Uluru Statement from the Heart

Introduction

Since the colonisation of Australia in 1788, the voices of Indigenous Australians have been pushed to the side by this country who continued to ignore Indigenous Australians in the lawmaking process and as citizens of Australia. This extends to the Australian Constitution, which discriminated against Aboriginal and Torres Trait Islanders. Whilst amendments to the Constitution and legislature have improved the treatment of Indigenous Australians over time, Australia is yet to achieve equitable outcomes for Aboriginal and Torres Strait Islanders. The Uluru Statement from the Heart aims on addressing these injustices and providing fairer outcomes for Aboriginal and Torres Strait Islander Peoples.[1] The Uluru Statement puts forward three pillars that will support the promotion of Indigenous voices in the Australian lawmaking process: Voice, truth, and treaty.[2] This paper will discuss all three pillars of the Uluru Statement, particularly, analysing Voice and how adopting this could include Aboriginal and Torres Strait Peoples in the provision of 'race power'.[3] Whilst focusing on Voice, this paper will acknowledge the necessity of treaty and truth to the Uluru Statement and how a combination of all three elements is necessary for real change to be seen.

Legal and Constitutional Consequences of the Uluru Statement

If the reforms outlined in the Uluru Statement are ratified, there would be various legal and constitutional consequences that would provide a strong platform for Indigenous voices. By giving an empowered voice to Indigenous Australians, the reforms proposed in the Uluru

[1] Referendum Council, *Uluru Statement from the Heart* (2017).
[2] Dani Larkin and Kate Galloway, 'Uluru Statement from the Heart: Australian Public Law Pluralism' (2018) 30(2) *Bond Law Review* 335, 335.
[3] Megan Davis, *To Walk in Two Worlds*, The Monthly (online), July 2018 <https://www.themonthly.com.au/issue/2017/july/1498831200/megan-davis/walk-two-worlds>.

Statement would target the pre-existing issue of Indigenous Constitutional vulnerability.[4] S 51 of the Constitution allows for special treatment of Aboriginal and Torres Strait Peoples, for benefit and disadvantage, although historically it has largely been the latter.[5] [6] A constitutionally enshrined Indigenous voice would reduce the power imbalance between the Federal government and Aboriginal and Torres Strait Island Peoples by creating an environment in which Indigenous Australians can make inputs and influence laws that affect their lives. This would provide an ability for Indigenous Australians to better integrate Indigenous customary law into modern Australian laws and create a constitutionally bound plural legal system.[7] However, these changes to the constitution would only be possible if a referendum is held and a majority of Australian voters believe that a First Nations voice should be enshrined in the Australian Constitution. Whilst there is the alterative option of passing legislation, this would be subject to amendments made by parliament over time. Furthermore, Indigenous rights have been recognised by the general public and as supported by studies completed by the 'From the Heart' campaign, 56% of Australians would be supportive of a constitutionally enshrined First Nations voice and has risen in the past few years.[8] Whilst this does not depict the exact voting choices of all Australians, it provides a likely estimate that the reforms listed in the Uluru Statement could become enshrined into the constitution.

Indigenous Data and the Uluru Statement

[4] Shireen Morris, 'The Torment of our Powerlessness' (2018) 41(3) *UNSW Law Journal* 629, 635.
[5] *Australian Constitution* s 51 (xxvi).
[6] Ibid 636.
[7] Emma Lee, Benjamin J Richardson and Helen Ross, 'The Uluru Statement from the Heart: Investigating Indigenous Australian Sovereignty' (2020) 23(2) *Journal of Australian Indigenous Issues* 18, 23.
[8] Shahni Wellington, ''Hugely encouraging': Voice to Parliament advocates boosted by poll, *NITV,* (online, 16 July 2020) https://www.sbs.com.au/nitv/article/2020/07/15/hugely-encouraging-voice-parliament-advocates-boosted-poll.

The insights brought forward by Larkin and Galloway effectively represent the ideals and the practical purpose behind the Uluru Statement and this paper unequivocally stands by their promotion and justification of the Uluru Statement.[9] As supported by Larkin and Galloway, Indigenous Australians have long been denied their rightful sovereignty and have faced inequality and injustices from the moment Anglo-Australian law was established.[10] Whilst introducing a First Nations voice into governance would be a historic push for Indigenous progression, this would not immediately achieve the Uluru Statement's ambition of an equal society. To achieve these goals, relevant data needs to be collected to quantify the needs of Indigenous Australians and provide measurable targets that will support the First Nation voice and guide policymaking towards real issues faced by Aboriginal and Torres Strait Island People.[11] Hence it is imperative that government agencies such as the Australian Bureau of Statistics support the First Nations voice by providing supplementary data to uncover the true issues battling Indigenous Australians. This is supported by UN expert sessions and forum sessions conducted by the United Nations Permanent Forum on Indigenous Issues that argued that the Indigenous peoples should be given the opportunity to actively participate in the data gathering and the "resulting data should be available for use by them in policy articulation, in planning and in monitoring and evaluation efforts."[12] This substantiates the suggestions made by the Uluru Statement as a First Nations voice would provide Indigenous peoples with a position in which they can make influential decisions on the data gathering and implementation to improve the lives of Indigenous Australians and their communities. Therefore, if the Uluru Statement is implemented and a First Nation voice is implanted into governance, Indigenous Australians would also need to be heavily involved

[9] Dani Larkin and Kate Galloway, 'Uluru Statement from the Heart: Australian Public Law Pluralism' (2018) 30(2) *Bond Law Review* 335.
[10] Ibid 339.
[11] Maggie Walter, 'The Voice of indigenous Data' [2018] (60) *Griffith Review* 257, 258.
[12] Tahu Kukutai and John Taylor, 'Indigenous Data Sovereignty: Towards an Agenda' (2016) 38(1) *Research Monograph for Aboriginal Economic Policy* 6, 22.

in the data analysis of their communities so that the information they are provided is not tainted by organisations that do not fully understand the issues faced by Aboriginal and Torres Strait Island Peoples.

Interactions with Governing Bodies

A structured procedure in ensuring the proper collection of data regarding Indigenous Australians is strongly complemented by the enactment of the Makarrata Commission. The Makarrata Commission would act as an Indigenous treaty with the Federal Government to rectify the inequalities faced by Indigenous Australians.[13] This interacts well with data collection as having specific issues to solve would provide the Makarrata Commission the ability to interpret and apply the data to best achieve its goal of providing "Indigenous Australians the means of attaining political equality, civic equality, and ultimately the protection of their cultural identity."[14] However, for this to be achieved, the Makarrata Commission must be accepted by Parliament and the Australian public. Larkin and Galloway argue that the Australian Government have failed to acknowledge the immense value of the Makarrata Commission and went on to claim that the Commission would provide an unjust systemic advantage to Aboriginal and Torres Strait Island Peoples. [15] This paper dismisses the notion that Indigenous Australians would unjustly benefit off the Makarrata Commission as the entire premise of the Commission is an opportunity for the Federal Government make reparations for the centuries of mistreatment and injustices faced by Indigenous Australians despite being the traditional owners of this land and never formally ceding their sovereignty.[16] This fundamentally unjust treatment of Indigenous Australians is demonstrated

[13] Referendum Council, *Uluru Statement from the Heart* (2017).
[14] Dani Larkin and Kate Galloway, 'Uluru Statement from the Heart: Australian Public Law Pluralism' (2018) 30(2) *Bond Law Review* 335, 344.
[15] Ibid.
[16] Ibid 336.

in *Kartinyeri v Commonwealth* in which the High Court was unable to concretely state that the 'race power' mentioned in section 51 of the Australian Constitution should only be applied to positively impact Aboriginal and Torres Strait Island Peoples.[17] [18] This exemplifies the inability for governing bodies, both judicial and parliament to acknowledge the injustices faced by Indigenous Australians and have not kept their rights at the forefront of their governance.[19] Furthermore, Indigenous representation creates an environment where Aboriginal and Torres Strait Island Peoples could trust the legal and political systems in Australia and create a positive feedback loop in which more Indigenous Australians enter the conversation to provide the a better outcome for Indigenous Peoples and in turn Australia as a whole.[20] Hence, despite government resistance, a constitutionally enshrined voice to Indigenous Australians would benefit the partnership between the historically disenfranchised Indigenous Australians and parliament that would represent the colonial state of Australia.[21]

Indigenous Representation

Historically, there has been a major underrepresentation of Indigenous Australians within the legal and political sphere. As such the goals of the Uluru Statement in providing a First nations voice is to attempt to correct the exclusion of Indigenous Australians since the country's foundation.[22] Political participation supplements a significant value to the Indigenous culture: self-determination. By creating institutions that allow for Indigenous representation in parliament, First Nations can be elected to represent the needs of Aboriginal

[17] *Kartinyeri v Commonwealth* (1998) 195 CLR 337.
[18] *Australian Constitution* s 51 (xxvi).
[19] Emma Lee, Benjamin J Richardson and Helen Ross, 'The Uluru Statement from the Heart: Investigating Indigenous Australian Sovereignty' (2020) 23(2) *Journal of Australian Indigenous Issues* 18, 23.
[20] Bronwyn Fredericks and Abraham Bradfield, 'More than a Thought Bubble: The Uluru Statement from the Heart and Indigenous Voice to Parliament' (2021) 24(1) *M/C Journal* 1.
[21] Jessie J Fleay and Barry Judd, 'The Uluru Statement: A First Nation's perspective of the implications for social reconstructive race relations in Australia' (2019) 12(1) *International Journal of Critical Indigenous Studies1*, 5.
[22] Shireen Morris, 'The Torment of our Powerlessness' (2018) 41(3) *UNSW Law Journal* 629, 646.

and Torres Strait Island Peoples and thereby have a significant impact on the governance of their communities.[23] As per Larkin and Galloway, the Uluru Statement's purpose is in essence, "to remedy the deficit in equality of representation of Indigenous Australians."[24] This statement concisely outlines the purpose of the Uluru Statement and thereby sheds light on the true significance of political representation. This echoes the principles of John Locke who argued that political participation is a means to protecting the ideals of humanity and should be at the forefront of any free and civil society.[25] This exemplifies the necessity for the Uluru Statement to be implemented into law and enshrined into the Australian Constitution to enfranchise Aboriginal and Torres Strait Island Peoples and re-enforce the ideals of a diverse yet equal society.

Conclusion

Ultimately, the Uluru Statement poses ambitious yet necessary goals to create a future where Aboriginal and Torres Strait Island People are no longer disproportionately affected by the legal system and can lessen the pain faced by Indigenous Australians as their cultural identity is threatened by a colonial legal system. Through the involvement of Indigenous Australians into the data gathering and implementing process and applying the collected data to enact the Makarrata Commission, there are many frameworks in place that can support the goals of the Uluru Statement and support its ideals. This paper commends Larkin and Galloway on their effective extrapolation of the Uluru Statement and supports their belief that a pluralistic legal system would best provide Indigenous cultural law the legal protection to remain enshrined in

[23] Jessie J Fleay and Barry Judd, 'The Uluru Statement: A First Nation's perspective of the implications for social reconstructive race relations in Australia' (2019) 12(1) *International Journal of Critical Indigenous Studies* 1, 5.
[24] Dani Larkin and Kate Galloway, 'Uluru Statement from the Heart: Australian Public Law Pluralism' (2018) 30(2) *Bond Law Review* 335, 343.
[25] Jessie J Fleay and Barry Judd, 'The Uluru Statement: A First Nation's perspective of the implications for social reconstructive race relations in Australia' (2019) 12(1) *International Journal of Critical Indigenous Studies1*, 5.

Australian public law for generations to come whilst not at all diminishing modern Australian laws.

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