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The fraud of "Constitutional recognition"

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The case for "Constitutional recognition" of Aboriginal and Torres Strait Islander (ATSI) peoples is an attack on the unceded sovereignty of Australian First Nation peoples.

It is driven by the demands of big mining and other corporations for access to Aboriginal land.

It is driven by the pious wishes of both Liberal and Labor for an end to ATSI peoples' demands for self-determination and their opposition to the racist practices of the colonial structures imposed on their communities.

It is driven by neo-liberal assimilationists within the ATSI peoples, by the Pearsons, Langtons and Mundines who grovel at the feet of imperialism and demand of their own people that they "improve" themselves by obliterating their identity and becoming happy wage slaves within the mainstream capitalist economy.

Its capacity for deception is enormous.

Very good people, people of great compassion and good-will, are attracted to the cause of the big "R" because "R"ecognition of ATSI peoples in the Constitution through a national referendum sounds, on the surface, to be such an obvious good, an obvious – if belated – act of justice towards ATSI peoples.

Surely only racists and bigots would oppose a referendum on the issue.

Referendum excludes considerations of ATSI sovereignty and rights

Well, there is opposition, and it is being led by ATSI people. In fact, the issue has deeply divided the ATSI community.

Opponents of the referendum point to the exclusion of the issue of sovereignty from the proposals for Constitutional change. The Expert Panel appointed by Gillard to report on Constitutional recognition determined that sovereignty not be considered:

"Any proposal relating to constitutional recognition of the sovereign status of Aboriginal and Torres Strait Islander peoples would be highly contested by many Australians, and likely to jeopardise broad public support for the Panel's recommendations. Such a proposal would not therefore satisfy at least two of the Panel's principles for assessment of proposals, namely 'contribute to a more unified and reconciled nation', and 'be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums'.

"While questions relating to sovereignty are likely to continue to be the subject of debate in the community, including among Aboriginal and Torres Strait Islander Australians, the Panel does not consider that these questions can be resolved or advanced at this time by inclusion in a constitutional referendum proposal." (P. 213)

Also excluded from the Expert Panel's Discussion Paper are definitions of ATSI peoples' rights. Minutes of the Expert Committee reveal an early agreement to replace the term "rights" with "values". Doing this represents a massive capitulation to a reactionary agenda to nobble the struggles of ATSI peoples.

Fears that recognition will weaken ATSI land rights

1



Recognition of ATSI peoples' prior occupancy of Australia will not be expressed in terms of their continuing ownership and custodianship of the land. Instead, it proposes to acknowledge "the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters" without reference to ownership and custodianship. Legally, ownership of Australian land is vested in a Minister of the Crown. The 1992 Mabo case negated "terra nullius" and recognised native title in those parts of Australia not subject to freehold title; and the 1993 Native Title Act created laws to administer native title claims in these very restricted areas of unallocated Crown land and some National Parks. However, these are legal mechanisms and not inalienable rights embedded in a Constitution. Recognition of prior occupancy and "a continuing relationship" changes nothing in this regard.

Fears that recognition will weaken self-determination

Removing the offensive references to race is long overdue, but will do nothing to embed Aboriginal self-determination in the Constitution. It is proposed to change that part of the Constitution which gives Parliament the power to make special laws for "the people of any race, for whom it is deemed necessary" to one that gives Parliament the power to "make laws for the peace, order and good government of the Commonwealth with respect to Aboriginal and Torres Strait Islander peoples".

ATSI peoples are to have no say in the matter. Under the new wording a racist attack on ATSI peoples such as the intervention in the Northern Territory or the imposition of income management, or changing collective community land ownership to individual capitalist land ownership are all possible. They are even more likely.

For a treaty and an anti-imperialist, republican constitution!

The Australian Constitution was unworkable and out-of-date even as it was proclaimed. It retained certain powers for British imperialism and imposed a hopeless shambles of divided powers between the State and the Federal governments. It was racist in its denial of injustices towards the ATSI peoples.

In time it will be swept from the shelves of lawyers. The people will enact a Treaty between the ATSI peoples and the national government. It will have the status of government-to-government agreement and be the basis for the entire Australian people's single and unitary national sovereignty. It will acknowledge that ATSI peoples never surrendered their sovereignties and are the traditional and continuing owners and custodians of their lands. It will condemn the seizure by force and violence, or the threat of force and violence, of ATSI lands by British colonialism. It will acknowledge ATSI peoples' rights to self-determination.

An anti-imperialist and republican constitution will be created. It will contain an Australian people's Bill of Rights. It will declare that our territorial integrity and national sovereignty are vested in the Australian people and are never to be surrendered or weakened or undermined or subverted by trade pacts, alliances, shared military facilities or by any other means.

This is not a pipedream. It is not wishful thinking. It is embedded in every act of people struggling against injustice and in defence of their rights. It must be at the core of an independent agenda that relies neither on parliament nor on its parties, but on the conscious organised strength of the people.

From little things, big things grow. From our actions for anti-imperialist independence and socialism shall come the Australia of its own people, by its own people and for its own people.

No fraudulent tinkering with an obsolete and unworkable Constitution!

Fight for unity of purpose in our communities and organisations and build our own agenda!

