

Political Theory Today

**Duncan
Ivison**

**Can Liberal
States
Accommodate
Indigenous
Peoples?**



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Indigenous Peoples?

polity

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First published in 2020 by Polity Press

Polity Press
65 Bridge Street
Cambridge CB2 1UR, UK

Polity Press
101 Station Landing
Suite 300
Medford, MA 02155, USA

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ISBN-13: 978-1-5095-3297-1

ISBN-13: 978-1-5095-3298-8 (pb)

A catalogue record for this book is available from the British Library.

Typeset in 11 on 15pt Sabon
by Fakenham Prepress Solutions, Fakenham, Norfolk NR21 8NL
Printed and bound in United Kingdom by Clays Ltd, St Ives PLC

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Contents

<i>Acknowledgements</i>	vii
<i>Preface: Uluru</i>	ix
1 The Challenge	1
2 Multiculturalism	24
3 Rights	46
4 Legitimacy and Justice	79
<i>Notes</i>	117
<i>References</i>	123

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Preface: Uluru

If you look at a map of Australia and search for Uluru, it appears to be almost at the centre of the country. It's located in the Central Desert region, 335 kilometres from Alice Springs. The name refers to the land of the Anangu, the traditional owners. Whether or not it *is* at the geographical heart of Australia – rather wonderfully, the Australian government's Geosciences division suggests there is no such thing¹ – the massive sandstone formation, standing almost 350 metres high, with a circumference of more than 9 kilometres, looms large in the geographical, spiritual and metaphysical landscape of both the Central Desert peoples and Australia. Uluru's history, in so many ways, encapsulates the struggles, hopes, fears, narrow-mindedness and generosity of Aboriginal and European relations over two centuries on this continent.

Preface: Uluru

For the Anangu, the landscape, including Uluru, was created by their ancestral beings at the beginning of time; a connection that entails an unending responsibility to protect and care for those lands. For Europeans, Uluru was originally ‘Ayers Rock’, named by the British surveyor William Gosse in 1873 for his boss, the Chief Secretary of South Australia, Sir Henry Ayers. Throughout much of the twentieth century, Ayers Rock became an iconic tourist destination for Australian and international visitors. But it was also a place of struggle. In 1985, after a wave of strikes, protests and an insurgent land rights movement, the title to the land was finally returned to the Anangu. The park is now jointly managed by them and Parks Australia as Uluru-Kata Tjuta National Park.

In May 2017, Uluru played host to another significant moment in Australian history: the First Nations National Constitutional Convention. This meeting was the culmination of work begun by the Referendum Council, established in 2015, charged with advising on the best means for delivering recognition of Aboriginal and Torres Strait Islander peoples in Australia’s constitution. As part of its work, the Council created a series of innovative ‘First Nation Regional Dialogues’ across Australia which prepared the groundwork for the Constitutional Convention,

Preface: Uluru

held at the foot of Uluru. What emerged from that meeting was a remarkable political declaration: the 'Uluru Statement from the Heart'. The allusion in the title is rich and powerful: a statement 'from the heart', declared at the metaphysical heart of Anangu country, aimed at the hearts of all Australians, attempting to cut to the heart of issues left unresolved for too long since European settlement. It begins thus:

Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. ... With substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia's nationhood.

It continues:

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness.

Preface: Uluru

We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.

Three major recommendations emerged from the Convention and the ‘Statement from the Heart’. The first was that a referendum should be held to enshrine a First Nations ‘Voice’ to Parliament. This would be a representative body of First Nations traditional owners to advise Parliament on policy affecting Aboriginal and Torres Strait Islander people. It would be a first step to addressing the ‘torment of our powerlessness’. Further discussions would be needed to define exactly what kind of representative body it would be, but the constitutional guarantee of its existence was critical. Previous advisory bodies have been created but then dismissed at the whim of governments. At the same time, the Council made clear it was not intended to have a veto over legislation. It would be a political mechanism for enhancing dialogue and improving the lives of Indigenous peoples.

The second and third recommendations were extra-constitutional in nature. The Council recommended that a ‘Declaration of Recognition’ be

Preface: Uluru

enacted by legislation passed by all Australian parliaments, bringing together the three parts of the ‘Australian story’: ‘our ancient First Peoples’ heritage and culture, our British institutions, and our multicultural unity’. And finally, it recommends that a ‘Makarrata Commission’ be established; the ‘culmination of our agenda’, as the Statement puts it. Makarrata is a Yolngu word taken from a dispute resolution ceremony from the Gumatj people in the northeast corner of Australia. It refers to two parties coming together, after a struggle, to heal the wounds of the past and to work towards establishing just relations for the future. There are two crucial elements to this concept that the Council highlights. The first is the need to establish an agreement-making process between First Nations and federal and state governments – a treaty process. The second is the need for truth-telling. A Makarrata Commission would provide a mechanism and public space for ‘truth telling about our history’. It’s important to note how closely the call for truth-telling is linked to the proposed treaty process: it’s not only about reckoning with the past, but also informing and shaping the future.² The renowned Australian anthropologist W. H. Stanner once said that the persistent absence of Aboriginal peoples from Australia’s history constituted a ‘cult

of forgetfulness'.³ The Uluru Statement demands that we abandon that cult once and for all.

What kind of statement is the 'Uluru Statement from the Heart'? Philosophers talk of statements being 'performative' when they do something in being said, as opposed to merely saying it. Political theorists, in turn, often focus on performative statements that create or found political things: for example, the force of the utterance 'We the people ...' in the preamble to the American constitution, or 'We hold these truths to be self-evident ...' in the Declaration of Independence.

All founding statements contain structural gaps between their intended meaning and the effects they seek to bring about in the world. There is no better example of this than the deep incongruity between the substance of the claims in the American Declaration of Independence and their co-existence with settler colonialism and slavery. These gaps must be filled by politics – a continual work on the world, by citizens, that returns to the promise (as yet unfulfilled) of that founding.

I believe that the Uluru Statement prefigures a possible re-founding of Australia in this sense. However, nothing is guaranteed. The initial response from the government of the day was to reject it

Preface: Uluru

outright. The referendum required to implement the Voice would need to be passed by a majority of the Australian people, as well as a majority of people in a majority of states. But the reaction amongst the general public has been generous, and a joint select parliamentary committee, made up of members from all sides of politics, has called for the Voice to become a reality (though there remains disagreement about how exactly that could be achieved). The Statement has thus set in motion a series of possibilities that could yet bring into being new forms of political relations between First Nations and the Australian state.

Another opportunity that has emerged is to rethink some of the normative foundations of liberal democracy in light of the Uluru Statement. Its core conceptual elements – of voice, history, truth-telling, agreement-making, legitimacy and justice – prefigure a potential normative foundation for First Nation and liberal state relations. My goal in this book is to try to develop this idea more fully, and to use the opportunity to respond to the challenge I believe Indigenous peoples present to liberal political theory more generally.

I need to make one thing clear before we begin. I am not an Aboriginal person. I grew up in Québec, Canada; was educated there and in the

Preface: Uluru

United Kingdom; and have now lived and worked in Australia for almost two decades. Although I draw extensively from Aboriginal political and legal philosophy, I am writing very much from a non-Aboriginal perspective, and as someone deeply interested in the history and future of liberal political thought. But I am also writing as a citizen; as someone trying to understand these issues more fully – to try to respond to what I see as a profound challenge to the future of liberal democracy. The Uluru Statement is an outstretched hand from the Indigenous peoples of Australia to all of us – tentatively and perhaps wearily so. This short book is a modest attempt to grab hold and begin the conversation.