

Beyond Formal Equality: The Cashless Debit Card and the Myth of Equal Opportunity in Australia

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Abstract

The concept of ‘equal opportunity’ and a ‘fair go’ are cornerstones of Australia’s national identity but in practice these are not realities for all Australians. Using the Cashless Debit Card (CDC) scheme as a case study, this article argues that First Nations Australians have been systematically denied equal treatment, instead being subjected to enduring dynamics of control, assimilation, and structural oppression. This paper contends that the prevailing conception of equality embedded in Australian law and policy, rooted in classical liberalism, is insufficient in upholding First Nations equality. To achieve genuine equality, alternative approaches grounded in substantive equality, self-determination, and sovereignty are both necessary and urgent.

Key Words

Equality, formal equality, welfare policy, social security, First Nations rights, social policy

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Introduction

This paper presents a critical theoretical analysis of the Australian Government's Australian Values Statement, with a focus on its claim to uphold "equality of opportunity for all people" (Department of Home Affairs, 2020, p.5). Drawing on the case study of the Cashless Debit Card scheme, the article interrogates how "equality of opportunity" is operationalised in practice. By critically analysing these policy interventions, this paper investigates how, far from advancing equality or justice, equality of opportunity reflects and reinforces settler-colonial structures that perpetuate coercion, control, inequality and assimilation. The paper contends that current formal liberal legal conceptualisations of equality are fundamentally inadequate for achieving genuine equality for Aboriginal and Torres Strait Islander peoples and instead enable assimilationist and interventionist policy that undermines First Nations Peoples' sovereignty. As such, the legitimacy of current policy making in Indigenous affairs must be fundamentally questioned and a more substantive approach should be adopted, one which upholds sovereignty and self-determination for First Nations Australians.

The Australian Values Statement (the statement) is part of the 'Life in Australia' booklet which was introduced in 2007 under the Howard Government as part of broader reforms to citizenship and visa policy (Federation of Ethnic Communities' Councils of Australia, 2019; Department of Home Affairs, 2020). The statement emerged during a period of significant local and global upheaval, including the so-called 'War on Terror' and its associated impact on geopolitical stability and migration (Federation of Ethnic Communities' Councils of Australia, 2019). This era was marked by moral panic and rising Islamophobia, alongside a broader political climate characterised by nationalism and defensive realism (Ho, 2007). The statement reflects anxieties of the time and functions as a foundational narrative in the construction of national identity. The

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booklet defines values that are integral to Australian national identity, such as freedom of personhood and religion, respect for the rule of law, democracy, gender equality, and most relevant to this critical analysis, “equality of opportunity for all people, regardless of their gender, sexual orientation, age, disability, race, or national or ethnic origin” (Department of Home Affairs, 2020 p.5).

This year marks 10 years since the inception of the Social Security Legislation Amendment Debit Card Trial Bill (2015) which formed the legislative foundation of the Cashless Debit Card (CDC) scheme (Bielefeld & Beaupert, 2019). The CDC scheme was introduced as a pilot scheme in 2016 by the Turnbull Coalition government and disproportionately targeted First Nations Australians who comprised between 78 per cent to 90 per cent of participants (Mendes, 2017; Australian Council of Social Services, 2018). The scheme was first trialled in Kununurra/Wyndham (WA) and in Ceduna (SA) from 2016-2018 then Kalgoorlie (WA), Hinkler (Queensland) and the Northern Territory from 2018-2021 (Australian National Audit Office, 2022; Bielefeld & Beaupert, 2019). The scheme quarantined 80 per cent of a recipient’s funds to be used for cashless transactions on approved items and restricted individuals’ spending on prohibited items such as alcohol, pornography and cigarettes (Klein, 2020). The CDC scheme was based on the concept of a “Healthy Welfare Card” which was recommended in the 2014 report *Creating Parity - the Forrest Review* (Bielefeld & Beaupert, 2019). The Forrest Review was led by Andrew Forrest, Australia’s 11th richest person and CEO of Fortescue Metals Group (Klein, 2020; AFR, 2025). The CDC scheme functioned both as a tool of income management and as a means of behavioural modification which, through preventing spending on prohibited items, attempted to promote “better choices” and “encourage socially responsible behaviour”, reflecting a neoliberal framing of poverty as an individual failing (Social Security Legislation Amendment Debit Card Trial Bill, 2015, p. 4; Department of Prime Minister and Cabinet, 2014, p. 34). Ultimately the overall goal was to “break the welfare cycle” and reduce “welfare dependence”, for First Nations people (Department of Prime Minister and Cabinet, 2014, p.15). The scheme was identified early on as

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being invasive and coercive, with multiple Auditor-General's reports finding no detectable reduction in social harm and revealing that the scheme was fraught with human rights violations (ANAO, 2018, ANAO, 2022). The scheme was finally abolished in 2022 following a Federal election commitment made by the Labor party in 2021 resulting ultimately being replaced by the Enhanced Income Management program in 2023 (ANAO, 2024). Three years on from the schemes end there have been a raft of reports, recommendations and findings, presenting a valuable opportunity to reflect on its legacy, and to critically examine the political and ideological foundations that enabled the erosion of First Nations People's rights and equality, ultimately prompting deeper questions about how and why such a policy was ever implemented.

The CDC did not emerge in isolation but was shaped by a long trajectory of paternalistic and assimilationist interventions in Aboriginal communities, most notably the Northern Territory National Emergency Response (NT Intervention). The NT Intervention ran from 2007-2012 and was ostensibly triggered in response to the findings of the Little Children are Sacred Report which described high levels of violence and sexual abuse of First Nations children in the NT (Gray, 2020). Federal and state governments responded to this by declaring a state of emergency enabling them to introduce a wide range of measures, legislative changes, and suspensions of legal protections (Gray, 2020). This included income management and behavioural modification through the "BasicsCard System" where welfare payments were quarantined and restricted to exclude prohibited items (Gray, 2020). The state of emergency necessitated the suspension of critical human rights and welfare acts, including the Native Title Act (1993), the Aboriginal Land Rights (Northern Territory) Act (1976), the Racial Discrimination Act (1975), and the Social Security Act (1991) (Gray, 2020), without these suspensions the interventions would have been unlawful. The intervention was foundational in shaping subsequent welfare and income management policies as it not only set a policy precedent for the CDC but also acted as an Overton window, gradually shifting public perceptions of what forms of state intervention were acceptable. In the years since

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their cessation both schemes have faced widespread backlash with both parliamentary and independent reports citing control and violation of Aboriginal and Torres Strait Islander people and their rights (O'Connor, 2022; Marston et al., 2022; ANAO, 2022). Together, the CDC scheme and Northern Territory intervention laid the groundwork for normalising coercive welfare policies and established a precedent for the suspension of legislative protections afforded to First Nations people.

Methodologically, this article adopts a critical theoretical approach informed by Indigenous scholarship and legal theory and is structured around four parts. The first explores the historical and political context of the CDC scheme, NT intervention and the Forrest review. The second critiques income management as a tool of control, assimilation and oppression. The third section critiques the liberal formal interpretation of equality that informs the statement and Australian judicial and political systems. Finally, the article advocates for an alternative, substantive model of equality, rooted in recognition, redistribution, and self-determination contending that genuine equality requires a shift towards Indigenous sovereignty and the establishment of a treaty.

Discussion: Historical and Political Context

An analysis of Andrew Forrest's role and the Forrest Review is essential to developing a critical understanding of the ideological underpinnings of the CDC scheme and its relationship to broader policies of control, assimilation, and discrimination. Andrew Forrest is not an elected member of parliament; he is a mining magnate who was selected by the Abbott Liberal/National Party Coalition government to develop a report on First Nations education and employment through his political lobbying efforts. The decision to select him to author this report was the result of years of campaigning and lobbying in combination with his significant influence as one of Australia's wealthiest businessmen. Forrest has been outspoken on matters relating to First Nations

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employment and education throughout his career, going back as early as 2008 when he spearheaded the development of the Australian Employment Covenant. The Covenant, back by backed by the then Rudd Labor Government, encouraged the private sector to place 50,000 Aboriginal people into jobs within two years, ultimately achieving only 2,800 placements (Jordan & Mavec, 2010). In 2012 Covenant was subsumed by GenerationOne a philanthropic organisation run by Forrest with the aim of managing the ongoing placement of First Nations Australians in private sector roles (Probono Australia, 2010). The organisation was financially backed by notable private sector business leaders, including James Packer, Kerry Stokes and Lindsay Fox (Probono Australia, 2010). The initiative was a continuation of the ideological position behind the Convent, that is the assertion that publicly-funded employment and training services must be overhauled and private sector solutions given increasing priority. The launch of GenerationOne was supported again by then Prime Minister Kevin Rudd who, in his opening keynote on the night of the initiative launch, stated:

“The Australian identity is defined by the concept of the 'fair go'. There are too many Indigenous Australians who don't get a fair go. Too many who battle prejudice or lack of understanding and lack the basic opportunities of education and training. The GenerationOne campaign is about rectifying that. Just as government cannot tackle this problem alone, nor can pure philanthropic endeavour.” (para. 52-56, 2010).

Rudd's initial backing of the Australian Employment Covenant, followed by his speech at the GenerationOne launch, publicly signalled the government's endorsement of private sector approaches to First Nations affairs and lent credibility to Forrest's persistent lobbying efforts. Speaking at the National Press Club in 2012, Forrest made his agenda even clearer stating:

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“We must fight the welfare driven and thoroughly failed policies that have crushed the spirit the spirit of indigenous peoples...today I see an Australia evermore determined to stop the squander of our precious wealth and the poisoning of our welfare... Elders have always know the solution is employment that is the only possible route, through training, that leads to a job [which] in turn leads to dignity and self-respect....this will not be achieved by the continuation of current policies... now we have 250,000 members of GenerationOne who, all of them demanding Government move from welfare to employment” (National Press Club, 2012).

Forrest speech affirms that GenerationOne was not merely a campaign to increase employment but also a lobbying effort aimed at shifting First Nations' welfare responsibilities from the state to the private sector. Forrest's efforts continued into 2013, where in the lead up to the federal election Forrest frequently appeared in national media to criticise public welfare approaches and promote employment-based interventions. In a 2013 interview for The Daily Telegraph, he was quoted as declaring:

Anyone who has thought seriously about the disparity between Aboriginal and non-Aboriginal Australians must acknowledge the welfare approach has failed (Davidson, 2013, para. 6).

Forrest's lobbying culminated in a significant political win in 2013 when, then-opposition leader Tony Abbott pledged \$45 million in funding for the GenerationOne Initiative (Cullen, 2013). Shortly after when Abbot was elected as the new Liberal/National Party leader, Forrest's diligent campaigning paid off when he was selected to lead a review into Aboriginal inequality. The resulting Forrest Review reflects the political and ideological context of Forrest and GenerationOne, ostensibly, the belief that the private sector is better positioned than the state to manage welfare and employment systems, and the framing of social and economic disadvantage

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is primarily the result of a lack of individual opportunity, rather than systemic inequality or structural discrimination.

In the Forrest Review employment was promoted as a singular path to Aboriginal social and economic advancement and should be delivered by the free market rather than government. Disadvantage in the Review was repeatedly attributed to “welfare dependency”, government handouts, and so-called “passive income lifestyles” (Department of Home Affairs, 2020 p.4). Forrest’s proposed solutions rested on promoting individual self-reliance stating, ‘[a]lmost half of our first Australians have already stepped up and are not disadvantaged...and are living proof that the disparity can end’ (Department of Prime Minister and Cabinet, 2014, p.14). The magnum opus of the report, the ‘healthy welfare card’, proposed not only as a means of promoting responsible financial behaviour, but also as a tool to prevent welfare fraud by reducing the circulation of untraceable cash, thereby generating cost savings for the government (Department of Home Affairs, 2020).

The Review cites the success of a similar scheme in South Africa managed by Palantir Technologies, a private data analytics firm, where ‘fraud has been almost eliminated and efficiency greatly improved’ (Department of the Prime Minister and Cabinet, 2014, p. 105). This underscores the true aim to of such a scheme, which was to increase surveillance and income management in pursuit of increased coercion based on the presumption on fraudulent and criminal behaviour. The Review further stated that the card would ‘ensure people have finances and concentrate on efforts to get back to work and make sure that welfare payments are used, as intended’ (Department of the Prime Minister and Cabinet, 2014, p. 121). Functionally, it was proposed that the card would be programmed to block cash withdrawals and the purchase of alcohol, gambling products, illicit services, and even gift cards at the point of sale. Retailers who accepted the welfare card for prohibited goods or attempted to issue cash would be subject to penalties, including on-the-spot

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finances. The proposal illustrated a deeply interventionist approach, reinforcing the Review's underlying assumption that welfare recipients require surveillance, regulation, and behavioural correction.

Critiques of Income Management

The CDC scheme is part of a long legacy of 'income management schemes' which serve to control welfare entitlements through limiting the access to payments and how the payments can be used. The critiques of income management schemes are many, Daryl Cronin (2008) argued that such schemes target First Nations Peoples, operating as tools of exploitation, domination and control, functioning as a form of 'welfare colonialism' (p.188). Cronin defined welfare colonialism as 'the direct control, containment and management of Indigenous people through governmental institutions' (2008, p. 188). In a similar vein, Klein (2020) referred to the CDC specifically as an example of 'settler colonial elimination' which occurs through 'processes of assimilation such as targeting First Nations subjects with behavioural conditions' (p. 265). Further, to support this argument, Cronin drew parallels between income management schemes today with Indigenous trust accounts controlled by Native Affairs in the early 1900's where First Nations people were required to seek permission from police to access money from their own accounts (Cronin, 2008).

Similarly, Klein cites an interview with a CDC participant who stated, 'It's taking us back to the ration days, telling me how to manage my money' (Klein, 2020, p.170). Lattas and Morris (2010, p.83) compared the electronic omniscient surveillance of the scheme, whereby recipients' purchases can be scrutinised by government officials, to Benthamesque 'panoptic surveillance'. The comparisons above reveal the extent to which the modern CDC scheme echoes colonialist interventions of the recent past that stripped First Nations recipients of autonomy and freedom, further reinforcing dynamics of colonial subjugation (Cronin, 2008). Evidently, the CDC scheme has utilised methods of control and coercion and in doing so creating dynamics of paternalistic

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domination and social control that perpetuated the structural subordination of First Nations People. Further, the scheme promoted dynamics of control and domination that restricted individual autonomy and, by disproportionately targeting First Nations people, actively reinforced systemic inequality.

Liberal Formal Equality and its Limitations

Equality in context of the Australian Values Statement's 'equality of opportunity' is not a neutral term, it is a philosophical concept and a part of broader discourses of philosophy of ethics and law. There are many competing definitions of equality, each with its own philosophical and political lineage (Frankel & Ray, 2023). Broadly speaking, however, one of the most widely assumed is the Aristotelian definition of numerical equality, that is, to "to treat like cases alike, but unlike cases differently" or to treat individuals as identical, assuming they possess the same total positive qualities in spite of experiences (Von Leyden, 1985, p.108). How this promise of equality is achieved varies. The first approach is the equal opportunity or non-discrimination principle also known as formal equality, which posits that individuals should be judged solely on merit, while factors such as race, age, and sex should be disregarded, this principle underpins the ideology of meritocracy (Roemer, 1998). Under this interpretation, equality of opportunity is understood as the promise of equalised or merit-based opportunity, not equality of access or outcome, instead it asserts that one will have equal chance in pursuit of a goal. This classically liberal interpretation of equality is central to international human rights discourses and the Anglo-Australian legal tradition, and it often serves as the philosophical basis for anti-discrimination legislation (Thornton, 2021). In contrast, a second interpretation, known as substantive equality, argues that true equality of opportunity can only be realised through resource equality, that is, by ensuring that all individuals are provided with equal enabling conditions, such as access to education, healthcare, and employment opportunities (Loenen, 2025). In the legal context, this involves taking into

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account historical and ongoing discrimination, structural disadvantage, and the need for redistribution in order to uphold justice, fairness, and equality (Thornton, 2021). This supports a view that equality is not just about opportunity but about equal access and outcome. It is the first, formal interpretation of equality that informs the concept of equality and ‘equality of opportunity’ within the Australian Values Statement:

The democratic nature of Australian society...does not mean that everyone is the same or that everybody has equal wealth or property. It means that with hard work and commitment, people without high-level connections or influential patrons can succeed (Department of Home Affairs, 2020, p. 7).

Subsequently, there are many critiques of formal equality and ‘equality of opportunity’, John Schaar argued that this approach to equality fails to account for inherited disadvantages such as poverty, racism, or class, which fundamentally shape individuals’ actual life chances (as cited in Stanley, 1977 , p.62). Schaar further contended that this doctrine of equality is not only flawed but purposefully deceptive and cruel, as it obscures the true hierarchical and oligarchic nature of modern capitalist society (Stanley, 1977). Sharlene Nipperess identified that this conception of equal opportunity narrowly privileges individualism and personal responsibility over collective wellbeing and structural transformation (Nipperess, 2016). As a result, marginalised groups become the focus of reform efforts rather than the structures that oppress them (Nipperess, 2016).

The CDC scheme exemplifies this ideological stance, as Klein (2020) argued, the policy reconfigures socio-economic disadvantage and settler colonialism as individual crises, rather than recognising them as products of ongoing structural and historical violence. Further, Sandra Fredman (2016) notably cautioned that ‘Equality of opportunity is a popular alternative to both equal treatment and equality of results’ further asserting that, ‘equal opportunities approach aims to equalize the starting point rather than the end result’ (p. 723). Connecting this to formal equality

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Fredman stated that this approach ‘requires the removal of obstacles...but does not guarantee that this will lead to greater substantive fairness in the result’ (p. 723). This approach is evident in the architecture of the CDC policy and the Forrest Review, which are preoccupied with the provision of controlling interventions, such as mutual obligation and behaviour-modifying income management, while ignoring the structural and historical inequalities faced by Aboriginal communities. By focusing narrowly on adjusting individual behaviours and capacities, these interventions obscure the broader colonial context of dispossession and marginalisation, thereby reinforcing existing power imbalances under the guise of promoting opportunity. Moreover, by targeting First Nations Australians with interventionist policies that remove the rights welfare colonialist interventions reinforced systemic inequality and denied equal treatment under the law.

Another failure of this conception of equality is that it reaffirms an ‘external’ model of state sovereignty, thereby denying the political and legal agency of First Nations peoples and preserving the colonial status quo. Because the formal interpretation of equality does not guarantee outcome it does not need to guarantee equal treatment including autonomy and self-determination. In upholding this interpretation of equality the Government uses settler-colonial legal architecture that seeks to maintain the authority and domination of the Australian state while systematically denying Indigenous sovereignty. Supremacy and authority are further enforced by using vulnerability arguments to undermine the already few legislative protections First Nations Australians do have. Bielefeld (2018) argued that by using appeals to ‘vulnerability’ First Nations Australians are denied the capacity to make autonomous decisions and have rights revoked. In the case of the NT Intervention, Alissa Macoun (2011) highlighted how vulnerability arguments were employed following the Little Children are Sacred report, which framed ‘[Aboriginal] Children, as vulnerable victims of savagery [which] also provided additional moral justification for settler action’ (p.527). It is this framing that enabled increase settler authority, which permitted the government to suspend protective legislation and intervene without restraint (Macoun, 2011).

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Vulnerability, in this context, becomes a discursive tool that creates an artificial necessity for the authority and domination of Government over First Nations Australians enabled by a formal interpretation of equality that does not guarantee equal treatment. If the exploitation of vulnerability can be used to undermine First Nations rights and autonomy, it raises serious questions about the legitimacy and effectiveness of formal equality, anti-discrimination frameworks and protective legislation.

Evidently the Australian legal system is inherently limited in its ability to adjudicate matters of First Nations rights due to its narrow conception of discrimination and equality. Margaret Thornton (2021) argued that this legal framework fosters a “fundamental attribution error,” whereby discrimination is understood as individual prejudice rather than a symptom of deeply stratified social and economic structures. When applied to the CDC scheme, this logic becomes all too visible. The scheme pathologises poverty and welfare dependency as personal and behavioural failings, to be ‘corrected’ through paternalistic policy interventions. In doing so, it diverts attention from historical, economic, and political forces that produce and maintain inequality, such as dispossession, colonisation, and systemic disinvestment in Indigenous communities. These distortions are not simply design flaws in policy or legislation, rather, they are integral to a broader settler-colonial legal architecture that seeks to maintain the sovereignty and authority of the Australian state while systematically denying Indigenous sovereignty. If anti-discrimination legislation can be so casually and flagrantly dismissed, denying First Nations peoples equal rights and political agency, even under a formal interpretation of equality, with little opportunity for recourse, then its legitimacy as a protective framework must be fundamentally questioned.

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Towards Substantive Equality and Sovereignty

Given these many limitations it is evident that formal equality and equality of opportunity are not substantial enough to protect the rights, autonomy and equality of First Nations Australians. As such, there is an urgent need to move towards a different conceptualisation of equality, one that can address both material disadvantage and structural injustice. Thornton (2021) and Sandra Fredman (2016) advocate for a substantive approach to equality, one that aligns with Martha Nussbaum's (2011) capabilities framework. This approach shifts focus from narrow formalism to broader structural conditions, recognising the need for legal and policy mechanisms that enable individuals and communities to be treated equally. Fredman (2016) outlines a multidimensional strategy to achieve substantive equality with four core aims and objectives, these are that substantive equality:

1. Should aim to redress disadvantage.
2. It should counter prejudice, stigma, stereotyping, humiliation and violence based on a protected characteristic.
3. It should enhance voice and participation, countering both political and social exclusion.
4. It should accommodate difference and achieve structural change (p. 727).

This framework offers a valuable starting point to equality, one that is a more just and inclusive foundation for policymaking. In addition to these four principals, I would like to suggest a fifth principle/dimension that is:

5. It should uphold First Nations Peoples' sovereignty.

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While the adoption of substantive equality is urgently needed to challenge systemic discrimination and inequality in the short term, in the long-term equality for First Nations peoples requires a more transformative political and legislative project centred on sovereignty and treaty. Substantive equality, as outlined by Thornton (2021), Nussbaum (2011), and Fredman (2016), may provide a more meaningful approach to addressing inequality within the confines of the current legal system. However, it is ultimately constrained by the structural limitations of that system, a system predicated on the denial of Indigenous sovereignty and colonial oppression. A form of internal sovereignty whereby First Nations Australians can uphold, protect and dictate affairs on their own terms may be the only way to guarantee genuine equality of outcome and access for communities. There is no singular way to define Indigenous sovereignty. Mansell defines sovereignty as ‘the right of authority in a people to control their territory, and those in it’ (as cited in Walter, 2003, p. 157). Other definitions suggest that sovereignty is about the relationship between the colonised and the coloniser such as Rademaker and Rowse’s (2020) definition as ‘making choices that would maximise autonomy, driven by a shared memory or imagined ideal of the autonomy they enjoyed before colonisation began’ (p. 159). As such, autonomy and freedom of choice are central to the concept of sovereignty, therefore as Walter (2008) argued, First Nations sovereignty is fundamentally denied through the control and domination of government interventionism.

Importantly, Larissa Behrendt (2003) argued, recognition of Indigenous sovereignty is not about asserting dominion over others but about enabling Aboriginal and Torres Strait Islander communities to govern their own affairs. This includes control over land, institutions, cultural heritage, education, legal systems, and economies. Such a model of internal sovereignty reflects what Behrendt calls ‘holistic’ sovereignty grounded in relational autonomy rather than state paternalism (2003). Central to this vision is the demand for control over decision-making processes that go beyond tokenistic inclusion within a dominant legal framework and instead speak to

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genuine self-determination (Behrendt, 2003). To achieve this Behrendt (2003) identified seven interconnected aspirations that are consistently articulated across First Nations advocacy:

1. self-determination and self-management
2. land rights and compensation
3. a sustainable economic base
4. cultural heritage protection
5. customary law
6. control over education
7. and the development of a treaty (p.94)

These aspirations were echoed in the Alice Springs Statement, where members of the Sovereign Aboriginal Coalition called for the self-management of internal and external affairs ‘to the fullest possible extent’, subject only to the terms of a negotiated treaty with the Commonwealth (Gilbert, 1993 in Falk & Martin, 2008, p.60). Although debate continues over the nature and extent of sovereignty, various forms of self-determination are already practised in fields such as health, education, land management, and governance. Compensation for dispossession is another key element of sovereignty, the Native Title Act (1993) provides a regime for compensation for extinguishment and loss of native title, however, the Sovereign Aboriginal Coalition has proposed a more ambitious model, including annual payments based on a percentage of Gross National Income, which acknowledges both historical injustice and the material foundations of self-determination (Falk & Martin, 2008). In the area of law and justice, the Aboriginal Provisional Government advocated for communities to determine and administer their own legal systems based on local customs and values (Aboriginal Provisional Government, 1992). This vision departs

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from merely increasing representation within existing institutions and instead proposes an alternative legal sovereignty in which Aboriginal communities are not subject to external rule but govern in accordance with their own laws and values.

A central component of the discourse of sovereignty is the long-standing call for a treaty. Due to the Crown's invocation of *terra nullius*, no treaty was ever signed with First Nations Australians as there was with New Zealand, Canada, and the United States (Falk & Martin, 2008). The Barunga Statement and the Sovereign Aboriginal Coalition call for a treaty that acknowledges inalienable title to land and guarantees ongoing cultural rights such as hunting, fishing, and usufructuary practices (Falk & Martin, 2008). The Aboriginal Provisional Government, meanwhile, envisions a treaty that resolves 'race-based human rights issues' through mutual recognition of distinct sovereignty and the continuity of Aboriginal law and governance (Falk & Martin, 2008). A treaty would provide an incontrovertible protection against future attempts to deny equality and freedom through limiting the interventionist reach of colonial policies that enable discrimination, control and oppression. While substantive equality offers an important step forward, treaty and sovereignty represent the only enduring foundations upon which justice, equality, freedom, and rights for First Nations peoples can truly be assured. This is consistent with a social justice approach to equality which is grounded in values of autonomy and equity of outcomes and treatment (Craig, 2002). As NT Treaty Commissioner Mick Dodson (as cited in Holland, 2023) asserted, 'social justice means that our lives will not be dominated by a foreign rule of law, which fails to adequately support or take into account our unique identities and aspirations' (p. 469). In this sense, a social justice approach to First Nations equality must be informed by sovereignty and involve institutional and structural reform (Holland, 2023).

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Conclusion

This primary argument in this article is that formal equality, particularly as it is articulated through the ideal of ‘equality of opportunity,’ fails to address and indeed, often obscures the structural conditions of inequality experienced by First Nations Peoples in Australia by denying the socio-political and economic realities of racialised and colonised disadvantage. It enables discrimination under the guise of neutrality and objectivity, and it legitimises assimilationist and paternalistic interventions such as the occurrence of the CDC scheme and the NT Intervention. Rather than protecting rights, formal equality often functions as a mechanism of control and economic privileging, silencing calls for sovereignty and masking the coercive nature of settler-colonial state power. The Australian Values Statement’s invocation of ‘equality of opportunity’ thus represents a hollow promise, one that invites inclusion into a fictitious national idealism of genuine equality while simultaneously excluding and managing Indigenous peoples through disciplinary policy regimes. This adoption of formal equality is not merely insufficient, it is actively harmful, distorting the very concept of equality to uphold settler authority and deny Indigenous self-determination. In contrast, a substantive approach to equality foregrounds structural disadvantage, redistributive justice, and the recognition of systemic inequality. Yet even substantive equality, if pursued within the confines of existing settler institutions, remains constrained unless it is accompanied by a deeper commitment to Indigenous sovereignty and treaty. As Behrendt (2003), and others have shown, equality can only be truly realised through sovereignty and a treaty that protects First Nations communities’ right to the governance of their lands, cultures, laws, and futures on their terms. Ultimately, achieving genuine equality and justice requires more than reforming how the state conceptualises rights and opportunity. It requires a radical reimagining of Australia’s legal and political foundations, one that affirms Indigenous sovereignty, enshrines treaty, and abandons the assimilationist logic at the core of formal equality.

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Acknowledgements

I would like to thank Dr. Rebbecca Howe, Dr. Partick O’Keefe and Noel Clement or their generous insights, edits and feedback on this paper. Without their support and encouragement this paper would not have been possible.

Funding

No funding was used for this article.

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