
RECOGNISE WHAT?

PROBLEMS WITH THE CAMPAIGN FOR CONSTITUTIONAL RECOGNITION

by Sarah Maddison

To have any merit at all, a recognition referendum should require the backing of the group being 'recognised'.¹ This means that the views of Aboriginal and Torres Strait Islander peoples with regard to their 'recognition' in the Australian *Constitution* should be of central importance to the campaign. As the current campaign unfolds, however, it seems that the loudest dissenting voices are coming from Indigenous people themselves, many of whom insist that recognition within what they see as an illegitimate *Constitution* will not address their claims upon the legitimacy of the nation. Indeed, as Megan Davis has noted, five years into the campaign for recognition Aboriginal resistance to the idea continues to grow.²

'POOR PROCESS' AND THE CAMPAIGN FOR 'RECOGNITION'

Following delivery of the final report of the Expert Panel on Constitutional Recognition of Indigenous Australians, the website YouMeUnity, which had provided a range of information about the referendum proposals under discussion, was rebranded as 'Recognise'. The new organisation was given the task of leading the campaign for a successful referendum.

Since this time, and despite the fact that a model of recognition has yet to be formally proposed, Recognise has campaigned relentlessly for the idea of constitutional recognition, undertaking a 'Journey to Recognition' that has seen campaigners travel more than 32,000 kilometres, holding hundreds of community events intended to promote the 'yes' case.³ The Recognise website articulates the organisation's task as involving 'a very specific focus', namely 'to raise awareness of the need to end the exclusion of Aboriginal and Torres Strait Islander peoples from the Australian *Constitution* and deal with racial discrimination in it'.⁴

Megan Davis argues that 'poor process', including the absurdity of running a campaign before the proposed reform is clear 'has made it difficult for Australians, including Indigenous communities, to have a debate'.⁵ The resulting 'backlash against the recognition project in the Aboriginal and Torres Strait Islander community' is

being driven by two concerns related to significant shortcomings in the process.⁶

The first issue concerns what is being experienced by many Indigenous people as a kind of 'disproportionate pressure' exerted through the view that the 'once-in-a-generation opportunity' to achieve constitutional change will only be possible if a weak form of recognition is accepted.⁷ This is evident in commentary from one of the co-directors of the Recognise campaign, Tanya Hosch, who argues that a successful referendum should proceed regardless of dissent, suggesting that all parties will need to 'compromise' on the model,⁸ and warning others not to 'make the best the enemy of the good' when they could instead 'make the good the enemy of division' by pursuing an achievable if imperfect form of recognition.⁹ Yet, in the absence of a definitive model, a simplistic idea of recognition 'has been shopped around for public consumption as a no-brainer and uncontroversial', a strategy that has 'inadvertently raised the ire of a battle-weary [Indigenous] polity'.¹⁰ Larissa Behrendt agrees, pointing out that 'there still are a lot of questions within the Indigenous community . . . people, not knowing what the model is, are still a bit unsure as to whether they want to sign up to it or not'.¹¹ In particular, it is the pressure towards a speedy consensus among Aboriginal and Torres Strait Islander people that has led to an angry response from some.

The Recognise campaign itself has also been criticised for its role in the process. Described by journalist Paul Daley as 'a mega-million dollar public relations campaign to promote a nebulous, ill-defined proposal', Recognise is seen by some as 'a distraction from attending to the real issues (treaties, acknowledgement of sovereignty, the appalling economic and lifestyle indicators that pepper Close the Gap) that might contribute to genuine outcomes for Aboriginal and Torres Strait Islander people'.¹²

Arrernte writer and activist Celeste Liddle also remains cynical about the fact 'that a Recognition standpoint is the only one the government deems necessary to fund'.¹³ This is a point made by

Davis as well, who finds it anomalous that there is 'a taxpayer-funded campaign to bestow settler recognition on Aboriginal and Torres Strait Islander peoples in the *Constitution*, while the purported subjects of that recognition are ambivalent, at best'.¹⁴ Davis also objects to the level of media attention directed towards the 'upbeat and hyperbolic narrative of "recognition"' while, she points out, 'in the community of the recognised? *crickets*'.¹⁵

It is in light of these concerns that Davis dubs much of the process to date as being one of 'gesture politics', providing neither the 'overarching narrative' that could give hope and direction to impoverished communities, nor adequate scope for participation.¹⁶ As she argues, Aboriginal and Torres Strait Islander peoples are seeking more than recognition. They are seeking 'institutionalised safeguards and the right to be consulted, and to participate actively in decision-making'. In the place of serious debate, however, Indigenous peoples are being told:

*Some recognition is better than no recognition . . . Or worse, that symbolism is substantive reform, or that any change to the Constitution is more than symbolic; as if the natives aren't well attuned to settler semantics. When we push back, saying we are seeking reform, not non-reform, something transformative, not decorative, we are described as ambitious; the blacks are taking a hard line. They, on the other hand, routinely and unselfconsciously describe themselves as modest, considered, conservative. The presupposition in the mainstream recognition conversation, that this was only ever about symbolism, is erroneous. It is restraining any sophisticated public debate.*¹⁷

It is the way these concerns with process link to concerns with the substance of recognition that leads to the second major problem with the Recognise campaign to date. Many Aboriginal and Torres Strait Islander people are worried that the pressure of the Recognise campaign risks closing down space for debate about more meaningful reform. Those critical of the constitutional reform proposals include some well-known leaders and activists from the more radical end of the political spectrum, including Gary Foley and Michael Mansell, whose primary concern is that constitutional 'recognition' may in fact undermine Indigenous aspirations to achieve a treaty or treaties with the Australian state, and for broader recognition of Indigenous sovereignty.¹⁸ As Liddle notes, however, while Recognise may listen to dissenting voices, it is explicitly not their role 'to promote Indigenous views opposing constitutional recognition, nor is their driving force the centering of Black Nationalist and/or pro-treaty views'.¹⁹

Indeed, there is some evidence to suggest that within the Recognise campaign there is a desire to close down the space for dissenting Aboriginal and Torres Strait Islander voices. Although one co-director has pointed out that many of the Recognise

events around the country 'have featured dissenting voices',²⁰ the other co-director was vocal in advocating for the finalisation of the referendum question by the end of 2015 so that the time in the lead up to the suggested 2017 referendum date could be most effectively used 'to put the nitpickers and the naysayers firmly back in their armchairs'.²¹

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This dismissive attitude is in contrast to a view suggesting that, as with any other issue, there is a 'wide breadth of opinion' among Aboriginal and Torres Strait Islander people, including a proportion that is 'outright opposed to any inclusion' in the *Constitution*, and many others who are becoming 'increasingly disillusioned and cynical'.²² Stan Grant has suggested that 'Blackfellas are sceptical at best, hostile at worst', when it comes to the Recognise campaign, with many wondering 'if it is not a con' and some expressing their preference for recognition of sovereignty and a treaty over inclusion in the *Constitution*.²³ Amy McQuire notes the extent to which Indigenous dissenters feel that 'a great cloak has been put over sovereignty and treaty, which has been rendered almost invisible in the waves of positive coverage for Recognise'.²⁴ McQuire also suggests that despite efforts to repress these views, 'there are still calls for treaty and sovereignty. They are not white noise'.²⁵

Over the last 18 months or so, however, concerns about the exclusion of dissenting Indigenous voices from the Recognise campaign have begun to creep into official processes. In July 2015, following a meeting of 40 Aboriginal and Torres Strait Islander representatives at Kirribilli House in Sydney, attended by both the then Prime Minister and Leader of the Opposition, a breakaway position was advanced by four key attendees—Patrick Dodson, Noel Pearson, Megan Davis and Kirstie Parker—who wrote a letter to the Prime Minister requesting 'a proper Indigenous process' that would determine 'where Indigenous people stand' on the question of constitutional recognition. The authors of the letter contended that it would be 'wiser' for government 'to prioritise clarity and consensus within indigenous Australia, as without 'the wholehearted agreement and backing of indigenous people . . . why would the nation proceed with a referendum?'.²⁶

This proposal, for a so-called 'black process', was initially rejected by then Prime Minister Tony Abbott.²⁷ However, in December

2015, it was announced that a Referendum Council was to be established, including several members of the original Expert Panel, plus one of the Joint Campaign Directors of Recognise, with a view to conducting a series of regional Indigenous-only meetings, culminating in a national Aboriginal and Torres Strait Islander convention during 2016. Reflecting on this decision, Kirstie Parker suggests that establishing such a process 'is a no-brainer' that should have been undertaken at the outset of the Recognise campaign. She contends that the Council process 'will constitute a significant amount of heavy lifting in this so-far flawed process' and 'has helped to stem growing cynicism within our community', although with a note of caution she adds '... for now'.²⁸ Davis, herself a member of the Referendum Council, is also cautious, observing that this will be the fourth deliberative process in five years and risks reducing Aboriginal and Torres Strait Islander people to a 'stakeholder position, feeding their routinely unheard aspirations through another entity outsourced with the task of deciding that which the parliament should really resolve'.²⁹ Certainly, there is little expectation that this new process will correct the flaws in the campaign to date.

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QUESTIONING THE NUMBERS

It is true that there is an evident degree of support for constitutional recognition among many Aboriginal and Torres Strait Islander people. A May 2015 poll, commissioned by Recognise, found that 87 per cent of Aboriginal and Torres Strait Islander people surveyed would vote 'yes' if a referendum were held today.³⁰ Importantly, however, the type of recognition that most often receives this support is generally described as 'meaningful', with high-profile leaders and activists including Patrick Dodson, Marcia Langton, Noel Pearson, Megan Davis and Larissa Behrendt advocating for both symbolic and substantive measures of recognition.³¹

Certainly, the fact that there is some Indigenous support for the proposed referendum, whatever level of support that may actually be, does not tell the whole story. The survey data produced by Recognise has been contested, and an attempt made to refute its findings through an alternative survey published on the

IndigenousX website. The IndigenousX survey was prompted by an assessment that Aboriginal and Torres Strait Islander views being expressed on social media platforms 'showed something quite different' to the Recognise survey results, and made the 87 per cent figure produced by Recognise seem 'not indicative of a lot of mob discussions' and therefore 'highly questionable'. Several people involved in IndigenousX agreed that the results of the Recognise poll 'had no basis in the communities which we each knew and were a part of'.³² The results of the IndigenousX survey certainly presented a different picture to that reported in the Recognise poll. Of the 824 people who responded, 25 per cent indicated support for Recognise, 58 per cent indicated that they did not support Recognise, and 17 per cent were unsure as to whether they supported Recognise or not. Only 33 per cent indicated that they would vote 'yes', even if all of the Expert Panel's recommendations were included.

Recognise were quick to defend their survey, pointing out that, unlike the IndigenousX survey, their polling has been commissioned from Polity Research, which did not practise self-selecting polls considered to be 'notoriously inaccurate'. The IndigenousX survey, which was promoted through Twitter and other social media, was, according to Gartrell, not only not nationally representative, but was the equivalent of 'asking your friends about an issue and then saying "everyone I have spoken to agrees with me"'. Gartrell maintains that Recognise has 'never denied there is dissent nor that there are critics of the movement', only that they 'disagree on the scale of it'.³³

In response, Liddle points out that her analysis of the survey data acknowledges that there may be some 'skewing' of the results due to the survey method, but maintains the validity of accessing Aboriginal and Torres Strait Islander points of view through social media due to the particular characteristics of many Indigenous communities. Liddle further suggests that there were 'no limits' to the IndigenousX survey, which Recognise could have promoted and shared through their own networks had they chosen to pursue 'an alternative means to gauge community views'.³⁴ Ultimately, as Liddle points out, the results from the IndigenousX survey make it clear that 'the discussion on this topic is far from over from an Indigenous perspective'. She contends that the wider public has a responsibility to engage with this discussion before they vote on the matter and suggests that the media 'has been neglectful when it comes to giving a platform for this diverse discussion'.³⁵

Concerns about polling persist. In May 2016, during the federal election campaign, Vote Compass released results showing that 72 per cent of the 200,000 Australians who had taken the survey were in favour of recognition, answering yes to the question:

'The Australian *Constitution* should recognise Indigenous people as Australia's first inhabitants.' The narrow focus of the questions was the subject of criticism, with Aboriginal legal scholar Larissa Behrendt pointing out that questions about recognition should include the option of a treaty. Behrendt commented that 'Indigenous participants did want to have some ability to talk about a treaty and its relationship with constitutional recognition', which she saw as 'fairly reflective of what we hear in the general community, where there is actually a push for a treaty to be there as part of the constitutional recognition debate or instead of it'.³⁶ Indigenous rights barrister, and Australia's first Indigenous Senior Counsel Tony McEvoy, also responded to the Vote Compass data by suggesting that 'many people' within Aboriginal and Torres Strait Islander communities see constitutional reform as 'a distraction from the ultimate outcome, being a treaty'. McEvoy argues that: 'At some point the treaty discussion is going to have to enter the national political debate.'³⁷

FIXING THE PROCESS

Whatever the actual numbers are, it is evident that the current national process has only limited merit, offering little support for the debate about a treaty or treaties that many Aboriginal and Torres Strait Islander people want. As Little and McMillan contend, what is needed is 'a more open discussion about the process itself', including 'the topics that are on the table for discussion'.³⁸ Without this discussion, regardless of how 'beautifully packaged' the recognition campaign is, as long as it seeks input only from those described by McQuire as 'a select Aboriginal elite', it will continue to be 'a white thing'.³⁹ And as McQuire asks, if the campaign for recognition does not have overwhelming support from Aboriginal and Torres Strait Islander people, 'what point is there to it at all?'.⁴⁰ The fact that a 'yes' vote might succeed regardless of Indigenous dissent and discontent would, as Little and McMillan point out, indicate 'the failure of constitutional recognition to transform relations in Australian society'.⁴¹

Confidence remains that Aboriginal and Torres Strait Islander people will reach consensus on the way forward, but it has also become harder to ignore the increasing volume of dissenting Indigenous voices.⁴² Many Aboriginal leaders and activists believe passionately that the 'unfinished business' of Australia's colonial history will not be resolved until Indigenous sovereignty is accorded proper respect, and until the sovereign Indigenous peoples of Australia are dealt with properly by way of a treaty. Indeed it is evident that for many Aboriginal and Torres Strait Islander people, any proposed constitutional reforms will not go nearly far enough. In fact, where there *is* consensus among Aboriginal and Torres Strait Islander people, it is on the grounds that 'weak' form recognition will not be enough.⁴³

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In light of this, it would seem that there is an urgent need to rethink the process. Davis and Langton suggest that the Australian political system 'is one that respects difference and can mediate disagreement', arguing that Aboriginal and Torres Strait Islander people could use the Referendum Council process and the subsequent campaign to 'engage in a deep conversation with Australians about our shared future'.⁴⁴ Indeed, until this kind of engagement is possible, there can be no meaningful process towards constitutional recognition.

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