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# RECOGNISING SYMBOLISM: WHY A REPUBLIC IS PART OF THE RESOLUTION

by Teela Reid

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## INTRODUCTION

Any talk on constitutional recognition usually boils down to the concept of symbolism. The idea is to symbolically recognise Aboriginal and Torres Strait Islanders peoples as the ‘First Peoples’ of Australia in the preamble of the Constitution, with no legal entitlement whatsoever. In my opinion, the only symbolism that needs to be recognised and changed is the colonial roots fracturing our sense of national identity. This article argues that discussions about symbolism when recognising Aboriginal and Torres Strait Islander peoples’ unique position in Australia must contemplate the adverse impacts of colonial symbolism. It suggests that a better way to reconcile the issue of symbolism is to become a republic. Furthermore, if the referendum for constitutional recognition<sup>1</sup> were to go ahead in 2016, it would need to rectify the races powers and ensure that Aboriginal and Torres Strait Islander people are not adversely discriminated against in order to win my “yes” vote.

## SYMBOLISM: A COLONIAL PROBLEM

The proliferation of colonial roots symbolised in the union jack on the Australian flag, the national anthem and the crowns on our currency are stifling our national identity. While it is certainly a defining feature of our history, it does not represent the whole story. It represents invasion, massacres, dispossession, disempowerment, loss of language and continued genocide. Any symbolic recognition of the ‘First Peoples’ under the current Australian Constitution would not complete the nation; it would only conform to the agenda of colonial attitudes.

Many oppose adopting a new national flag, arguing that it shouldn’t be changed because Australian troops fought under it. But so did Aboriginal and Torres Strait Islander Peoples, at a time when they were not even considered citizens! A national conversation to become a republic would ignite debate about changing the flag that would surely contemplate a new version incorporating the nation’s three official flags: the current flag, the Aboriginal flag and the Torres Strait Islander flag. We could learn some lessons from Canada, to remove the union jack, but go even further in terms of truly symbolising the unique diversity of Australia. Similar

plans are underway in New Zealand, as the nation prepares for a referendum in 2016 to vote on a new flag, with their Prime Minister in full support of a new design featuring the silver fern, a symbol of ancient Māori legend.<sup>2</sup> Likewise, a new Australian flag would require good leadership and to be ultimately decided by the Australian people.

For Australia to become a republic it would require a shift from conservatism, to more progressive political plans. Australian legal ties to England have been severed as a result of the *Australia Act 1986 (Cth)*.<sup>3</sup> It makes no sense to cling to the conflicting ideals imposed under the current Constitution that makes a non-Australian—the British Queen—our head of state.

## AVOIDING 1999

A new republic referendum needs to avoid the pitfalls of the 1999 attempt, which failed primarily because there was no consensus on the model that meant the head of state would be appointed by Parliament, not the voters. At that time, voters were also asked to change the preamble to recognise Aboriginal and Torres Strait Islanders as the ‘First People.’ The failed attempt to do so at the time may have been a result of the landmark *Mabo*<sup>4</sup> decision in 1992, which overturned terra nullius and gave legal recognition of Indigenous ownership to the land in the form of native title. Some Australians saw this as a perceived ‘threat’ to their own homes and the security of their private land. This was unlike 1967, where changes to the Constitution empowered the Federal Government to make laws with respect to Aboriginal and Torres Strait Islander peoples,<sup>5</sup> both positive and negative.<sup>6</sup> It would suggest that these types of national reforms need to be timed and planned strategically to get the double majority.

## RECOGNISE WHAT?

The Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples (‘Expert Panel’) avoided the recommendation to change the preamble alone. Instead, the Expert Panel’s proposed amendments focused on replacing and removing the races powers contained in sections 51xxvi and 25 of

the Constitution,<sup>7</sup> retaining the Government's law making powers with respect to Aboriginal and Torres Strait Islander peoples<sup>8</sup> and guaranteeing non-discrimination.<sup>9</sup> The Expert Panel's report<sup>10</sup> urged the Federal Government to ensure any changes must contribute to a more unified nation; be of benefit to and accord with the wishes of Indigenous people; be capable of being supported by an overwhelming majority and be technically and legally sound.<sup>11</sup> But the Federal Government is yet to comment on exactly what changes will be put to a referendum for the public to decide whether to vote "yes" or "no". To win my support at a referendum, any model for change would need to rectify the current races powers and guarantee that Aboriginal and Torres Strait Islanders peoples cannot be discriminated against.

## A referendum for a republic is the better option to reconcile indifferences.

### SYMBOLIC RECOGNITION

Despite public sentiment supporting the acknowledgement that Aboriginal and Torres Strait Islander peoples were here first is the right thing to do, I believe that it is a paternalistic and tokenistic gesture. On a positive note, the level of support for symbolism reflects the emerging conscience that Australians certainly want to see change and genuinely want to begin rectifying the deep historical injustice and pervasive systemic inequalities that Aboriginal and Torres Strait Islander have faced since colonisation. On the other hand, it signals a lack of understanding about the real change the grassroots campaigns seek. Symbolic recognition alone does not bring substantive change. Issues of sovereignty and treaty of course remain paramount, but are beyond the focus of this paper.

If we are going to deal with the concept of symbolism, then the conversation needs go both ways. Each year, on 26 January we encounter the 'Australia Day' v 'Survival Day' debate. On 'Australia Day' 2015, Prime Minister Tony Abbot gave the nation's highest accolade to Prince Phillip by awarding him a Knighthood. It sparked opposition Leader Bill Shorten to say, '...let us be brave enough to demand constitutional recognition for the First Australians, and let us breathe new life into the dream of an Australian head of state',<sup>12</sup> reviving the republic idea. He is not alone in this plight and is supported by high profile figures including former Governor-General Quentin Bryce and Malcolm Turnbull, to the right of the political spectrum, who was a founding member of the Australian Republican Movement.<sup>13</sup> The ultimate question is are the Australian people prepared to truly recognise and embrace our unique diversity and distinct identity?

### CONCLUSION

Constitutional recognition for Aboriginal and Torres Strait Islander peoples needs to be more than a symbolic gesture in the current Constitution. It needs to remove racism and address the issue of negative discrimination for substantive change. A referendum to change the preamble alone only conforms with and reinforces past colonial attitudes. If Australia was prepared to deal with the concept of symbolism, then a referendum for a republic is the better option to reconcile indifferences for the benefit of all Australians. This would entail a national conversation about changing the Australian flag, redeveloping the national anthem and redesigning currency to address the proliferation of colonial symbolism that is splintering our national sense of identity. This would recognise that our ancient histories contribute to the unique fabric and prosperity that continues to define Australia; and at the same time affirm the truth that Aboriginal and Torres Strait Islander peoples are, and always will be, the 'First Peoples'.

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- 1 Joint Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, Parliament of Australia, *Progress Report* (2014).
- 2 AFP, 'New Zealanders to vote on flag change as PM backs Silver Fern', *The Australian* (online) 30 October 2014 < <http://www.theaustralian.com.au/news/world/new-zealanders-to-vote-on-flag-change-as-pm-backs-silver-fern/story-e6frg6so-1227105667811> >.
- 3 *Australia Act 1986* (Cth).
- 4 *Mabo v Queensland (No.2)* (1992) 175 CLR 1.
- 5 *Commonwealth of Australia Constitution Act* (1900) s 51(xxvi).
- 6 *Kartinyeri v Commonwealth* (1998) HCA 22.
- 7 Expert Panel on Constitutional Recognition of Indigenous Australians, 'Recognising Aboriginal and Torres Strait Islander People in the Constitution: Report of the Expert Panel' (Commonwealth of Australia, 2012) ('Expert Panel Report') 230.
- 8 *Ibid.*
- 9 *Ibid* 231; The Expert Panel also recommended inserting s 127, recognising Indigenous languages but affirming English as the national language. This paper does not support the s 127 amendment in alignment with the Joint Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, Parliament of Australia, *Interim Report* (2014) 27-29.
- 10 Expert Panel Report, above n 5, 211.
- 11 *Ibid.*
- 12 ABC News, 'Opposition Leader Bill Shorten renews call for republic ahead of Australia Day', *ABC* (online), 22 January 2015 <<http://www.abc.net.au/news/2015-01-25/bill-shorten-renews-call-for-republic-ahead-of-australia-day/6045222>>.
- 13 Sarah Elks, 'Monarchists not happy as Quentin Bryce backs republic, gay marriage', *The Australian* (online), 23 November 2014 <<http://www.theaustralian.com.au/national-affairs/monarchists-not-happy-as-quentin-bryce-backs-republic-gay-marriage/story-f59niix-1226766438669>>.