
Interview: Dr. Nicolas Peterson

Anthropologists run Aboriginal affairs

Dr. Peterson is the chairman of the Anthropology Department at the Australian National University. He was the research officer for the 1973-74 Aboriginal Land Rights (Woodward) Commission, which resulted in the Aboriginal Land Rights Act (Northern Territory) 1976, which turned over 15% of the continent to Aboriginal control, with another 10-15% under claims.

Q: You were mentioned to me as someone particularly knowledgeable on benchmark studies vis-à-vis Aboriginal land rights questions.

Peterson: Yes, I might be able to help you. The history goes way back. Initially there was the understanding that Australia was *terra nullius* land, then there was a large amount of anthropological work which sort of built up the understanding of Aboriginal patterns of land tenure and what the debates are around that field.

Q: That was when?

Peterson: That really went from the 1930s until the 1970s. That was sort of getting the field data, if you like. Moving to the conceptualization that the kind of rights and interests that Aboriginal people have in land really constitute ownership and that this is really no different than the sense of ownership we have in our own society.

And then the sort of more recent things, which are the legal things, various court judgments and subsequent acts that have flowed from that, acts of government. . . .

There are the key judgments like the Gove Land Rights Case in 1971 which is the *Milirrpum and others vs. Nabalco and the Commonwealth of Australia*. That was the first piece of legislation, the first court judgment which indicated that Aboriginal people had no rights in land which were recognizable under Australian law.

And then of course there is the June 1992 [Mabo] judgment which overturned all that. Those are the two judgments which are absolutely crucial.

Then in terms of legislation, the most crucial piece would be the Aboriginal Land Rights (NT) Act 1976. That was the

benchmark legislation by the Australian government conferring rights on Aboriginal people, statutory rights. This followed an inquiry by Mr. Justice Woodward. Now that was for the Northern Territory only. He was the barrister for the Gove Land Rights Case. He was the barrister for the Aboriginal people. He was approached by the Methodist Church, I think. . . . I was actually his research officer into his commission of inquiry into the Aboriginal Land Rights Commission, I worked with him for a year doing that.

That is the benchmark piece of legislation. Another piece which followed the Mabo decision is the Native Title Act 1993, which just tried to clarify some of the uncertainties which were raised in the judgment, because the judgment leaves an enormous amount of things hanging.

Q: Has there been much written on regional agreements?

Peterson: There is not much done on regional agreements. People are working on regional agreements in a big way now. There is a lot of work being done but nothing has been published. Regional agreements are foreshadowed in the Native Title Act 1993, that allows the possibility of regional agreements.

Q: Various people have pointed out that anthropologists have played an important role there.

Peterson: Oh, we have. We have played a crucial role in all this. Aboriginal people now own in freehold over 11% of the continent. And in 1966 they didn't own any land as Aboriginal people. Individuals may have owned it, but not as Aboriginal people. But now in 1995 there is over 11% of the continent.

And in the Northern Territory, I forget the exact figures but it is more than 33% of the surface area of the NT has been transferred since 1976 into Aboriginal hands. The population of Aboriginal people is about 40,000 in the Northern Territory. About 300,000 in the continent as a whole.

Q: Now when you say that we, meaning the anthropologists, have played a crucial role in this, could you maybe just give me a brief characterization of that?

Peterson: Anthropologists have participated in government inquiries, they have written most of the land claims, they have done all the basic research by which Aboriginal people have got their land back. They have considerable input into the legislation, various pieces of legislation. And of course for a long time anthropologists were the advocates for Aboriginal people.

Q: W.E.H. Stanner seems to have been quite crucial.

Peterson: Stanner really emerged during the 1960s and he became very influential. He was very well connected as a result of the war and had a lot of friends in the public service in high places. And he was a professor here at the ANU,

which is in Canberra, right beside the government. He became sort of Coombs's resource and authoritative voice. Coombs set the political agenda in the Office of Aboriginal Affairs. Stanner was "the voice of the Aboriginal people." At that stage, there was relatively little direct involvement of Aboriginal people. There wasn't a very high-profile Aboriginal leadership.

And there was another person, Dexter, who was the head of the Office, the three of them. And they were the ones who *pioneered* a lot of these policies. And they were the ones who were pushing the Liberal government toward recognition of land rights. They wouldn't go that far, but made various concessions and in 1971 Coombs and Stanner wrote the famous speech for the prime minister then, McMahon, in which he said Aboriginal people have the right to choose the way they live and the rate at which they change their way of life.

So it was the Liberals, a conservative party, which formally announced the death of the assimilation policy, which had in fact died in practice a long time before, on Jan. 26, Australia Day, 1971, in a very important speech, landmark speech. They were the architects behind the scene of the push to land rights. Not in a political thing, but within the bureaucracy.

Q: And what was Stanner's training?

Peterson: He was an anthropologist.

Q: Where was he trained?

Peterson: He was trained at the London School of Economics. Because Australia didn't grant Ph.D.s before the war. So that all of the people would do an M.A. in Australia and then they would hop on the boat and go to London and sit at Malinowski's feet at the London School of Economics. Malinowski is the grandfather of anthropology.

Q: So a number of the early Australian anthropologists were trained in London?

Peterson: All of them. . . . Even when they had Radcliffe-Brown, when they founded the chair, in 1926, the professors still sent them off to London to get a Ph.D. Stanner went, Elkin went.

Q: Obviously you have a very good faculty at ANU now. Does any of the old training in London still continue?

Peterson: Oh, no. That was why the Australian National University was founded. It was also set up to give advice about Asia and the Pacific to the government. And to attract people back from abroad and to start graduate programs. We now have 53 Ph.D.s in our department alone in anthropology and archeology.

Q: Someone mentioned that each land council had anthro-

pologists working on the staff, advising on questions of land claims, and helping in court, etc.

Peterson: That is right. The Central Land Council employs five. The CLC in Alice Springs employs at least five. The Northern Land Council employs at least five. The Pitjantjatjara Land Council employs a couple, a man and a woman. And of course there are a lot of us who work on contracts for them. I do a lot of contract work. I have just written a sea claim, a test case sea claim for the Northern Land Council. So they are hiring a lot of anthropologists to write the claims as well. Because a lot of the work that the anthropologists employed by the councils do has to do with mining, signing agreements, distributing royalties, all that sort of thing, and they often don't have enough time to focus on a single project.

Q: The sea claim, that is interesting. What is the Northern Land Council claiming?

Peterson: They are claiming ownership of the sea, and the sea bed.

Q: How far offshore would that go?

Peterson: Well, we are not going particularly far offshore. They are doing two different claims at the same time. We are going very much on the usage we can prove, which would be, it is only two kilometers north of the northernmost island that we are going for, but this is in an area which sticks right out into the Arafura Sea and it is a large island which has a whole lot of little islands in an arc off to the east and so it kind of has an enclosed inland sea where people were crossing about 20 km of open water.

So it is a big area of sea we are claiming, but it is not going particularly far offshore from the last piece of land. Other Aboriginal groups are claiming to the horizon.

Q: What does that mean, to the horizon?

Peterson: Horizon, I think, I stand open to the correction, but I think the horizon is thought to be 13 nautical miles away or something, that order. Some of them are claiming all the way to Indonesia. And that sort of doesn't work because it goes across to international boundaries. But of course some of this is ambit play to try and force the government to include them in any discussions which involve the sea when they are talking to Indonesia.

Q: When they make this claim, what are they arguing they should have, precisely?

Peterson: We are going to argue it, whether we get it, for full beneficial ownership of the sea. Everything. Of course full beneficial ownership of the sea by private citizens is not something, I don't know about American law, but certainly not in British common law, I don't speak as a lawyer, I speak as an anthropologist, but as far as I know, it is not common.

Because the sea is common property owned by the state on behalf of the people. But we are actually claiming the seabed is the private property of these people. And all the things in and the right to exclusive control of the waters we are claiming, so that anyone who comes on it has to seek their permission.

Q: When does that come up in court?

Peterson: It is before the Native Title Tribunal at the moment. That means it is bound to be disputed by the Fishermen's Association, the recreational people, the government probably, so it will probably end up in the federal court.

Q: If you can make any sort of rough estimate, of the total coastline of Australia, which of course is an island-continent, what percentage of offshore sea ringing Australia would actually be claimed at this point?

Peterson: We're not claiming for the whole of Australia, we're only claiming for one little bit. But in the Northern Territory, Aboriginal people own more than 70% of the shoreline. Right now.

So 70% of the shoreline you can't set foot on, if you are not an Aboriginal person, without permission from Aboriginal people.

Q: Do you need a visa?

Peterson: You need a permit from the Aboriginal community in the area.

Q: So you would be trying to apply for everything off this 70% of the shoreline?

Peterson: In the case I am involved in, we are not doing it for the whole 70%. We are just working with one community and the water that is off their bit of the shoreline. But of course it would set a precedent and the other communities would lob in there pretty quickly.

Q: This is striking, even from an international standpoint. Is there any precedent for what you are doing, or are you setting a precedent?

Peterson: I can't speak authoritatively on that, but honestly I would be very, very surprised if we actually got ownership of the seabed and things. I think the European common law practice will override that.

But I do think, that I would be enormously disappointed and think it most unjust if we didn't end up with a very influential part to play in the administration of coastal waters in the Northern Territory. Obviously meaning, very substantial Aboriginal representation on all the boards which issue licenses and whatever else.

Q: It is intriguing. It brings up all sorts of defense questions as well.

Peterson: It does.

Interview: David Bennett

Plenty of jobs for the anthropologists

Bennett is in the Strategic Policy Unit of the federal Department of Environment, Sports, and Territories (DEST), which handles several agencies in charge of "protected areas" such as the Australian Heritage Commission and the Australian Nature Conservation Agency. He and his superior at DEST, Philip Toyne, are the two key federal bureaucrats involved in trying to establish Australia's first "regional agreement" in the Cape York Peninsula. Bennett moved to his current position from the Aboriginal and Torres Strait Islander Commission. He emigrated to Australia after several years in the U.S. Army.

Q: What is the latest on the regional agreements? Have any been struck, are they on the horizon, or what?

Bennett: First of all, under the Native Title Act, Section 21, none have been struck. However, there is a region in the far northern tip of the Cape York Peninsula, which, geographically, because it is isolated—about like having the Everglades designated—the groups up there want to go together, saying, "Look, we have a very strong case for claims. We can do it one claim at a time, or, we will put in, under Section 21, a regional agreement claim. Let's sit down and let's talk about it, and see what we can work out."

Now the whole idea of regional agreements is in part very similar to the Canadian agreements. The idea we have been working on is very close to the Nunavut model in Canada. The closest one is this far northern tip of the Cape, 8,000 square miles of the Cape York Peninsula. Now, there are a couple of other regions considering such things. We have an area called the Kimberleys in Western Australia; they are looking at the possibility of one, because they have an area out there where they think they can make a better deal through claiming all the rights and settling all the issues, including issues of how the area will be governed—self-government per se is not on in this country, but we can have a modified form of it.

The other place that is thinking very strongly about it, is the Torres Strait Islands, because they have won the first and in one way most successful, of the Native Title claims. But now they want to expand it over the sea.

So they are thinking about a regional agreement which would take in the sea, because for the Torres Strait Islanders, it is the sea between, that is more important than the islands,