

It is best we all sing from the same sheet of music

[Henry Ergas](#) 12:00AM July 19, 2019



Illustration: Eric Lobbecke.

That indigenous Australians lived on this continent for thousands of years before European settlement is a fact whose recognition in the preamble to the Constitution is long overdue.

And it is also a fact European settlement inflicted many miseries on indigenous people, not least through policies that excluded them from the free and prosperous society that was being built around them.

But while the painful legacy that has left remains a challenge to the nation's conscience, there is a risk that enshrining an indigenous voice in the Constitution would not overcome the errors of the past but re-create them in a new form.

In effect, one of the great wrongs done to indigenous Australians was the denial of political equality. Justice demanded that the wrong be righted, and today all Australians are political equals, with the Menzies government taking the decisive step in 1962 of extending federal voting rights to those indigenous people who were not enfranchised.

That the process took much longer than it should have is undoubtedly true. But it is no less true that the advent in Australia and the other advanced democracies of full political equality — without distinction on the basis of race, sex or creed — was an extraordinary achievement of Western civilisation.

After all, less than two centuries ago every society was, and had always been, organised on an ascriptive basis, with rights and privileges that depended on one's identity. But once the American Revolution unleashed the ideals of liberty, the aspiration to political equality acquired what Alexis de Tocqueville described as "providential" force, lighting a beacon of hope for all those excluded from its blessings.

It was therefore no accident that Martin Luther King, in the magnificent speech he delivered at the Lincoln Memorial in Washington, DC, on August 28, 1963, called the Declaration of Independence's affirmation "that all men are created equal" a "promissory note" issued to every American.

And it was in demanding that America redeem its "sacred obligation" that he spelled out the dream that his children would live in a nation where what mattered was "not the colour of their skin but the content of their character".

It is precisely because the ideal of political equality is so precious, and the battle to secure it has been so hard fought, that the proposal to reintroduce the colour of one's skin into our Constitution is deeply troubling.

Its effect would be to entrench a division between two classes of citizens, with the class of those who can claim some connection, however loose, to Australia's original inhabitants having rights of political representation, even if not of ultimate decision, that are denied to others.

Yet political representation is much more than just the articulation of public opinion or the mechanical exercise of periodically taking a snapshot of the wishes of the electorate.

Rather, it is the very act of all participating together, time and again, in the intensely competitive process of selecting the nation's legislators that forges what James Bryce, one of Britain's greatest constitutional scholars, called the "self-conscious" awareness that the people in a democracy have of themselves as "a collective and unified sovereign", and that gives content to their "shared sense of supremacy" over state institutions.

To segregate that process in the Constitution would be to admit that what counted in Australia, in terms of shaping the laws under which we live, is not simply who you are but, even worse, the identity of your ancestors. Ultimately, that would lead both indigenous and non-indigenous Australians to view this country not as one people, equal under law, but as two, separate and unequal.

Of course, we already have many policies that are targeted to indigenous Australians. Yet however targeted those policies may be, they are not the property of their recipients but reflect the will and interests of the nation as a whole, with all Australians having an equal stake in their success and an equal claim to participate in their formation.

Moreover, if those policies have received widespread support, it is because they have invariably been presented as steps on the path to reconciliation, bringing Australians together rather than tearing them apart. They are, in short, intended to heal historical divisions, not to

perpetuate them, with the aspiration that someday they will become redundant.

But while nothing human is eternal, the Australian Constitution, which has been subject to far fewer amendments than almost all of its foreign counterparts, comes close to being forever. With the exception of the Inter-State Commission, which the High Court found breached the separation of powers, the institutions it establishes have had enormous endurance; to give an institution constitutional status is effectively to make it perpetual. And to base that institution on race is to make race an irradicable feature of our constitutional system.

To all that, the amendment's proponents reply that it would simply allow, but not compel, parliament to legislate for the advisory body they believe is needed.

However, the reality is that once the amendment had been made, such a body would inevitably be brought into existence. It is also inevitable that it would rapidly acquire a life of its own. And assuming that the amendment had at least some substantive content, which specified the minimum features that body should have, attempts to revise or remove it might well be vulnerable to constitutional challenge.

Yet the track record of these bodies hardly justifies that degree of entrenchment, as the woes that afflicted the Aboriginal and Torres Strait Islander Commission show.

However one evaluates that episode, it is reasonable to suggest that constitutional recognition of ATSIC would have made it harder to reform and impossible to abolish. As a result, even putting aside any issues of principle, sheer prudence counsels against locking in an institution whose design is as ill-defined as its effectiveness is untested. It may be that parliament feels it would benefit from having an indigenous advisory body; if so, it has every ability to create it through ordinary legislation,

and it could do so for, say, 10 years before considering whether it warrants a place in the Constitution.

To raise these concerns is neither to impugn the motives nor to question the seriousness of the amendment's advocates. Least of all is it to ignore the persistent gap between indigenous Australians and their fellow citizens.

But however much the past matters, it contains many futures. And the future all Australians deserve is one that advances political equality, including by removing existing race references from the Constitution.

Since the Enlightenment, political equality has been the lodestar for all people of goodwill. To abandon it now would not only concede defeat; it would ensure it.