

Reconciliation after recognition? Indigenous-settler relations in Australia

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ABSTRACT: Since 2010 the political agenda on addressing Indigenous-settler relations in Australia has been dominated by the debate on constitutional recognition. On many levels this debate has been unsatisfactory but in this paper we focus on three particular issues that we argue should be the focus of continuing analysis of indigenous-settler relations regardless of the outcome of the constitutional recognition process. First, we contend that efforts to reconcile Australia need to recognize the conflictual nature of Indigenous-settler relations and that, as many conflicts, this requires management rather than resolution. Second, we suggest that this debate needs to pay greater attention to ongoing conflictual relations rather than a mere accounting for the wrongdoing of the past. Third, we unpack the constitutional recognition debates to demonstrate that—regardless of the core issue of Indigenous-settler relations—the ongoing process of reconciliation needs to address the conflicts within non-indigenous people over the appropriate course of action. Therefore, rather than solely relying on indigenous peoples to drive the process (and bear responsibility if it fails), there needs to be a future-oriented engagement involving non-indigenous people across their political divisions if the aspiration towards an ongoing process of reconciliation is to be achievable. Until the internal conflicts within non-indigenous people are identified and ventilated, Australia falls a long way short of being in a position to address and managed internally the conflict between indigenous peoples and the state.

1 INTRODUCTION

For the last four years a team of political, legal and criminological scholars based across four continents has been engaged in a research project examining ‘Reconciliation, Recognition and Resistance in South Africa and Northern Ireland—lessons for Australia’.¹ The aim of the project has been to examine the differing dynamics of the transitional processes in South Africa and Northern Ireland since the 1990s to develop comparative knowledge that can inform ongoing debates on reconciliation in Australia, and, in particular, initiatives focused on constitutional recognition of Aboriginal and Torres Strait Islander peoples.

The transitional processes out of widespread political violence in South Africa and Northern Ireland since the 1990s have been quite divergent reflecting the differing dynamics of the two conflicts.² However, in this paper I concentrate on three common characteristics of the South Africa and Northern Ireland processes that are not as yet widely accepted in Australia. I contend that it is the failure to recognize these three conditions that is inhibiting the current debate in Australia and is at least partially responsible for preventing the development of a more mature debate in Australia. The conditions are, first, that the country is dealing with

1. The research project is funded by the Australian Research Council (DP130101399). The investigators on the team are Adrian Little (Melbourne), Mark McMillan (Melbourne), Paul Muldoon (Monash), Juliet Rogers (Melbourne), Erik Doxtader (South Carolina) and Andrew Schaap (Exeter).

2. See Little 2017.

a conflict situation, second, that it needs to establish a social and political framework for the future rather than concentrating solely on the past, and third, that this involves political engagement both within and between the various parties to the conflict.

While I will not dwell for long on the theoretical and methodological background to the project, it is worth briefly identifying that the team has worked with a broadly agonistic framework based on their previous research outputs (see, for example, Schaap 2005, Muldoon 2008, Muldoon and Schaap 2009, and Little 2002, 2004, 2008 and 2014, and Little and Lloyd 2009) and other recent scholarly works (Maddison 2015). Agonistic theories focus on the inevitable enduring nature of conflict and the ways in which that inflects political life. While concerned with the politics of conflict and the mechanisms and processes through which conflict can be managed, negotiated and transformed, agonistic theory sees the existence of such conflict as immutable. Rather than wishing away conflict or seeking to eradicate or resolve it, agonistic theories are concerned with the way in which it is expressed in political life (Mouffe 2000). Instead of trying to resolve conflicts, agonists are concerned with ways in which it can exist and indeed characterize political life without necessitating forms of overt political violence.

The methodology of the project has involved a series of workshops, interviews and documentary analysis across the three comparator countries in the study. The named researchers on the project attended all of the workshops with a range of stakeholders in each of the societies and conducted the interviews in pairs. While much of the initial work was in South Africa and Northern Ireland, the latter part of the project has almost exclusively been focused on the Australian case. As we reach the final stages of the project (with one final workshop in 2017), this paper provides some positioning and reflection on where the team has ended up as well as indicators of where this program of research needs to go next.³

2 CONTEXTUALIZING THE AUSTRALIAN DEBATE

Since 2010, the Australian debate has been dominated by discussion over the rights and wrongs of constitutional recognition of Aboriginal and Torres Strait Islander peoples as the original inhabitants of Australia and for whom there is a specific relationship with the land and waters of the country as well as a diverse range of cultural traditions, languages and practices that need to be reflected in the primary legal document underpinning the Australian state. While there is not sufficient space here to reflect on the historical backdrop to the constitutional recognition debate, it is part of a broader process going back to the referendum in Australia in 1967 and then, from the early 1990s a series of events that have been part of a process dubbed ‘reconciliation’. These events have included the formation of the Council for Aboriginal Reconciliation, Prime Minister Paul Keating’s Redfern Park speech, and the Mabo case in the early 1990s through to Prime Minister Kevin Rudd’s apology to the Stolen Generations in 2008.

However, since the narrow election of the Gillard government in 2010, there has been a bi-partisan commitment across Australia’s political divide to pursue constitutional recognition of Indigenous peoples. An Expert Panel that had been established by the Gillard government reported on a proposed wording for constitutional change in 2012, a proposal that was subsequently discussed by a parliamentary Joint Select Committee that reported in 2015. Meanwhile, the subsequent Liberal Prime Minister, Tony Abbott had been discussing these issues with a select group of Indigenous leaders after his election in 2013, before Abbott was deposed by the current Prime Minister, Malcolm Turnbull, in 2015. While Turnbull’s approach has lacked the alacrity of Abbott’s pursuit of a referendum on constitutional change in 2017, he did establish a Referendum Council to pave the way towards a proposal for constitutional change. At the time of writing, and while consultations take place, the proposal appears to be in abeyance. Indeed, in one such consultation exercise with Aboriginal

3. When I use the term ‘we’ in what follows, I am particularly referring to the research conducted with Mark McMillan in the course of the project.

people in the state of Victoria, the gathering in Melbourne voted unanimously to reject the idea of constitutional recognition with a much stronger call for treaty.⁴

3 THE SHORTCOMINGS OF THE AUSTRALIAN APPROACH TO CONSTITUTIONAL RECOGNITION

Given the project's focus on the mechanisms and processes of managing and governing the politics of conflict, the researchers have become increasingly concerned by the ways in which the Australian debate on constitutional recognition has been conducted. Indeed, one of the most obvious observations has been the unwillingness in Australia to construe Indigenous-settler relations in conflictual terms. This is reflected in the mainstream media coverage and the conduct of the debate in the main political parties, but is most certainly not the message that is being delivered by many Aboriginal and Torres Strait Islander participants in this project.⁵ This is not to say that there is overt advocacy for violence, but there is a desire to see the relationships established since the initial colonization of Australia recognized as grounded in violent upheaval that has permeated Indigenous-settler relations ever since.

Here, and in other publications (Little and Macmillan 2017), we contend that this has been due to the invisibility of at least one of the parties to the conflict. For decades this was, of course, Aboriginal and Torres Strait Islander peoples who had to live with the legal fiction of *terra nullius* and were therefore invisible as participants in a conflictual relationship. Since the 1990s, however, with much greater acceptance of the need for a process of reconciliation, contemporary non-Indigenous Australians have become invisible. The debate is conducted as one involving the (very important) relationship between Indigenous people and the Australian state rather than one that should be partly focused on the relationship between Indigenous and non-Indigenous *people*. This exonerates non-Indigenous people from responsibility for their role as parties to a conflict and places all of the burden on Aboriginal and Torres Strait Islander peoples to reconcile with the Australian *state*.

Therefore, we contend that while it is vital not to underplay the significance of the legal relationship with the state, the conflict in Australia is also about the political relationship between people. This much is apparent to most Indigenous activists but it is far less clear for non-Indigenous Australians who have been exonerated from engagement. This is important because the management and/or governance of these relationships is an ongoing process rather than something which can simply be enacted through legal change or changes to the practices of political institutions.

The process of putting the Australian debate on a more substantive footing requires a number of significant developments. Not the least of these is the recognition that the focus on past misdemeanours and violence is a necessary but not sufficient part of the discussion of Indigenous-settler relations. The focus on the past that has predominated in the debate thus far pays insufficient attention to the need for changes that are directed towards the politics of these relationships in the future. Considerations (and apologies) for the failings of the past are not substantive enough to reset the structure of contemporary and future relationships. Therefore, whatever the outcome of moves towards constitutional recognition of Aboriginal and Torres Strait Islander peoples, there remains a set of relationships between people that need to be recalibrated and transformed on an ongoing basis.

4 A STRONGER FOOTING FOR AUSTRALIAN RECONCILIATION DEBATES

Based on both the various engagements in Australia during the research process and the comparative analysis of the processes in South Africa and Northern Ireland, we contend that

4. Weblink.

5. Reference to JCR Network conference at Melbourne in October.

there are three basic background conditions that are impeding the progress of the Australian reconciliation debate. First, in both South Africa and Northern Ireland, it was clear and widely accepted—at no obvious cost to any of the participants—that the situation being transformed was conflictual and involved conflict between people (as well as or not just between states). Second, the transitional processes that were established were focused just as much on creating the conditions for co-existence in the future as they were about accounting for the past. Third, and most significantly, much of the effort expended on building new conditions and institutions was as much about conducting debates within groups that were on one side of the divide, as it was about conversations across political divides. While we find Australia's debate deficient on all three counts, we are particularly concerned that the final point about the need for greater engagement *within* non-Indigenous Australia is not currently taking place. As a result, the onus for delivering a reconciled Australia is directed towards Aboriginal and Torres Strait Islander peoples.

The first issue is a very basic one but it seems to be a formidable challenge for Australia to recognise the conflictual relationships within its boundaries. This is significant because it changes the dynamics of the conversation from 'how do we right this historical wrong?' to 'how do we manage this relationship between people now and in the future?'. This is not just a semantic issue because the focus on 'acts' and 'wrongs'—necessary as that process is—can deflect attention away from thinking through the social and political dynamics of a recalibrated relationship between Indigenous and non-Indigenous people. To be clear, this in no way should detract from the need to account for the experiences of the Stolen Generations or the reason behind deaths in custody, but we also need to recognize that a debate about the future of relations between different people in Australia needs to grapple with the question of what it means to 'share this place'. A process directed toward understanding the conflictual nature of the relationships that exist within Australia between Aboriginal and Torres Strait Islander peoples and non-Indigenous citizens demands a much clearer public discourse about the recognition of difference. That is, the pursuit of legal equality between all inhabitants of Australia is not a process that does enough to reflect that there is an inherent difference in the standing of Indigenous people that will not (and indeed should not) go away. This difference does not need to be resolved through legalistic egalitarianism—it needs to be recognized and accentuated.

This first point leads inexorably to the second issue around managing relationships that is objectively simple but politically difficult. That is, the basic understanding of reconciliation needs to be recalibrated so that it is better understood as the ongoing management of relations rather than a mere accounting for the past. While apologies and recompense may indeed be necessary, they cannot provide a firm footing for future political relationships. This is partly because apologies and the like tend to focus on particular individuals or groups of individuals who are categorized as victims. While the apology may be on the behalf of 'the state', it is only to those perceived to be directly impacted by specific wrongful actions. As such, apologies—be they to the Stolen Generations, or the families of victims of Bloody Sunday in Northern Ireland, or those mistreated in Indian Schools in Canada—are never really focused on the impact of structural injustices on minority groups. This does not belittle their potential importance to individuals or groups who want remorse on the part of the state for their experiences, but they are rarely events that implicate the state in as any way guilty for the perpetration of ongoing structural injustice against particular sections of society. Moreover, there is often no recognition of the ways in which the behaviours of the past have created the conditions in which contemporary structural injustices have been established. In short, there is a need to ensure that processes of reconciliation in Australia are understood as an ongoing process of managing Indigenous-settler relations and the development of a future-oriented perspective. While constitutional recognition may have a role in that process, it can only be as a precursor to further initiatives including (potentially) a treaty or, to put it more precisely, a series of local agreements between different Aboriginal nations and the constituent states of the Australian Federation.

Third, and most importantly, a more specific focus on relations between people in general rather than the relationship between Aboriginal people and the Australian state is vital. While

relationships *between* Indigenous and non-Indigenous people are vital in the discussion of a more reconciled society, a pre-cursor to this debate is that there is a more open debate *within* these groups especially non-Indigenous Australians. Just as there is no uniformity within Aboriginal Australia—this will come as no news to Indigenous political activists! – so there is no agreement within non-Indigenous Australians about the issue of reconciliation. And yet this is a debate that is rarely entered into between non-Indigenous people. Those who oppose reconciliation or forms of recognition direct their points towards political parties or Indigenous interlocutors. Aboriginal people are deeply engaged within their own forums as to the rights and wrongs of processes of recognition and reconciliation.

Yet, there appears to be a complete lack of engagement within non-Indigenous Australia between those who support and oppose these processes. More often than not, the supporters of reconciliation defer to Aboriginal people and effectively say ‘tell us what you want and we will support it’ rather than engaging on their own terms with other non-indigenous people and, in particular, opposing those who differ. The task of opposing constitutional conservatives and those on the right who oppose some of the more fundamental forms of change such as treaty is largely left to Aboriginal people with the well-meaning non-Indigenous people lined up behind. Once again, this speaks to a lack of engagement and an absence of responsibility of non-Indigenous Australians to lead in this debate. In short, the disagreements between non-Indigenous Australians are rarely ventilated and there is little onus to engage in that discussion. Therefore, not only is the burden to reconcile placed on the shoulders of Indigenous people, the job of resistance to insubstantial forms of reconciliation is also located there. Put simply, there is a need for much greater engagement within non-Indigenous Australia to fulfill the responsibility that the role of changing relationships requires.

5 CONCLUSION

The debate over constitutional recognition of Aboriginal and Torres Strait Islander peoples in Australia is mistakenly being conducted in terms of equality. That is, it is being imagined as a process that leads to the accordance of the same status as other Australian citizens through recognition that Indigenous people were the initial inhabitants of Australia and have special relationships with land and sea as well as specific languages and cultural traditions. However, the primary division in the debate—which receives very little attention—is the fact that most opponents of a thoroughgoing reform of the Australian constitution do so on the basis that all people—Indigenous and non-Indigenous—are effectively the same. This is opposed by most Indigenous activists and commentators who reject this form of procedural equality and favour instead something that appropriately recognizes the differences between Aboriginal and Torres Strait Islander peoples and other Australian citizens. Moreover, our contention in this paper is that this difference is both grounded in conflict and likely to generate further political contention.

To summarise, Aboriginal and Torres Strait Islanders are already recognized as legally different in the Australian constitution; the change that most Indigenous activists that favour recognition seek is a rectification of the terms under which that difference is understood. Of course, many others do not want constitutional recognition at all, favouring more substantive changes without the need for this intermediary step. Regardless of whether the Australian constitution is amended through the contemporary debate or not, our argument suggest that there needs to be a much more substantive, ongoing conversation about the nature of difference for Aboriginal and Torres Strait Islander peoples that goes beyond mere legal status. We suggest that this more developed understanding of difference is more likely to bring political conflict into the foreground of debate. And, finally, in turn, this places much greater emphasis on non-Indigenous people to engage with each other about these issues rather than the debate being conducted solely in terms of relations between Aboriginal and Torres Strait Islander peoples and the Australian state.

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Reconciliation after Recognition? Indigenous settler relations in Australia

Date:

2017

Citation:

Little, A. (2017). Reconciliation after Recognition? Indigenous settler relations in Australia. Adi, I (Ed.). Achwan, R (Ed.). Competition and Cooperation in Social and Political Sciences, (1), pp.3-8. Taylor and Francis.

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