

*Indigenous Aspirations and Structural Reform in Australia***Harry Hobbs****Hart Publishing, 2021, ISBN 9781509940158**

The ongoing tension between Indigenous aspirations for empowerment and European colonial structures is a defining aspect of Australia's national identity. European colonisation deprived Indigenous Australians of their rights to self-determination, autonomy, control over land and culture, system of governance and dispute resolution mechanisms. Although there has been increasing political inclusion and legal recognition,<sup>1</sup> structural barriers still prevent Indigenous people from achieving their aspirations for empowerment. The destruction of the 46,000-year-old Aboriginal Juukan caves in Western Australia by a mining company in May 2020 is a recent and jarring reminder of the work that remains to be done.<sup>2</sup> In *Indigenous Aspirations and Structural Reform in Australia*,<sup>3</sup> Harry Hobbs presents a nuanced account of how the relationship between the state and Indigenous peoples can be reshaped.

As Hobbs acknowledges in the introduction,<sup>4</sup> his work enters the large and wide-ranging body of literature which explores how Indigenous peoplehood may be reconciled with colonial liberal-democratic traditions.<sup>5</sup> Keeping his focus on contemporary constitutional reform in Australia, Hobbs examines 'whether and how an Indigenous representative body ... [would] be effective at meeting Indigenous aspirations'.<sup>6</sup> This discussion occurs against the backdrop of the 2017 Uluru Statement from the Heart in which Indigenous representatives called for the establishment of a First Nations Voice to parliament enshrined in the *Constitution*,<sup>7</sup> a proposal that

<sup>1</sup> See *Aboriginal Lands Trust Act 1966* (SA); *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

<sup>2</sup> Sam Ben-Meir, 'Destruction of Juukan Cave a Loss to Humanity' (2020) 31(3) *Indigenous Policy Journal* 359, 359.

<sup>3</sup> Harry Hobbs, *Indigenous Aspirations and Structural Reform in Australia* (Hart Publishing, 2021).

<sup>4</sup> *Ibid* 4.

<sup>5</sup> See, eg, George Williams and Harry Hobbs, *Treaty* (Federation Press, 2<sup>nd</sup> ed, 2020); Dylan Lino, *Constitutional Recognition: First Peoples and the Australian Settler State* (Federation Press, 2017); Michael Mansell, *Treaty and Statehood: Aboriginal Self-determination* (Federation Press, 2016).

<sup>6</sup> Hobbs (n 3) 5.

<sup>7</sup> *Ibid* 3.

was not endorsed by the government of the day. Hobbs argues that structural reform would require a permanent shift in current societal attitudes towards Indigenous rights and consequently shifts within government. To be effective such representative bodies would also need to be designed so as to have the capability to influence policy-making.<sup>8</sup> Hobbs affirms the value of representative bodies in empowering Indigenous communities with ‘the capacity to have their voices heard in the processes of government’,<sup>9</sup> but contends that the design and organisation of current representative bodies are a limitation.

Recognising that Indigenous people around the world have the common aim of sovereignty,<sup>10</sup> and that there are diverse views on what that term means, he endeavours to explore sovereignty through the perspective of Australia’s Indigenous peoples. His chapters assess the extent to which Australia’s current governmental framework allows for Indigenous participation;<sup>11</sup> explore Indigenous aspirations for structural reform;<sup>12</sup> and develop Hobbs’ original formulation of principles for institutional design.<sup>13</sup> This original formulation takes the form of four criteria to assess representative bodies advocating for Indigenous law reform — voices, power, ownership and integrity. Hobbs’ intends for the criteria to apply to Indigenous and state tensions globally, not just within the Australian context.

Hobbs uses Yorta Yorta man William Cooper as a symbol of the aspirations of Australian Indigenous people. Cooper’s petition in 1937 to then-Prime Minister Joseph Lyons<sup>14</sup> was one of the pioneering efforts by the Indigenous people of Australia to fight for governmental reform and parliamentary representation. Notwithstanding that today Indigenous people enjoy the same civil rights as all other Australian citizens to participate in the processes of government — for example, through being

<sup>8</sup> Ibid 14.

<sup>9</sup> Ibid 195.

<sup>10</sup> Ibid 6.

<sup>11</sup> Ibid ch 2.

<sup>12</sup> Ibid ch 3.

<sup>13</sup> Ibid ch 4.

<sup>14</sup> Andrew Markus, ‘William Cooper and the 1937 Petition to the King’ (1983) 7(1) *Aboriginal History* 46, 51.

able to vote<sup>15</sup> — longstanding institutional and structural barriers continue to predispose government bodies to neglect Indigenous interests in policy-making, frustrating Cooper's central concern. Cooper is mentioned in almost every chapter — notably in both the introduction and conclusion — reminding the reader of the Indigenous community's unwavering desire for change through the decades since Cooper's petition.

Hobbs draws on different works and research to piece together a rough picture of Indigenous political aspirations. He discusses the nuanced and complicated feelings of a people who are marginalised, and yet yearn for a differentiated existence from the uniform legal and political system. Hobbs contends that Australia's Indigenous communities are still vulnerable to being overlooked in the system of governance and the current legal framework has yet to sufficiently embrace Indigenous laws and practices.<sup>16</sup> He challenges the persisting political stand and posits that 'reform must be built on the views of those it is intended to serve'.<sup>17</sup> For the Indigenous people, colonialism has 'fundamentally shap[ed] everyday life'<sup>18</sup> across their land — relegating them to the 'margins of society'.<sup>19</sup> Hobbs argues that embracing Indigenous aspirations would mean a huge shift in Australia's current polity to one in which the Indigenous community can accept and participate in fairly, and this requires not only change to the 'politico-legal structures of the state',<sup>20</sup> but also attitudinal changes.

One critique of Hobbs' book is its choice of case study. In chapter five, Hobbs studies the ebbs and flows of the Aboriginal and Torres Strait Islander Commission ('ATSIC')<sup>21</sup> against his proposed four criteria to assess representative bodies advocating for Indigenous law reform. Although ATSIC is commonly viewed as Australia's 'most significant institutional attempt'<sup>22</sup> to give Indigenous peoples a degree of influence over the processes of government, the body was abolished 16 years ago.<sup>23</sup>

<sup>15</sup> John Chesterman, *Civil Rights: How Indigenous Australians Won Formal Equality* (University of Queensland Press, 2005) 1.

<sup>16</sup> Hobbs (n 3) 17.

<sup>17</sup> *Ibid* 233.

<sup>18</sup> *Ibid* 78.

<sup>19</sup> *Ibid* 79.

<sup>20</sup> *Ibid* 78.

<sup>21</sup> *Ibid* 118.

<sup>22</sup> *Ibid* 12.

<sup>23</sup> *Ibid* 119.

The book would have offered more to current discussion if it had analysed, in addition to ATSIC, representative bodies such as the ACT Aboriginal and Torres Strait Islander Elected Body ('ATSIEB'),<sup>24</sup> or the Reconciliation Action Plan ('RAP') program that partners with Indigenous peoples and supports Indigenous self-determination.<sup>25</sup> Solely studying an abolished body weakens the potential impact of the book to inform current debates. Nonetheless, the history of ATSIC is of vital importance and does not detract from the merit of Hobbs' original and helpful assessment criteria.

Critics may be sceptical about the 'authenticity' of Hobbs' contribution, given that he is a non-Indigenous person presenting an argument for structural reform of Indigenous treatment under the law. Would an Indigenous person be better-positioned to write on the topic? This question, at bottom, engages issues of standpoint epistemology,<sup>26</sup> which is the idea that an individual's social identity and experience makes a difference to what '[he or she] is in a position to know'.<sup>27</sup> It may be said that the experiences of the marginalised make them more 'qualified' to assess and identify social structures and power dynamics within a community.<sup>28</sup> Those who subscribe to this view may count Hobbs' lack of lived experience with Indigenous marginalisation as a limitation of his work.<sup>29</sup> However, Hobbs' work is noted for its sensitivity, and this potential critique is pre-empted in the introduction.<sup>30</sup>

To conclude, *Indigenous Aspirations and Structural Reform in Australia* succeeds as an important addition to the literature on reform surrounding Indigenous empowerment. It probes the aspirations of Indigenous people,

<sup>24</sup> Aboriginal and Torres Strait Islander Elected Body, 'ATSIEB new members welcomed' (Media Release, 5 August 2021) 1.

<sup>25</sup> Reconciliation Australia, *2021 State of Reconciliation in Australia Report* (Report, 2021) 39, 41.

<sup>26</sup> Olúfemi O Táíwó, 'Being-in-the-Room Privilege: Elite Capture and Epistemic Deference' 108(4) *The Philosopher* 61, 63.

<sup>27</sup> Briana Toole, 'From Standpoint Epistemology to Epistemic Oppression' (2019) 34(4) *Hypatia* 598, 599.

<sup>28</sup> Andrew Lavin, 'Michael Scott and Standpoint Epistemology' *Blog of APA* (Online Article, 2020) <<https://blog.apaonline.org/2020/01/29/michael-scott-and-standpoint-epistemology/>>.

<sup>29</sup> Standpoint epistemology has been heavily debated by theorists, and this book review does not endeavour to engage in the debate, nor give a stance on the issue.

<sup>30</sup> Hobbs (n 3) 4–9.

conveying to readers the complexity of such a topic, while offering ideas for meaningful change that would better ensure the rights of the Indigenous communities in Australia. Hobbs offers insight into how, with the right structural design, representative bodies can be an effective voice to parliament for the Indigenous community. This book is recommended for scholars, legislative policymakers, academics and students with a keen interest in this area of Indigenous law reform.

*Liew Xuan Ning*\*

\* LLB (Hons I) candidate, School of Law, University of Tasmania and member of the *University of Tasmania Law Review* Editorial Board in 2021.

