# 6

# Missing ATSIC: Australia's need for a strong Indigenous representative body

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## Introduction

The idea of market liberalism within government has been influential since the 1980s, but its interaction with other more established ideas in Australian Indigenous affairs is a matter for debate. I tend to the view that Australian Indigenous policy was for a decade or more protected from neoliberalism by the idea of self-determination, which had become influential in the 1970s. This other policy idea led the Australian Commonwealth Parliament in 1989 to create a statutory authority, the Aboriginal and Torres Strait Islander Commission (ATSIC). As well as a permanent staff of public servants, ATSIC had an extensive structure of elected Indigenous regional councillors, who in turn elected zone and national commissioners. This made ATSIC a significant Indigenous representative body within Australian political institutions. Through its programs and spending, ATSIC also encouraged community-based Indigenous organisations to take on service delivery, asset holding and representative roles. Rowse referred to these organisations as the 'Indigenous sector', which he argued was 'one of the defining material products of the Australian public policy change from "assimilation" to "self-determination"' in Indigenous affairs (Rowse 2004: 39, see also

Rowse 2002). Going further, I suggested that ATSIC and the supported Indigenous organisations could together be thought of as moving 'towards an Indigenous order of Australian government' (Sanders 2002). This terminology had been used in Canada in the 1996 Royal Commission on Aboriginal Peoples and also seemed appropriate to Australia. Particularly since the High Court recognition of common law native title in the Mabo case in 1992, it seemed possible to think of law and governmental authority in Australia as flowing from Indigenous sources as well as from Commonwealth and state legislatures and their constitutions. These ideas and language potentially gave ATSIC and Indigenous organisations strong long-term foundations within Australian political institutions. This, however, was not to be. Through a convergence of circumstances detailed below, ATSIC was abolished in 2004–05. In the decade since, ideas of market liberalism have overrun those of self-determination in Australian Indigenous affairs, leading to continuing challenges to the roles of Indigenous community organisations (Sullivan 2011: 48–66).

This chapter revisits some of these ideas over a decade after ATSIC. It argues that some law and governmental authority in Australia *must* flow from Indigenous peoples and their precolonial history. As a consequence, Australia needs a strong Indigenous representative body within its political institutions. The ATSIC experiment was an attempt to develop such a body, which we are now missing. The chapter begins with some history of the abolition of ATSIC and developments since in public policy towards Indigenous Australians. The emergence of the National Congress of Australia's First Peoples as a new Indigenous representative body is recounted and analysed, and so too is the push towards recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution. Both are argued, as of 2016, to have achieved weaker recognition of Indigenous peoplehood and rights than ATSIC. Australian public policy is thus still trying to recover from the abolition of ATSIC over a decade on.

The administrative location of Indigenous-specific programs within government in recent years is also discussed and compared with the ATSIC era. Looking forward, the question for Australian Indigenous policy becomes: how can a strong Aboriginal and Torres Strait Islander representative body be redeveloped as an appropriate recognition of Indigenous peoplehood rights within Australian political institutions? While answering that question proves beyond the scope of this chapter,

hopefully I will at least establish that this is a good question to be asking. For during the decade since ATSIC, there has not even been acknowledgement of the appropriateness of this question.

Rather than neoliberalism, the broad sociological term I find most helpful in Indigenous affairs is decolonisation. I resist the term neoliberalism as it seems to foreclose, rather than open, possibilities. While there is no denying the rise of market liberalism in ideas about government since the 1980s, other ideas have also still had a presence, such as decolonisation and a 'peoples' approach. Framing and labelling are important, and it may be that insisting that this is still the age of decolonisation, as well as neoliberalism, is a way to keep alive ideas about the recognition of Indigenous rights.

## Losing ATSIC and self-determination in Australian Indigenous policy

For almost three decades from the early 1970s to the late 1900s, the central terms of Indigenous policy in Australia were self-determination and the slightly less assertive self-management. This use of a foundational right of peoples drawn from international law as an element of Australian Indigenous policy was widely accepted, if at times a little cautiously. The second 'object' of the ATSIC Act passed in 1989 was 'to promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders'. If this was less than a whole-hearted embracing of the right to self-determination of Indigenous peoples, this was less evident in 1992 when the Australian Government and ATSIC made contributions to the 10th session of the United Nations Working Group on Indigenous Populations, which was developing a draft Declaration of the Rights of Indigenous Peoples. As the CEO of ATSIC put it, the 'Australian delegation' argued for retaining the right to self-determination of Indigenous peoples within the draft so long as this took place 'within the framework of existing nation States'. This 'recognition of the right of self-determination' within the proposed Declaration would help Indigenous peoples 'to overcome the barriers to full democratic participation in the political process' (ATSIC 1992: vii). This position was maintained until the late 1990s, when the Howard Coalition Government began to retreat from supporting self-determination in the draft Declaration and in Indigenous policy more generally (Dodson & Pritchard 1998, ATSIC 1999).

Even with this retreat, ATSIC seemed to be growing stronger as an Indigenous representative body. From 1995, it was accredited with non-government organisation (NGO) status in the United Nations, giving access to international forums independent of the Australian Government. In 2000, ATSIC gained its first elected chairperson, Victorian Indigenous leader Geoff Clark. With Clark re-elected as chair for a second term in early 2003, ATSIC seemed secure. But controversy surrounding a pub brawl and a publicly funded trip to Ireland during 2002 soon caught up with Clark, as too did legal proceedings relating to allegations of rape back in the 1970s. Allegations of nepotism and funding impropriety among the elected representatives more generally saw ATSIC stripped of its financial decision-making powers in April 2003 and a broader review undertaken. Clark was suspended as chair by Minister Ruddock in August 2003, leaving ATSIC in the vulnerable position of having an acting chair.

The 2003 review of ATSIC was conducted by two white male ex-politicians and an Indigenous woman academic. The reviewers proposed with some 'urgency' a 'reform package' that would provide ATSIC with 'a new leadership structure and a boost to its morale' (Hannaford et al. 2003: 7). This would do away with zone commissioners and instead make the 35 Regional Council chairs ATSIC's national 'governing body'. The national chair and deputy chair would be elected from this body and, like Regional Council chairs, would be able to 'be removed by a no-confidence vote in them, carried by a statutory majority of their respective electing bodies' (Hannaford et al. 2003: 13).[1] While these were significant changes, the reviewers began with two 'over-arching' recommendations that indicated foundational support for ATSIC: that the 'existing objects of the ATSIC Act should be retained' and that 'ATSIC should be the primary vehicle to represent Aboriginal and Torres Strait Islander peoples' views to all levels of government' (Hannaford et al. 2003: 8). The Review was in fact calling for the strengthening of ATSIC as a national Indigenous representative body, rather than in any way diminishing it. It talked of ATSIC representing the 'voice and interests of Aboriginal and Torres Strait Islander peoples within government' and of this 'advocacy role' extending 'internationally' through ATSIC's NGO status at the

1 This suggestion probably grew out of uncertainty around the position of Geoff Clark as ATSIC chair during late 2003. When Clark was suspended by Minister Ruddock in August 2003, the ATSIC Board was left with an acting chair, Lionel Quartermaine, for many months. Clearly, this put the board in a rather weak position, unable to move decisively to a new chair by its own vote.

UN (Hannaford et al. 2003: 18). This supportiveness was not, however, how the Review report was interpreted and used by either the Howard Coalition Government or the Latham Labor opposition.

In late March 2004, with a federal election looming later that year, Opposition Leader Mark Latham announced that, if elected, a Labor Government would abolish ATSIC, its own creation of 15 years earlier, and 'establish a new framework for Indigenous self-governance and program delivery' (Latham & O'Brien 2004). A couple of weeks later, the Howard Coalition Government seized the opportunity to do likewise. The ATSIC 'experiment in separate representation' had, it argued, been a 'failure' (Howard & Vanstone 2004). It was to be 'abolished' and would not be replaced by 'another elected structure' (Vanstone 2004a). 'Specialist Indigenous programmes' would be 'retained' but 'devolved to mainstream Departments', while 'existing mainstream programmes' would also be pushed to 'perform better'. To this end a Ministerial Taskforce would be 'established immediately' and a 'new Office of Indigenous Policy Coordination' would 'provide policy advice and monitor the performance of mainstream agencies' (Vanstone 2004a).

Five days after these ministerial announcements, the Secretary of the Australian Government Department of the Prime Minister and Cabinet (PMC), Peter Shergold, made the new arrangements in Indigenous affairs the central example of a speech on 'Connecting Government'—a report on how Australia would adopt 'whole-of-government responses' to its 'priority challenges'. Shergold identified five 'characteristics' of the 'new whole-of-government mainstreaming' in Indigenous affairs: collaboration, a focus on regional need, flexibility, accountability and leadership. Under the first of these he referred not only to the Ministerial Taskforce, but also to a 'Secretaries' Group in Canberra' and a 'network of regional offices around the nation' in which 'all the services delivered by key departments—employment, education, community services, legal aid and health—will be represented'. These 'Australian government indigenous coordination centres' would be 'tasked to work with indigenous communities to deliver services in a coordinated way' using 'Framework Agreements' in which 'government and community work as partners to establish goals and agree their shared responsibilities' (Shergold 2004).

Establishing these new arrangements in Indigenous affairs proved both complex and simple. Faced with a Bill to abolish ATSIC in June 2004, the Labor opposition pulled back from immediate support and moved

instead for a Senate Committee inquiry. This extended the legislative process for abolition past the election held in November and into 2005 (SCAIA 2005). The administrative process, however, was effected far more simply by machinery of government changes from 1 July 2004. From that day, ATSIC's programs and legislated responsibilities were assigned to 13 different Commonwealth agencies (Vanstone 2004b). This left ATSIC a mere shell during the last year of its legislative existence.

## Mainstreaming and whole-of-government logics in the new arrangements

During the Senate Committee inquiry, and more generally in 2004, it was often noted that the involvement of mainstream Commonwealth agencies and programs in servicing Indigenous people was not new. It had been common ever since the Commonwealth became involved in Indigenous affairs on a national scale after the 1967 constitutional alteration referendum. Indigenous-specific programs in Indigenous-specific agencies, like the Department of Aboriginal Affairs and ATSIC, had existed alongside the service delivery efforts of line agencies through both general programs and some Indigenous-specific ones. The question was thus posed of how the 'new mainstreaming' would differ from the 'old' (Altman 2004). Shergold was optimistic that, through the whole-of-government idea, this new approach could in fact be quite different from the old pattern of 'each department' making 'its own decisions in a non-coordinated way' (SCAIA 2005: 82). Others, however, were more sceptical. Bill Jonas, the Aboriginal and Torres Strait Islander Social Justice Commissioner whose five-year term was just ending, argued that while 'accountability for service delivery by mainstream government departments and agencies' was to be 'commended' and was progressing 'in fledgling stages', there were 'issues that remain to be addressed before success is assured' (Jonas & Dick 2004: 13). He saw the bigger challenge as 'ensuring meaningful participation of Indigenous peoples in government processes' in the absence of a national Indigenous representative body. The successor Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, took a similar line when he identified 'the fundamental flaw of the new arrangements' as 'the absence of principled engagement with Indigenous peoples' (Calma 2007: 107).

A 2009 study of the whole-of-government push in Australian Indigenous affairs by public administration scholars judged it to have 'under-performed due to entrenched barriers', including a lack of 'supportive architecture', a 'programmatic focus' and 'the maintenance of centralized decision-making'. This was so despite there being strong crafted 'leadership' for the approach and the 'cultivation of rich networked relationships'. These scholars argued that within the 'broad trend' of under-performance there were some 'resounding stories of success' (O'Flynn et al. 2011: 247–51). But their ultimate conclusion was that 'with all the best of intentions, deeply embedded bureaucratic characteristics impede attempts at working across boundaries and of connecting outside of silos' (O'Flynn et al. 2011: 253).

Sullivan's more anthropological study around the same time noted that 'mainstreaming' actually leads to the 'fragmentation of Indigenous affairs' and is, therefore, in 'tension' with the whole-of-government idea. He judged that while mainstreaming was 'delivered', a whole-of-government approach was not. He argued that devising 'hierarchical structures' for a whole-of-government approach was 'relatively easy', but that 'few conceptual and organisational tools were available to the subordinate reaches of the bureaucracy charged with putting policy into effect' (Sullivan 2011: 46–7).

My approach to the whole-of-government idea in Indigenous affairs was more sceptical from the outset. I thought it overlooked why government is divided into departments in the first place: so that its parts can focus on doing one thing and not another. It is one thing to observe, as Shergold often did, that education is related to health and community order in Indigenous affairs, but it is quite another to argue that all these things should be attended to together. Running a health clinic is not like running a school or a community policing patrol, and there is only a limited sense in which these services can be coordinated, let alone combined. Holism, I argue, is unhelpful counsel of perfection and impossibility within government that, when resorted to, distracts from the lack of other more important guiding principles—like engaging with Indigenous people (Gray & Sanders 2006).

By contrast, my approach to mainstreaming has long been more sympathetic and strategic. Back in 1993, in response to the Royal Commission into Aboriginal Deaths in Custody complaining about the 'multiplicity of agencies' within government involved in Indigenous

affairs, I warned against the alluring idea of returning to a single dominant source of Indigenous funding. There was much to be gained, I argued, from the involvement of many government agencies in Indigenous servicing, either through general programs or through Indigenous-specific ones. This multiplicity potentially increased the 'manoeuvrability' of Indigenous interests in relation to government and also the 'amount' of accessible resources. It could also help cater for the 'diversity of Aboriginal circumstances' and, in the case of general programs, reduce the 'visibility' of spending through Indigenous-specific services that could be labelled as 'special' (Sanders 1993, see also Anderson & Sanders 1996 on health spending and services). This was not an argument against Indigenous-specific programs and organisations, but rather an argument for using Indigenous-specific resources sparingly and strategically in conjunction with mainstream or general resources that could also be accessed by Indigenous interests.

Twenty years on, my thoughts on mainstreaming have shifted a little. I have watched disappointedly as line departments in housing and employment have turned the very different Indigenous-specific programs they inherited from ATSIC into much more standardised versions of their own general programs (Sanders 2014). It was still, however, with a sense of foreboding that I watched the Abbott Coalition Government elected in 2013 bring the vast majority of Indigenous-specific programs into the PMC. This centralisation was, I thought, a bad idea that would probably lead to a reduction in the resources available to Indigenous people, both through the central department and through line departments. To the extent that this centralisation was promoted and seen as another version of the whole-of-government approach, this simply confirmed my scepticism about the naivety of this idea. Corralling most Indigenous-specific funding within the PMC has, in my judgement, proved to be very adverse to Indigenous interests, and the sooner we return to a more dispersed administrative model of funding Indigenous services, the better. The whole-of-government idea in Indigenous affairs has long been oversold, while the very different strategic potential of the involvement of mainstream or line departments of government in Indigenous servicing has, conversely, long been under-appreciated.

## Rediscovering decolonisation and a 'peoples' approach to Indigenous affairs

Beyond debates about the administrative organisation of Indigenous affairs, when attempting to take a broader sociological view I often turn to ideas about decolonisation. In 2006, when assessing the Howard Government's first decade in office, the phrase that seemed appropriate was 'defying decolonisation' (Sanders 2006). With ATSIC gone and the administrative revolution of the new arrangements proceeding apace, what the Howard Government seemed to lack was any sense of the larger colonial context of Indigenous affairs and the way in which modern Indigenous policy is, in many ways, an allegorical attempt at decolonisation. This entails recognising that contemporary Indigenous Australians are 'peoples' descended from precolonial political communities, rather than just a 'population' segment within Australian society. Rowse (2012) has charted the changing relative strengths of these two 'idioms' in Indigenous affairs in a collection of recent essays, arguing that the peoples approach was on the rise during the late 20th century but that the populations approach has risen to prominence again in the early years of the 21st century. What is needed in contemporary Australian Indigenous policy is some re-recognition of the attempt at decolonisation and the contribution that a peoples approach can make.

ATSIC, it should be noted, always sat rather awkwardly between the populations and peoples idioms. Created by the Commonwealth with a franchise for Indigenous people based on regions of residence, ATSIC for some could only ever be another imposition of the colonial 'status quo' (Bradfield 2006). But, as noted above, ATSIC did, over time, assert autonomy from its Commonwealth creator and start to use the language of First Nations and peoples. While the Howard Coalition Government resisted this move, and drove the relative rise of the populations idiom during most of its 11-and-a-half-year reign, ironically at the end it also set some ground for the reinvigoration of a peoples approach. In the lead-up to the 2007 election, Howard slightly shifted his ground on Indigenous policy and reconciliation. While repeating his support for the 'Indigenous responsibility agenda' and 'unified Australian citizenship', Howard now committed to a referendum 'within 18 months' to 'formally recognise Indigenous Australians in our Constitution—their history as the first inhabitants of our country, their unique heritage of culture and languages, and their special (though not separate) place within a reconciled, indivisible

nation' (Howard 2007: 4). This ever so slight move back towards a peoples approach gave the Rudd and Gillard Labor governments and the Abbott and Turnbull Coalition governments new room for manoeuvre.

## The National Congress of Australia's First Peoples: Not yet strong

During its turbulent two-and-a-half years, the first Rudd Government did two things that moved Australian Indigenous policy back towards a peoples approach. It changed Australia's 'position' on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), voted on in the General Assembly in September 2007, from opposition to 'support' (Macklin 2009a: 2). And it supported Indigenous people, through the Aboriginal and Torres Strait Islander Social Justice Commissioner, in the development of a new national Indigenous representative body. Rather than a statutory creation of the Commonwealth Parliament, the new National Congress of Australia's First Peoples became an incorporated company. The Rudd Government supported its establishment with AU$6 million initially and another AU$23.2 million for operations to the end of 2013 (Macklin 2009b). In the May 2013 Budget, the Gillard Government committed to another AU$15 million over three years, but the Abbott Coalition Government elected in September indicated in December that it was withdrawing that commitment (Harrison 2013). This left the National Congress struggling to survive financially from the beginning of 2014.

In June 2016, during the next federal election campaign, the National Congress joined with 17 other Indigenous organisations to issue 'The Redfern Statement', a 'call for urgent Government action'. This called for the 'restoration of funding to the National Congress of Australia's First Peoples', as well as the establishment of national Indigenous peak bodies in the areas of education, employment and housing. It also called for specific policy actions in the areas of health, justice, preventing violence, early childhood and disability.[2] While the National Congress has clearly survived and is establishing some presence in Australian politics, it is not yet a strong national Indigenous representative body. Perhaps strength can only develop slowly, through persistence when the political climate

2 See nationalcongress.com.au/redfern-statement/, viewed 28 October 2016.

is unfavourable and through cautious opportunism in more favourable times. After six years, the National Congress of Australia's First Peoples is still a young Indigenous representative body fighting to institutionalise itself within Australian politics. It will be many years before this institutionalisation can be assessed, but, unlike ATSIC, Congress will not be able to be abolished by the Commonwealth Parliament. While the National Congress of Australia's First People is not yet strong, it is also not vulnerable to complete destruction by adverse government action. Indeed, it has already survived some adverse times and demonstrated a growing strength.

With individual and corporate members and two chambers of elected representatives, Congress, like ATSIC before it, sits ambiguously between the populations and peoples idioms. Proposals have been floated for an Assembly of First Nations that would supplement and extend Congress into a fuller peoples structure, but as yet these have come to little (McAvoy 2014). Decolonisation in settler majority societies is clearly never simple, and Indigenous activists can legitimately work in both the populations and peoples idioms.

## Constitutional recognition: Not yet done

The Gillard Government's major contribution to Indigenous affairs was to advance the idea of constitutional recognition. In December 2010, it established an Expert Panel on Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution, which reported in January 2012. This suggested that the existing Commonwealth 'race' power should be repealed along with one other reference to race in the Constitution. It recommended a new power for the Commonwealth to make laws 'with respect to Aboriginal peoples and Torres Strait Islander peoples' with several statements of recognition in its preamble (Dodson & Leibler 2012: 133, 153). The Expert Panel also recommended that a prohibition of racial discrimination be added to the Constitution, plus a recognition of Aboriginal and Torres Strait Islander languages alongside English as the national language (Dodson & Leibler 2012: 133, 173). While these were modest, well-argued ideas for constitutional change, this was not how they were portrayed in the ensuing public debate.

Aboriginal lawyer and member of the Expert Panel Noel Pearson has commented that he was 'surprised at the negative reaction' to these recommendations for constitutional change of which he was a 'strong proponent'. The proposed 'racial non-discrimination clause' came in for particular criticism from 'the right side of politics' as a 'one clause bill of rights' that would 'improperly empower the judiciary to strike down parliament's laws' (Pearson 2016: 173). The cause of constitutional recognition never recovered from these adverse reactions despite almost two years further work by a parliamentary committee (Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples 2015). Indeed, it now seems certain that the 50th anniversary of the previous constitutional alteration referendum concerning 'aboriginal natives' will pass in May 2017 without further change. From seeming possible in the early Gillard years, constitutional recognition has now lost impetus.

In trying to reposition the debate on constitutional recognition, Pearson has turned away from rights that could be tested in courts to the idea of a 'guarantee of Indigenous participation and consultation in the political processes with respect to Indigenous affairs, creating an ongoing dialogue between Indigenous peoples and the parliament' (Pearson 2016: 174). This 'Indigenous representative mechanism' would be 'constitutionally modest' but 'could provide the impetus for a profound paradigmatic shift between Indigenous peoples and the state', with 'statements of recognition' then being made 'outside the Constitution', possibly in a 'statute of reconciliation' that 'could perhaps be enacted with the concurrence of all the parliaments, and with the active agreement of Indigenous peoples' (Pearson 2016: 174). These ideas and phrases are somewhat vague and speculative, but that is arguably their strength as Australians struggle to find some common ground around constitutional recognition for Aboriginal and Torres Strait Islander peoples. They are also strangely reminiscent of what ATSIC did and was during its 15-year life; Indigenous people talking back to the settler state and, through some settler recognition, also at times being heard.

## Conclusion: The importance of language and Indigenous representation

I began by saying that I would revisit the idea of an Indigenous order of Australian Government, as well as the need for a strong Indigenous representative body. This was language used in the 1996 Canadian Royal Commission on Aboriginal Peoples that attracted my attention around the turn of the millennium as also appropriate to Australia. It is language that still attracts me to this day, although I gather it has not greatly caught on even in Canada.[3] What has flourished in Canada, as I understand it, is the language of nation-to-nation relationships in Indigenous affairs. A peoples or peoplehood approach is another element of this idiom. Perhaps what is most important is recognising how this political communities approach in Indigenous affairs is so vastly different from the disadvantaged populations idiom. The language of political communities, peoples and First Nations opens a whole other terrain in Indigenous affairs, as too does the language of colonisation and decolonisation. Without these languages, Indigenous affairs conducted solely in the populations idiom is severely lacking.

Finally, I note that in the decade since ATSIC's abolition, the numbers of Indigenous representatives in Australia's federal, state and territory parliaments have increased significantly. One ATSIC Commissioner, Alison Anderson, was a Northern Territory parliamentarian for the next 11 years, becoming a minister in governments of each major party persuasion before retreating to the cross bench as a disappointed independent. In the Australian Parliament, there are now Indigenous members of the House of Representatives in both major parties and two Indigenous Labor Senators.[4] While this increased Indigenous parliamentary representation is to be applauded, as Maddison argued

3 I have partly wanted to revisit this language to correct a mistake of numbering made by the Canadians, which I extended. The Canadian Royal Commission referred to indigenous nations as a third order of government, but I argue that this is conceptually incorrect. There are logically just two orders of government in countries like Canada and Australia, an indigenous order of precolonial origins and a colonial order brought by the settlers of the 18th and 19th centuries. Through federalism within the colonial order, there are two *levels* of government within both Canada and Australia that claim some independence from each other, but these are not two orders of government. Rather, they are simply two levels within the colonial order. This helps us see that there can be different levels within the indigenous order of government as well, ranging from very localised individual First Nations to groupings of First Nations at larger geographic scales.

4 This leaves aside Senator Jacquie Lambie's claim to Indigenous heritage, which has been controversial among the Tasmanian Aboriginal community.

in a review of Indigenous parliamentarians, this form of representation places major constraints on Indigenous people. Indigenous parliamentary representation will never, 'without structural transformation', she argues, 'be an adequate vehicle for representing Indigenous needs and concerns in the postcolonial state' (Maddison 2010: 663). For that, a strong, separate Indigenous representative body will be needed, something like ATSIC was becoming before it was so ill advisedly abolished.

## Postscript 2017: The Abbott and Turnbull governments on constitutional recognition

While a self-proclaimed prime minister for Indigenous Affairs, Tony Abbott did little during his two years at the top that advanced the cause of constitutional recognition. As replacement Coalition Prime Minister, Malcom Turnbull attempted a bipartisan reopening of Indigenous constitutional recognition. In December 2015, together with Labor Opposition Leader Bill Shorten, Turnbull established a Referendum Council to 'advise on the next steps towards a successful referendum' on constitutional recognition (Referendum Council 2017: 46).

In early 2017, the Referendum Council held 12 First Nations Regional Dialogues around Australia and a culminating National Constitutional Convention at Uluru in central Australia. This resulted in the 'Uluru Statement from the Heart', which spoke in a collective Indigenous voice. After preliminary statements about the continuing sovereignty of 'our Aboriginal and Torres Strait Islander tribes', the major claim for recognition was a 'call for the establishment of a First Nations Voice enshrined in the Constitution' (Referendum Council 2017: i). This reflected the development of Noel Pearson's thinking; he was a member of the 2016–17 Referendum Council as well as of the 2010–12 Expert Panel. Cobble Cobble woman and Professor of Law at the University of NSW Megan Davis was another key supporter and promoter, being also a member of both the Referendum Council and the previous Expert Panel (see Davis 2016, Pearson 2017).

The Referendum Council's final report in June 2017 made two recommendations. The first was that a referendum be held to alter the Australian Constitution to provide for:

> a representative body that gives Aboriginal and Torres Strait Islander First Nations a Voice to the Commonwealth Parliament (Referendum Council 2017: 2).

The second was for an 'extra-constitutional Declaration of Recognition' to be passed by all Australian parliaments as a 'symbolic statement of recognition to unify Australians' (Referendum Council 2017: 2). Reactions to these recommendations were cautious at the time, but three-and-a-half months later hopes were dashed. The Turnbull Coalition Government's official response in October was that such an 'addition to our national representative institutions' was neither 'desirable or capable of winning acceptance in a referendum' (Prime Minister, Attorney General, Minister for Indigenous Affairs 2017). After a brief moment of openness, if not optimism, constitutional recognition for Aboriginal and Torres Strait Islander peoples in Australia was, again, going nowhere.

Constitutional recognition is about decolonisation, self-determination and a peoples approach in Australian Indigenous affairs. These ideas have been in retreat in Australia over the last two decades, particularly since the abolition of ATSIC. The ascendant ideas are a mix of neoliberalism, neopaternalism, formal legal equality and overcoming socio-economic disadvantage among the Indigenous population. ATSIC, if it still existed, would be rightly pushing back.

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