Egalitarian Nationhoods: A political theory in defence of the Voice to Parliament in the Uluru Statement from the Heart

Abstract

The 2017 Uluru Statement from the Heart called for a constitutionally enshrined Voice to parliament, and a Makarrata Commission to supervise a process of treaty-making and truth-telling. The recommendations were rejected by the Turnbull government and appear unlikely to be implemented under a Morrison government. Initially, the main objection to the Voice from government MPs was that it would upset the balance of Australia's bicameral system by creating a third chamber. Other concerns include the potential of an Indigenous Voice to divide Australians and create special privileges for a particular group. Drawing on Chaim Gans' theory of egalitarian Zionism, this article introduces the idea of egalitarian nationhoods. It argues that the Voice does not provide privilege but equality in allowing First Nations to enjoy self-determination and collective rights, something most non-Indigenous Australians take for granted.

Keywords: Uluru Statement, Egalitarian Zionism, self-determination, Aboriginal and Torres Strait Islander peoples, nationhood

Introduction

For over a decade Australians have debated whether and how Aboriginal and Torres Strait Islander peoples could be recognised in the Constitution. In the 2017 Uluru Statement from the Heart, Aboriginal and Torres Strait Islander peoples explained what constitutional recognition means to them. The Uluru Statement calls for a constitutionally enshrined First Nations Voice to parliament and a Makarrata Commission to supervise a process of treaty-making and truth-telling. The proposals in the Statement are feasible and would not make Australia's current political system unworkable. Similar representative bodies and truth-telling commissions have been created in other settler-colonial states. The recommendations have both symbolic and political power. They focus on ensuring 'Aboriginal participation in the democratic life of the state' (Davis 2018, 158).

The Uluru Statement is the culmination of one of the most comprehensive processes of debate about constitutional change in Australia's history. In 2016 and 2017, 12 deliberative dialogues were conducted with Indigenous communities across Australia. Attendance at each of the dialogues was by invitation and meetings were capped at 100 participants to promote discussion. At the end of each three-day dialogue, delegates confirmed a statement of their discussion, and selected ten representatives for a final convention at Uluru. The Uluru Statement is the endorsed position of the First Nations National Constitutional Convention at Uluru. The collective will of such a diverse and representative body carries enormous moral authority.

Two points are worth noting about the Statement. First, the Voice does not include a veto power over legislation or government policy. It makes clear that self-determination and the right to be heard as a collective is at the core of Indigenous aspirations for structural reform. Second, the Statement also makes clear that the Voice should be placed in the Constitution. While there would be no legal obligation on government or parliament to engage with the Voice, Megan Davis, the architect of the Indigenous-led dialogues that culminated in the Uluru Statement,

explains that constitutional entrenchment would improve the likelihood that government listens to Indigenous peoples (2019). The exact design and mechanisms of the Voice can be introduced through legislation but having the existence of the Voice protected in the Constitution is significant. It provides authority, legitimacy, and a sense of permanence. This is particularly important considering Australian history. Previous national Indigenous representative bodies have lacked constitutional protection, leaving them vulnerable to the 'wavering sympathies of the Australian community' (Behrendt 2003, 8). Each has been abolished.

The Australian community appears to support the Uluru Statement and its call for a constitutionally entrenched Voice to Parliament. A survey of poll data since 2017 conducted by the Centre for Aboriginal Economic Policy Research (CAEPR) suggests that 70–75 per cent of voters with a committed position support the Voice (Markham and Sanders 2020, 20). In contrast, the Commonwealth government does not support a Voice to parliament being inserted into the Constitution. In 2019, Prime Minister Scott Morrison made his position clear, stating that the Voice was 'not being considered within the constitutional context' (Morrison 2019). Like his predecessor as Liberal leader and prime minister, Malcolm Turnbull, Morrison apparently understands the Voice to be a 'third chamber' that would disrupt Australia's bicameral system and violate the democratic principle of one-person, one-vote (Karp 2018).

Recognising that the Uluru Statement's call for a Voice is morally and politically powerful, the government has sought to shift focus. In 2019, it set up a process to establish a legislated Indigenous Voice to government. The terms of reference for the National Co-Design Group specifically stated that placement in the Constitution was 'out of scope' (National Indigenous Australians Agency 2019, 3) and in 2021 Morrison again ruled out a referendum to include the Voice in the Constitution (Harris). Following the release of the co-design process' interim report in October 2020, Tim Rowse suggested that 'one of the agenda-setting effects' was to 'sever the debate about the Voice from the debate about constitutional recognition' (2021). Despite this, public consultation on the co-design process resulted in over 2500 submissions, of which 90 per cent wanted the Voice to be constitutionally enshrined (Larkin, Buxton-Namisnyk and Appleby 2021). Further, the CAEPR study found that a referendum on a Voice to Parliament would likely be carried, especially if the Coalition leadership approached it 'with a more positive frame than in 2017' (Markham and Sanders 2020, 21). This suggests that there is wide support for the Voice to be inserted into the Constitution, not just passed by legislation.

The government remains implacably opposed to a constitutionally enshrined Voice to parliament. This article explores whether insights from an Israeli political theorist, Chaim Gans, can help inform the debate. Comparative legal and policy scholarship on Indigenous peoples' rights generally focuses on the 'natural' grouping of Canada, Australia, Aotearoa New Zealand, and the United States. As Kirsty Gover explains, these states 'are all affluent liberal democracies settled during the period of intensive British imperial expansion in the 19th century, and many of their current legal-constitutional commonalities derive from their shared inheritance of the English common law' (2015, 356). These shared features make comparison particularly useful, but debate over the appropriate political or constitutional relationship between dominant and non-dominant communities is recurrent across the globe. While the language of these debates differ, at root is a common concern centring on how principles of equality and difference can be mediated. This article draws on Gans' concept of egalitarian Zionism to ground support for a constitutionally entrenched Voice to parliament.

Egalitarian Zionism is predicated on a broad account of equality. It holds that members of ethnocultural groups should be afforded both individual and collective rights (Gans 2016).

Gans argues that Israeli law and policy fails this standard because while Palestinians in Israel are granted rights as individuals, their collective right to self-determination is denied. As its name suggests, egalitarian Zionism is focused inward on Israeli society. It aims to deprivilege exclusive accounts of Zionism that dismiss the collective rights of Palestinians in order to make conceptual and legal space for Palestinian self-determination.

The concept of egalitarian Zionism has not been explored in the Australian context before, but this does not mean it has no relevance. Of course, significant distinctions exist between Australia and Israel, including the fact that Palestinians can be considered a single ethnocultural group while First Nations in Australia are culturally and linguistically diverse. Nonetheless, two key parallels appear. First, the dismantling of racist legislation and policy over many years has left Aboriginal and Torres Strait Islander peoples possessing a broad and formally equal distribution of political resources, but the collective rights of Indigenous communities to self-determination remains unrealised. Second, an exclusive account of Australian nationhood remains a key obstacle to realising First Nations' right to self-determination. Drawing on Gans, egalitarian nationhoods is presented as an inclusive, alternative framework. Egalitarian nationhoods focuses attention on the fact that Aboriginal and Torres Strait Islander peoples are distinct political communities entitled to collective rights and self-determination. This understanding can decentre exclusive accounts of Australian nationhood and help counter opposition to a constitutionally entrenched Voice to parliament. Aboriginal and Torres Strait Islander peoples have called for non-Indigenous Australia to 'work on itself' and 'take responsibility' (Referendum Council 2017, 17). This article attempts to answer that call with specific regard to a constitutionally enshrined Voice to parliament but the theory of egalitarian nationhoods can potentially be applied to other areas.

This article is divided into three parts. In the first part we briefly outline Gans' theory of egalitarian Zionism. As we note, egalitarian Zionism differs from conservative interpretations of Zionism that deny the Palestinian right to self-determination. In the second part, we draw out our theory of egalitarian nationhoods by demonstrating how similar narratives in Australia purport to tie Australian nationhood to British colonisation. This project serves to privilege a non-Indigenous national culture and deny or dismiss Aboriginal and Torres Strait Islander peoples' right to self-determination.

In the final part, we frame the Uluru Statement from the Heart, specifically the Voice to parliament, as a call for egalitarian nationhoods. Egalitarian nationhoods rejects the triumphalism of the traditional colonial narrative but allows civic space and legal and political architecture for Indigenous and non-Indigenous Australians to all enjoy collective self-determination. At the heart of this theory is a defence of the Voice to parliament and of the Uluru Statement. It also refutes criticisms that the Statement's recommendations present racial privilege or special treatment. Rather, it presents constitutional change as a mechanism for providing Aboriginal and Torres Strait Islander peoples with collective rights and self-determination; a right that non-Indigenous Australians take for granted. A constitutionally entrenched Voice to parliament is the first step in realising those rights.

Egalitarian Zionism

Chaim Gans introduces the notion of egalitarian Zionism in his 2016 work, *A Political Theory for the Jewish People*. He argues that egalitarian Zionism exists in the space between dominant, conservative interpretations of Zionism and a minority left position of post-Zionism that rejects the legitimacy of placing Jewishness at the centre of national life. Gans believes that egalitarian

Zionism provides a framework to accommodate Jews and Arabs where both can 'live within their groups under conditions of equality with members of other ethnocultural groups' (2016, 7).

Drawing on Isaiah Berlin, Gans grounds his theory in a collectivist moral ontology. In this framework, the nation or the collective is a living organism and each individual merely a cell. The implication being, to allow individual rights while denying collective rights is to cut an ethnocultural group off from what it means to be fully human. Because humans are inherently social creatures, it is vital for individuals to see themselves as members of a larger ethnocultural collective. In Israeli law and policy, Gans argues that collective rights to self-determination are afforded only to the Jewish people. Egalitarian Zionism is an attempt to develop a model of Zionism that could satisfy Rawlsian principles of justice by articulating a morally fair Zionism and recognising Palestinian rights to self-determination.

Gans begins by identifying and distinguishing three forms of Zionism that differ in their justification for the Jewish peoples' collective right to self-determination in Israel: proprietary, hierarchical, and egalitarian Zionism. Proprietary Zionism views the land of Israel as the historical right of the Jewish people. Articulated by the country's founders and reflected in many contemporary political campaigns, the proprietary narrative holds that although the Jewish people were denied possession of this territory for many generations, they never lost their moral and legal rights of ownership over their homeland (Gans 2016, 60). Because the land of Israel is the property of an essentialist Jewish people, this account justifies both the formation of an exclusively Jewish state and undergirds the dismissal of Palestinian rights. According to this theory, because the Palestinians unlawfully stole the land that lawfully belongs to the Jewish people, recognition of Palestinian rights would be 'tantamount to granting rights to a thief over the object of his theft' (Gans 2016, 66).

It is clear that proprietary Zionism falls short of Rawlsian conditions of justice. More moderate but equally problematic is hierarchical Zionism. While proprietary Zionism is 'popular among the Israeli "men in the street"', Gans contends that hierarchical Zionism 'is invoked mainly by academics' (2016, 72). It holds that the right to self-determination entails a right to a hegemonic nation-state. On this account, because the Jewish people have a right to self-determination, they have the right to an exclusively Jewish state. Importantly, hierarchical Zionism is not based on demographics. The Jewish people are not entitled to 'a monopoly over all the state's public and symbolic space' (Gans 2016, 76) because they constitute a majority of the territory. Rather, collective self-determination is a privilege enjoyed by the Jewish people based on their connection to the land of Israel. It is not available to Palestinians who live in Israel.

Hierarchical Zionism moves away from the 'nationhood-property symbiosis' (Gans 2016, 72) and thus creates more room for the recognition of Palestinian rights. It cannot, however, explain why Palestinians are denied the same right to national self-determination enjoyed by the Jewish people. For this reason, Gans develops a third approach, called egalitarian Zionism. Egalitarian Zionism is predicated on equality of peoples and respects the rights of all ethnocultural groups to collective self-determination within their homeland. In circumstances, like Israel, where a particular territory is the homeland of one or more ethnocultural groups, it holds that both groups have the right to exercise self-determination. One ethnocultural group cannot deny another that right by adopting a hegemonic interpretation of self-determination because that involves failing to treat that group as equals (Gans 2016, 85). Consequently, both Jewish people and Palestinians enjoy a right to self-determination. Gans argues that egalitarian Zionism offers two paths forward for the state of Israel. The first is for Jews and Palestinians to exist within

the one state but with ‘autonomy equal to that of each other’ (2016, 97). The second is for the creation of two states. Gans suggests the second path is more practical as, broadly speaking, Jews and Palestinians prefer to live in a community where their culture is hegemonic and their people are numerically superior.

Gans developed his theory to explore whether the creation of Israel and the consequent dispossession of Palestinians could be defended as morally just. His efforts to differentiate an egalitarian Zionism from proprietary and hierarchal forms are therefore directed for a particular purpose. Putting aside whether Gans achieves his aim, this article explores whether his political theory can inform discussion on constitutional reform in Australia. The following part draws on Gans’ theory to articulate a related concept of egalitarian nationhoods.

Egalitarian Nationhoods in Australia

Egalitarian Zionism defends the right of members of distinct political communities that share specific territory to exercise individual and collective rights within that territory. It does so by distinguishing between proprietary and hierarchical forms of political and cultural hegemony that dismiss the rights of marginalised communities. In this sense it has relevance for Australia, where law and policy has long ignored Aboriginal and Torres Strait Islander peoples’ and communities’ aspirations for collective self-determination. Further connections between Australia and Israel exist. Both nations were formally created relatively recently, and in both cases a proprietary right is claimed by the numerically larger and politically powerful collective at the expense of Indigenous minorities. As we argue in this part, similar proprietary and hierarchical logics underpin dismissal of Aboriginal and Torres Strait Islander peoples’ collective rights to self-determination.

There are, of course, many differences between the establishment of the State of Israel in 1948 and the Commonwealth of Australia in 1901. First, the Jewish people assert a special claim to territorial and sometimes cultural and political supremacy within the borders of Israel. This entitlement is predicated on several claims, including the declaration that Israel is the ancient homeland of the Jewish people, an appeal to history which highlights the legacy of persecution faced by the Jewish diaspora, and a hierarchical argument which asserts the right of ethnocultural collectives to self-determination. In Australia, by contrast, the British had no special claims.

A second key difference is that the Jewish people have maintained a relatively uniform ethnocultural identity. In Australia, the dual identity of British Australians was dominant through to the 1960s and lingered after the breakup of empire (Curran and Ward, 2010). In the decades that followed, Australianness gradually took the place of Britishness and became a single hegemonic form of nationalism (Jones 2018, ch 3). Patrick Wolfe offers a further important difference in the ideology behind Australian and Israeli colonisation. In Israel, he notes it would be unimaginable to change Hebrew place names back to their Arabic counterpart. In Australia, and other settler societies, appropriating Indigenous symbolism is framed as a statement of independence from the metropole and part of the ‘assertion of settler nationalism’ (Wolfe 2006, 387).

Notwithstanding these significant distinctions, many scholars have noted similarities between Palestinians living under Israeli occupation and Indigenous peoples and communities in Australia, Canada, Aotearoa New Zealand, and the United States (Lloyd 2012; Makdisi 2010; Mansour 2018). Wolfe has been particularly influential in shaping this view. He draws Israel

into the settler-colonial project noting that the same myth of peaceful settlement is propagated by the state. He notes 'Whatever the Europeans say about Natives rolling up their blankets and fading away, like the Israelis say about the Palestinians, dissolving into the night—that doesn't happen' (Kēhaulani Kauanui and Wolfe 2018, 347). Rachel Busbridge suggests that this 'turn' away from Israeli exceptionalism and towards seeing the occupation through a settler-colonial lens can be explained by a 'steady overturning of the default sympathy traditionally granted to Israel in favour of an increasing identification with the Palestinians' (2018, 92). Gans work is important as it recognises the critique of Israel's treatment of Palestinians and reflects seriously on how equality, if not justice, can be achieved. His framework offers an approach for defending the Uluru Statement's first recommendation in an Australian context.

The Proprietary Argument and Rejection of Indigenous Nationhood

In Israeli political discourse, the proprietary argument asserts that the land of Israel has been the Jewish homeland since ancient times. The Jewish people never conceded their proprietary rights; even though they were forcibly removed, every generation maintained a desire to return. On this account, the ongoing denial of Palestinians right to self-determination is supposedly justified (Gans 2016, 60). In Australia, the British claimed proprietary rights over the East Coast in 1770 and eventually over the entire continent. Instead of asserting any historical connection to the land, however, the British simply denied that First Nations had any legal right (Frost 1981; *Cooper v Stuart* 1889). As the continent was considered unowned, the British regarded themselves free to claim proprietary rights on the basis of discovery and improvement (Banner 2005). The fact that discovery is so clearly legally untenable has motivated the development of a similar 'nationhood-property symbiosis' (Gans 2016, 71) where the justification of Australian nationhood is tied to the legitimacy of colonisation and the denial of Aboriginal and Torres Strait Islander peoples' inherent sovereignty. This symbiosis underscores some arguments against a constitutionally entrenched Voice to parliament.

An important plank in the theory of egalitarian nationhoods is acknowledging that Aboriginal and Torres Strait Islander communities are legitimate nations. Nationhood is sometimes treated as synonymous with statehood, but the terms can also be treated as identifying distinct concepts. While a state exercises jurisdiction over particular territory irrespective of the population who inhabit it, a nation is an 'imagined community' (Anderson 1983), comprising a people that share a 'psychological bond' (Connor 1978, 382). In an influential article, sociologist Anthony Smith has argued that the bond is a mix of collective cultural, linguistic, religious, or ethnic identities, as well as shared 'symbols, memories, myths, values and traditions' (2002, 14-15).

Aboriginal and Torres Strait Islander peoples inhabited what is now Australia for at least 60,000 years and belonged to distinct nations (Veth and O'Connor 2013, 19). Over this period, they have enjoyed a long history of operating as distinct societies, with a unique economic, religious, and spiritual relationship to their land. Indeed, each nation developed its own symbols, memories, and traditions. Those collective cultural identities are drawn from the particular tract of country that each nation is connected to and responsible for (Watson 2011, 509); a connection that is often spoken of in the language of sovereignty. As Pekeri Ruska and Callum Clayton-Dixon explain, Aboriginal sovereignty stems from 'the ancient reciprocal relationship we have with our lands. This relationship finds its roots in our connection to kin and country, manifesting in our song, dance and story, our language, ceremony and law' (2015, 10). Similarly, the Uluru Statement refers to sovereignty as 'a spiritual notion: the ancestral tie between the land, or "mother nature", and the Aboriginal and Torres Strait Islander peoples

who was born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors' (2017).

The British ignored the existence of multiple complex political communities when they claimed sovereignty over the Australian landmass. Indigenous peoples' presence was noted but they were deemed not to possess the land in a way the British recognised or respected. The denial of their inherent sovereignty lay the foundation for the colonies and, ultimately, the Australian nation. *Terra nullius* was dismissed as legal fiction in 1992. In the landmark decision, *Mabo v Queensland (No 2)* (1992, 175 CLR 1), Justice Gerard Brennan drew on international native title precedents to conclude that *terra nullius* was 'unjust and discriminatory' (1992, 42). While the High Court confirmed that the acquisition of sovereignty could not be contested in an Australian court, *Mabo* challenged conventional understandings of the legitimacy of the Australian nation. As Mick Dodson has noted, the decision suggested that 'the sovereign pillars of the Australian state are arguably, at the very least, a little legally shaky' (2002, 18).

The dubious nature of the British acquisition of sovereignty exposes a legitimacy gap at the heart of the Australian nation. In the wake of the *Mabo* judgment, conservative narratives propagated by right wing advocacy groups like the Bennelong Society and publications like *Quadrant*, sought to overcome this gap by stressing the blessings of British colonisation (Kelly 2019, ch 5; Manne 2001, 2003). Their arguments drew and expanded on Geoffrey Blainey's 'balance sheet' reasoning, which contended that colonialism had been, overall, a project that produced positive results (1993, 10-15). They have been followed in more recent times by the current editor of *Quadrant*, who has financed the publication of controversial revisionist histories that purport to demonstrate that colonisation was both humane and just (Windschuttle 2002; Connor 2005).

Closely related to attempts to minimise the negative impact of British colonisation are efforts to maintain a foundation myth that justifies British occupation in the national culture. A central element of this position is a rejection of Aboriginal and Torres Strait Islander nationhoods on the basis that it diminishes the supremacy of Australian nationhood. This ideological position has a long history in Australia. It explains the visceral anger directed at Cathy Freeman for carrying both the Aboriginal and Australian flags after winning a gold medal at the 1994 Commonwealth Games and, to a lesser extent, after her Olympic victory at Sydney 2000 (White 2008). Freeman's stand served as a visual representation, broadcast to the world, of equality between Indigenous nationhoods and Australianness.

Opposition to the Aboriginal and Torres Strait Islander Commission (ATSIC) also reveals a distinct unease with Indigenous self-determination and a desire to preserve Australia's foundation myth. Established by the Hawke government in 1990, ATSIC was another representation of equality. Its mission was to give Aboriginal and Torres Strait Islander peoples a dedicated, elected, representative body to inform government policy. In 1989, as opposition leader, John Howard vehemently opposed the Commission, arguing that 'the ATSIC legislation strikes at the heart of the unity of the Australian people' (*Hansard* 1989, 1328). Following its victory at the 1996 federal election, Roger Wettenhall notes that the Howard government was frequently at 'loggerheads' with ATSIC (2000, 84). Pre-empting the 'third chamber' arguments, Howard's health minister, Michael Wooldridge, suggested that it was an anomaly, if not incompatible with the Westminster system (*Hansard* 1996, 3078). Relations deteriorated and, in the lead up to the 1998 election, the ATSIC board passed a unanimous vote of no confidence in the minister for Aboriginal affairs, John Herron. Herron defiantly described the

vote as a 'badge of pride' (Wettenhall 2000, 85). ATSIC was finally abolished by Howard in 2004 with support from the opposition leader Mark Latham. Announcing his intention to dismantle the Commission, Howard declared, 'the experiment in elected representation for Indigenous people has been a failure' (Howard 2004).

Fears that acknowledging the legitimacy of Indigenous nationhoods is a zero-sum game that delegitimises Australian nationhood remain. Perhaps most incendiary is the opening of John Stone's *Quadrant* article to mark the fiftieth anniversary of the 1967 referendum, 'let me begin by acknowledging the traditional owners of this land: King George III and his heirs and assigns' (2017, 62). Stone rejects not only the term First Nations (which in conspiratorial rhetoric he describes as 'United Nations-derived terminology [to assert] Aboriginal superiority over the rest of us') but also the term Indigenous, insisting that 'all native-born Australians are Indigenous' (Stone 2017, 62). These arguments have influenced tabloid journalist Andrew Bolt and hard-right politician Pauline Hanson who have both described themselves publicly as Indigenous (Mansell 2014; Bickers 2018). All of this is deliberately provocative, but it also reveals a profound anxiety among some on the political right.

These examples are tied together by a proprietary argument that sees Indigenous sovereignty as necessarily deleterious to Australian sovereignty. Aboriginal nationhoods must therefore be dismissed in favour of conceiving Aboriginal and Torres Strait Islander peoples as no more and no less than Australian citizens. Although not always articulated in this manner, these attitudes underlie dismissal of a constitutionally entrenched Voice to parliament. For example, the Institute of Public Affairs has frequently opposed the Voice by asserting that it would be 'divisive and undemocratic' to 'grant a special constitutional privilege to one segment of our community' (2017, 1). Prime Minister Turnbull echoed these comments when announcing his government's decision to reject the Voice, explaining that 'our democracy is built on the foundation of all Australian citizens having equal civic rights', and a constitutionally enshrined Indigenous representative (advisory) body would 'undermine the universal principles of unity, equality and "one person one vote"' (Department of Prime Minister and Cabinet 2017).

Hierarchical Self-Determination

In Israel, Jewish hegemony is justified not only by proprietary arguments but also with an appeal to the 'hierarchical conception of the right to national self-determination' (Gans 2016, 73). Hierarchical Zionism recognises individual Palestinian rights but serves to defend the right to privilege the Jewish character of the state of Israel through national cultural symbols. In doing so, it denies Palestinians the right to collective self-determination.

Strands of hierarchical self-determination are visible in Australia. Even after the White Australia immigration policies were finally dismantled in 1973, the privileging of Britishness in the 'state's entire public and symbolic space' has remained (Gans 2016, 75). Australia's flag is the most overt example of hierarchical Britishness. Calls to change the flag by former Prime Minister Paul Keating were ferociously opposed by conservative commentators. Since then, opposition to change has remained intense but poorly articulated. As Australia no longer calls itself a British dominion collectively or British subjects individually, overt appeals to Britishness seem inconsistent with Australian nationhood. Instead, the flag is defended with vague appeals to Australia's culture, traditions, and history. That Australia, positioned for decades now as an independent, multicultural nation in the Asia-Pacific, would retain a flag that denotes subordination to another nation seems an anomaly unless it is placed within the framework of hierarchical Britishness and a broader desire to preserve a white, European

national character. Mark McKenna argues that reconciliation and the republic are the last two pieces of unfinished business in the Constitution and should be seen as a joint project (2004). Resistance to an Australian republic or changing the flag has less to do with lingering loyalty to Britain than an underlying fear that these moves will open a broader conversation about justice for Aboriginal and Torres Strait Islander peoples.

The privileging of a non-Indigenous Australian national culture is also revealed in debates over Australia Day. The modern Australian state came into being on 1 January 1901. Despite this, there has been a concerted effort to push the origin story back into the eighteenth century with James Cook anachronistically cast as the father of the nation. In 2018, Scott Morrison dedicated \$50m to celebrate the 250th anniversary of Cook's arrival on Australia's East Coast (Visentin 2018). The backdrop of the announcement was a public discussion about public memory and existing Cook statues. This was sparked in part by journalist Stan Grant who questioned the inscription: 'Discovered this territory 1770' on the Cook statue in Sydney's Hyde Park (Grant 2017). Then Prime Minister Turnbull used wild language, describing any move to change the statue as Stalinist (Knaus 2017). Not only was removing or editing existing Cook statues ruled out, his government (with Morrison as treasurer), went the other way by promising more monuments. As Prime Minister, Morrison defended the move to use public money to cast Cook in a favourable light noting that, 'he gets a bit of a bad show from some of those who like to sort of talk down our history' (McCulloch 2019). The Cook celebrations can be seen as part of the ongoing History Wars and an effort to reclaim Australia's colonial history as something worthy of celebration (Macintyre and Clark, 2003). Every Australia Day an increasingly large number of Indigenous and non-Indigenous people reject the narrative that Australia's colonial past must be celebrated. For traditional nationalists, however, 26 January 1788 is the beginning of the Australian story. The arrival of the British is, in the words of former Prime Minister Tony Abbott, the 'defining moment' in Australian history (Jones 2014). It therefore must be privileged in national public consciousness.

Morrison articulated this view in September 2018 in response to Byron Bay Council's decision to move its citizenship ceremony to 25 January. As with other councils who made this move previously, Byron Bay was stripped of its right to hold citizenship ceremonies. Taking to Twitter, the prime minister claimed it was an exercise in 'indulgent self-loathing' adding that, 'our modern Australian nation began on January 26' (Thorpe 2018). Historians were quick to respond to such an ahistorical claim; 1788 predates, the states, parliament, the flag, Constitution, or even the word Australian. Unlike ancient Australia which has existed since time immemorial or colonial Australia with incremental starting points, modern Australia has a fixed and obvious beginning with Federation on 1 January 1901. Despite this, a few days later he claimed without irony, 'You don't pretend your birthday was on a different day' (Elton-Pym 2018). Indifferent to the fact he was pretending the national birthday was on a different day, he returned to his teleological narrative that imagines the federated nation of Australia to be the inevitable, pre-determined, perhaps even divinely mandated outcome of British colonisation. To this end, the colonisation process must ultimately be viewed as good and worthy of celebration if the resulting nation is to be viewed in this way. As for Indigenous dispossession, massacres, introduction of disease, destruction of culture, loss of language, and genocide, the prime minister echoed the euphemistic language of his Liberal predecessors by referencing, 'a few scars … some mistakes … things that you could have done better' (Elton-Pym 2018).

Hierarchical self-determination allows room for the recognition of individual rights but withholds collective rights. In Australia, that logic is identifiable in efforts to trumpet the

equality that Indigenous Australians have as individuals while simultaneously denying their right to be seen collectively as distinct political entities. These narratives often appear in debate on a Voice to parliament. The Institute of Public Affairs, for example, argued against a Voice on the basis that 'every citizen is already given that opportunity because we each have a vote' and 'No new body in the constitution is necessary to give any citizen a voice to parliament (Institute of Public Affairs 2017, 1). Similarly, in dismissing the Voice, Prime Minister Turnbull suggested that Indigenous feelings of voicelessness could be resolved by 'more Aboriginal and Torres Strait Islander Australians serving in the House and the Senate' (Department of Prime Minister and Cabinet 2017). While greater numbers of Indigenous parliamentarians will undoubtedly enhance awareness and consideration of Indigenous peoples' priorities, statements such as this fundamentally misconstrue the nature of parliamentary representation in Australia (Hobbs 2021, 27-37). Indigenous members of Parliament do not and cannot represent their Indigenous nation nor a broader pan-Aboriginal community; they are members of their party and represent their electorate. More Indigenous members of Parliament is not comparable to recognition of collective rights.

The Uluru Statement as egalitarianism

Egalitarian Zionism recognises the rights of ethnocultural groups that share territory to exercise both individual and collective rights within their homeland. In Israel, Gans' theory supports both Jewish and Palestinian rights to self-determination 'because both are homeland groups in it, each in their own way' (2016, 87). In Australia, few would dispute that Aboriginal and Torres Strait Islander peoples have a special and justifiable claim to their country. Despite the fears of the hard right, the corollary of this admission does not mean that non-Indigenous Australians have no claim to self-determination, or that recognising Indigenous nationhoods requires dismantling Australian nationhood.

When white Australians overwhelmingly saw themselves as ethnically and culturally British, there was a palpable sense of estrangement and the United Kingdom was popularly referred to as 'home'. That is no longer the case for many Australians. For the vast majority of non-Indigenous Australians, Australia is their home. Australian culture since the 1970s has been tied to the idea that this is an immigrant nation. Within a relatively short amount of time, deep roots can be planted. A key (though rarely sung) line in the nation anthem specifically highlights Australia's migrant nature, 'For those who've come across the seas, we've boundless plains to share'. Australia has a non-Indigenous population of over 24 million people. Although many Australians maintain strong cultural and familial ties with the countries of their (or their parents) birth, for the majority, there is no other homeland they can legally return to, or indeed would want to return to. Few would seriously consider all non-Indigenous Australians leaving Australian territory to be either practical or just. While a century is infinitesimal compared to the at least 3,000 generations of Aboriginal and Torres Strait Islander peoples who have called this country home, it is not without significance. In that century, traditions and a distinct, internationally recognised national identity has been cultivated.

The Declaration of Independence for the State of Israel stresses the connection of the Jewish people to Israeli territory in its opening paragraph. It notes that, 'here they first attained to statehood [and] created cultural values of national and international significance' (Gans 2016, 87). The same can be said of Australia. The brutality of its colonial beginnings facilitated the emergence of a distinct Australian nation in the twentieth century, one acknowledged and accepted by the international community. The Australian people have a right to both nationhood and self-determination, but they do not have a right to persecute, exclude, or

discriminate against Aboriginal and Torres Strait Islander peoples. Understood as an expression of nationhood(s), the constitutionally enshrined Voice to parliament in the Uluru Statement is not a call for privilege, special treatment or violative of democratic principles, but a call for egalitarianism.

In Israel, Gans contends that for pragmatic and political considerations egalitarian Zionism would likely lead to a two-state solution. In Australia, egalitarian nationhoods respects the right of Aboriginal and Torres Strait Islander peoples to be recognised as distinct political communities (Turner 2006) and to 'be free, like other people, to choose the political structures suitable to their needs' (Mansell 2016, 141) but does not call for a two or multi-state solution. Nor does the Uluru Statement from the Heart. Rather, it records Indigenous Australians' support for and commitment to structural reform to the Australian state such that their 'ancient sovereignty can shine through as a fuller expression of Australia's nationhood' (2017). In other words, contrary to fears that collective Indigenous rights will undermine the traditional proprietary claim to the whole of the Australian territories, the Uluru Statement contends that recognising Aboriginal and Torres Strait Islander nationhoods will enrich Australian nationhood.

A constitutionally entrenched Voice to the parliament is the first step in realising this vision. The desire to enshrine the body in the Constitution is informed by the experiences of ATSIC and earlier national Indigenous representative bodies in Australia, but it also reflects the view that the legitimacy and credibility of the institution may be enhanced by its legal form. The argument is that constitutional entrenchment will not only strengthen the Voice's independence, but by conferring democratic legitimacy through a national referendum, will insert the body 'into the public life and imagination of the nation' (Davis 2015, 24). A grassroots popular campaign leading to successful constitutional reform could build considerable moral and political pressure, compelling government and the parliament to listen to the Voice and to listen to Aboriginal and Torres Strait Islander peoples. In this sense, constitutional entrenchment signifies a genuine attempt at establishing egalitarian nationhoods. It could empower Aboriginal and Torres Strait Islander peoples by enhancing their capacity to be heard in decisions that affect them.

The government's current preference of a legislated voice to government rather than a Voice to parliament protected by the Constitution, falls short of egalitarian nationhoods. Delivering the Australian Studies Institute's Australia and the World Lecture in 2020, Gudanji-Arrernte woman and Indigenous policy expert, Pat Turner, suggested this model was 'doomed to fail' (2020). A member of the government's 19-person Senior Advisory Group, Turner argued that providing advice to government 'is not shared decision making'. She went on to say that:

> A compelling case for shifting away from a Voice to Parliament to a Voice to government has not been made … Whether intended or not, the outcome of the government-controlled process for establishing a Voice is likely to be disjointed, conflicted, and thus counterproductive … The lesson from past failures is that Indigenous peoples have to be able to set up their own structures to reach decisions in their own time about how they are to be represented (Turner 2020).

Significantly, Turner adds that this is 'In fact, no different to anyone else in our society' (2020).

Understanding the Voice to parliament through the lens of egalitarian nationhoods can be useful in articulating why the voice to government is an inadequate compromise. Many groups

provide advice to government but there is a clear hierarchical structure that underscores the supremacy of the Australian state and the resulting 'torment of … powerlessness' felt by First Nations peoples (Uluru Statement from the Heart 2017). Even a body like ATSIC, created through legislation, can be abolished through legislation. The designers of the Uluru Statement have given careful consideration to how an authentic First Nations' Voice can be enshrined in the Constitution without undermining the Australian state.

In 1968, W.E.H. Stanner spoke of the 'unacknowledged relations between two racial groups within a single field of life' (2009, 189). As Tim Rowse notes, it is phrase with deep meaning (2017, 4). Non-Indigenous and Indigenous Australians may continue their relationship 'within a single field of life' but this can only be considered just if it is on terms of equality. The Uluru Statement is an important litmus test of Australia's willingness to confront its 'difficult heritage' as Sharon Macdonald would phrase it, with honesty and maturity (2008). Constitutional entrenchment of a Voice to parliament would be, not only a legal step towards justice for Aboriginal and Torres Strait Islander peoples, but a philosophic step away from proprietary or hierarchical nationalism to egalitarian nationhoods, and ultimately a release from the patriotic obligation felt by some to defend a colonial narrative inescapably linked to suffering and devastation.

How we conceptualise colonial history and how we imagine Aboriginal and Torres Strait Islander peoples to fit either inside or outside the grand narrative of Australianness is neither fixed nor predetermined. In his final Reith Lecture in 2003, V.S. Ramachandran, asked his audience to 'Remember that politics, colonialism, imperialism and war … originate in the human brain' (2003). The nation too is largely imagined. Nevertheless, these imaginations gain legitimacy over time especially as collective memories form and collective rights are asserted. Traditional narratives of Australian identity deny Aboriginal nationhoods. If Aboriginal and Torres Strait Islander peoples are to be afforded not special treatment, but equality, legal reform must be directed at viewing Indigenous Australians as 'co-sovereigns on and of this land' (Hobbs 2018, 188). The Uluru Statement and the Voice to parliament does not challenge the legitimacy of Australian nationhood but asks for Indigenous nationhoods to be placed on an even footing. This is equality, not privilege.

References

Anderson, Benedict. 1983. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso.

Banner, Stuart. 2005. "Why Terra Nullius – Anthropology and Property Law in Early Australia." *Law and History Review* 23(1) 95-132.

Behrendt, Larissa. 2003. *Achieving Social Justice: Indigenous Rights and Australia's Future*. Sydney: Federation Press.

Bickers, Claire. 2018. "Pauline Hanson claims she is Indigenous." *Queensland Times*, April 6. https://www.qt.com.au/news/disgusting-pauling-hanson-blasts-commonwealth-game/3380450/.

Blainey, Geoffrey. 1993. "Drawing up a Balance Sheet of our History." *Quadrant* 37(7-8) 10-15.

Busbridge, Rachel. 2018. "Israel-Palestine and the Settler Colonial 'Turn': From Interpretation to Decolonization." *Theory, Culture & Society* 35(1) 91-115.

Commonwealth Parliament of Australia [Hansard]. 1989. *House of Representatives Parliamentary Debates, official Hansard*, April 11 (John Howard).

Commonwealth, Parliament of Australia [Hansard]. 1996. *House of Representatives Parliamentary Debates, official Hansard*, June 27 (Michael Wooldridge).

Connor, Michael. 2005. *The Invention of Terra Nullius: Historical and Legal fictions on the foundation of Australia.* Sydney: Macleay Press.

Connor, Walker. 1978. "A Nation is a Nation, is a State, is an Ethnic Group is a…" *Ethnic and Racial Studies* 1(4) 377-400.

Cooper v Stuart. 1889. 14 App. Cas. 286.

Curran, James and Stuart Ward. 2010. *The Unknown Nation: Australia After Empire*. Melbourne: Melbourne University Press.

Davis, Fergal. 2015. "The Problem of Authority and the Proposal for an Indigenous Advisory Body." *Indigenous Law Bulletin* 8(19) 23-25.

Davis, Megan. 2018. "Correspondence: 'Moment of Truth'". *Quarterly Essay* 70 147-169.

Davis, Megan. 2019. "The Voice to Parliament: Our Plea to be Heard." *ABC Religion & Ethics*, July 11. https://www.abc.net.au/religion/megan-davis-voice-to-parliament-our-plea-to-be-heard/11300474.

Department of Prime Minister and Cabinet. 2017. "Response to Referendum Council's Report on Constitutional Recognition." October 26. https://ministers.pmc.gov.au/scullion/2017/response-referendum-councils-report-constitutional-recognition.

Dodson, Mick. 2002. "Sovereignty." *Balayi: Culture, Law and Colonisation* 4 13-19.

Elton-Pym, James. 2018. "Scott Morrison Calls for Special Day to Honour and Recognise Indigenous People." *SBS News*, September 25. https://www.sbs.com.au/news/scott-morrison-calls-for-special-day-to-honour-and-recognise-indigenous-people.

Frost, Alan. 1981. "New South Wales as *terra nullius*: The British denial of Aboriginal land rights." *Historical Studies* 19(77) 513-523.

Gans, Chaim. 2016. *A Political Theory for the Jewish People*. Oxford: Oxford University Press.

Gover, Kirsty. 2015. "Settler-State Political Theory, 'CANZUS' and the UN Declaration on the Rights of Indigenous Peoples." *European Journal of International Law* 26(2) 345-373.

Grant, Stan. "America Tears Down its Racist History, We Ignore Ours." *ABC News*, August 18. https://www.abc.net.au/news/2017-08-18/america-tears-down-its-racist-history-we-ignore-ours-stan-grant/8821662.

Harris, Rob. 2021. "'Not our policy': Scott Morrison Rejects Push for Referendum on Voice." *Sydney Morning Herald*, March 18. https://www.smh.com.au/politics/federal/not-our-policy-scott-morrison-rejects-push-for-referendum-on-voice-20210318-p57bxc.html.

Hobbs, Harry. 2018. "Constitutional Recognition and Reform: Developing an Inclusive Australian Citizenship through Treaty." *Australian Journal of Political Science* 53(2) 176-194.

Hobbs. Harry. 2021. *Indigenous Aspirations and Structural Reform in Australia*. Oxford: Hart Publishing.

Howard, John. 2004. Cited in *ABC Radio National*, "Fed Govt Plans to Abolish ATSIC". April 15.

Institute of Public Affairs. 2017. *Four Reasons to Reject the Referendum Council Recommendations*. Parliamentary Research Brief, July 28

Jones, Benjamin T. 2014. "Modern Australia's Defining Moment Came Long after First Fleet." *The Conversation*, September 4. https://theconversation.com/modern-australias-defining-moment-came-long-after-first-fleet-31160

Jones, Benjamin T. 2018. *This Time: Australia's Republican Past and Future* Melbourne: Redback.

Karp, Paul. 2018. "Scott Morrison Claims Indigenous Voice to Parliament would be a Third Chamber." *Guardian*, September 26. https://www.theguardian.com/australia-news/2018/sep/26/scott-morrison-claims-indigenous-voice-to-parliament-would-be-a-third-chamber.

Kauanui, J. Kēhaulani, and Patrick Wolfe. 2018. "Patrick Wolfe on Settler Colonialism." In *Speaking of Indigenous Politics: Conversations with Activists, Scholars, and Tribal Leaders*, edited by J. Kēhaulani Kauanui. Minneapolis: University of Minnesota Press.

Kelly, Dominic. 2019. *Political Troglodytes and Economic Lunatics: The Hard Right in Australia*. Melbourne: La Trobe University Press.

Knaus, Christopher. 2017. "'No Pride in Genocide': Vandals Deface Captain Cook Statue in Sydney's Hyde Park." *Guardian*, August 26. https://www.theguardian.com/australia-news/2017/aug/26/captain-cook-statue-and-two-others-in-sydneys-hyde-park-attacked-by-vandals.

Larkin, Dani, Emma Buxton-Namisnyk, and Gabrielle Appleby. 2021. "What did the Public say about the Government's Indigenous Voice Co-Design Process?". *Conversation*, July 6. https://theconversation.com/what-did-the-public-say-about-the-governments-indigenous-voice-co-design-process-163803.

Lloyd, David. 2012. "Settler Colonialism and the State of Exception: The Example of Palestine/Israel." *Settler Colonial Studies* 2(1) 59-80

Mabo v Queensland (No. 2). 1992. 175 CLR 1.

Macdonald, Sharon. 2008. *Difficult Heritage: Negotiating the Nazi past in Nuremberg and Beyond*. Hoboken: Taylor & Francis.

Macintyre, Stuart and Anna Clark. 2004. *The History Wars*. Melbourne: Melbourne University Press

Makdisi, Saree. 2010. "Riding the whirlwind of settler colonialism." *Victorian Studies* 53(1) 108-115

Manne, Robert. 2001. "In Denial: The Stolen Generations and the Right." *Quarterly Essay* 1.

Manne, Robert. ed. 2003. *Whitewash: On Keith Windschuttle's Fabrication of Aboriginal History*. Melbourne: Black Inc.

Mansell, Michael. 2014. "Andrew Bolt, Indigenous Australian? Come off it." *Guardian*, January 31. https://www.theguardian.com/commentisfree/2014/jan/31/andrew-bolt-indigenous-australian-come-off-it.

Mansell, Michael. 2016. *Treaty and Statehood: Aboriginal Self-Determination*. Annandale: Federation Press.

Mansour, Awad. 2018. "The Conflict over Jerusalem: A Settler-Colonial Perspective." *Journal of Holy Land and Palestine Studies* 17(1) 9-23.

Markham, Francis, and Will Sanders. 2020. *Support for a Constitutionally Enshrined First Nations Voice to Parliament: Evidence from Opinion Research since 2017* (Centre for Aboriginal Economic Policy Research, Working Paper No. 138/2020).

McCulloch, Daniel. 2019. "Prime Minister Scott Morrison wants Aussies to 'Rediscover' Captain James Cook with $12m Project." *Perth Now*, January 22.

https://www.perthnow.com.au/politics/federal-politics/prime-minister-scott-morrison-wants-aussies-to-rediscover-captain-james-cook-with-12m-project-ng-b881081256z.

McKenna, Mark. 2004. *This Country: A Reconciled Republic?*. Sydney: University of New South Wales Press

Morrison, Scott. 2019. "Doorstop – Brisbane, 13 July 2019", *Prime Minister of Australia*. July 13. https://www.pm.gov.au/media/doorstop-brisbane.

National Indigenous Australians Agency. 2019. "Terms of Reference National Co-Design Group". https://voice.niaa.gov.au/sites/default/files/2021-02/national-co-design-group-tor.pdf

Ramachandran, Vilayanur S. 2003. "Reith Lectures 2003: The Emerging Mind". *BBC*, http://downloads.bbc.co.uk/rmhttp/radio4/transcripts/20030430_reith.pdf.

Referendum Council. 2017. *Final Report of the Referendum Council.*

Rowse, Tim. 2017. *Indigenous and Other Australians since 1901*. Sydney: NewSouth Publishing.

Rowse, Tim. 2021. "Is the Voice Already Being Muted?" *Inside Story*, February 1. https://insidestory.org.au/is-the-voice-already-being-muted/.

Ruska, Pekeri and Callum Clayton-Dixon. 2015. "Words of the Struggle" *Black Nations Rising* 1 10.

Smith, Anthony D. 2002. "When is a Nation?" *Geopolitics* 7(2) 5-32.

Stanner. WEH. 2009. *The Dreaming and Other Essays: With an Introduction by Robert Manne*. Melbourne: Black Inc.

Stone, John. 2017. "Fifty Years of Unremitting Failure: Aboriginal Policy since the 1967 Referendum." *Quadrant* 61(11) 62-72.

Thorpe, Nakari. 2018. "'Indulgent Self-Loathing': Scott Morrison Denounces Council's Australia Day Date Change." *SBS News*, September 24. https://www.sbs.com.au/news/indulgent-self-loathing-scott-morrison-denounces-council-s-australia-day-date-change.

Turner, Dale. 2006. *This Is Not a Peace Pipe: Towards a Critical Indigenous Philosophy*. Toronto: University of Toronto Press.

Turner, Pat. 2020. "The Long Cry of Indigenous Peoples to be Heard: A Defining Moment in Australia." Australia and the World Annual Lecture, National Press Club, September 30. https://nacchocommunique.files.wordpress.com/2020/09/pat-turner-australia-and-the-world-annual-lecture-30.09.20.pdf

Veth, Peter and Sue O'Connor. 2013. "The Past 50,000 Years: An Archaeological View." In *The Cambridge History of Australia: Volume 1: Indigenous and Colonial Australia*, edited by Alison Bashford and Stuart Macintyre. Sydney: Cambridge University Press.

Visentin, Lisa. 2018. “Sydney to get new Captain Cook memorial as part of $50m revamp.” *Sydney Morning Herald*, April 28. https://www.smh.com.au/politics/federal/sydney-to-get-new-captain-cook-memorial-as-part-of-50m-revamp-20180428-p4zc64.html.

Watson, Irene. 2011. “The 2007 Declaration on the Rights of Indigenous Peoples: Indigenous Survival–Where to from Here?’ *Griffith Law Review* 20(3):507-514.

Wettenhall, Roger. “Reshaping the Commonwealth Public Sector.” In *The Howard Government: Australian Commonwealth Administration 1996-1998*, edited by Gwynneth Singleton. Sydney: University of New South Wales Press.

White, Leanne. 2008. “One Athlete, One Nation, Two Flags: Cathy Freeman and Australia’s search for Aboriginal Reconciliation.” *Sporting Traditions* 25(2) 1-19.

Windschuttle, Keith. 2002. *The Fabrication of Aboriginal History, Volume 1, Van Diemen’s Land 1803-1847*. Sydney: Macleay Press

Wolfe, Patrick. 2006. “Settler colonialism and the elimination of the native.” *Journal of Genocide Research* 8(4) 387-409.