
The Voice as Politics

Laurel Fox and Graeme Orr*

The 2023 referendum to embed an Aboriginal and Torres Strait Islander Voice in the Constitution animates questions about the potential of such an institution as an agent for the further development of a national Indigenous politics. This article explores those questions, within their theoretical and historical context. This context includes the nature of political representation given Indigenous diversity and the history of formal, national Indigenous representative bodies in Australia. A representative Voice would at a minimum be a centring conduit; necessarily so given its purpose of speaking into the behemoth that is government at the Commonwealth level. Lessons from the past illuminate challenges for the future design of any Voice, a sensitive issue given tensions between localism and centralism, and between the demotic and existing Indigenous structures. Ultimately, to be transformative within Indigenous and mainstream discourse, the Voice must be sufficiently public, representative and accountable: in short sufficiently political.

Debate about a First Nations or Aboriginal and Torres Strait Islander “Voice” in Australia has focused either on the politics around the proposal, particularly its reception by the various parliamentary parties. Or it has focused on its need, in terms of potential impact. That is, on its value as symbolic constitutional “recognition” and, more significantly, as a potential driver of policy outcomes. Such change-agency is captured in the preposition “to”, in the shorthand “Voice to Parliament”. It would be a Voice “to” better inform the national government and legislature about matters affecting Indigenous peoples.¹

But there is another impact that warrants deeper consideration, beyond either its reception by mainstream politics or its fit with the Commonwealth polity. What of the Voice as something constructive of Indigenous politics? That is, what of the Voice as an agent for the further development of a national Indigenous politics? These questions animate this essay.

The essay begins with reflections on both the nature of politics generally, and specifically within the interplay between a behemoth Commonwealth and a multi-faceted set of Indigenous peoples and interests. We then describe the enduring idea of a “national representative body” and describe the history of the three such bodies from the past half-century. In conclusion, we draw lessons about the nature of the “politics” that such a body may construct, depending on its composition and role.

WHAT IS POLITICS?

The concept of “politics” is so protean that one can open almost any encyclopaedia of political science and political theory and yet find no entry for it. This could be because the subject is so all-consuming that it defies delineation. But that will not do: if we truly believed “everything is political” then politics would be a meaningless meta-cipher and there would be no life outside it or nourishing it.

For our purposes, we can posit an irreducible descriptive core to politics. Politics everywhere is about governing society: power to maintain social order, to encourage flourishing communities and to coordinate interests and values. To Crick, “politics ... is the activity by which differing interests ... are conciliated by giving them a share of power in proportion to their importance to the welfare and the

* Laurel Fox: PhD candidate, University of Queensland Law School. Graeme Orr: Professor, University of Queensland Law School. We are grateful to the anonymous reviewer for helpful suggestions.

¹ Already we have invoked three terms to describe the original inhabitants of this continent and their descendants. In what follows we will use “Indigenous”, the most common contemporary adjective. “First Nations Voice” is also common among proponents, given the international rhetorical heft of “First Nations”. The Commonwealth is employing the older term “Aboriginal and Torres Strait Islander” in the formal constitutional wording, as it is both Australian English and explicitly distinguishes the people of the Torres Strait.



survival of the whole community [whilst] ensuring reasonable stability and order”.² Study of government in Australia has historically had an institutional focus, although understanding governance also requires understanding power relations distributed more widely.³

Then, within places that aspire to be democratic, there is an ideal within politics: it is about representation. Politics cannot just be a dictatorial or oligarchical division of public goods across competing sub-interests. While defining “representation” is hardly less difficult than defining “politics” (indeed it generates paradoxes)⁴ representation has an irreducibly Janus-like duality. It involves voice, in the sense of *speaking into*: presenting interests or values to be heeded by the wider society and the institutions that coordinate governance. It also involves voice in the sense of *speaking out of*: self-construction through expression, remembering that values and interests are not hard-wired but are sharpened in a recursive process that itself shapes identities.

The ongoing (and as we shall see shortly, historical) push for a national Indigenous representative body intersects with these core elements of politics in several key ways. First, it would be a formal institution, not merely one civil society lobby among others. Obviously it would be a categorical error to conflate institutional politics with all politics; what we mean to do is highlight the significance of a representative body as a centring conduit and shaper of that politics. Relatedly, a primary purpose of such a body is to feed into improved governance within the wider national system. It is not one voice in a cacophony of attenuated voices.

Second, its internal form will be contested, because the nature of political representation is contestable. Should representatives be directly elected or drawn from existing hierarchies and sectors? Should they act as delegates of their “constituencies” or as trustees? Should the body they form be regionalised and bottom-up, or have an integrated, “One Mob” focus? Some who carry an existing voice would prefer to maintain that voice in a more pure or undiluted form: to remain a big fish in a small pond rather than to expand the pond.

INDIGENOUS VOICE WITHIN NATIONAL POLITICS AND THE LIMITS OF PARTY POLITICS

Since Aristotle, the focus of political studies has been on organised states and their public institutions, especially those dealing with conflicting interests and values.⁵ In this sense, “politics” is not an obvious feature of singular or small tribal societies,⁶ even though features of the political (like negotiated solutions to conflict or solving co-ordination problems) are clearly integral to such societies. Instead it is bound up with two things: organised institutions, and power relations among disparate forces and sub-groups.

Positive arrangements to address or ameliorate the vexed issue of Indigenous relationships with, and within, colonising states like Australia, draw on one of three options. (We are dealing here with political options, not juridical ones, such as a court supervised bill of rights). The three are not mutually exclusive; they could be nested, like the rings of an onion.

At the outer ring is self-determination in a strong sense, via the carving out of an Indigenous- majority province with broad governance powers (eg Nunavut in Canada).⁷ At the inside are legislative or parliamentary arrangements, bolstered by reserved seats (such as the Māori electorates in Aotearoa/New Zealand). Even leaving aside mainstream fears of separatism, the Indigenous statehood option runs up

² Bernard Crick, *In Defence of Politics* (Bloomsbury Academic, 5th ed, 2013) 7.

³ Nicholas Barry et al, “Introduction” in Peter Chen et al (eds), *Australian Politics and Policy* (Sydney University Press, 2021) 5–6.

⁴ Hannah Pitkin, *The Concept of Representation* (University of California Press, 1972)

⁵ To Aristotle, politics is not just inevitable (humanity’s gregariousness making us all *zoon politikon*) but the highest form of social partnership, prior to other units, even the individual and the family: *Politics* (H Rackham trans, Harvard University Press, 1932) Book 1.1.

⁶ Crick, n 2, 3–4.

⁷ Michael Mansell surveys each of these in *Treaty and Statehood: Aboriginal Self-determination* (Federation Press, 2016). As his subtitle suggests he argues for a distinct state (Chs 9–11).

against the fact of the plethora of First Nations across the Australian continent and their dispersal and interweaving since 1788.

On the other hand, parliamentarianism alone – even today, with a numerical high-water mark of Indigenous MPs in the Commonwealth Parliament⁸ – is limited, if not assimilative. This is due to the shackles of the Australian party system. Indigenous perspectives may be welcome in most parties, yet remain subservient to party discipline and majoritarian electoral pressures. Numerous parties have, on occasion, formed with a dedicated focus on Indigenous issues and candidates.⁹ Such parties seem doomed to be short-lived or idiosyncratic: their limited lifespans reflect the embedded and stable nature of the majoritarian party system in Australia.

The third type of arrangement is negotiation, from a position of recognition and respect. The most obvious form of such an arrangement is a treaty (with exemplars all over the world but, most obviously in our region, in *Te Tiriti o Watangi*). Victoria is the first Australian jurisdiction to begin to make headway on the process of treaty negotiations. But treaties are a long haul whose outcomes are not guaranteed.¹⁰ The Voice proposal fits broadly into this theme of negotiation – as it is predicated on a direct voice at the table, albeit a consultative voice only. But it contrasts with treaty in a couple of key respects.

First, Voice is not a substantive outcome, the way certain treaty provisions (like reparations) would be. Rather it is an institution.¹¹ Second, it is not exclusive of treaty. Some activists, 35 fallow years on from Prime Minister Hawke’s promise of a treaty process, want a treaty first.¹² However in the framing of the *Uluru Statement*, Voice is a necessary precursor to treaty negotiations. Therein lies one insight underpinning the present essay. The Voice is not just an institution speaking “outwards” to wider Australian governance. It would construct a new channel for Indigenous politics, a new channel for the development of national positions and consensuses.

This verb – not just noun – understanding of the Voice proposal is important, and not just to the lexical ordering of Voice-Treaty-Truth in the *Uluru Statement*. That is significant enough, since fair treaty negotiations are unlikely to occur at a national level if Indigenous voices are purely localised, given their plethora and dispersal by colonisation. But there is another note to the pitch of the Voice proposal as politically constitutive. It is the potential – and pitfalls – of an ongoing (re)construction of Indigenous politics.

To use terms like “development” of national Indigenous politics is not to imply current “immaturity”. For millennia, First Nations that traded, neighboured or passed through each other’s lands built up norms of interaction, via the politics of diplomacy, reciprocity and conflict resolution. Indigenous bodies in specific areas of health, welfare or land management are used to the dynamics of interacting with government departments, as well as coalescing and jostling with each other. Family moieties interweave and vie with each other for influence within a social politics.

But beyond, say, commentary featured on National Indigenous Television (NITV) or agenda-setting by the *Koori Mail* – the nationwide Indigenous newspaper now in its fourth decade – there is a dearth of national institutions to channel Indigenous politics.¹³ As we will see shortly, there has been over half a

⁸ Eleven of 226 from July 2022 (eight Senators, three MHRs). Source: Parliamentary Education Office. Compare Peter Kurti and Nyunggai Mundine (eds), *Beyond Belief: Rethinking the Voice to Parliament* (Connor Court Publishing, 2022), whose blurb cites this parliamentary progress as one reason to oppose the Voice.

⁹ Dean Jaensch and David Mathieson, *A Plague on Both Your Houses: Minor Parties in Australia* (Allen & Unwin, 1998) document seven such parties, between the 1960s and 1990s alone. A new one, the Indigenous-Aboriginal Party of Australia, was registered in 2021.

¹⁰ For current progress, see Harry Hobbs, “Treaty-making Gathers Pace”, *Inside Story*, 17 March 2023.

¹¹ Of course a treaty could incorporate such an institution –for example, 18 First Nations treaties in Canada contain some self-government processes. But it would hardly be the only work of a treaty.

¹² For example, Treaty Before Voice <<https://www.treatybeforevoice.com/>>.

¹³ The *Koori Mail*’s motto is “The Voice of Indigenous Australia ... Published since 1991”. The term Koori however reflects its production roots in eastern Australia. NITV is a wing of the larger SBS broadcaster, itself subject to a public charter of independence and impartiality in reporting.

century of experiments with a national, Indigenous representative body. One key lesson to be taken from this history is not so much the failure, or the current absence, of such bodies, but the *enduring nature* of the idea. In a sense it is an inevitable idea, given the overweening power of the Commonwealth. A Commonwealth that grew inexorably over the first half of last century and which then, in the wake of the 1967 referendum, swallowed the lion's share of power over "indigenous affairs" from State parliaments and bureaucracies.¹⁴ It is thus no coincidence that national representative bodies were first institutionalised in the early 1970s. The other key lesson of this history is that the Voice proposal is no Goldilocks solution. Indeed uncertainty over the composition of a Voice body reflect inevitable tensions within Indigenous politics.

NATIONAL INDIGENOUS REPRESENTATIVE BODIES IN AUSTRALIA

The story of government-sponsored and enabled Indigenous representative bodies in Australia is both chequered and salutary. Chequered in that, over the last half-century, three such bodies have come and gone. Yet salutary in that the revival of such bodies reflects the enduring appeal and importance of the very concept of a "national" and "representative" body.

Understood this way, the Voice, if enacted, will be the fourth such body, after the National Aboriginal Consultative Committee (NACC), the National Aboriginal Conference (NAC) and Aboriginal and Torres Strait Islander Commission (ATSIC). Different in composition and profile and, if entrenched by referendum, not subject to dissolution by Executive whim or parliamentary fiat. But still part of a lineage speaking to the importance of a formal conduit for Indigenous voices, to address the behemoth that is the Commonwealth of Australia. In this section we highlight some key features of these earlier bodies, to tease out the nature or type of politics they instantiated.

NACC (1973–1977)

The NACC was established by ministerial action in 1973. It comprised 41 directly elected representatives, nominally empowered to advise the Commonwealth Executive through the Minister for Aboriginal Affairs. Its enabling document was a brief Cabinet resolution, whose key points were: "the committee should be advisory only; it should not at this time be established by statute... two or three meetings of the Committee per annum might be adequate; the duties of delegates should be prescribed by the Committee and approved by the Minister".¹⁵ (Despite this last clause, the contours and operations of the Committee were not further defined.) The general role of members was to consult within their constituencies and represent their interests at national meetings of the body. The intention of government was to create a "consultative council" with which it could confer on Indigenous policy.¹⁶

The key feature of the NACC was its representative structure. Whereas the Department of Aboriginal Affairs (1972–1990) was staffed by public servants, and three non-Indigenous appointees made up the Council for Aboriginal Affairs (1967–1976),¹⁷ the NACC comprised popularly elected representatives from specially created Indigenous electorates across Australia.¹⁸ Enrolment, voting and candidature were voluntary, and restricted to Aboriginal and Torres Strait Islander adults.¹⁹

¹⁴ Emblematic of that was the *Aboriginal Affairs (Arrangements with States) Act 1973* (Cth) for the transfer of State-based public servants.

¹⁵ LR Hiatt, Maurice Luther and Lowitja (Lois) O'Donoghue, *Inquiry into the Role of the National Aboriginal Consultative Committee* (Report of the Committee of Inquiry, 4 November 1976) 14–15 (*NACC Report*).

¹⁶ Gough Whitlam, "Aboriginals and Society" (Press Statement No 74, Statement by the Prime Minister, 6 April 1973) 2.

¹⁷ The CAA comprised HC Coombs (a senior economic adviser to government), WEH Stanner (a senior scholar and anthropologist) and Barrie G Dexter (a former diplomat and the first Secretary of the Department). See Sally Weaver, "Australian Aboriginal Policy: Aboriginal Pressure Groups or Government Advisory Bodies?" (1983) 54 *Oceania* 1, 7.

¹⁸ Whitlam, n 16, 2.

¹⁹ The definition of Aboriginal and Torres Strait Islanders by then was "a person of Aboriginal or Islander descent who identified as an Aboriginal or Islander and is accepted as such by the community with which he is associated". See the *NACC Report*, n 15, 13–16.

Governments and NACC members and proponents diverged over whether it should act only in a behind-the-scenes advisory capacity. Or whether its role should extend to executive decisions and encompass public advocacy (independent of and, where necessary, oppositional to government). In the governmental view, Indigenous people could “organise themselves to provide a political pressure group, but not within the context of the very organisation established by Government to provide it with advice”.²⁰ The NACC was to be a committee, within the established traditions of executive government. Some have argued that establishing the NACC was a way to contain Indigenous voice at a time when it was radicalising.²¹ Nonetheless, the NACC pursued a greater role and acted with initiative. Members engaged in confrontation with the government to be recognised as an “independent political organisation”,²² and the NACC concerned itself with controversial national issues.²³

In response, the Minister queried his ability to pay members’ salaries if they adopted “different functions from those described in the Cabinet minute [becoming] not a body to consult with me, but a directive body”.²⁴ Given this ongoing conflict over roles, the NACC was abolished by ministerial decision in 1977. Despite striving to expand its roles, the NACC inherently remained a limited government construct, not able to do “politics” in the sprawling and public sense.

NAC (1977–1985)

The NAC was established ministerially in 1977 to replace the NACC. It operated alongside the Department and a new Council for Aboriginal Development (CAD, 1977–1980). Prescriptive enabling documents were issued in the form of a *NAC Charter*, incorporated into Hansard.²⁵ It, too, was constructed on an elective basis. Its 35 representatives were to “draw together and express Aboriginal opinion on the basis of views put forward and considered at local and State levels”.²⁶ The Minister could consult it *if the Minister wished* (as opposed to consultation as of right or via a prescribed administrative process).²⁷

As with the NACC, enrolment, voting and candidature was restricted to Indigenous adults residing in specially created electorates.²⁸ Voters directly elected representatives to the national body, and those members also comprised State and Territory branches. Those branches selected delegates to a more frequently meeting NAC Executive. In contrast, the CAD comprised 10 members: five chosen by government and five nominated from within the NAC Executive.

Although the NAC had advisory capacity, the CAD was expressly established as “the formal advisory body to the Minister for Aboriginal Affairs”.²⁹ This duality reflected a decision by government to separate the “representative” role (albeit that the Minister could consult the NAC), from giving “formal advice” to government.³⁰ This reflected its establishment by a conservative government which wanted to conserve a “conventional emphasis on cabinet control and ministerial responsibility for policies”.³¹ Reflecting

²⁰ Ian Viner, “Submission No 39 for Cabinet in Decision No 292 of Cabinet: National Aboriginal Consultative Committee” (25 February 1976–2 March 1976) 3.

²¹ Stuart Bradfield, “Separatism or Status-Quo?: Indigenous Affairs from the Birth of Land Rights to the Death of ATSIC” (2006) 52 *Australian Journal of Politics and History* 80, 82, 84.

²² Weaver, n 17, 3.

²³ Including for example, police brutality and prisoner rights, and land rights: *NACC Report*, n 15, 20–21.

²⁴ Colin Tatz, *Race Politics in Australia: Aborigines, Politics and Law* (University of New England, 1979) 43.

²⁵ Minister for Aboriginal Affairs, Commonwealth, *Parliamentary Debates*, House of Representatives, 30 May 1977, 2106–2108 (“NAC Charter”, “CAD Explanatory Note”, “CAD Ministerial Statement”).

²⁶ CAD Ministerial Statement, n 25.

²⁷ Sally Weaver, “Australian Aboriginal Policy: Aboriginal Pressure Groups or Government Advisory Bodies: Part II” (1983) 54 *Oceania* 85, 93.

²⁸ NAC Charter, n 25, cll 14, 21.

²⁹ CAD Explanatory Note, n 25, 2107.

³⁰ Weaver, n 27, 88–89.

³¹ Compare the reformist Whitlam government that installed the NACC: Weaver, n 17, 10–12.

on governmental design choices made in 1976–1977, the main author of the NACC Report (which contained the recommendations for the NAC design) used the words: “before letting the tiger loose, the Minister carefully removed all its teeth”.³²

Again, despite its elective basis, the NAC, like the NACC, was not intended to occupy some wider, public advocacy role. Its members were not meant to assume a free-ranging, expressive function,³³ as opposed to being akin to a “hired consultant”.³⁴ Nonetheless, the NAC was free to lobby its views unofficially,³⁵ and in its lifetime acted in a manner akin to the NACC. For instance, it adopted some public and confrontational positions, most evident in appealing for land rights and a *Makarrata*.³⁶

ATSIC (1989–2005)

ATSIC effectively fused aspects of a department and a representative body. Established as a statutory authority under the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth), it assumed Executive, advisory and representative capacities. This omnibus design was to be a form of self-determination, ensuring “Aboriginal and Islander people are properly involved at all levels of the decision-making process in order that the right decisions are taken about their lives”.³⁷ It thus operated as a peak representative body, while also directly exercising on-the-ground administrative functions involving a significant budget.

The Act established elected Regional Councils across Australia and a national Commission with a chairperson and CEO. The Commission was a policy-making entity (alongside the Minister), while Regional Councils advocated parochial interests and took charge of regional policy implementation and service delivery.³⁸ Australia was divided into 60 regions, with direct elections for Regional Councillors. As with its predecessors, enrolment, voting and candidature were voluntary and restricted to Aboriginal and Torres Strait Islander adults. The regions were grouped into 17 zones, and councillors in each zone voted for a delegate to sit on the national Commission. The Minister was empowered to appoint three additional Commissioners, including the chairperson, as well as the CEO (who alone did not have to be of Indigenous descent).

While the NACC and NAC could advise the Commonwealth Executive on policy matters, they sat outside of it. ATSIC, in contrast, enjoyed not only a ministerial advisory role but service delivery roles alongside the wider ecosystem of governmental agencies. It was thus “both an extension of the institutions of Australian political democracy, with all its bureaucratic apparatus, *and* an exercise of Indigenous self-determination”.³⁹

Ultimately, ATSIC’s dual roles created internal conflict: elected Councillors and Commissioners were accountable to their constituents, but the regional councils and the Commission were legally accountable to the Minister and Parliament. This led many to query whether ATSIC was a voice accountable only to Indigenous people, an adviser to government, or a deliverer of government services accountable to the Parliament and Auditor-General.⁴⁰ Despite this, ATSIC established itself as an effective advocate, within key national and public debates, often in conflict with government positions.⁴¹

³² LR Hiatt, “A New Aboriginal National Organization” (1990) 60 *Oceania* 235, 237.

³³ Weaver, n 27, 95.

³⁴ *NACC Report*, n 15, 102; Weaver, n 27, 93.

³⁵ Weaver, n 27, 93.

³⁶ Scott Bennett, *Aborigines and Political Power* (Allen & Unwin, 1989) 179.

³⁷ Minister for Aboriginal Affairs, Commonwealth, *Parliamentary Debates*, House of Representatives, 10 December 1987, 3152.

³⁸ Will Sanders, John Taylor and Kate Ross, “Participation and Representation in ATSIC Elections: A 10 Year Perspective” (2000) 35 *Australian Journal of Political Science* 493, 493–494.

³⁹ Geoffrey Stokes, “Australian Democracy and Indigenous Self-determination, 1901–2001” in Geoffrey Brennan and Francis G Castles (eds), *Australia Reshaped: 200 Years of Institutional Transformation* (CUP, 2002) 181, 211 (emphasis in original).

⁴⁰ Michael Mansell, “The Political Vulnerability of the Unrepresented” in Jon Altman and Melinda Hinkson (eds), *Coercive Reconciliation: Stabilise, Normalise, Exit Aboriginal Australia* (Arena Publications Association, 2007) 73, 83.

⁴¹ Jane Robbins, “The Howard Government and Indigenous Rights: An Imposed National Unity?” (2007) 42 *Australian Journal of Political Science* 315, 323.

LESSONS: DESIGN, DEFERRAL, DISSENT

One clear lesson from the bodies just described, is that over-reliance on an elective principle risks erasing fundamental Indigenous modes of governance, rooted in connection to country. The NACC and NAC structures exemplified this problem.⁴² ATSIC's Regional Councils were designed to alleviate it. However this solution generated a new interplay, between Regional Councillors and their constituents, and the Commission itself. While there have always been contests between parochial and national perspectives for Indigenous peoples facing governmental structures, ATSIC institutionalised and demarcated this.

ATSIC's structure attempted to balance the "politics of diversity" involving regional interests and national ones.⁴³ In turn, as Regional Councils had different and at times competing responsibilities to the national Commission, an intra-ATSIC politics arose and fed back into intra-Indigenous group politics. Such jostling was not wholly organic, as the Regional Councils and Zones did not map neatly onto pre-existing communities or traditional boundaries. This structure, and the mix of roles, also generated an "in-house" ATSIC politics – enmeshed with the wider bureaucracy of government – that was not present in the NAC or NACC models.

A second lesson revolves around role. The NACC and NAC/CAD models were explicitly designed to nestle within a co-operative and behind-the-scenes approach to advising the responsible Minister. While rooted in Westminster concepts of accountability within centralised governance, this was also meant to neuter the bodies as publicly political entities. Genuine representation, by necessity, involves such a public dimension, as it requires a two-way interplay between the representatives and those people (or bodies, or interests) they represent.

The 2023 Voice referendum will take place prior to the settlement of any specific model for the Voice itself. The proposal is hardly a vacuum, however. Two aspects are clear. The body will be advisory only, unlike ATSIC. And it will give advice to both the Commonwealth Executive and Parliament.

Proponents of the Voice have opted to defer any attempt to definitively resolve the design of the body, until after the referendum. In part this reflects the politics of direct democracy itself. A detailed model will be picked at by those who want no Voice at all, leading to an "if in doubt, kick it out" appeal to the electorate. (A powerful stratagem against change, given compulsory voting.) Deferral of design seeks to keep the principle of a national representative body front and centre, while respecting two protocols.

One is that formally, the power to erect the framework of the Voice lies with a future national Parliament. The other is that substantively, it must involve an intricate balance and compromise within and between Indigenous communities and existing power structures. Even in the process of its own structuring, a Voice will be an exercise in national Indigenous politics, of a boot-strapping kind.

The 2021 Indigenous Voice Co-Design Report (which consulted widely to assay aspirations and models) plumps for a high level of interwovenness. Its framework is based on federalist quotas, guaranteeing two members from all eight jurisdictions plus the Torres Strait, with additional members for "remote" representation from the five geographically largest jurisdictions and for mainland resident Torres Strait peoples. These 24 members would be selected or elected, by processes generated by 35 "Regional Voices" that would be themselves organised to reflect local traditions. "Gender balance would be structurally guaranteed" within the 24-person national Voice.⁴⁴

Obviously, such a devolved model is not a directly elected, national committee or assembly. The idea is a pyramid with a strong base accommodating and drawing on, rather than cutting across, existing local bodies. Its conception of politics is reflected in an insistence that the national Voice be "proactive [as well as] responsive".⁴⁵ It is not to be a handmaiden awaiting Cabinet (or parliamentary committee) invitations

⁴² Lowitja (Lois) O'Donoghue, *An Aboriginal and Islander Consultative Organisation: Report of Consultations* (Australian Government Publishing Service, 1986) 27.

⁴³ Diane Smith, "From Cultural Diversity to Regionalism: The Political Culture of Difference in ATSIC" in Patrick Sullivan (ed), *Shooting the Banker* (North Australia Research Unit, Australian National University, 1996) 17, 28.

⁴⁴ National Indigenous Australians Agency, *Indigenous Voice Co-design Process: Final Report to the Australian Government* (July 2021) 17–18 (*Co-Design Report*).

⁴⁵ *Co-design Report*, n 44, 19.

to advise on already shaped initiatives. Nor is it to play the role of a traditional Ombudsman, responding to “constituents” grievances. It is to have a public role in shaping agendas.

Any design process will not be easy. As we have seen, two related issues are critical. One concerns the axis between localism and centralisation; the other concerns the balance between the demotic and (for want of a better word) the elitist. There is a complex interplay within Indigenous societies: with some communities rooted in country; with complex kinship and family ties; with existing interest groups and agencies; with often urbanised activist movements; and with a university-educated middle class.

Tension within these forces and groups is often portrayed almost geographically, as if the very concept of *an* Indigenous politics risked effacement of the unique voices of a multiplicity of countries. But, as Larkin notes, the politics of diversity also informs the aspiration of a *newly* constitutive, representative politics: there is a fear that any new “Local and Regional Voices [may] revert to pre-existing structures and organisations ... Delegates at the Regional Dialogues were very clear that they felt these organisations did not represent them politically, and the danger of this model is they will be reverted to: further silencing voices who have told us they are not being heard”.⁴⁶

At the time of writing (April 2023) South Australia has legislated a First Nations Voice to advise that State’s Executive and Parliament. Its composition is interesting, especially in considering how the final design morphed away from what was initially proposed. The initial Bill envisaged a single, 13-person body, headed by the appointed Commissioner for Aboriginal Engagement. Five members would have been directly elected, by plurality vote, from five electorates spanning the State. Seven would be appointed Indigenous people, with two places reserved for representatives of the Councils of the main desert peoples (the Maralinga Tjarutja, and the Anangu Pitjantjatjara Yankunytjatjara).⁴⁷

The finalised First Nations Voice for South Australia is considerably more layered, reflecting key ideas from the national Co-Design Process report. It combines a dual-tier composition with requirements for gender diversity, as well as specialist advisory committees alongside the Voice itself. The first tier consists of Local Voices, likely based on six regions. They are to be elected by Indigenous people, but with gender quotas.⁴⁸ (Curiously these elections are to coincide with the quadrennial parliamentary election: which may ensure high turnout but risks admixing partisan politics with Indigenous politics.)

Each Local Voice will then send its joint presiding officers to the State-wide First Nations Voice, which is to meet up to six times a year, to act as a conduit between the Local Voices and the Parliament and Executive.⁴⁹ To augment its indirectly elected nature, the State-wide Voice must also establish independent committees to advise *it*: one of Elders, one of Youth, one for the Stolen Generations and one made up of Native Title representative body delegates.⁵⁰ Finally that Voice will also report to the legislature annually, including via a kind of “State of the Indigenous Union” address to a joint sitting of both houses.⁵¹

REPRESENTATIVE POLITICS: PUBLIC, CONTESTED, RELATIONAL

Public rhetoric has framed the Voice proposal, in an elliptical shorthand, as a “Voice to Parliament”. The wording of proposed s 129 of the *Constitution* offers a “Voice [that] may make representations to the Parliament and the Executive Government of the Commonwealth”.⁵² In a practical sense, the lexical order might be “Government and Parliament”. (Since the budget and reach of the Executive means that its policies and programs are the lifeblood of practical governance. And since, in a Westminster system

⁴⁶ *Co-design Report*, n 44, 45, quoting submission by Dani Larkin.

⁴⁷ *Aboriginal Representative Body Bill 2021* (SA).

⁴⁸ *First Nations Voice Act 2023* (SA) Pts 2–3. On gender see Sch 1 s 4.

⁴⁹ *First Nations Voice Act 2023* (SA) ss 28–29.

⁵⁰ *First Nations Voice Act 2023* (SA) ss 30–33.

⁵¹ *First Nations Voice Act 2023* (SA) s 38.

⁵² *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill 2023* (Cth).

like Australia's, no bill is likely to be enacted without government support and the great majority begin as Cabinet submissions.⁵³)

Yet, as we noted at the outset, the "Voice to Parliament" label frames things in a way that is not just symbolically important, Parliament being the ultimate democratic institution. Parliament is also the ultimate public, political institution: its debates and inquiries are streamed and recorded verbatim, its papers collected and published. While the Executive consults, it works under a cloak of Cabinet and other secrecy that freedom of information laws only partly unveil. A Voice "to Parliament" necessarily involves publicity of the advice, if not a model of a Voice as an assembly deliberating in public.

Legislation could of course confine advice to the Executive to a discreet (and discrete) approach of tendering recommendations via the Minister. Such a "behind-the-scenes only" approach would not be consistent with the Voice's avowedly representative aims. Indeed it would run counter to the Indigenous aspirations that were on display when the NAC and NACC chafed against limits on their role as a conduit for an array of social and economic concerns. In short, the impact of the Voice as an element of public law will not be measured solely by whether government heeds its advice. The Voice itself will shape the *politics* of reaching that advice: the accountability and responsibility, of those voices that make up the Voice, to Indigenous peoples and groups.

Australia the settler-state has tended to act unilaterally to define what these bodies are *and can develop to become*. This hierarchical rather than relational approach underscores their cyclical abolition. It also helps explain contemporary political party disjuncture about the very desirability, let alone role, of the Voice. In contrast, more genuine intercultural dialogue and accommodation could alleviate the kind of intractable and symptomatic legitimacy crisis settler-states otherwise find themselves in.⁵⁴

Rather than leading irresistibly to disunity or division within a nation, "surviving cultural multiplicity constitutes the secure place of anchorage" for Indigenous/non-Indigenous politics within a state.⁵⁵ Along the way, institutional political reform through the Voice proposal may also shift "mainstream" politics, most obviously in its inter-relationship with Indigenous voices and concerns. The Voice proposal thus offers potential for a "shift in mentality" within politics and governance more broadly.⁵⁶

Much of this essay may seem theoretical and historical. But such reflections will be critical in the ultimate challenge of designing a Voice. It must be sufficiently public, and sufficiently representative and accountable: in short, sufficiently *political*. These insights do not determine how large it should be, let alone how it might be elected or selected, or tiered between a national body and new or existing local and regional organisations. Compromises on such matters were evident in the shifts in design of the South Australian model, outlined above. Such choices will determine the nature of the political space that the Voice constructs.

To outsiders, especially those who pay little heed to the practice of politics, the meta-politics and jostling over such design questions may suggest that Indigenous politics in Australia is especially riven with complex fissures, some organic, some the result of colonialism. There are tensions between interests rooted in "country", and a more dispersed, often urbane, "One Mob" politics. While distinctive to Indigenous politics, such tensions are hardly unfamiliar in wider society.

There is no simple balance of forces and structures in mainstream Australian politics and governance either. It involves three-tiers, with hundreds of local governments, eight regional legislatures, and the multi-branched Commonwealth government. Within all that there are a plethora of agencies and interest groups, both formal and informal, based in government, corporate and civil society. Familial and communal rivalries are also present in Whitefella politics.

⁵³ "Early engagement" with the Executive is thus crucial, even in relation to legislation: *Co-design Report*, n 44, 11.

⁵⁴ Gabrielle Appleby, Ron Levy and Helen Whalan, "Voice Versus Rights: The First Nations Voice and the Australian Constitutional Legitimacy Crisis" (2023) 46 *UNSWLJ* (forthcoming).

⁵⁵ James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (CUP, 1995) 204–205.

⁵⁶ Appleby, Levy and Whalan n 55, 3, 14; Dani Larkin and Kate Galloway, "Uluru Statement from the Heart: Australian Public Law Pluralism" (2018) 30 *Bond Law Review* 335.

Ultimately, the Voice presents a political challenge for non-Indigenous Australia. If it comes into being, to listen to it, obviously. (If not, it will come to be seen as window-dressing, however much it serves to channel a national Indigenous politics.) But also, in both the referendum on its adoption, and its future structure and workings, there is a challenge to the nation to adopt a mature outlook, and not frame division and dissent as somehow an unseemly pathology of Blackfella politics. Public contestation is an *essential* element of *all* representative politics.