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DECADES OF APOLOGIES[1]

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Abstract: *Through an extended period culminating in the 1990s when race relations reached the stage of proactive political rhetoric, government representatives in the US, Canada and Australia have been asking discriminated peoples for forgiveness, both with the purpose of reconciling the past and renewing race relations. This phenomenon is highlighted through the Australian Referendum of 1999, particularly the indigenous element in its second proposal: a new, value-based, preamble to the Constitution. In an apologetic era, the proposed Preamble may well be considered too modest, moderate and conservative. The article argues that what has been proposed and achieved by the 1999 Referendum has not proved enough for those who demand a treaty with Indigenous Australia, financial compensation, and a formally renewed state (a 'republic reconciled') with a new preamble to describe its values and a new national mindset. Such a rephrased preamble sh/would then be a full-grown product of consultations and the decade(s) of apologies, with the goal to reach a better-run, more ethical state.*

Key words: *Australian Referendum 1999, race relations, Indigenous people, apology, constitutional preamble, political rhetoric*

Introduction

Through an extended period culminating in the 1990s when race relations reached the stage of proactive political rhetoric, government representatives in the US, Canada and Australia have been asking discriminated peoples for forgiveness,

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both with the purpose of reconciling the past and renewing race relations. Highly publicized speeches in these countries share distinct features, for example they demonstrate a new historical consciousness; they have little financial consequence; they result in legislative action; and they affect other national minorities. A broader project may fruitfully examine the scope and effect of speeches dealing with the following relations: US – Indigenous Hawaiians, Canada – First Peoples, Australia – Aboriginal and Torres Strait Islander peoples. Specific texts subjected to such research ought to include [as for the USA] Bill Clinton's apology to indigenous Hawaiians in 1992/3; [in Canada] recognition of a third order of government, Nunavut, and Quebec as nation in 2005; and [in Australia] the Redfern Address, the 1999 Referendum, the Australian Declaration towards Reconciliation in 2000, and the National Apology in 2008. In this article, however, I will limit my scope of investigation on the Australian Referendum of 1999, particularly on the indigenous element in its second proposal: a new preamble to the Constitution.

Unlike the essentially republican Preamble to the US Constitution,[1] which has not changed since its codification and, together with the Bill of Rights, can establish interpretations for a value-based citizenship, the Australian Constitution proper (Constitution of the Commonwealth of Australia) does not have a preamble. The preamble of the colonial constitution (1900), however, is still a living part of the Australian constitutional body, even if its reference to the monarch, lords and

Note

[1] We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

colonies have long lost credit.[2] To remedy this, the new preamble proposed for people to accept in 1999 attempted to describe a new republican democratic Australian future, with shared historic, socioethnic, economic, environmental values listed. The proposed preamble reads as follows:

> *With hope in God, the Commonwealth of Australia is constituted as a democracy with a federal system of government to serve the common good.We the Australian people commit ourselves to this Constitution:*
>
> *proud that our national unity has been forged by Australians from many ancestries;*
>
> *never forgetting the sacrifices of all who defended our country and our liberty in time of war;*

Note

[2] The existing preamble in the *Commonwealth of Australia Constitution Act 1900* (Imp), patriated by the *Australia Act 1986* (Cth; UK) – evidently a historic piece of imperial colonial legacy, irreconcilable with parliamentary republicanism and national sovereignty – reads:

> WHEREAS the people of New South Wales, Victoria, South Australia, Queensland; and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:
>
> And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:
>
> Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

> *upholding freedom, tolerance, individual dignity and the rule of law;*
>
> ***honouring Aborigines and Torres Strait Islanders, the nation's first people, for their deep kinship with their lands and for their ancient and continuing cultures which enrich the life of our country*** [emphasis added]*;*
>
> *recognising the nation-building contribution of generations of immigrants;*
>
> *mindful of our responsibility to protect our unique natural environment;*
>
> *supportive of achievement as well as equality of opportunity for all;*
>
> *and valuing independence as dearly as the national spirit which binds us together in both adversity and success.* (AEC, 1999)

1999 is not the first occasion when Indigenous Australians had to face how the nation would vote on them. In advance, the 1967 Referendum was outstandingly successful: 90.77% of the people voted to repeal the racially discriminating section 127 and to change section 51(xxvi) of the Australian Constitution (Lippmann, 1994, p. 30), thereby for the first time Aborigines became constitutionally equal, undifferentiated citizens. No federal protection or account before 1967 was accorded to people of the "aboriginal race" (section 127), neither were they included in the census [section 51(xxvi)]: they were regarded as non-entities in the Australian nation. After 1967, however, racial differentiation disappeared from the Constitution, because it was deleted, and with it did Aboriginal Australians, who became entitled to the same rights, freedoms, privileges, and obligations as other 'ordinary Australians.' Most historians would agree that the 1967 Referendum ended the colonial status of the original Australians; however, if we consider the subsequent 1999 referendum in the context of the Reconciliation Movement, this (post)colonial legacy, arguably, has not yet been fully deconstructed. (The Reconciliation Movement, 1991-2000, was initiated by the Australian government with the goal to "forge a new relationship based on mutual understanding, recognition and respect" [ANTaR, 2012] between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians, motivated by historiographical,

legal, political change; manifest in political rhetoric, and followed by a people's movement when the Australian Declaration towards Reconciliation, in 2000, practically closed the formal process without achieving a treaty). Accordingly, in an apologetic era, the proposed Preamble may well be considered modest, moderate and conservative. The words 'custodians' and 'peoples' absent in the emphasised passage express two concerns which would have required more radical change.

This version of the Preamble was drafted by the incumbent Howard-government (Liberal/National Coalition in government between 1996-2007, a conservative party according to European party-mapping), who simultaneously neutralised any indigenous elements of it that would have implied legal consequences. While in office, John Howard was often blamed by the "bleeding-heart left academic elite and the intelligentia" for notoriously refusing to say sorry and apologise to members and family of the Stolen Generations, as well as for refusing to sign a treaty (or a document that amounts to it) with Indigenous people(s), thereby recognising their indigeneity and rights to self-determination. His conservative stance even cost him the leadership of the Liberal Party in 1989, mostly due to his anti-immigration and anti-indigenous statements.

In an illustrative article in 1988 he wrote:

> The Liberal and National Parties remain committed to achieving policies which bring Aboriginal people into the mainstream of Australian society and give them equal opportunity to share fully in a common future with all other Australians. Consequently we are utterly opposed to the idea of an Aboriginal treaty [. . .] it is an absurd proposition that a nation should make a treaty with some of its own citizens. It also denies the fact that Aboriginal people have full citizenship rights now. (Howard, 1988, qtd. in Djerrkura)

This statement does not sound anti-multicultural but it is certainly anti-treaty. That is, because the underlying principles of multiculturalism are in accordance with the basic tenets of classic liberalism: the universality of human rights, the equality of all individuals without discrimination, and the equality of communities without privileges – these the Coalition has always been supportive of. However, when it came to a full recognition of cultural identity manifested in political demands especially on behalf of Indigenous peoples (for example, in the form of

demanding a treaty), both major parties retreated. Generally regarded as more approachable and committed to the Aboriginal cause, Labor has proved just as reluctant to move into the political battlefield of treaty-making (where mines of 'sovereignty' and 'self-determination' may explode), because that would cause the national interest to suffer. That is even so with Labor's National Apology in 2008 (Rudd).

The proposed new Preamble does include and recognise the country's Indigenous heritage, while it enumerates a set of values for contemporary and future-oriented Australian citizenship. However, it is not an apologetic preamble, and as such, it did not pass either. In spite of its importance in national symbolics, national sum results for the preamble predominantly disapproved of the proposed text, with YES votes counting 39.34% and NO votes amounting to a majority: 60.66% (AEC, 1999), which indicates that not only did Australia intend to become a republic by 2001, it wanted to become a 'republic reconciled.'[3]

The legacy of the past 200 years obliged Australian people to forge a real unity during the decade between the Bicentenary (1988, the 200th anniversary of British occupation) and the Centenary of Federation (2001), so that the 100th anniversary of the birth of the Commonwealth of Australia (1901) – the real birth of the nation? – could be celebrated becomingly. Contrastive histories collided many times in the apologetic era: one of the memorable examples is when in June 1988 the Indigenous peoples of Australia submitted a petition, known as the Barunga Statement, to the Australian government, which presented an interpretation of history quite different from the version celebrated at the Bicentenary. Invasion, taking of lands, dispossessing natural resources, stealing cultural artifacts, and genocide were all seen as illegal: these actions the other side used to perceive as peaceful settlement under colonisation, distribution of land to satisfy the hunger for it, anthropological interest and protection of museal values, and protection of

Note

[3]"Reconciled Republic," which I use in my context, was coined by Mark McKenna (prominent historian/political scientist and an advocate of the republic) for a book title of his (2004).

children living in miserable conditions.

Prime Minister Bob Hawke (of the Labor Party, well before the conservative turn in 1996) promised to fulfill these claims, in other words, he promised a treaty. However, through the course of time, 'treaty' – which is a legal term with serious implications, one of which is that treaties are made between 'sovereign nations' – was modified into a 'Reconciliation movement.' The issue was cancelled from the agenda of consequent governments. Indigenous and non-Indigenous sources equally notice the changing political rhetoric of self-determination in Australia, following the development of the term through such stages as self-determination, self-management, treaty, makarrata, self-determination (again), accord, compact, self-government, reconciliation, social justice (Mudrooroo, 1995, p. 217; Gardiner-Garden, 1999, pp. 7-41). 'Self-determination' and 'self-management' keep recurring in post-Barunga government statements (as they did before 1988 [Lippmann, 1994, p. 77]), but the term 'treaty' is carefully avoided.

I have analysed several documents (both by the federal government and representative Indigenous bodies) to trace this downgrading process of the concept of 'treaty.' One of them, *Going Forward* by the Council for Aboriginal Reconciliation (1995) supported a treaty and sovereignty, whereas government multicultural policy papers were either silent about the issue or referred to special status (OMA, 1990), unique group and self-determination (NMAC, 1995), and reconciliation (NMAC, 1997, 1999). Even the Council's 1997 document dropped serious legal language (including the use of 'treaty' and 'sovereignty'): Pat Dodson, the first chair of the Council (1990-95) resigned exactly because his broad treatment of self-determination was objectionable in government circles. In order to curb further right-wing attacks against Aboriginal rights (which came anyway with the 1996 change of government), claims to self-determination had to be dressed into more acceptable language so that the 'national interest' would not feel threatened. Such a close-reading of policy papers coincides with political analysts' opinion (McAllister, 2001; Mitchell, 2000), who argue that the preamble question failed both because of a majority backing the status quo (and so it failed because the republic question also did so, cf. T. Espák [2012]), and because it was not future-oriented and apologetic enough.

A list of apologetic texts in Australia would include the 1992 Redfern Speech (PM Paul Keating on history); the High Court's 1992 Mabo-judgement, the Native

Title Act and its amendments in 1993, 1998, 2007; the Australian Declaration towards Reconciliation in 2000; and eventually PM Kevin Rudd's National Apology in February 2008). Whether formally addressed as such, or in other informal ways of politic behaviour, these texts share four features: (a) historical consciousness (as a result of new historiographies), (b) non-financial consequences, (c) consequent legislative action, (d) an after-effect on other national minorities (by an extended definition of race). Let me leave Australia for the sake of a Canadian example (a similar example could be the USA's Clinton's address to Hawaiians in 1993, as well). When, during the constitutional crisis in the early 1990s it became obvious that First Peoples demand constitutional space and such participation in the federal system which recognizes their nationhood, they got it in the form of a proposed 'third order' in the Charlottetown Accord. This did not happen without debates, however, much of which continued about the symbolic constitutional body of Canada, historical injustices, the urgent need to create unity in diversity, and the urgent need to recognize and reconcile other national minorities. To say in Ottawa that Quebec, another national minority, is a nation, before the 1990s, would have been a radical, potentially separatist proposition. Yet, perceptions – due to the decade of apologies – have changed to such an extent that in 2006 the Canadian House of Commons passed PM Stephen Harper's motion to recognise the Quebecois nation within Canada.

Returning to Australia, if Australia is to pass changes to the constitution that would follow changes in the past decades, they need to forge both a new preamble (possibly a bill of rights), and become a republic. This is not just outsider's advice: there exists a political timeline to proceed along: 2014 for a preamble (FPALC, 2009), and 2020 for the republic (AAP 2010). What has been proposed and achieved by the 1999 Referendum has not proved enough for those who demand a treaty with Indigenous Australia, financial compensation of losses (unless as native title), and a formally renewed state (a 'republic reconciled') with a new preamble to describe its values and a new national mindset. The accepted newer preamble would then be a full-grown product of consultations and the decade(s) of apologies, with the goal to reach a better-run, more ethical state.

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