

Over 200 years without a place

By Noel Pearson

The Weekend Australian

25-26 August 2007

Australia has never been clear about the place of Aborigines and Torres Strait Islanders in the nation. It was not clear on the founding of the colonies in Australia.

There has been long and unresolved debate about the meaning of terms on which the British crown instructed the colonists to make sovereign claims to territories that had been, for up to 60,000 years, the home of its indigenes. If the colonists had disobeyed their instructions then, the meaning of such infidelity is now moot. Only in respect of the acknowledgment of native title to land has the terms of Australia's settlement been revisited and made clear: the common law imported from England on the shoulders of the colonists (as the fictions of English law describe it) included recognition of indigenous entitlement to their traditional lands.

It was not clear at the time of nationhood, the formation of the federal commonwealth in 1901. What was clear was that the new Constitution provided that the new parliament would have no power to legislate in relation to members of the Aboriginal race and they were not to be counted in the census. In other words, indigenous people were not citizens of the new nation.

At the time of the sesquicentenary of European colonisation in 1938, the place of indigenous people in Australia remained unsettled. While white Australians celebrated, the famous pioneers of the Aboriginal political struggle, William Cooper, Jack Patten and William Ferguson, organised a congress attended by 1000 people that passed the following resolution: "We, representing the Aborigines of Australia, assembled in conference at the Australian hall, Sydney, on the 26th day of January, 1938, this being the 150th anniversary of the white men's seizure of our country, hereby make protest against the callous treatment of our people by the white men in the past 150 years, and we appeal to the Australian nation to make new laws for the education and care of Aborigines, and for a new policy which will raise our people to full citizen status and equality within the community."

The day before, then prime minister Joseph Lyons met a delegation of Aboriginal representatives. Nothing came from it. It is said that Lyons's main motivation was to take the opportunity to meet pastor Doug Nichols, later governor of South Australia and the first Aborigine to be knighted, who was then a footballer with the Fitzroy Australian football club. No commonwealth legislation would be enacted. Indeed, no legislation could be enacted without a change to the Constitution.

The change to the Constitution would not be made for another 30 years and the 1967 constitutional referendum, which removed the barriers to indigenous citizenship, required a heroic decade-long campaign by Faith Bandler and the next generation of Aboriginal campaigners for indigenous recognition. The same questions about the place of indigenous people within the nation at issue in the 1960s had arisen during that earlier period of indigenous policy consternation in the '30s.

Against the mainstream assumption that Aborigines were a doomed race and all that remained was to "smooth the dying pillow", a burgeoning political movement from 1938 would insist that Aborigines had and would continue to survive and that they sought recognition as an indigenous people of the country.

The 1967 referendum was only a negation of discrimination. It got rid of the original discrimination in the Constitution. It left unresolved the positive question about the place of indigenous people in the nation. Legislation during the past 40 years – not the least the Native Title Act in the '90s – would provide recognition of Aboriginal rights to land, heritage, health and education (with varying degrees of success), but the question about the place and future of indigenous people within the nation remained unresolved.

There was no clear resolution of the consternation of Aboriginal policy in the '30s and there was no resolution of the moral quandary of the '60s. Out of the '30s came a general commitment to the concepts of advancement and assimilation: the white Australian emphasis on assimilation met with an Aboriginal desire for equality and advancement. But while concerted policies at the state level aimed

at assimilation, there was little concerted policy supporting equality and precious little investment in advancement.

Out of the '60s came the general commitment to the concepts of self-determination and advancement, and a banishing of assimilation. The idea that Aborigines, particularly in remote areas, should be able to choose to pursue a more or less traditional lifestyle became dominant, but the basic capabilities necessary for true choice (such as good health and a good education) were neglected such that life in remote communities was in no sense a matter of choice: it was the only option.

The same policy confusion dogged the desire for advancement. Advancement, both social and economic, requires an acceptance of integration even if one is opposed to assimilation. But all too often the baby of integration was thrown out with the bathwater of assimilation. So little advancement ensued.

So 40 years on we end up with a full-blown indigenous policy crisis in the first decade of the 21st century. This is no longer a matter of consternation, it is no longer a matter of moral quandary, it is a matter of crisis.

And the extremity of the issue is demonstrated in the fact that those who most bear the irresolution of this question are the innocents: Aboriginal children. It is always the case that it is the innocent children who suffer. But I would argue that the suffering today is more egregious than the suffering of the past.

In the '30s the children overwhelmingly suffered at the hands of white society and governments, who removed them from their families, and who created and continued to allow conditions that made removal to missions and protection an often better result than leaving them where they were. The debate between stolen generations and rescued generations has been an unnecessary and anachronistic polemic, when the only options available to Aborigines within Australian society at the time placed their children in circumstances that too often made removal a lesser evil. The greater evil was to leave, young girls in particular, vulnerable to predation by whites who had unlimited prerogatives over Aborigines, especially on the frontiers. Australia was a cruel society back then.

In the '60s the children overwhelmingly suffered at the hands of poverty and the lack of access of their parents to opportunity in a discriminatory society. Today, as is plainly obvious, the children overwhelmingly suffer at the hands of their own people, often their own loved ones.

The profound difference in the nature of this innocent suffering tells us about the depth of the crisis. And at the heart of the matters at issue still lies an unclear answer to that old question: whither the place of the Aboriginal and Torres Strait Islander people in the Australian nation?

In 1981, prime minister Malcolm Fraser sought an answer to this question when he instructed the Senate committee on constitutional and legal affairs to examine "the feasibility, whether by way of constitutional amendment or other legal means, of securing a compact or 'makarrata' between the commonwealth government and Aboriginal Australians". The committee's report, *Two Hundred Years Later*, was tabled in 1983. Nothing has yet come of it.

In 1988, prime minister Bob Hawke's impulsive commitment to a treaty, subsequently called a compact, at the Barunga Festival in the Northern Territory, soon came to naught.

During the past 40 years the question of the place of Aborigines within the Australian nation has surfaced momentarily in public life, only to return to the troubled sub-terrain of the Australian consciousness. This consciousness includes an enormous goodwill on the part of the great majority of Australians for the country's indigenous people. The problem is that the answer to the unresolved question is tied up in a long, fraught history of advocacy, polemic, debate and policy implementation, some of which has succeeded and much of which has failed. This murky territory is intellectually and politically polarised and confused. There is often furious disagreement over language rather than substance.

In a recent essay for the Griffith Review, I proposed a general law of public policy: that the distance between correct and incorrect public policies is often finer than people think. It is political contest that generates polarity and exaggerates differences between wrong and right policies. Caricature and the

imperatives of criticism of one's opponents that is inherent to political practice obscures the intellectual truth that the gulf between right and wrong policies is often a matter of fine calibration and degree.

A recent example illustrates my point. First, Robert Manne's important essay in *The Monthly*, extracted in this newspaper, referred to economist Helen Hughes's book *Lands of Shame*. Manne wrote: "The policy Hughes outlines – cogently and persuasively, it must be said – is generally unsympathetic to land rights and self-determination, frankly paternalistic, opposed to those who presently exercise power in the Aboriginal communities and openly assimilationist in its ultimate ambition." The difference between Manne's view of where Hughes stands on a fundamentally important question (of assimilation and land rights) and where I have taken her to stand, is confirmed in her response to Manne in a letter to the paper this week.

Hughes wrote: "While I was gratified that Robert Manne...found my book *Lands of Shame* cogent and persuasive, I was disturbed by his incorrect allegations that I am 'generally unsympathetic to land rights' and 'openly assimilationist'. *Lands of Shame* strongly advocates private property rights for Aborigines and Torres Strait Islanders after demonstrating that it's communal ownership and inalienability that make a mockery of the return of 'native title' lands to Aborigines because it makes them unable to benefit from land ownership as other Australians do. *Lands of Shame* also strongly advocates that Aborigines and Torres Strait Islanders should have the equal opportunity and the right, after receiving the same education as other Australians, to make informed lifestyle choices. Whether they then decide to be hunters and gatherers in remote Australia or university professors is for them, not for Robert Manne, or me, to decide."

This equates with the Hughes of my acquaintance: she is not antipathetic to Aboriginal culture and identity, and the take-no-prisoners demeanour belies a septuagenarian's tender hope for Aboriginal uplift and, more importantly, a belief that it can happen. It is just that Hughes understands a number of bracing realities that have for too long been ignored by those who have held sway in Aboriginal policy.

It is true that many of Hughes's fellow travellers on the cultural and political Right fall on the wrong side of the indigenous culture and identity question. Some members of the Government and the public servants who develop policy have simplistic positions on the question of the place and destiny of indigenous people within the nation: they have given the questions little thought and are driven by the currents of cultural war. Like Manne, I put Prime Minister John Howard in similar terrain to Hughes. But I don't think that terrain is antipathetic to Aboriginal culture and identity.

We will never solve "the Aboriginal problem" until we answer this fundamental question: what is the place of Aboriginal and Torres Strait Islander people in the Australian nation – its past and its future?

Noel Pearson is Director of the Cape York Institute for Policy and Leadership.