

# Australian Sovereignty -Past and Present

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# Explaining the nature of plural democracy in both traditional and contemporary Australian Society

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## **Australian Sovereignty –Past and Present**

The concept of Sovereignty is a construct based on the history of ideas in Western Society. The idea of Sovereignty obviously started with the reality of all power being vested in a sole absolute ruler. Laws were made simply by edict of the Sovereign. From there the first step toward democracy was in England. The power of the Sovereign became shared with a council of Barons when the Magna Carta was signed by King John in 1215.<sup>1</sup> This was the birth of the House of Lords and the first formal step toward parliamentary democracy.

However this new institution only represented the nobility. It did not represent the merchant and landowning classes who paid significant taxes and they therefore lobbied heavily for representation in the lawmaking process. So eighty years later in 1295 a House of Commons was established.<sup>2</sup> However it was quite unrepresentative of ordinary people and for the next few centuries remained inferior to the House of Lords.

In medieval times a tradition had also been established for common people to petition the King to redress injustices. If the King agreed with the Petition or ‘Bill’ then a law was passed to redress the injustice.<sup>3</sup> Once the Houses of Parliament had been established they increasingly took over this role of introducing and passing Bills. These were then signed into effect by the Sovereign, but only if he or she agreed. The power of the Monarch to defy the will of Parliament ended when King Charles I of England was beheaded in 1649.<sup>4</sup> With this event, Sovereignty irrevocably shifted from the Monarch to the Parliament.

Many other countries began adopting the parliamentary model and voting rights were gradually widened beyond the landowning classes to the general population. This resulted in the Lower Houses ultimately gaining supremacy in the law making process. In 1893 New Zealand became the first country to implement *full universal suffrage*, where women won the right to vote. In 1906 Finland was the first country to introduce *universal full suffrage*, where women could also stand for election.<sup>5</sup>

It could be quite reasonably argued that Australia did not achieve universal full suffrage until the 1967 referendum, when Aboriginal Australians were finally given full citizenship rights. Until that time Aboriginal people could only secure their citizenship and rights to their freedom of movement and association, if they effectively foreswore their Aboriginality. Since 1967 then, we have more truly become a plural, democratic society with equality under the rule of law. This is despite our Constitution still allowing the federal government to make laws on the basis of race and the state governments to restrict voting on the basis of race. So technically we are still to achieve ‘universal full suffrage’.

Despite these constitutional clauses allowing race-based discrimination, Australia nonetheless embraces the freedoms that attach to an unconditional equality of citizens, even though it remains a legal fiction. We do not need a Bill of Rights written into the Constitution, to correct this, because equality of citizens is the fundamental principle from which all rights and freedoms flow. Freedom of association, freedom of assembly, freedom of worship, freedom of speech and so on, all flow from the principle of citizen equality.<sup>6</sup>

For all our rights to be protected, all we need is a constitutional statement guaranteeing the equality of all citizens within our context as a plural democratic society.

The concept of a plural society is therefore a vital element of democracy, and its relationship with the right of free association needs to be more fully understood. Those countries that have adopted universal full suffrage, also have also included within this the elementary right of each individual to freely associate with like-minded others. Freedom of Association means that each individual has an unfettered right to come together with others and form groups in order to pursue their common interests.<sup>7</sup>

Each individual can belong to a whole multitude of groups relating to their sporting, occupational, religious, political, cultural, educational, welfare or diverse other interests. So within a plural, multi-group society the individual has organisational mechanisms to advocate for and assist them in their dealings with government. Although theoretically in competition with each other, these diverse common-interest groups are nonetheless bound together as an overall society. This is achieved by either explicitly or implicitly reaching a common agreement on the rules of justice and what is or is not fair play.<sup>8</sup>

Within a modern plural, democratic society such as Australia, Sovereignty can therefore be seen to reside with the people and their free associations, rather than within the parliamentary institution itself. The existence of this *'Plural Democratic Sovereignty'* is readily understood by the Australian people and we also readily recognise what is and is not just and fair. This is most graphically reflected in our indelible national values of *'Mateship and the Right to a Fair Go'*.

In other words, all Australians firmly believe in the principles of Equality, Free Association, Justice, and Fairness. We will therefore join with others and oppose any law or decision that fails to reflect these basic Australian values. This is the essence of the ongoing Social Contract between the people of Australia and its government.

Unfortunately, definitions of Sovereignty are dominated by Western history and the way its democratic institutions have evolved to their present form. Few attempts, if any, have been made to define the nature of Sovereignty that existed in Australia prior to 1788 and how it might relate to Australia today. There are in fact many parallels between the nature of Sovereignty that exists in Australia today, and that which existed prior to 1788.

The original Australian social structure and institutional processes were based in an entirely different culture and knowledge system. However the nature of Australian society both yesterday and today, nonetheless has many fundamental similarities. In reality, both our traditional and contemporary Australian societies can be accurately described as: *Plural democratic societies in which all citizens are equal and remain equal subject to the Rule of Law*.

What this means is that both our traditional and contemporary societies had multiple group mechanisms through which the individual could relate to the broader societal structures and processes. In both societies, the equality of all citizens is assumed with your equality only able to be compromised by the degree to which you offend against the law.<sup>9</sup> In both societies you stand as equal before the law and can only be punished according to the merits of your offence, not according to your social status or group affiliation. Unfortunately the nature of plural democracy in traditional Australian society has been subject to very little study and discussion, and a brief attempt will therefore be made here.

Right across Australia all traditional societies were divided into two halves or Moieties, and then into four quarters called Skin Groups. Some had more divisions, but the basic four were still present. These Skin Groups were ritual lodges that had a specific ritual relationships with each of the other lodges.<sup>10</sup> The relationships each individual had within

and across these ritual lodges were further subdivided according to generation, occupation, gender and educational status, so that each individual had multiple group relationships.

Because you were born into this matrix of relationships they were in that sense not voluntary, but they nonetheless provided the legitimate foundation of a cohesive multi-group society that contained sophisticated checks and balances.

Appointment to all positions of authority in traditional Australian society was based solely on merit, with merit being determined through the twin tests of character and knowledge. Seniority, or Eldership, was therefore not based on age, but on learning. So the quicker you learned the more quickly you rose in seniority; as long as that learning was accompanied by the inculcated character traits of humility, patience and inclusion.<sup>11</sup>

Unlike the modern electoral system, an individual in the traditional system therefore could not nominate themselves for or actively seek high office. You had to be groomed, trained and educated for it, successively passing ever more esoteric levels of learning.<sup>12</sup> The number of high office holders was strictly balanced between the ritual lodges at every level of authority and across each gender, so this meant that power could never be concentrated in one group, one gender, one family or one clan. More than this, power in society could not be gained by force. Great ability as a hunter or warrior gave you no entitlement whatsoever, beyond the respect and recognition that came with the successful conduct of that role.<sup>13</sup>

Each clan or tribe exercised sovereign rights over a specific water catchment area and their role was to sustainably manage that area, so that they lived in continuous plenty, even in the worst of seasons.<sup>14</sup> All Aboriginal knowledge was integrated through the totemic system to serve ecological purposes, and Aboriginal people were part of that ecology.<sup>15</sup>

There was therefore no overpopulation and consequently never any wars of conquest, invasion and subjugation in traditional Australia.<sup>16</sup> Those boundary disputes or inter-tribe justice disputes that did occur were highly ritual affairs with rules agreed beforehand by the Elders. Twenty-eight days notice had to be given of an intended conflict. Surprise attacks were not allowed and you could not have a military force that outnumbered your opponents.<sup>17</sup> There was therefore no concept whatsoever of sovereignty gained through invasion, conquest or occupation.<sup>18</sup>

These were of course exactly the concepts used by the British to extinguish Aboriginal sovereignty, along with the fictional concept of Terra Nullius. This was the totally vacuous idea of a vacant continent, and elements of this idea are still with us today.

Through delegation of Britain's sovereign powers, six colonial governments were ultimately established. These six states then delegated some of their own sovereign powers downward to local municipalities. Finally in 1901 these six states delegated some of their powers upward, again through the agency of the British Parliament, to form a new sovereign entity, the Australian Federal Parliament. Independent international relationships were then established by Australia with other sovereign nations, through various trade, travel and cultural exchange treaties and diplomatic agreements.

Similar to these four levels of government structure and process in modern Australia, traditional Australian society can also be seen as having had four levels. As already indicated, sovereignty began at the clan level, with each clan responsible for a specific water catchment area. Each clan then participated with a handful of other clans which had the same language, in a broader governmental process. It was a common practice for each group of clans with a common language to differentiate theirs from other sometimes similar languages, by each language group using a different word for 'no'.<sup>19</sup>

Each of these language groups then in turn formed part of a broader cultural federation of perhaps a half-dozen language groups, in which a common word for 'the people' was used to signify their cultural unity within the cultural federation of language groups.<sup>20</sup>

Each of these cultural federations then established trade, travel, cultural exchange and diplomatic relationships with other federations, and these conventions were the same across Australia. For instance all travel and trade was commonly restricted to specific routes known as Songlines. They were called this because the travel route direction were coded into a song that had to be memorised and sung and you travelled.<sup>21</sup>

Your passport was therefore the song, which was preferably sung in the language of the people through which whose land you were travelling.<sup>22</sup>

Above and beyond this however, high status people such as doctors lawyers and emissaries could travel anywhere at any time. Their diplomatic status was demonstrated Australia-wide by the device of red and white stripes painted across the nose and cheeks of the diplomat.<sup>23</sup>

So instead of the present day Australian structure of some 600 municipalities within six states and one federation, in Aboriginal Australia there were some 1,500 clans within about 350 language groups, within some 60 or so federations. Each of these cultural federations then had various treaty and diplomatic relationships with each other.

Traditional Australian society was therefore a series of sovereign, plural, democratic societies, bound together on an Australia-wide basis by treaty and common protocols. There was therefore an embedded sense of common identity across the whole of Australia, and this was evidenced by the fact that all the people in the centre of Australia knew it was an island. Early explorers were amazed when desert people explained to them that no matter in which direction you went, you would always reach the sea.<sup>24</sup>

This Australian sovereignty was then challenged by the British invasion of 1788, which sought to establish a new society reflecting the class based divisions of British society. Officers and landed gentry were at the top, followed by free settlers and merchants in the middle, and convicts and Aboriginal people as an underclass.

However despite this alien imposition of a new order, the Land and the Dreaming has continued to inexorably shape the Australian character. The realities of this harsh land require a certain degree of laconicness, self deprecation, humour and resilience in order to survive. The ideas of *Mateship and the Right to a Fair Go* therefore took hold and an egalitarian ethos began to once again define us as a people. By the time of federation in 1901 our egalitarian ethos was not strong enough to prevent the idea of 'Australia for the White Man' being written into the Constitution in the form of race-based clauses,<sup>25</sup> but we have continued to evolve past this neo-colonial jingoism.

The race-based provisions in our Constitution are therefore an anachronism that are an insult and offence to every one of us, because it spurns our equality as human beings. There is only one race, the human race.

As it stands, our Constitution is a sterile document, devoid of any statement of who we are as a people and how we define ourselves. It is simply a mechanical scheme of arrangement between the six states to create a federation. It is time our Constitution was more than this. Why should our Constitution not be a living ***Social Contract***, between the Australian people and our government by making a clear statement in to the effect that:

***'Australia is a plural democratic society in which all citizens are equal and remain equal subject to the rule of law, and all provisions within this Constitution must be consistent with these four interrelated elements of citizen equality, social pluralism, parliamentary democracy and the rule of law.'***

However there is one more precondition for us to constitutionally establishing a truly just and equal Australian society. Our Constitution must first honestly address the lie of Terra Nullius and the historical wrongs that accompanied 1788. Only then will we be able to enter a social compact with our First People and move forward as one united Australian

people. So it is suggested that a second constitutional statement should be along the lines that:

***‘The nation and people of Australia formally recognise the prior Sovereignty of Australia’s First People, commits to an ongoing process of truth-telling in our history and agreement making with them, and to the continued sharing of our rich Aboriginal cultural heritage as an integral part of our national identity.’***

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