

THE VOICE REFERENDUM

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Australian schoolchildren are told that they live in the world's largest island and smallest continent, a land that has been continuously occupied by countless generations of Indigenous people over the last sixty-five thousand years. On 14 October 2023, about 40% of Australians voted 'yes' to a Constitutional amendment that would have formally recognised these original inhabitants, the Aboriginal and Torres Strait descendants of Terra Australis. The other 60% voted 'no'. In no States did a majority vote 'yes'. The Constitutional amendment failed.

Holding the referendum was a major part of the platform that Labor took to the May 2022 federal election; and Anthony Albanese chose to lead his triumphant election night speech to the Labor faithful with his personal promise to carry it through. Having made much of the need for truth, transparency and integrity in government – with an eye to the absence of all three in the preceding Morrison government – and pitching it as the first priority of his administration, the new Prime Minister set up an unambiguous benchmark by which to be judged.

At the time, the political risk seemed low. Albanese had ridden the wave of anti-Morrison rage with political skill and was buoyed by polling and focus group data showing a clear majority of Australians were in favour of recognising Australia's First Nations' peoples in the Constitution. However, the initial support continuously fell from election night and through 2023 (Briggs 2023).

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Brief background

The Australian Constitution that came into force on the first day of the twentieth century was negotiated by white male politicians born and raised in the preceding century. They accepted and promoted the iniquitous doctrine of *Terra Nullius*, a myth propagated by the early British explorers to assert that the Great South Land was bereft of inhabitants. Although demonstrably untrue, the land-hungry newcomers set out to make it so.

Section 51 (xxvi) empowered the newly created Commonwealth government to make special laws for people of ‘coloured or inferior races’, *excluding* ‘the aboriginal race’ whose regulation and control were to be left to the State governments. Section 51 also explicitly prevented Indigenous Australians from being counted in regular population censuses. From the start, what has been called ‘the race power’ placed Aboriginal and Torres Strait Island peoples at a systemic disadvantage to other Australians. Not to be counted amounted to a confirmation of *Terra Nullius*. In an imported post-enlightenment culture where measurement and quantification equated to ‘scientific knowledge’, this was a crushing blow and justified policies based on a mix of neglect, control and paternalism.

The subsequent atrocities of massacres, the ‘stolen generations’, mass incarceration, deaths in custody, confinement, unemployment, homelessness, poverty, discrimination, and health and educational disadvantages have resulted in third world hubs in a first world country (Reynolds 2013, 2021). The fact that the Constitution was finally amended in 1967 to remove the race power clause, with more than 90% of Australians voting ‘yes’ at that time, has not materially ‘closed the gap’ (Ashenden 2022). Governments continue to impose policies on Indigenous communities without consulting them in an effective and continuing manner.

In the face of accumulating government failure, Aboriginal activists have been pushing for new and more effective ways of involving Indigenous Australians in the development, implementation of and accountability for policies aimed at improving their lives. Too often, even well-meaning actions of state and federal governments have been imposed without the input or knowledge of Aboriginal communities, resulting in perverse outcomes that have reinforced prevailing injustices and stereotypes. This push culminated in 2017, when Indigenous representatives met in central

Australia and agreed what came to be called ‘The Uluru Statement from the Heart’ (2017). Basically, this statement proposed three paths forward:

- recognising First Nations’ peoples in the Australian Constitution by way of a permanent ‘voice’ to parliament;
- recognising joint First Nations sovereignty with the Crown, paving the way for development of treaties between Indigenous peoples and Australian governments;
- establishing a process of truth-telling about the historical record and the continuing injustices between Indigenous and non-Indigenous Australians.

These are the three elements in the *Uluru statement* commonly referred to as Voice, Treaty and Truth.

Framing the referendum

The incoming Albanese Labor government promised to accept the offer made by the framers of the *Uluru statement*, ‘in full’. But the new government chose to start with point one, The Voice, which would provide Indigenous communities with a permanent mechanism for giving advice to government on issues affecting them. The key point was *permanent*. By being enshrined in the Constitution, future governments had to ‘listen’, though not heed, advice from a mechanism that could not be unilaterally removed (as has occurred in the past with advisory bodies of Indigenous peoples, such as ATSIC), other than by another successful Constitutional amendment.

As it turned out, the order of action may have been misplaced. Opposition to the proposed amendment that only picked up the first of the three points quickly mobilised around the other two. Conservative politicians and their backers in agribusiness and the natural resources sector represented the proposed Voice as likely to lead to an attack on private property owned by non-Indigenous Australians. In stirring the pot, they relied on the widespread ignorance of the history of relations between Indigenous and non-Indigenous Australians to bolster extraordinary assertions like – ‘they are coming for your land and house’. Decades of ‘the history wars’ had prepared the majority of voters with a distorted and demeaning view of how we have arrived where we are and reinforced a generally ungenerous, for some deeply racist, attitude to First Nations peoples.

But rank racism is not the full story. There was also genuine confusion about *why* the Voice was needed, a situation readily reinforced by those opposed to the amendment on a rag-tag range of grounds, reflecting material and ideological commitments. The centre right and far right political parties quickly planted their flags as being opposed to creating a ‘special status’ for First Nations’ peoples. The cry went up – ‘it will divide our nation: we are all equal’. The fact that we are not all equal – that we are divided along class, ethnic, gender, ‘race’ and cultural fractures – was wilfully ignored. The power of centuries of liberal ideological baggage focused on individual ‘rights’ and aspirations was brought to bear in favour of those with entrenched privilege and power.

The timing of the referendum magnified the impact of this tendentious claim. In an era of high interest rates, declining living standards for the majority of Australians and increasing economic insecurity, it was not surprising that many working class voters and downwardly mobile middle class voters looked to their own. For those Australians finding it difficult to meet rising housing, health and utility bills, the plight of others less fortunate than themselves receded in significance. The question *why should we vote yes* morphed into *why should ‘they’ get something (anything) when we get nothing?* Perceptions of inequality, as the sociologist W.G. Runciman (1966) once said, is all about relative deprivation.

This helps us understand the seemingly counter-intuitive result that the strongest ‘no’ votes were concentrated in low socioeconomic areas, while ‘yes’ triumphed in the areas having the most affluent voters. Cities like Sydney and Melbourne displayed this stark divide. The inner city, eastern and beachside suburbs were strongly in favour; but almost all the western suburbs and non-metropolitan regions went against the referendum proposal.

A positive correlation between educational attainment and the likelihood of supporting the amendment has also been suggested (*e.g. The Guardian* 2023). Indeed, it is possible that the stronger correlation may well be with education than with geography. However, more to the point, people who live in well-heeled areas have the everyday luxury to express empathy for others because they are not scrambling to keep a roof over their heads and food on the table. This, I believe, is the key political lesson of the referendum outcome, one that should have been well embedded on the progressive side of politics after the global rise of authoritarian populist

forces here, there and everywhere. Trump, Brexit, Orban, Duda and the whole grisly lot should have forearmed us against the volley of misinformation, disinformation and vitriol that poisoned the campaign from the beginning.

It is also the case that the 'no' campaign was well orchestrated. The leaders of the Coalition parties, Peter Dutton and David Littleproud were able to (literally, at photo ops) stand behind their Aboriginal shadow Indigenous Affairs spokesperson, Senator Jacinta Nampijinpa Price who argued that Aboriginal Australians were *better off because of British colonisation*. The symbolism of her strong challenge to the 'yes' campaign's focus on Indigenous deprivation provided cover for many Australians unaware of the realities of Indigenous disadvantage to vote 'no', not because they lacked empathy and generosity but because they just didn't know. The slogan 'if you don't know, vote no' was scurrilous but evidently highly effective.

All this is familiar stuff, right out of the Tory handbook. What is baffling to me was the role of what was called 'the progressive no' campaign spearheaded by another Aboriginal Senator, Lidia Thorpe. People in the 'Blak Sovereignty' movement opposed the voice because they don't wish to be included in the Constitution. Their overriding aim is to achieve a treaty or treaties with the Crown over sovereignty, though it is not clear whether they mean absolute or joint ownership of the land. This meant that the government and 'yes' campaign were faced with two articulate, young Aboriginal women arguing against the amendment for radically different reasons but both claiming that most Indigenous Australians opposed the Voice. That this was false was borne out by the fact that the 'yes' vote prevailed in most remote Aboriginal communities, up to 80% in places like Leonora in Western Australia, Hope Vale in far north Queensland and in the south-west of the Northern Territory. 60% support figured in Fitzroy Crossing (WA), Jabiru (NT) and Lockhart River (Qld.).

Senator Price believes it ain't broke. Senator Thorpe thinks it's broke and beyond fixing. The latter seems to believe that the 'no' result is a victory and will hasten attention being focused on the issue of Indigenous sovereignty. This seems to me to be sheer fantasy, showing a level of political naivety almost beyond comprehension. If the majority of the 3% Indigenous minority cannot convince the other 97% to enshrine a Voice, are the majority of non-Indigenous Australians ever likely to accept Aboriginal sovereignty? In fact, in the immediate aftermath of the vote,

the Queensland and NSW Labor governments began to wobble at the knees on their promises to negotiate separate treaties with their Indigenous communities. Former Labor Prime Minister Paul Keating (2023) commented that the failed campaign for the Voice has probably pushed treaty off the political agenda indefinitely.

Complacency also marred the ‘yes’ campaign. The early polls, as noted, showed strong majority support for the amendment. The government was also fooled by drawing on the earlier overwhelmingly positive outcome of the same sex marriage plebiscite. Whereas many, perhaps most, voters knew someone – family member, friend, or friend of a friend – in the LGBTQI+ world, many, perhaps most, did not directly connect with Indigenous Australians, in part because of their limited numbers but mostly because of their geographical and socioeconomic marginalisation.

There have been many causes advanced to explain the result, which I won’t rehash here. But the deadly simple mechanics of constitutional change in Australia, supported by the undeniable historical experience of forty-four previous attempts, is that success depends on there being bipartisan support across the political and parliamentary divide, and a strong positive vote in Queensland. As soon as the Queensland-based leaders of the two Coalition parties came out swinging against the amendment, the task for the ‘yes’ campaign became immense.

Where now?

In the immediate aftermath of the referendum, Indigenous leaders withdrew, many observing a week of silent reflection. As a non-Indigenous Australian, I have no insight into nor right to suggest where the movement for Indigenous rights might go next. The referendum raised complex issues and diverse opinions among and within Indigenous communities that will be worked through over the next few years by Indigenous leaders and communities across the country. One view was put recently by Yorta Yorta man Daniel James (2023). Based on early soundings with other Indigenous people who had campaigned for ‘yes’, he suggested building on that momentum with a threefold focus:

- reinvigoration of the ‘closing the gap’ agenda through a coalition of relevant peak associations

- development of a new body to not only represent First Nations' interests but to actively advocate (agitate) for the strengthening of Australian democracy and truth in public life
- ensuring that a Peter Dutton-led Opposition does not win the next federal election.

This last aim places pressure on the Albanese government and Labor movement to deliver meaningful reform. Both have undoubtedly suffered a major blow, eating away at the political capital inherited on election night 2022. The key question is – can they regroup and move on? What would that look like? As I see it, there are two broad paths forward.

First, the government can retreat to its oppositional strategy of 'head down', advancing only those policies that cannot easily be weaponised by the Coalition attack dogs, notably Peter Dutton and his Murdoch media henchpersons. The downside of this small target approach to the next election is that a second term Albanese government would then be wedged into continuing the 'Liberal-light' agenda of its first term. It may seem like the low-risk strategy – if holding onto office and not doing anything when there is the driving aim – but the downside risk is that progressive supporters will drift away to the Greens and Teals.

The alternative progressive approach would involve attacking inequality, the root cause of populist insurgency worldwide. This would require sharply focused policies that improve the life chances of those disenfranchised voters who have ceased being 'aspirational' and are now 'survivors', clinging on in hope of getting through. It would require clever and nuanced policies of taxation reform that 'soak' the rich and exempt the remaining voters who still aspire to be rich. At the top of the list would be a wealth tax concentrating on the total assets of the wealthiest 5% of Australians, while exempting the sacred cow: 'the family home'. This would require careful design to keep ahead in the cat and rat game of tax dodging. Companion policies would need to aim at the means – including asset shifting, trusts, and private and shell companies – by which the super-rich conceal or transfer their wealth through family networks and sundry other murky avenues.

Such policies would also need to complement other international efforts to control tax havens and levy minimum global income taxes on corporations. The recent comprehensive report by the EU Tax Observatory (2023) notes that 'tax evasion – including grey-zone evasion at the border of legality – is increasingly happening domestically. Global billionaires

have effective tax rates equivalent to 0% to 0.5% of their wealth, due to the frequent use of shell companies to avoid income taxation. To date, no serious attempt has been made to address this situation, which risks undermining the social acceptability of existing tax systems'. Increasingly, tax evasion is occurring closer to home as progress is made on closing down international tax havens. One of the authors of the report has co-authored an extensive study of the need for radical tax reforms across the developed economies (Saez and Zucman 2019). International cooperation in establishing and policing a global assets register would help, with a portion of receipts directed to coordinated action on climate change, especially in the Global South.

A strategy of getting serious about the broader issue of economic inequality is obviously a high-risk strategy, with memories of the 2019 electoral outcome still burning bright in the minds of Labor leaders. Dutton would wheel out the well-tested furrphies of 'the politics of envy'. This attack would be vociferously backed by those individuals and corporations most likely to lose from a more progressive tax system, a narrative that we have seen played out many times over the years. But would it succeed this time? Dutton is widely disliked in the broader electorate; and his behaviour in the referendum painted him indelibly as 'Mr. Nasty'. If Labor's strategy was pursued with focus and discipline, clearly identifying on whom the taxes would fall and on whom they would not, while also pointing to how the proceeds would be used to solve 'the cost-of-living crisis', would Dutton be able to carry enough moderate liberal and swing voters in the seats he would have to win to defeat Albanese and his team?

A sober assessment of Dutton's political success on the referendum suggests that the Coalition could foreseeably flip enough seats in Western Australia and outer suburbs in other States to drive Labor into minority government again, dependent on a large crossbench in both Houses.

Conclusion

This view of the referendum and its aftermath suggests, as noted, that Indigenous affairs will return to the backburner for some time, an outcome already anticipated if not welcomed by Aboriginal leaders. New ways will need to be found to involve Indigenous communities in policies that actually close the gap. The referendum was an opportunity lost. The result was shocking but not a surprise.

The future in a highly volatile world, marked by the forces of multipolarity, deglobalisation and rolling crises, economic and political, is even more difficult to foresee than usual. Labor clearly has a big challenge on its plate to avoid the indignity of being dumped into history's dust bin as a one-term wonder.

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