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A Losing Voice in Australia: The Fall of an Indigenous Referendum Measure

By Dr. Binoy Kampmark
Global Research, October 16, 2023
Region: Oceania
Theme: Law and Justice

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Even before October 14, The Voice, or, to describe in full, the Referendum on the Aboriginal and Torres Strait Islander Voice to Parliament, was in dire straits. Referenda proposals are rarely successful in Australia: prior to October 14, 44 referenda had been conducted since the creation of the Commonwealth in 1901. Only eight had passed.

On this occasion, the measure, which had been an article of faith for Labor Prime Minister Anthony Albanese, hinged on whether an advisory body purportedly expert and informed on the interests and affairs of the First Nations Peoples would be constitutionally enshrined. The body was always intended as a modest power: to advise Parliament on policies and legislative instruments directly of concern to them. But details on who would make up such a body, nor how it could actually achieve such Olympian aims as abolishing indigence in remote indigenous communities or reducing the horrendous incarceration rate among its citizenry, were deemed inconsequential. The near cocky assumption of the Yes case was that the measure should pass, leaving Parliament to sort out the rest.

In the early evening, it became clear that the Yes vote was failing in every state, including Victoria, where campaigners felt almost complacently confident. But it was bound to, with Yes campaigners failing to convince undecided voters even as they rejoiced in preaching to their own faithful. The loss occurred largely because of two marshalled forces ideologically opposite yet united in purpose. They exploited a fundamental, and fatal contradiction in the proposal: the measure was advertised as "substantive" in terms of constitutional reform while simultaneously being conservative in giving Parliament a free hand.

From one side, the conservative "Australia as egalitarian" view took the position that creating a forum or chamber based on race would be repugnant to a country blissfully steeped in tolerance and colour-blindness. Much of that is nonsense, ignoring the British Empire's thick historical links with race, eugenics and policies that, certainly in the Australian context, would have to be judged as genocidal. Even the current Australian Constitution retains what can only be called a race power: section 51(xxvi) which stipulates

that Parliament may make laws regarding “the people of any race for whom it is deemed necessary to make special laws.”

Beneath the epidermis of such a view is also an assumption held by such Indigenous conservatives as Warren Mundine that there have been more than a fair share of “voices” and channels to scream through over several decades, be it through committees or such bodies as the disbanded Aboriginal and Torres Strait Island Commission. The plethora of these measures did not address inequality, did not improve health and educational outcomes directly, and merely served to create a managerial class of lobbyists and activists. To merely enshrine an advisory body in the Constitution would only serve to make such an entity harder to abolish in the event it failed to achieve its set purposes.

Campaigners for the Voice will shake their heads and chide those who voted against the measure as backward reprobates who fell for a gross disinformation campaign waged by No campaigners. They were the ones who, like worshippers having filled the church till, could go about morally soothed proclaiming they had done their duty for the indigenous and downtrodden. Given that the No vote was overwhelming (59%), the dis- and mis-information angle is a feeble one.

It is true to say that the No campaign was beset by a range of concerns, some of them ingenuous, some distinctly not. There was the concern that, while the advice from Voice members on government legislation and policy would be non-binding on Parliamentarians, this would still lead to court challenges that would tie up legislation. Or that this was merely the prelude to a broader tarnishing of the Australian brand of exceptionalism: first, comes the Voice, then the Treaty process, then the “truth telling” to be divulged over national reconciliation processes.

The first of these was always unlikely to carry much weight. Even if any parliamentary decision to ignore advice from the Voice would ever go to court, it would never survive the holy supremacy of Parliament in the Westminster model of government. What Parliament says in the Anglo-Australian orbit of constitutional doctrine tends to be near unquestionable writ. No court would ever say otherwise.

The second concern was probably more on point, insofar as the Voice would act as a spur in the constitutional system, one to build upon in the broader journey of reconciliation. But the No casers here, with former Australian foreign minister Alexander Downer being fairly typical of this, regard matters such as treaty and truth-telling commissions as divisive and best scotched. “The most destructive feature of failed societies is that they are divided on the basis of ethnicity, race or religion,” he wrote this month. For Downer and his ilk, Australia remains a pleasant land – not exactly verdant, but pleasant nonetheless – where Jerusalem was built; don’t let any uppity First Nations advocate tell you otherwise.

The procedurally minded and pragmatic sort – which count themselves amongst the majority of Australian voters, were always concerned about how the advisory body would be constituted. Any new creature born from political initiative will always risk falling into the clutches of political intriguers in the government of the day, vulnerable to the puppeteering of the establishment. In Australian elections, where pragmatism is elevated to the level of a questioning, punishing God, the question of the “how” soon leads to the question of “how much”. The Voice would ultimately have to face the invoice.

Another, equally persuasive criticism of the Voice came from what might be loosely described as the Black Sovereignty movement, led by such representatives as independent Senator Lidia Thorpe. From that perspective, the Voice is only a ceremonial sham, a bauble, tinsel cover that, while finding form in the Constitution, would have meant little. “This referendum, portrayed by the government as the solution to bringing justice to First Peoples in this country,” she opines, “has instead divided and hurt us.”

Precisely because it would not bind elected members, it had no powers to compel the members of parliament to necessarily follow their guidance. “The supremacy of the colonial parliament over ‘our Voice’,” Thorpe goes on to stress, “is a continuation of the oppression of our people, and the writing of our people into the colonial Constitution is another step in their ongoing attempt to assimilate us.” This would make the body a pantomime of policy making, with its membership respectfully listened to even if they could be ultimately ignored. Impotence, and the effective extinguishment of indigenous sovereignty, would be affirmed.

Among some undecided voters lay an agonising prospect, notably for those who felt that this was yet another measure that, while well-meant in spirit, was yet another on the potted road of failures. The indigenous activist Celeste Liddle represents an aspect of such a view, one of dissatisfaction, stung by broken promises. Her view is one of morose, inconsolable scepticism. “I’m at a time in my life,” she writes in *Arena*, “where I have seen a lot of promises, a lot of lies, a lot of attacks on Indigenous communities, and not a lot of change. I therefore lack faith in the current political system and its ability to ever be that agent of change.” That’s an almost dead certifiable “No”, then.

The sinking of the Yes measure need not kill off the program for improving and ameliorating the condition of First Nations people in Australia. But for those seeking a triumphant Yes vote, the lesson was always threatening: no measure will ever pass the hurdle of the double majority in a majority of states if it does not have near uniform approval from the outset. It never has.

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Dr. Binoy Kampmark was a Commonwealth Scholar at Selwyn College, Cambridge. He currently lectures at RMIT University. He is a regular contributor to Global Research and Asia-Pacific Research. Email: bkampmark@gmail.com

Featured image: Picture of Albert Namatjira at the Albert Namatjira Gallery, Alice Springs. Aboriginal art and artists became increasingly prominent in Australian cultural life during the second half of the 20th century. (Licensed under Attribution)

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