

# Recognition debate has become an embarrassment

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- THE AUSTRALIAN
- APRIL 21, 2015 12:00AM
- <http://www.theaustralian.com.au/opinion/columnists/recognition-debate-has-become-an-embarrassment/story-fn8v83qk-1227312458188>

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**Noel Pearson has now abandoned formal constitutional recognition and instead wants a treaty. His support for the proposal for a declaration of indigenous recognition outside of the Constitution came with a catch: an “indigenous constitutional body”, which would, in effect, constitute a - nation within the nation.**

More than ever, the recognition debate has become a national embarrassment. Let me illustrate. The centenary of the Anzac legend is to be celebrated this week, but it (indeed the Anzac treaty) is not recognised in the Constitution. Australian soldiers, or their descendants, do not have the right to be consulted over any legislation that may affect them.

Soldiers and veterans are a significant lobby and perhaps they do not need special legislation, but it would be difficult to make the argument that Aborigines are not also a significant lobby. The number of Aborigines is probably the same as the number of soldiers and veterans (and their descendants) and Aboriginal leaders are never out of the news, and never short of funds, yet Pearson wants a special power for his troops alone.

Section 51 (xxix) of the Constitution empowers the commonwealth to make treaties with foreign powers, but not domestic constituencies. Section 51 (xxvi) of the Constitution, however, allows the commonwealth to make laws for the “the people of any race”.

Pearson wants a special deal for his troops when the Constitution already provides them with a special deal. But he wants more. He wants Aborigines alone to have a treaty clause written into the Constitution such that Aborigines would have to be consulted on any matters affecting them that the parliament or government of the day transacts.

It would be difficult to exclude any matter that affects the diverse interests of Aborigines, in effect, establishing a second (and racially constituted) parliament.

Constitutional recognition would create, in effect, a treaty between some Australian citizens and other Australian citizens on the basis of identity, whether race, culture, language, belief and so on.

Having abandoned constitutional recognition proper as a lost cause, Pearson has regrouped and wants a hook in the Constitution that would amount to the same thing. Let me predict how this sorry mess will end.

While so-called conservatives agree with so-called progressives that race should be removed from the Constitution, conservatives rightly argue any replacement clause that recognises Aborigines would be fatal to equality.

Australians and Aboriginal leaders supported equality in the 1967 referendum. It was the 1967 recognition, however, that helped usher in welfare for Aborigines, which, as Pearson has pointed out, poisoned Aborigines.

These were unintended consequences of the 1967 recognition. The recognition provided incentives to behave badly — to sit down. Aboriginal culture of “demand sharing” or “humbugging” was peculiarly susceptible to the welfare trap.

Australians will not support propositions that risk raising further incentives to behave badly, which is precisely what will happen if Pearson’s proposal for an “indigenous constitutional body” is recognised. What about “recognition” for Aborigines outside of the Constitution (and without the hook)?

Most voters are pragmatists, and they want to know the answer to one simple question.

What is it that proponents (inside or outside the Constitution) want to recognise?

Proponents are reluctant to reveal what it is Aborigines want recognised. The deception inherent in the recognition debate is immense.

Let me inform you what sensibly could be recognised: that an Aboriginal people existed in Australia before European settlement. Such a statement could sit in a preamble to the Constitution, literally and figuratively preceding the Constitution.

The following formulation was contained in the Gillard government Aboriginal and Torres Strait Islander Peoples Recognition Act 2013.

“The people of Australia, recognises that the continent and the islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples.”

They were here first. Beyond that, there should be nothing.

The people who now constitute Australia have come from 180 or so countries. There is no “people” other than Australian citizens.

Australians no longer share a common heritage (British) or race (Anglo-Celtic). Australians share the history of the place called Australia, an official language, the law and civic traditions. Substantive equality before the law is guaranteed, especially following the 1967 version of recognition. There is no guarantee that every person will thrive: for those who cannot, there is welfare.

The treaty is a trick. It will not help a single Aboriginal child get to school, study, pass exams and get a job.

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