australian people was the desired goal of the reconciliation process. Such a settlement would be one between citizens of the one, united Australia who were, at a fundamental level, one nation. The outcome of negotiations under this framework would be put to a referendum.

This informal process – neither representative nor officially sanctioned – came to nothing mainly because leading mining interests were banking on the 10-point plan to deliver certainty.

But who would have thought that you could get leading figures from the far Right of Australian politics endorsing a set of principles that included the establishment of a long-term capital base for indigenous people and their support for a domestic treaty to be put to a referendum?

The lesson from the Bennelong process is that if we are to achieve an agreement between the descendants of the original and the newer Australians, we need to reach clarity on some of the most basic questions: the necessity and purpose of a settlement; the fundamental legal premise of a settlement; the nomenclature of a settlement; and the strategy for the achievement of a settlement.

There are two comments I will make in relation to how cogent is the case for the necessity and purpose of a settlement. First, advocates have often assumed that the achievement of a treaty is a precondition to indigenous social and economic recovery. I do not accept this. We must and can act to confront and start to resolve the problems afflicting our people. Second, I do not accept the assumption that the achievement of a legal-political settlement will automatically guarantee solutions to social and economic problems. Legal-political settlements can be only a part of any solution. The other part involves responsibility and hard work.

There is much scepticism in the Australian community about what substantive gains will result from the achievement of what is seen as a symbolic gain. The case must be made for how and why indigenous and non-indigenous Australians will gain from a national settlement.

A national agreement would be a domestic legal agreement, between the indigenous people of Australia and the commonwealth government on behalf of the nation. This acceptance does not deny that indigenous peoples possessed sovereignty before colonisation and it does not deny that indigenous people did not consent to colonisation and the extinguishment of their original sovereignty. It is rather an acceptance of the realpolitik that talk about treaty in the sense of an agreement between two sovereign nation-states is fantasy.

The implication that a treaty involves an agreement between sovereign nation-states is the source of much of the rejection of the proposal. Only if it were clear that the treaty that was proposed was a domestic one would it be at all possible for the term treaty to be acceptable. For many opponents, the word treaty represents a threat to the Australian nation.

For many supporters any word less than treaty is not good enough.

These opposing positions ignore three facts: first, that the word treaty has been used in its domestic meaning in North America and New Zealand; second, that most of the supporters of a treaty are in fact talking about a domestic agreement; and third, that many of the opponents of a treaty would support a domestic agreement.

The last point is where I believe proponents of a treaty have been the weakest: articulating the necessary strategies to achieve their desired goal.

Almost all of the proponents of a national agreement have concluded that a treaty would require amendment to the Australian Constitution. The basic consideration in relation to any proposal to amend the Constitution is this: you need a majority of voters in a majority of the states to support a referendum to amend the Constitution.

That is, you need the support of 80 per cent to 90 per cent of the Australian people at a referendum. You will need, among others, people such as Opposition indigenous affairs spokesman Tony Abbott convinced of the cause if you are serious about getting there.

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