

The First Nations Voice Referendum

A Teaching Resource for Politics, International Relations and Public Policy



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for the Australian Political Studies Association (APSA) Teaching and Learning Group

Introduction

The 2023 Referendum on the First Nations Voice is a significant event in Australian politics and history. As teachers of politics, international relations, and public policy, we have both an opportunity and responsibility to provide our students with the knowledge and tools to understand and engage with the referendum process.

This includes an understanding of how the Voice Referendum has come about, as the first of three reforms from the *Uluru Statement from the Heart*, and how a Voice might change politics and policy-making moving forward.

This collection of resources and learning activities has been prepared at the request of members of the Australian Political Studies Association (APSA). It includes resources that can be used in units of study across the sub-disciplines of politics, political philosophy, public policy, and international relations.

We have invited Indigenous and non-Indigenous academics with expertise in the area to contribute ideas and learning materials to assist teachers in teaching about the Voice Referendum over the coming months.

We have included First Nations authors and perspectives throughout these activities whenever possible, and we encourage you to draw attention to this when presenting the resources to your students.

We have also included a list of additional resources below that may be useful in your teaching or in simply developing your background knowledge in the area.

OTHER RESOURCES

For blog-style academic commentary on the Voice Referendum and *Uluru Statement from the Heart*:

- Indigenous Constitutional Law Blog <https://www.indigconlaw.org/>

For an online training module on the referendum:

- <https://ulurustatement.org/training/>

For various webinars, lectures and videos on the Uluru Statement and Voice:

- <https://ulurustatement.org/education/resources/>

For official government resources regarding the Voice Referendum:

- <https://voice.gov.au/>

Factsheets and a guide for legal practitioners on the Referendum by the Law Council of Australia:

- <https://lawcouncil.au/policy-agenda/the-referendum-for-an-aboriginal-and-torres-strait-islander-voice>

A television series of interviews with First Nations Elders, talking about their own lives and roles as leaders in their communities, and in many cases reflecting on the significance of the Voice:

- One Plus One – The Elders <https://iview.abc.net.au/show/one-plus-one-the-elders>

ABC Radio National - Speaking Out with Larissa Behrendt – Podcasts on 'Politics, arts and culture from a range of Indigenous perspectives' - <https://www.abc.net.au/radio/programs/speakingout>

Including episodes (panel discussions) on:

- Voice, Treaty Truth: The implications of constitutional reform? (11 June)
- Representation, Voice and Treaty (7 May)

Constitutional law expert, Associate Professor Elisa Arcioni from the University of Sydney Law School explains The Voice to Parliament:

<https://youtu.be/pS1O2zsvEAQ>

The Conversation: 10 questions about the Voice to Parliament - answered by the experts, 19 June 2023, <https://theconversation.com/10-questions-about-the-voice-to-parliament-answered-by-the-experts-207014>

National Museum of Australia – teaching resources, “Defining Moments” series: 1967 Referendum <https://www.nma.gov.au/defining-moments/resources/indigenous-referendum>

O’Neil, Jason & Diana Perche, 2023, ‘Indigenous politics’ (Chapter 35) in N Barry et al (eds) *Australian Politics and Policy: Open Textbook*, Sydney University Press, <https://open.sydneyuniversitypress.com.au/9781743328859/9781743328859-indigenous-politics.html#Chapter35>

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The Uluru Statement & the deliberative process that produced it

Associate Professor Sean Brennan & Professor Gabrielle Appleby (UNSW Sydney)

BACKGROUND

At the centre of contemporary debate on constitutional recognition of Aboriginal and Torres Strait Islander peoples is the *Uluru Statement from the Heart*. It is a request for constitutional and structural reform, issued to the Australian people by Aboriginal and Torres Strait Islander delegates attending the First Nations Constitutional Convention on 27 May 2017: 50 years after the successful 1967 Referendum removed exclusionary references to Aboriginal people in the Constitution.

The 1967 referendum gave the Commonwealth Parliament powers to make laws for Aboriginal people. But it rendered the Constitution entirely silent with respect to the place of First Nations people. They were left vulnerable to adverse discrimination and lacking a reliable mechanism to have input into laws and policies affecting them.

For decades, First Nations people appealed to politicians for structural reforms to alter the dynamics of policy development and law-making. These included the Barunga Statement in 1988 from people of the Northern Territory, presented to Prime Minister Bob Hawke; ATSIC's 1995 Recognition Rights and Reform report, produced for a government Social Justice Package that was never delivered; and the final recommendations in 2000 of the Council for Aboriginal Reconciliation from ten years of consultation.

Liberal Prime Minister John Howard sparked the contemporary debate regarding constitutional recognition of Aboriginal and Torres Strait Islander people in 2007, as the first of seven successive Prime Ministers from both sides of politics who committed themselves to constitutional recognition. An Expert Panel appointed by the Labor Gillard Government delivered a package of referendum proposals in 2012 including protection against racial discrimination, but there was immediate scepticism from the Opposition, and the Government never formally responded to the Panel report.

The issue was referred to working groups and parliamentary committees. Eventually, a group of Aboriginal and Torres Strait Islander leaders issued the Kirribilli Statement in 2015 calling for direct engagement with their communities and substantive not minimalist reform. Soon after, Liberal Prime Minister Malcolm Turnbull established a Referendum Council. Its Indigenous Steering Committee devised a deliberative consultation process, known as the Regional Dialogues, that culminated in a First Nations National Constitutional Convention at Uluru. The purpose was to consult with a diverse group of First Nations

people from across the country to determine their response to reform proposals and ask participants what meaningful constitutional recognition was for them.

LEARNING OBJECTIVES

- Identify the distinctive features of the deliberative process that culminated in the *Uluru Statement from the Heart*.
- Observe the relationship between the process and the prominent influence of the *Uluru Statement from the Heart* in the debate over a referendum for constitutional recognition.

READINGS

Davis, Megan, 2018, 'The Long Road to Uluru', *Griffith Review*, 60

<https://www.griffithreview.com/articles/long-road-uluru-walking-together-truth-before-justice-megan-davis/>

Referendum Council, 2017, *Final Report*, pp 9-11, 16-32 and Appendix I

<https://www.referendumcouncil.org.au/final-report.html>

Davis, Megan & George Williams, 2021 *Everything You Need to Know About the Uluru Statement from the Heart*, UNSW Press.

ACTIVITIES

In preparation for class, ask students to gather examples from the media and other public discussion of the referendum that refer to the *Uluru Statement from the Heart*.

Address the following questions in small groups and then discuss the responses with the whole class:

1. What preparatory steps were involved in designing and road-testing the deliberative process and the agenda that was then used in the Regional Dialogues? Why was that important?
2. Where were the Dialogues and final Constitutional Convention held and what is the significance of that geography for the process and its outcome?
3. How were participants in each Dialogue selected, and why was that important?
4. In what ways did the three-day program for each of the Dialogues constitute a deliberative model for community consultation?
5. How did the Uluru Convention bring the work of the Regional Dialogues to a conclusion?
6. How did the overall process differ, for example, from the way parliamentary committees conduct their work and electoral democracy deals with Indigenous issues?
7. How did the achievement of a consensus outcome in endorsing the *Uluru Statement from the Heart* subsequently affect the course of debate on constitutional recognition?

After addressing these questions, ask students to pair off and look at the media / public discussion examples they brought to class. Do the references to, and representations of the *Uluru Statement from the Heart* accurately reflect what you now know of the process? Consider why this is or is not the case.

Political & ideological context of the Voice Referendum

Jason O'Neil (UNSW Sydney)

BACKGROUND

In the lead up to the Voice Referendum, Indigenous and non-Indigenous politicians and activists have made their stance clear. The wide range of perspectives can be broadly mapped across the left/right spectrum, and it is worth considering the nuances in the positions of the First Nations activists and leaders, and those of the political parties.

The Voice Referendum and *Uluru Statement from the Heart* reforms are formally supported by the Australian Labor Party, with leadership from Patrick Dodson, Linda Burney, and Malarndirri McCarthy. They are also supported by the Australian Greens, with leadership from Dorinda Cox.

The Yes campaign currently includes the Yes23 campaign run by Australians for Indigenous Constitutional Recognition Ltd, and the History is Calling campaign run by the Uluru Dialogue, which carries the mandate from the *Uluru Statement from the Heart*. There are also a number of Liberal and National Party members and MPs who support the campaign, including former Coalition Minister for Indigenous Australians, Ken Wyatt.

The referendum is opposed by the Federal Liberal Party and the Nationals.

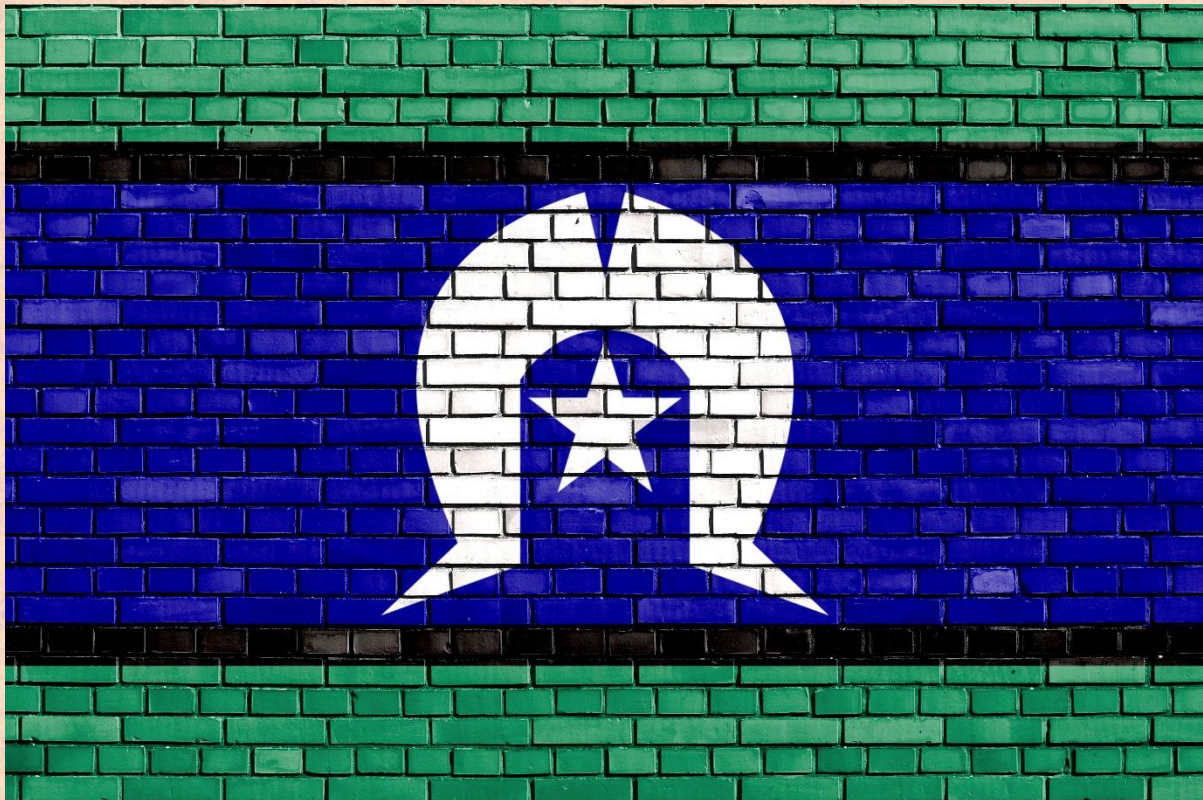
The formal No campaign is led by Warren Mundine, Jacinta Price, and other conservative figures. It currently includes the Fair Australia campaign run by conservative lobby group Advance Aus Ltd. There are also Indigenous activists and politicians including Lidia Thorpe who have been part of the 'progressive' and/or 'radical' opposition to the Voice Referendum, calling for treaty and truth-telling processes instead.

ACTIVITY

Before class, ask students to identify recent campaign material or public statements made relating to the Voice Referendum.

In pairs or small groups, ask students to share what they have found and collectively identify:

1. Are Indigenous voices or viewpoints present in this material?
2. What is the source of this material? What political party and/or referendum campaign is this material aligned with, if any?
3. Are there any signs of dis- or misinformation in this material?
4. What ideological positions are visible in this material?
 - a. What might be the position of those ideologies on principles of Indigenous self-determination and democracy?



MEDIA MATERIALS

Allam, Lorena, 2023, *"A gift to Australia": Indigenous leaders return to Uluru to rally yes vote in voice referendum*, *The Guardian* 26 May, <https://www.theguardian.com/australia-news/2023/may/25/a-gift-to-australia-indigenous-leaders-return-to-uluru-to-rally-yes-vote-in-referendum>

Gock, Kamin, 2023, *'Lidia Thorpe rules out supporting No campaign, may abstain from Voice to Parliament legislation vote'*, *ABC News* 28 May, <https://www.abc.net.au/news/2023-05-28/lidia-thorpe-rules-out-voting-no-to-voice-may-abstain-from-vote/102403054>

Butler, Josh, 2023, *'Lidia Thorpe brands leading no group "deceptive" for using her quotes in voice Facebook campaign'*, *The Guardian* 24 May, <https://www.theguardian.com/australia-news/2023/may/24/lidia-thorpe-brands-leading-no-group-deceptive-for-using-her-quotes-in-voice-facebook-campaign>

McCubbing, Gus, 2023, *"Fight for it": Dan Andrews' advice for Yes campaign'*, *Australian Financial Review* 12 June, <https://www.afr.com/politics/fight-for-it-dan-andrews-advice-for-yes-campaign-20230613-p5dg3r>

OTHER READINGS

Larkin, Dani & Kate Galloway, 2021, *'Constitutionally Entrenched Voice to Parliament: Representation and Good Governance'*, *Alternative Law Journal* 46(3), 193-198.

Arnett, Christopher, 2023, *'How we can avoid political misinformation in the lead-up to the Voice referendum'* *The Conversation* 5 June, <https://theconversation.com/how-we-can-avoid-political-misinformation-in-the-lead-up-to-the-voice-referendum-206500>

Indigenous nation building & the Voice Referendum

Ben Kelly & Dr Janine Gertz (UNSW Sydney)

CONTEXT

Aboriginal and Torres Strait Islander peoples have been asserting their sovereignty since the earliest days of the British colony of New South Wales. This has taken many forms, from asserting Indigenous law via the application of traditional punitive measures to settlers and armed resistance to colonial expansion, through petitioning for Indigenous control over specific reserves, to state and nationally-oriented political agitation for Land Rights and self-determination.

From the second half of the twentieth century, First Nations political figures increasingly drew on the language of international law to assert their claims. They positioned Aboriginal and Torres Strait Islander groups as rights-bearing *peoples*. The current nomenclature of 'First Nations' reflects this trend. Various groups have advocated for a treaty or treaties between First Nations and the settler state since at least the 1970s. First Nations delegates contributed to the development of the 2007 UN Declaration on the Rights of Indigenous Peoples over the course of several decades. International networks of Indigenous peoples have developed, knowledge and strategies have been exchanged.

In recent decades, several First Nations groups have adopted the language of 'nation building' to frame and guide their efforts to practice, develop and assert their right to self-determination. The Indigenous Nation-Building framework that has been pursued by First Nations Groups here in Australia builds on more than 30 years of research conducted by the Native Nations Institute at the University of Arizona, and the Harvard Project on American Indian Economic Development in North America. The process which has been adopted within Australia has been autonomous from the agendas of Australian governments but has leveraged resources and structures controlled and created by the state.

It is anticipated that an Aboriginal and Torres Strait Islander Voice to Parliament would strengthen Treaty and Truth-Telling processes and may be another avenue via which Aboriginal and Torres Strait Islander Nations can be legally and politically recognised.

LEARNING OBJECTIVES

- Define 'Indigenous nation-building' in the context of Aboriginal and Torres Strait Islander nations.
- Understand that Aboriginal and Torres Strait Islander nation-building is autonomous from settler state policy goals and initiatives, including constitutional recognition.
- Articulate how First Nations may be able to leverage a Voice to parliament in pursuit of their nation-building agendas.

READINGS

Jorgensen, M. et al, 2023, 'Yes, The Time Is Now: Indigenous Nation Policy Making for Self-determined Futures', *Public Policy and Indigenous Futures* (pp. 129-147), Springer Nature.

Rigney, D. et al, 2022, *Establishing a Voice to Parliament could be an opportunity for Indigenous Nation Building. Here's what that means. The Conversation* 4 August, <https://theconversation.com/establishing-a-voice-to-parliament-could-be-an-opportunity-for-indigenous-nation-building-heres-what-that-means-187534>

Further reading:

Rigney, D. et al, 2021, 'Treating treaty as a technology for Indigenous nation-building', *Developing governance and governing development—International case studies of Indigenous futures* (pp.119-140), Rowman & Littlefield.

VIDEO BACKGROUND RESOURCE

<https://ulurustatement.org/education/resources/>

LEARNING ACTIVITIES

Ask students to form small groups and discuss the following questions:

1. What are some examples of Indigenous nation building considered in the Jorgensen et al (2023) chapter?
2. How have First Nations leveraged external opportunities, including state or federal policy, to advance those nation building strategies and activities?
3. Can you think of any other potential Indigenous nation building goals, strategies or activities?

Reconvene, solicit responses, and build a list of Indigenous nation building goals, strategies, and activities. Some examples might be:

- national-language revitalisation
- cultural revitalisation
- economic development
- increasing capacity to manage Country
- increasing capacity for self-government

In their groups, ask students to select one Indigenous nation building goal/strategy/activity and discuss:

1. How might a Voice to parliament be leveraged to pursue your chosen goal/strategy/activity?
2. What settler policies, existing or potential, could be leveraged to that end without a Voice to parliament?
3. Besides leveraging state and federal policy, how could your nation building goal/strategy/activity be advanced?

Reconvene and share ideas.

Final all-group question: how important is a Yes outcome in the Voice Referendum for Aboriginal and Torres Strait Islander peoples' nation building agenda? It could simply be a show of hands for Very, Somewhat, or Not very.

Representative bodies in historical context: The lessons of ATSIC

Associate Professor Alison Holland (Macquarie University)

HISTORICAL CONTEXT

As an advisory body to governments, the proposed Indigenous Voice to parliament is part of a longer history of Indigenous representative bodies.

Calls by Indigenous people for an Indigenous voice to parliament date back to the 1930s. It wasn't until the election of the Whitlam government in 1972 that a dedicated Indigenous advisory body was established, the National Aboriginal Consultative Committee (1972-1977) as well as a Department of Aboriginal Affairs and a dedicated Aboriginal affairs minister.

In making these changes, Whitlam signalled a policy shift from assimilation to self-determination. However, with a change of government in 1975 the NACC was replaced by the National Aboriginal Conference (1977-1985). This was accompanied by a greater emphasis on self-management and self-sufficiency in policy terms.

Despite their important interventions both bodies faced internal and external challenges including structural weaknesses, tensions between the body and the Department and with governments, and frustrations by Indigenous representatives at the limitations on their policy making capacity and in adequately representing diverse Indigenous interests.

A bold new experiment was initiated in 1990 following the passage of the highly controversial *Aboriginal and Torres Strait Islander Act* in Federal Parliament. The Aboriginal and Torres Strait Islander Commission (ATSIC) represented the Hawke government's attempt to bring self-determination back into the policy frame.

Following extensive community consultation across Australia, a network of regional councils were established which elected one of their members every three years to sit on a National Commission. The government of the day appointed the Chief and Deputy Commissioner and a Chief Executive Officer who headed the administrative arm of the organisation.

Unlike previous bodies, ATSIC was a statutory authority with representative and advisory powers. It had a dedicated budget targeted mostly to two of its flagship programs in employment and housing. After operating for fifteen years, it was abolished by the Howard government, in a bipartisan move, in 2004/5. Political scientist Will Sanders argues that Indigenous affairs is still recovering from its loss.

LEARNING OBJECTIVES

- Understand the historical context of the present Voice to parliament proposal.
- Outline the successes and limitations of ATSIC.
- Identify some of the key issues, tensions, and possibilities in establishing an Indigenous voice within the Australian polity.

ACTIVITY

Students will read the piece by Colin Tatz and listen to the podcast on ATSIC before coming to class. In groups they will discuss the following questions:

1. What does Tatz see as the chief obstacle to Indigenous representation?
2. What was the main purpose of Indigenous representative bodies prior to ATSIC?
3. What was ATSIC and how do Indigenous people understand its role?
4. How does history shape Indigenous concerns and demands for representation?
5. What were the main challenges for ATSIC? What are its legacies?
6. What, if any, are the lessons for the Voice from the ATSIC experience?
7. What are the political lessons of the ATSIC experiment?

READING

Tatz, Colin, 2017, 'Australia has ignored Black Viewpoints Before. Why would a constitutional 'voice' be any different?', *The Conversation* 3 August, <https://theconversation.com/australia-has-ignored-black-viewpoints-before-why-would-a-constitutional-voice-be-any-different-81816>

PODCAST

Melbourne Law School, *The ATSIC Chronicles: Reflections From the Journey and Lessons for the Voice*: <https://law.unimelb.edu.au/iljh/resources/white-noise-of-settler-law-justice-talks/white-noise-podcast/white-noise-episode-1-the-atsic-chronicles>

ADDITIONAL RESOURCES

Australian Human Rights Commission, 2008, *Building a Sustainable National Indigenous Representative Body*, Issues Paper, https://humanrights.gov.au/our-work/publications/building-sustainable-national-indigenous-representative-body-issues#1_national

Australian Human Rights Commission, 2008, *Summary. Issues for Consideration in the Formation of a National Indigenous Representative Body* <https://humanrights.gov.au/our-work/publications/summary-issues-consideration-formation-new-national-indigenous-representative>

Sanders, Will, 2018, 'Missing ATSIC: Australia's Need for a Strong Indigenous Representative Body', Deirdre Howard-Wagner et al (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Beginnings* (pp. 113-130), ANU Press.

The Voice & international relations: UNDRIP

James Blackwell (ANU)

CONTEXT

The process that went into designing the Regional Dialogues, the *Uluru Statement from the Heart*, and the idea of a Voice to Parliament, while uniquely an Australian idea, is built upon a framework derived from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

UNDRIP, the process that helped develop it, and what it means for Indigenous peoples domestically and within international relations, is extremely important to understanding a Voice to Parliament.

UNDRIP, and Indigenous global politics more broadly, is strongly related to and has informed the ways in which Indigenous peoples interact with the international system.

DISCUSSION ACTIVITIES & ASSESSMENT - ESSENTIAL MATERIAL

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) - https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

The *Uluru Statement from the Heart* - <https://ulurustatemdev.wengine.com/wp-content/uploads/2022/01/UluruStatementfromtheHeartPLAINTEXT.pdf>

ACTIVITY 1

The students break into small groups. Half of the groups are tasked with identifying and discussing explicit links between the Uluru Statement and UNDRIP. The remaining groups will discuss implicit links between the Statement and UNDRIP. Return for a group discussion on both aspects, why it is that some are explicitly referred to, while others only implicitly.

ACTIVITY 2

Split the students in to four groups.

- Group 1 will discuss whether the way Australian domestic politics works with Indigenous peoples reflects the principles of UNDRIP.
- Group 2 will discuss how international Indigenous politics has been influenced by the principles of UNDRIP.
- Group 3 will discuss whether non-binding UN resolutions can ever be successful in creating lasting change, domestically and globally.
- Group 4 will discuss the ways in which Indigenous peoples have been or are involved in the international system.

Return all 4 groups together and open up to broader discussion.

ASSESSMENT IDEA

Essay question:

To what extent is the Uluru Statement from the Heart and the idea of a Voice to Parliament a product of domestic Indigenous politics, compared to being influenced by things such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), or work and bodies in other countries?



READINGS

Lightfoot, Sheryl, 2016, 'Practicing global politics in Indigenous ways', In *Global Indigenous Politics*, pp. 72-92. Routledge.

Davis, Megan, 2012, 'To bind or not to bind: the United Nations Declaration on the Rights of Indigenous People five years on'. *Australian International Law Journal* 19: 17-48.

Synot, Eddie, 2019, *The Universal Declaration of Human Rights at 70: Indigenous rights and the Uluru Statement from the Heart*, *Australian Journal of International Affairs* 73(4): 320-325.

Blackwell, James, 2022, 'First Nations and Australia: Walking Together or Walking Alone?', *Australia on the World Stage* (pp. 89-104), Routledge.

How a constitutional referendum works, & the significance of '67

Dr Diana Perche (UNSW Sydney)

BACKGROUND

A referendum to amend the Australian Constitution is a rare event, and for many voters, this will be the first time they are asked to vote to change the Constitution. The most recent constitutional referendum was the 1999 referendum proposing Australia become a republic and a new preamble, both convincingly rejected by the electorate. The last successful referendum was in 1977. In this activity, we will consider the mechanics of section 128 of the Constitution, and reflect on the relevance of past attempts to this year's Referendum.

The very low success rate for previous proposals is well known, with only 8 out of 44 succeeding. The 'double majority' required to pass (a majority of voters, and a majority of states) has proven too difficult to achieve in the past. This is no accident; the drafters of the Constitution designed it to be especially difficult to change. Many referendum proposals have simply failed to achieve a majority of 50%, and five failed due to three or more states voting against, despite a national majority. This has been identified by the no campaign as a potential way to prevent the Voice from succeeding, and will shape the campaign strategy over the next few months.

Much attention has also been paid to the risks of proposing a change to the Constitution without bipartisan support from the two major parties. The decision by the Coalition to campaign against the Voice is significant, but bipartisanship on past proposals has not guaranteed success in the past, either.

The 1967 Referendum which allowed the Commonwealth to pass legislation for Aboriginal people was passed with a national majority of 90.77% and is seen by many as a profoundly important moment in First Nations/Settler relations. The true impact of the change to the Constitution has often been misunderstood, or mythologised, but its symbolic significance remains a powerful motivator for many supporting the Yes campaign. As Megan Davis and George Williams argued, 'Part of the task ... of convincing Australians to vote Yes ... is to first explain the limited nature of what was brought about in 1967. It is only once the modest legal scope of that referendum is understood, including the fact that it removed all references to Aboriginal people without inserting anything positive in their place, that it becomes clear that the referendum left behind unfinished business still worthy of debate today.'

SUGGESTED TUTORIAL READINGS

Twomey, Anne, 2022, 'Changing the Australian Constitution is not easy. But we need to stop thinking it's impossible'. The Conversation 27 May
<https://theconversation.com/changing-the-australian-constitution-is-not-easy-but-we-need-to-stop-thinking-its-impossible-183626>

Burney, Linda, 2017, 'Reconciliation and referendum : 1967 to present', *Australian Journal of Public Administration*, 76(4), 409–411. <https://doi.org/10.1111/1467-8500.12288>

Gardiner-Garden, John, 2007, 'The 1967 Referendum—history and myths', *Parliamentary Library Research Brief No. 11*
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2FJTZM6%22>

DOCUMENTS TO CONSULT IN CLASS

Commonwealth of Australia Constitution Act, section 128
[https://www.aph.gov.au/About Parliament/Senate/Powers practice n procedures/Constitution/chapter8#chapter-08_128](https://www.aph.gov.au/About%20Parliament/Senate/Powers%20practice%20procedures/Constitution/chapter8#chapter-08_128)

Australian Electoral Commission – Referendums information
<https://aec.gov.au/referendums/> (including Referendum Factsheet
<https://aec.gov.au/referendums/files/resources/referendum-factsheet.pdf> and
Referendum dates and results
https://aec.gov.au/elections/referendums/referendum_dates_and_results.htm)

TUTORIAL ACTIVITY

1. Ask students to look at section 128 of the Constitution, and explain what is required for the Constitution to be changed.
2. Look at the 'Referendum dates and results' document from the AEC, and discuss the reasons why so many proposals have failed.
3. Small group discussion: The 1967 Referendum. Answer the following questions:
 - a. What amendments were made to the Constitution after the 1967 referendum?
 - b. In what ways was the 1967 referendum 'mythologised'?
 - c. Why is the 1967 referendum still so meaningful today?

BACKGROUND READING

Davis, Megan & George Williams, 2015, 'The 1967 Referendum', *Everything you Need to Know About the Referendum to Recognise Indigenous Australians*, NewSouth.

Behrendt, Larissa, 2007, 'The 1967 referendum', *Australian Indigenous Law Review*, 11 (special edition), 12–16.

Bongiorno, Frank, 2023, 'The history of referendums in Australia is riddled with failure. Albanese has much at risk – and much to gain', *The Conversation* 14 February <https://theconversation.com/the-history-of-referendums-in-australia-is-riddled-with-failure-albanese-has-much-at-risk-and-much-to-gain-198799>

Irving, Helen, 2015, 'What the record reveals of the chances of Indigenous recognition', *The Conversation* 27 May <https://theconversation.com/what-the-record-reveals-of-the-chances-of-indigenous-recognition-42246>

Attwood, B., & Markus, A., 2007, *The 1967 referendum : race, power and the Australian Constitution* (2nd ed.). Canberra: Aboriginal Studies Press.

Atkinson, Kate, 2023, 'Voice naysayers race to rewrite 1967 referendum's history', *National Indigenous Times* 15 June <https://nit.com.au/15-06-2023/6388/voice-naysayers-race-to-rewrite-1967-referendums-history>

How will the Voice work?

Consultation & accountability

Jason O'Neil & Diana Perche (UNSW Sydney)

BACKGROUND

The upcoming Voice Referendum will enshrine an 'enabling provision' in the Australian Constitution, leaving the specific design, composition, and function of the Voice to the Australian Parliament. After a successful referendum, these matters will need to be addressed by the Australian Government in consultation with First Nations communities.

A set of core Voice Design Principles were established by the First Nations Referendum Working Group in early 2023 and accepted by the Albanese Labor government. They set general parameters for what the Voice should look like after a successful referendum.

The function and design of the Voice would be set by separate legislation. In 2021, Professor Tom Calma and Professor Marcia Langton delivered their final report of the 'Indigenous Voice Co-design' process which was initiated by the Malcolm Turnbull Government. This report made design recommendations for a Voice body enshrined in legislation only, as stipulated by the Morrison Coalition government at the time. Advocates for the *Uluru Statement from the Heart* have critiqued this process as being not genuine 'co-design' because of the restraints placed on the report by the government.

After a successful referendum, there will likely be another consultation process with Aboriginal and Torres Strait Islander communities to design the Voice. The shape and function will also change over the decades, responding to the needs of First Nations and the desires of successive governments.

ACTIVITY

1. Examine the Voice Design Principles and discuss how these might be implemented after a successful referendum.
2. Consider the public debate around the 'yes' and 'no' cases for the Referendum. How well do these reflect the intentions of the First Nations Referendum Working Group?
3. Small groups: Answer the following questions about the Larkin and Galloway reading:
 - a. Can you identify the ways in which the Voice might contribute to 'good governance'?
 - b. How is cultural authority reflected in the design of the Voice?
 - c. What benefits would the Voice provide for First Nations peoples, according to Larkin and Galloway?

READINGS

National Indigenous Australians Agency, Voice Design Principles
<https://voice.gov.au/about-voice/voice-principles>

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Media, the polls & framing the debate

Diana Perche & Jason O'Neil (UNSW) & Peter John Chen (University of Sydney)

ON THE MEDIA

The media is an important political actor and will be critical in the Voice debate.

The way media organisations select what to report, and the way that information is communicated, influence how people understand an issue and how they behave at the ballot box. Media workers and organisations are not 'neutral' but have their own backgrounds and opinions. This can shape what they highlight, and what they neglect in their coverage; a concept called 'framing'. This can be particularly problematic when journalists and commentators may start from a position of relative ignorance about First Nations peoples and perspectives.

Members of the Yes campaign have argued that members of the Opposition and spokespeople for the No campaign are relying on misinformation to create fear around the Voice Referendum. Some have suggested that we are seeing the use of false information seen in the Brexit debate in the UK and that has become a feature of American politics.

Further, a feature of coverage of the Voice has been the focus on rolling opinion polls. These polls become headline stories, where trends are presented as the major story, with limited analysis of the limitations of the polling methodology, and the nuances of the different positions being mapped.

ACTIVITIES

1. It is often assumed that different media outlets have a 'house position' on important political topics. Is this the case with the Voice? Assign students to different media outlets and have them collect and analyse coverage of the Voice. As a group compare and contrast their findings: To what extent do they share a perspective? What is that perspective? What are the implications of that perspective?
2. Using an established piece of false information about the voice (for example: that the Voice to Parliament would be able to veto legislation, create new High Court litigation, or be excluded from considering topics like the nature of Australia Day) assign students to search for this narrative in recent media reporting. Where is this misinformation appearing? Where is it being fact checked? What are the implications of this misinformation on the Voice outcome?
3. Consider recent media reports of at least two different opinion polls about the referendum. Ask students to examine the questions asked, and the available responses. How might the survey design have influenced the results? How reliable and valid are the survey responses? How accurately were these reported by the media outlets? Do they acknowledge known limits in polling?

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Evershed, Nick, & Josh Nicholas, 2023, 'How much can polling really tell us about support for the voice to parliament?' The Guardian 15 June, <https://www.theguardian.com/news/datablog/2023/jun/15/how-much-can-polling-really-tell-us-about-support-for-the-voice-to-parliament>

The Yes/No pamphlet

Professor Anne Twomey (University of Sydney)

CONTEXT

At most referendums since 1912, Australian voters have been sent a pamphlet that sets out the arguments for voting Yes or No in the referendum. The requirements are set out in section 11 of the *Referendum (Machinery Provisions) Act 1984* (Cth). It provides that after the referendum bill has passed Parliament, a majority of the MPs who voted for the referendum bill may prepare the Yes case, by way of a statement of up to 2000 words. If any MPs have voted against the referendum bill, a majority of them may prepare the official No case, with the same word limit. These cases are then placed in a pamphlet, along with a copy of the actual proposed amendment, and the Australian Electoral Commission then sends it to each voter at least 14 days before the referendum.

As the Yes/No pamphlet is written by politicians who are seeking to persuade voters, it is not necessarily factually correct or informative. It is often directed to emotions, fears and prejudices and may contain misleading statements. For this reason, there has been much criticism of the pamphlet, including by the House of Representatives Standing Committee on Legal and Constitutional Affairs in its report, *A Time for Change: Yes/No?*, from 2009.

That Committee was chaired by Mark Dreyfus, who is now the Attorney-General. It was therefore unsurprising that he proposed to amend the legislation to abolish the Yes/No case. However, in a political deal to get other changes to that legislation passed, the Government later agreed to the retention of the Yes/No case.

ACTIVITIES

1. Ask students to assess the Yes and No cases in the pamphlet on the Voice Referendum. Instruct them to break down and track the key arguments. Does each side address the same arguments or are some left unanswered? Is this a consequence of how the cases are prepared?
2. Ask students to identify how much of the material in each case is factual in nature and how much is directed at persuasion, contention or speculation. What could be done to make the pamphlet more informative and accurate?
3. Ask students to identify the persuasive techniques used in the Yes and No cases. What cognitive biases do they seek to activate? How can cognitive biases be used to affect referendum results (e.g., Brexit)? Can anything be done to combat such manipulation?

READINGS

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Theoretical approaches to Indigenous-state relations

Elizabeth Strakosch (University of Melbourne)

In settler colonies like Australia, Canada and the United States, settlers ‘come to stay’ and to form a majority society on Indigenous land. They bring their own political institutions and cultural norms, and use a range of methods to engage with the sovereign Indigenous peoples who they dispossess. These mechanisms include treaties, constitutional recognition of Indigenous rights and entitlements, or denying the existence of Indigenous sovereignty altogether. In Australia, the colonial governments, and later the Federal Government, did not recognise the existence of Indigenous sovereignty, colonising in a mode that is often referred to as ‘terra nullius’.

Most settler colonies have not decolonised in the same way as places where colonists formed a minority. They continue to assert the legitimacy and authority of the political institutions which they brought with them. This creates an unresolved conflict between settler derived national institutions and ongoing Indigenous land ownership and political authority. The Voice to parliament, and the broader *Uluru Statement from the Heart*, is one of many proposals to address and mitigate this conflict, and establish more just ongoing relations. However, there are a range of perspectives amongst Aboriginal and Torres Strait Islander people about the value of the Voice. It is useful to understand these perspectives by engaging with the breadth of Indigenous scholarship on Indigenous-settler relationships. There are several established theoretical traditions, which in turn lead to a range of different ideas about what practical steps are needed to create change. This resource introduces you to some of the main approaches.

ACTIVITY

Select and read one or more opinion pieces from Indigenous people about the Voice, and ask students with which theoretical approach they best align.

Approach 1: Participation

Many scholars argue that improving Indigenous-state relations, and the wellbeing of Indigenous peoples within settler states, requires greater Indigenous participation in existing institutions. This is based on the democratic idea that all voices should be heard and represented within liberal institutions, so that the state can be meaningfully said to derive from the consent of all its citizens. It is this approach that led to the demand for Indigenous people to be recognised as Australian citizens in the mid-twentieth Century. Many argue that this formal inclusion was not enough to ensure true participation as Indigenous people are a numerical minority. To ensure they are heard, especially in areas of government that directly affect Indigenous communities, people who take this approach propose a range of ‘special’ mechanisms. These include reserved seats in parliaments (as in Aotearoa/New Zealand) and even separate parliaments or other representative institutions (as in some Scandinavian nation-states which have Saami only parliaments). There are many other less

comprehensive mechanisms that aim to improve Indigenous participation in the democratic life of the state.

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Approach 2: Recognition

A well-established approach to improving Indigenous-state relations is the recognition paradigm. This advocates a deeper form of political encounter between Indigenous peoples and the settler state, based on the state recognising the pre-existing culture, ownership, or collective rights of Indigenous people. The recognition approach takes different shapes based on what advocates believe needs to be recognised.

At one end of the spectrum, a participation approach might involve using constitutional reforms or formal mechanisms to acknowledge the existence, value and contribution of Indigenous cultures and peoples. In a more substantive form, it might include self-determination structures which recognise the right of Indigenous people to determine their own futures. At its strongest, the recognition paradigm calls for negotiating treaties (or renewing and respecting existing treaties) which recognise the independent political sovereignty of Indigenous peoples. Treaties are a mechanism by which settler states can acknowledge but then absorb Indigenous sovereignty, and negotiate more just terms for foundational relationships. The fact that there are no treaties in Australia (unlike most other settler states), means that treaties are seen as a radical shift from the status quo, and is one of the sources of the claim that 'Indigenous sovereignty was never ceded'.

- Behrendt, Larissa, 2013 'Aboriginal Sovereignty: A Practical Roadmap', *Sovereignty: Frontiers of Possibility*, Evans, Genovese et al (eds), University of Hawaii Press.

Approach 3: Refusal

There is a strong critical Indigenous theoretical tradition that rejects the previous two approaches. Indigenous scholars such as Aileen Moreton-Robinson, Chelsea Watego, Glenn Coulthard, and Audra Simpson argue that Indigenous sovereignty continues to exist and is the rightful authority over the land occupied by settler states. More than this, Indigenous sovereignty cannot be extinguished through Western legal mechanisms such as treaty, as Indigenous sovereignty is based on different ontological grounds.

Many scholars in this tradition see recognition paradigms as a 'trick' by settler states, appearing to offer improved relationships, but actually offering little power or real change. Moreover, these recognition paradigms work to legitimise the settler state's claim over Indigenous lands and lives by making the state seem more progressive and inclusive. 'Refusal' means Indigenous nations turning away from the settler state – instead of continually appealing to the state for more substantive forms of recognition, the principle of refusal involves Indigenous people returning to the source of their own political authority and exercising their sovereignty through the continual refusal to recognise settler claims over Indigenous lives and land.

- **Simpson, Audra, 2014, *Mohawk Interruptus: Indigenous Life Beyond the Borders of Settler States*, Duke University Press.**
- **Watson, Irene, 2015, *Raw Law: Colonialism and International Law*, Routledge.**
- **Hokuwhitu, Moreton-Robinson, Tuhiwai-Smith, Andersen & Larkin (eds), 2021, *The Routledge Handbook of Critical Indigenous Studies*, Routledge.**
- **Coulthardt, Glenn, 2014, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, University of Minnesota Press.**

4. Resurgence

Linked to this principle of refusal, many Indigenous scholars and leaders are using the language of ‘resurgence’. This involves not just turning away from the settler states promises of recognition, but by consciously living in ways that respect Indigenous terms of reference. Acknowledging the damage that has been done by centuries of colonial occupation and violence, the resurgence movement advocates investing Indigenous energies in rebuilding Indigenous nations and societies. Movements such as language reclamation, return to Homelands, Native nation-building and revitalizing key Indigenous ceremonies and practices all draw from the resurgence paradigm.

- **Kiiwetinepinesiik Stark, Craft and Aikau (eds), 2023, *Indigenous Resurgence in an Age of Reconciliation*, University of Toronto Press.**
- **Alfred, Taiaiake, 1999, *Peace, Power and Righteousness: Heading the Voices of Our Ancestors*, Oxford University Press.**

THE ARTICLES

What approach do you think the Voice to Parliament best represents? What might those coming from the other perspectives think of the Voice?

With which approach do you think the following articles on the Voice best align?

- <https://www.sbs.com.au/nitv/article/the-ulu-statement-we-never-ceded-sovereignty-but-can-we-join-yours/2uf8133f1>
- <https://www.theguardian.com/australia-news/2023/apr/28/dysfunctional-treatment-of-indigenous-australians-will-continue-unless-voice-exists-ken-wyatt-says>
- <https://www.theguardian.com/australia-news/2023/jun/04/indigenous-voice-crucial-to-treaty-ulu-statement-co-author-megan-davis-says>
- <https://theconversation.com/voice-to-parliament-design-report-still-doesnt-meet-international-human-rights-standards-174861>

OVERVIEW RESOURCES ON SETTLER COLONIALISM IN AUSTRALIA

- **Watego, Chelsea, 2021, *Another Day in the Colony*, University of Queensland Press.**
- **Moreton-Robertson, Aileen, 2015, *The White Possessive*, Duke University Press.**
- **Veracini, Lorenzo, 2010, *Settler Colonialism: A Theoretical Overview*, Springer.**
- **Wolfe, Patrick, 2015, *Race and the Trace of History*, Verso.**
- **Langton, Marcia, 2023, *First Knowledges Law: The Way of the Ancestors*, Thames & Hudson.**

ABOUT THE APSA T&L GROUP

ASPA is comprised of a diverse community of academics engaged in the production and distribution of knowledge. The Teaching and Learning Group exists to support the practice of teaching and learning in the higher educational context in Australia, encourage the development and distribution of evidence about best practice teaching methods to and from practitioners, and to encourage the creation of resources that can be employed in teaching and learning about politics, public policy, and international relations in Australia.

The group's focus on teaching praxis sees it engaged in:

- **Fostering communication of evidence-based teaching approaches and methods**
- **Supporting educational research on relevant teaching and learning practices**
- **Running and promoting events on teaching and learning across Australia**
- **Developing and promoting open source and open-access educational resources**

The Group encourages broad participation in its activities, avoiding attempts at regulating the teaching practices of peers in favour of promoting best practice, innovation in teaching, and sharing resources useful for the teaching of politics, policy, and international relations.

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