

The lessons in the 1967 Referendum campaign

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Abstract: The composition of Australia's Constitution saw a pattern of discrimination emerge against its Indigenous peoples, calling into question the strength of Australia's commitment to its founding narrative of a 'fair go'. This essay explores whether the 1967 Referendum, in which Australians voted overwhelmingly to amend the Constitution to allow the Commonwealth to make laws for Aboriginal people and include them in the census, had an affect on actual behaviour of the Commonwealth and non-Indigenous people towards the Indigenous population.

Key words: Australian Constitution, 1967 Referendum, constitutional recognition

One of the founding narratives of the Australian polity is the commitment to the idea of a 'fair go'; a place where mates look after each other, and egalitarianism, rather than class, shapes the national character. Yet the composition of Australia's Constitution (the 'Constitution') saw a pattern of discrimination emerge against its Indigenous peoples, calling into question the strength of the commitment to this narrative. This pattern of discrimination took hold and became embedded in the hearts and minds of so many Australians who, for generations, supported an exclusion and segregation of Aboriginal peoples (Charlesworth & Durbach 2011, pp. 64-73). The 1967 Referendum, in which Australians voted overwhelmingly to amend the Constitution to allow the Commonwealth to make laws for Aboriginal people and include them in the census, represented a divergence from this pattern; a heightened interest in issues facing Australia's Indigenous people. But have those amendments in the Constitution had any affect at all on actual behaviour of the Commonwealth and non-Indigenous people towards the Indigenous population?

Arguably, the 1967 Referendum failed to establish a new pattern of the place of Indigenous peoples within Australia's political and legal structure, thereby allowing for the possibility of exclusion and discrimination to remain (Williams 2007, pp.8-11). If our aim is a continuous



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divergence from the path of discrimination, it would behove us to learn from the strategies employed during the decade-long 1967 Referendum campaign and apply this insight in future endeavours. From examining the strategies employed, four distinct lessons become clear. The first is successful communicative processes in lobbying public opinion need not always involve the exchange of logical arguments, rather a combination of emotion and cognition operating synergistically facilitate a change in attitudes. The second is that temporary solutions may be deployed by those on the receiving end of said lobbying and that whilst such changes may be cosmetic in nature, they can lead to an entanglement in a moral discourse which cannot be overlooked or forgotten. The third is to the degree that a nation values its membership in an emerging community of liberal states, it will be vulnerable to international pressures in reforming discriminatory policies (Risse, Ropp & Sikkink 1999). The final lesson is that the preceding three in isolation are not sufficient to instigate lasting social and political change, rather a configuration of all three together for a sustained period should achieve a continuous divergence from a pattern of discrimination and allow for long lasting improvements in conditions for Aboriginal people.

Movement towards amending the Constitution commenced in the 1950s, propelled by the blatant discrimination toward Aboriginal people in its drafting and from a concern that Aboriginal issues were not being dealt with appropriately by the state, so federal parliament should be given responsibility for their welfare (Williams 2007, pp.8-11). Section 127 of the Constitution provided: 'In reckoning the numbers of people of the Commonwealth, or of a State or other part of the Commonwealth, Aboriginal natives shall not be counted'. Section 51 (xxvi) also stated that the Commonwealth could legislate with respect to 'the people of any race, other than the Aboriginal race in any State, for whom it is deemed necessary to make special laws'. The exclusion from the Census count, aside from insulting their human dignity, reduced potential funding for Aboriginal peoples' welfare as the apportionment of tax dollars to the states is calculated by Census count (Bandler 1989). The other operative provision permitted discriminatory legislation by state governments. For example, 'in Queensland an Aboriginal who comes under the Aboriginal Preservation and Protection Act may find himself in control neither of his earnings nor his children' (Bandler 1989, pp. 92-93). So, in 1967, a proposal was put before the Australian people under which section 127 would be deleted entirely and the words, 'other than the Aboriginal race in any State' in section 51(xxvi) would be struck out. Arriving at this point was not met without opposition.

Whilst a formal 'no' case was never formulated for presentation as part of the referendum campaign, the key reformers such as the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI) faced seemingly insurmountable odds (Behrendt 2007, pp. 12-16). Faith Bandler recalls:

We'd need to convince a racially biased and backward country, controlled by the descendants of people who'd invaded our shores on 180 years before...and whose acts of obscenities and contempt were so disastrous to the original land owners, to change. (1989 p. 85)

Further, the proposition that the Constitution was discriminatory was questioned with sceptics, such as Prime Minister Menzies claiming that section 51 (xxvi) was actually a protection against discrimination in respect of Aborigines; that there should be no valid laws

which would treat them as people outside the normal scope of the law (Rowse 2000). The path to constitutional reform in Australia was also littered with failed proposals demonstrating a deep-seated distrust of referenda by the Australian population. Prime Minister Menzies described that obtaining ‘an affirmative vote from the Australian people on a referendum proposal is one of the labours of Hercules’ (Bandler 1989, p.105). Bandler acknowledging of the twenty-four previous proposals which sought Constitutional change that only four had been approved by the voters (1989 p.105). Whilst the pattern of discrimination against the Indigenous people and the need for change should have been obvious, ignorance, argumentative rhetoric and the history of public disapproval for any government move for change all contributed to the strong possibility that the referendum would be defeated. Yet despite these influences, on 27 May 1967 a Federal referendum was held. The people of Australia overwhelmingly voted ‘Yes’, with the proposal supported by around 90 percent of the population; the highest ‘Yes’ vote so far achieved in the history of referendum proposals (Williams 2007, pp. 8-11).

Such overwhelming support demonstrated a heightened interest in Indigenous issues and awareness of the pattern of discrimination, yet there have been moments subsequent to the 1967 Referendum in which it is clear that the issue of reconciliation with Indigenous people is a contested priority within the Australian community (Williams 2007, pp.8-11). A clear example occurred in 2000, when Prime Minister Howard dismissed a call for a treaty by reducing Indigenous difference to just cultural uniqueness and social disadvantage, thus ignoring the legacies of dispossession (Pitty 2009, pp.25-46). Understanding that there is a clear pattern of discrimination against the Indigenous people forces one to consider how the Constitution and Aboriginal peoples’ right to be treated without discrimination will, as it was in the decades leading up to 1967, advance to the forefront of Parliamentary and public debate. Surely, to arrive at an answer to this question, we need to draw lessons from the strategies used and mechanisms employed throughout the decade-long referendum campaign to understand the conditions which affect social and political transformation.

The objective of the 1967 Referendum was to do two things: allow Aboriginal people to be included in the census and give the federal Parliament the power to make laws in relation to Indigenous people; taking over the responsibility for their welfare. In order to be successful, the 1967 Referendum had to be the product of a political campaign that persuaded the Commonwealth Government and the public of the rightness of the cause against a background of white rural intolerance and deep-seated distrust of referenda (Bandler 1989). The campaign leaders within FCAATSI engaged every political campaign trick in the political book: letters, press statements, petitions, freedom rides, speeches, meetings in town halls, parliaments and pubs, speaking on the radio and, by 1967 on that most powerful of mediums, television where the campaign gained international traction (Viner 2007, pp.17-28). The dedication to work for the success of the referendum was obvious; the campaigners sought out representatives from churches, unions, sporting bodies, service clubs, universities and local councils. Bandler buoyed by a hall-filled with such representatives, was eager to see the intensive campaign through (1989). Clearly, such interest indicated the success of the campaigners’ preliminary work; Prime Minister Holt could no longer resist the force of ‘popular impression that the words now proposed to be omitted from section 51(xxvi) are

discriminatory and the fear of Australia being shamed in international forums' (Viner 2007, pp.17-28). This mixture of sustained domestic activism and international exposure brought about the success of the 1967 Referendum. Would it be possible then to employ every technique in the lexicon of the 1967 Referendum politicking and expect a similar result? Or have the patterns of discrimination toward the Indigenous people become more insidious and nuanced? In either case, drawing lessons from such strategies will help facilitate significant political and social transformation for the betterment of Aboriginal people.

The process by which people become convinced and persuaded to change their attitudes, or to see their interests in new ways, often involves communicative processes which leverage both emotion *and* cognition (Risse, Ropp & Sikkink 1999). In the early stages of the campaign, the political influence of the Aboriginal cause was inconsequential and so the campaigners depended upon an appeal to abstract matters – equality, social justice and writing the wrongs of history (Attwood & Markus 1997) rather than a dissemination of purely logical arguments. This strategy of moral persuasion employed by the campaigners helped remind the government and non-Indigenous population of their own identity as promoters of human rights. Appeals to emotion and evocation of symbols through such iconic posters as the 'Yes' for Aborigines further highlighted the pattern of discrimination within Australian society. However, these communicative processes are still not sufficient in order to create a continuous divergence from the pattern of discrimination. Rather, sustainable improvements in conditions for Aboriginal people requires the political system to establish the rule of law.

The process of social and political reform often also begins with a government body's pursuit of exogenously-defined and strategically-motivated adaptation as a response to growing domestic pressures so as to pacify any external criticism. Unfortunately, any adjustment to past discourse and behaviour is done without necessarily believing in the soundness of such change (Risse, Ropp & Sikkink 1999). Whilst these changes may be cosmetic in nature and thus may not provide a continuous divergence from a pattern of discrimination, any change to domestic law as part of this process makes it very difficult for said government bodies to back-step or deny the validity of the change. Over time, such government bodies may come to believe what they say, particularly if they say it publicly (Risse, Ropp & Sikkink 1999). Throughout the decade-long referendum campaign, nearly all of the discriminatory State and Commonwealth legislation targeted by reformers in the 1950s had been repealed (Bandler 1989). Such legislation made it very hard for the government to then deny amendments to sections 127 and 51(xxvi) of the Constitution. However, one should not expect a stable amelioration of the Indigenous peoples' welfare; improvements were brought about through pressure and so, should the pressure decrease at any point, the government may return to discrimination.

Where a nation values its membership in an emerging community of liberal states, it will be vulnerable to international pressures in reforming discriminatory policies. Such repressive governments can be denounced as pariah which do not belong in the liberal community. Some repressive governments might not care. Others, however, feel deeply offended, because they want to belong to the broader liberal community; leaders are convinced that their behaviour is inconsistent with an identity to which they aspire (Risse, Ropp & Sikkink 1999).

The Holt government prevaricated until a recognition of the remarkably large 'Yes' vote and growing calls for the government to play a greater role forced it to consider the matter. Attwood and Markus (1997) state that it was clear that considerations of national and international opinion were uppermost in the Coalition government's decision making, citing Holt as saying, 'we must take into account the place that the Aborigine question occupies in Australia's international relationships'. Surely the combination of pressure from below in the form of domestic pressure and pressure from above on the international stage reduces the likelihood for the pattern of discrimination to continue. Yet it could be argued that whilst the heightened international and domestic pressures may mitigate discriminatory practices in the short term, such concern may allow the initial 'rally around the flag' effect to wear off and momentum toward social and political change to slow.

The above-mentioned mechanisms in isolation are insufficient when lasting social and political change is desired, but a configuration of all three together for a sustained period is likely to achieve a continuous divergence from a pattern of discrimination and allow for long lasting improvements in Aboriginal welfare. Political and social change requires time; it is for the most part a communicative process and as such takes time to engage in the kind of dialogue and contestation inherent to communication (Risse, Ropp & Sikkink 1999). The campaign that led to the 1967 Referendum spanned a decade, with Bandler recalling 'the hectic pace maintained by all our office holders and members...had drained us' (1989, p. 110). In order to achieve a continuous divergence in the pattern of discrimination, it is crucial that campaigners keep up the pressure.

In 1967, after ten years of campaigning, a referendum was held to change the Australian Constitution. More than 90 per cent of Australian voters chose 'Yes' to count Aboriginal and Torres Strait Islander peoples in the census and give the Australian Government the power to make laws for Aboriginal and Torres Strait Islander peoples. However, the social and political effect of the 1967 Referendum went far beyond its legal significance; we are able to draw key lessons from the strategies used which instigated such significant social and political change. The sustained use of moral persuasion toward a governmental body that identifies with a liberal community is likely to bring about social and political change, especially when its pattern of discrimination is made known on the international stage.

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