

Prologue

The Crimson Thread of Whiteness

In the ten years of debate that preceded the federation of the Australian colonies, the Federation Fathers gave no thought to how Aboriginal people might be included in the nation-to-be. Nor did they give any thought to how Aboriginal people might be excluded. Indigenous Australians barely registered in their planning for the new nation. The only significant exception came at the beginning of the federation debates, not from an Australian but from a New Zealand delegate, Captain William Russell. (At this time, New Zealand was a potential member of an Australasian nation-state that might also have included Fiji and other Pacific islands.) Russell pointed to the Australians' failure to address the status and rights of the Indigenous people as a serious flaw in the proceedings and a substantial point of difference between the countries on either side of the Tasman Sea.¹ However, this trans-Tasman warning fell on deaf Australian ears, and New Zealand's withdrawal from the federation debates soon afterwards spared the Federation Fathers further reminders of their remissness in Aboriginal affairs.

While the federation debates and referenda lurched towards their ultimate goal, anthropologists Baldwin Spencer and Frank Gillen were conducting research among the Aboriginal people of central Australia. In 1899 they published a book, *The native tribes of central Australia*, which became a classic of Australian anthropology; it was followed by numerous other works, written jointly or individually. In line with contemporary evolutionary theory, their studies were premised on the assumption that 'the Australian aborigines are the most primitive or backward race' on Earth.² Relics of the Stone Age, they were doomed, and little more could be done other than make their 'path to final extinction...as pleasant as possible'.³ Spencer and Gillen's investigations revealed new intricacies in

Aboriginal cultures, influencing the theories of European intellectuals such as Emile Durkheim and Sigmund Freud. Yet they also entrenched the twin assumptions that Aboriginal people were peculiarly primitive, and that their grasp upon life was remarkably tenuous. These assumptions pervaded popular as much as scientific perspectives.

Although attitudes toward Aboriginal people were negative, they were not necessarily malicious. Insofar as turn-of-the-twentieth-century white Australians thought about Aboriginal people at all — and this seems to have been seldom — their attitude was more commonly apathy than malevolence, since Aboriginal people were not usually perceived as a threat. Lyn Spillman observes that while Aboriginal people ‘were occasionally seen as an “other” to a national identity built around racism and progress, they were not a threatening other’.⁴ There were local concerns about Aboriginal people: they were unsanitary or unsightly in the view of townspeople living near fringe camps; they were drunk or disruptive in the view of the guardians of public decency; they still posed a physical danger to white intruders out on the far fringes of the frontier in the Centre, Kimberley and Arnhem Land. But none of these added up to a threat to Australia’s national existence. In his influential 1893 forecast of looming global racial conflict, *National life and character*, Victorian member of parliament Charles Pearson very seldom mentioned Aboriginal people, and then only to dismiss them as an ‘evanescent race’, in contrast to the dynamic, virile, enduring and therefore dangerous Asian.⁵

Despite being dismissed as weak and ineffectual, and despite inattention to them in the federation debates, the Constitution that consummated the federation process referred twice to Aboriginal people. Both references were exclusionary. Section 51(xxvi) empowered the federal parliament to make laws 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’. Section 127 stated that, ‘In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.’ The records of the federation conferences and conventions give little indication of why these clauses were included in the Constitution, though several commentators have proffered explanations.

Robert Garran, who officiated at the federation conferences of the late 1890s and later became one of the most respected authorities on the Australian Constitution, claimed that the reference to ‘the aboriginal race’

in section 51(xxvi) was a mere afterthought. He recalled that ‘throughout the debate I don’t think a word was said about the aborigines. It simply did not occur to anybody that Federal power over them was needed.’ He explained that the targets of the provision were ‘introduced races, like the Kanakas’, and the reference to Aboriginal people was inserted because the ‘federating colonies were very jealous of their powers, and assigned nothing to the Federal Parliament unless they thought it very definitely a matter of federal concern’.⁶ Garran’s explanation seems plausible insofar as Aboriginal people — unlike Asians and Pacific Islanders — were not considered a threat to the Australian nation, and therefore did not warrant the federal parliament having powers to make ‘special laws’ in regard to them. However, it seems inadequate to explain why, when Aboriginal people were usually completely ignored in the constitution-making process, this sub-section should refer specifically to them. After all, no other race or ethnic group was specified anywhere in the Constitution.

But perhaps the ‘aboriginal race’ of section 51(xxvi) did not originally refer exclusively to Indigenous Australians. The clause that eventually became section 51(xxvi) first appeared in the constitutional draft of 1891, at which time New Zealand was a prospective member of the federation. Hugh Mahon, a member of the first Commonwealth parliament, noted that this section possibly ‘originated in a desire to preserve the rights of the New Zealand Legislature in respect to the Maoris’. At this time, Maori enjoyed far more extensive civil rights than did Aboriginal people in any Australian colony, and non-indigenous New Zealanders already boasted of the superiority of their race-relations record over that of their trans-Tasman neighbours. After New Zealand withdrew from the federation process, the clause limiting Commonwealth powers over the ‘aboriginal race’ may have been retained because of the federal leaders’ lack of interest in Aboriginal affairs. As Mahon explained, in a reversal of Garran’s claim: ‘It is not clear that the States were unduly desirous of retaining control of the natives. The position is probably due to the reluctance of the Federalists to assume a burden rather than to the determination of the States to preserve a right.’⁷ Despite their differences, Mahon’s and Garran’s explanations share one notable theme: for the federal leaders, Aboriginal people were of little consequence.

The motives behind section 127, which appeared in a ‘Miscellaneous’ chapter near the end of the Constitution, are equally uncertain. Its primary purpose probably concerned financial apportionments between the states

and the Commonwealth, which were to be made on a per capita basis. Excluding 'aboriginal natives' from the count implied that they were insignificant for the purposes of public expenditure. This section also meant that 'aboriginal natives' would not be counted for the purpose of determining the number of parliamentary seats to be allocated to each state, but it did not debar them from exercising the franchise.⁸ Like section 51(xxvi), section 127 rested on an assumption that Aboriginal people counted for little. Neither section formally excluded them from the legal rights and entitlements of Australian citizenship, but both implied that Aboriginal people were outside the community of the Australian nation.

One reason why Aboriginal people were shut out of the national community was that, as an irredeemably primitive race, they were deemed incapable of exercising the rights of citizenship or appreciating its responsibilities. Moreover, they were considered a fleeting problem. Some contemporary commentators lamented their projected extinction; some celebrated the prospect; most simply accepted it as the outcome of inexorable forces of nature over which human beings were ultimately powerless. At the time of Federation, it seemed to settler Australians that the Aboriginal race literally had no future. A forward-looking nation foresaw an Australia devoid of Aboriginal people.⁹

The other reason behind the national exclusion of Aboriginal people lay in the ideas of ethnic nationalism, the paramount expression of which was the white Australia policy. Projected outwards, the white Australia policy was directed primarily against Asians, but it was more than merely the sub-text of a restrictive immigration program. Whiteness was a treasured quality of early twentieth-century settler Australians, an emblem of their status as a civilised race and their place in the world at the forefront of progress. Whiteness was also a badge of Britishness, and it was Britishness that underpinned Australia's nationhood, providing the heritage, history and culture that made Australia heir to a glorious past and embedded it in deep time. In 1890, Henry Parkes invoked the 'crimson thread of kinship' to affirm the ethnic solidarity of white Australians, both with each other and with their British parent. His metaphor became a slogan of the federation movement. Britishness, conceived as a combination of biological ancestry and cultural heritage, provided the ethnic foundations of Australian nationalism.¹⁰ Its outward manifestation — whiteness — put Aboriginal people beyond the pale of the nation.

In the federation era, Aboriginal people and the white Australia policy were seldom discussed together. In one of the few instances in which they were, Attorney-General and future Prime Minister Alfred Deakin declared in 1901 that:

In another century the probability is that Australia will be a White Continent with not a black or even dark skin among its inhabitants. The Aboriginal race has died out in the South and is dying fast in the North and West even where most gently treated. Other races are to be excluded by legislation if they are tinted to any degree. The yellow, the brown, and the copper-coloured are to be forbidden to land anywhere.¹¹

Deakin's assumptions were widely shared: active measures had to be taken to safeguard white Australia against coloured aliens, but not against the coloured indigenes, since they were expiring independently of government action or inaction. The white Australia ideal faced little threat from a dying race.

Early twentieth-century Australians maintained that nationhood, equality and democracy could flourish only in a society whose members were drawn from a common stock, the outward sign of which was similarity of complexion.¹² Yet Aboriginal exclusion from political participation in the new nation was not a foregone conclusion at the time of Federation, as demonstrated by the passage through parliament of the first item of legislation to specify the rights of the Australian citizen, the *Commonwealth Franchise Act 1902*.

As originally introduced by Senator Richard O'Connor, government leader in the Senate, the franchise Bill guaranteed a uniform adult franchise with no exclusions on racial or gender grounds. Parliament devoted far more debating time to the Bill's enfranchisement of women than to its awarding the vote to Aboriginal people, but the latter did affront some members. Western Australian Senator Matheson protested that it would be 'repugnant and atrocious' to enfranchise 'an aboriginal man, or aboriginal lubra or gin — a horrible, degraded, dirty creature'. He proposed an amendment excluding the 'native races' of Australia, Asia, Africa and the Pacific from the franchise.¹³

Defending the Bill in its original form, Senator O'Connor proclaimed his devotion to the white Australia policy, but protested that Matheson's

amendment represented ‘a monstrous and a savage application of this principle of a white Australia’. It was entirely appropriate, O’Connor argued, to prohibit the entry of coloured races into the nation, but improper to curtail the rights of coloured persons already legitimately resident here. He pointed out that in four states (New South Wales, Victoria, South Australia and Tasmania), Aboriginal people already possessed the state franchise on the same basis as white people; in the other two (Queensland and Western Australia), they held a restricted right to vote according to a property qualification. To deprive these people of the federal vote would be to apply the white Australia doctrine ‘with a savagery which is quite unworthy of the beginnings of this federation’.¹⁴

In the ensuing debate, some senators argued that Aboriginal enfranchisement should be considered separately from that of ‘coloured aliens’. South Australian Senator McGregor said that he would ‘be very sorry if we took away a right from a declining race like the aborigines, but with respect to Chinese, Japanese, Africans, and other aliens, who are much more dangerous than the aborigines, I should be quite willing to take some step’.¹⁵ A majority of senators seem to have agreed with McGregor’s assessment of Aboriginal people as ‘a harmless race’, as against the menacing Asian and African, for they passed the Bill in a form enfranchising Aboriginal people but disfranchising Asians, Africans and Pacific Islanders.

The Bill then proceeded to the House of Representatives, where much the same arguments were rehashed. Here, however, a majority of members were in favour of reinstating the exclusion of Aboriginal people, primarily on the grounds that the Aboriginal vote would be manipulated. Most Aboriginal people, several members claimed, lived in the vast pastoral lands of northern and central Australia where they were employed under conditions of servitude. They were too ignorant and unintelligent to appreciate the significance of voting, and so firmly under the control of their white bosses that they would do his bidding and vote *en masse* as the station owners directed. Implicitly, these members agreed with Senator McGregor’s assessment of Aboriginal people as in themselves ‘harmless’, but considered them potentially harmful because of their manipulability. No one expressed a fear that Aboriginal people, acting independently, might exercise the franchise in ways hostile to white interests, as if they could not credit them with sufficient intelligence and initiative to do so. It was not the agency of Aboriginal people they feared, but its lack: their supposed weakness, ineffectualness and propensity to be manipulated by others.¹⁶

When the Bill returned from the House to the Senate with the clause excluding Aboriginal people reinstated, the arguments for and against exclusion were recycled yet again. By this time, however, Senator O'Connor conceded that the government was prepared to accept the exclusion, because it was 'not worth while, for the sake of this particular provision, to stand out for our own way, and so run the risk of losing the Bill'.¹⁷ The government was willing to sacrifice the principle of racial equality in the franchise to preserve the principle of gender equality. After all, as O'Connor explained several times, racial equality in the franchise would affect few voters, and that few would diminish over time as coloured aliens were denied entry and Aboriginal people continued to die out. The senators eventually passed the *Commonwealth Franchise Act 1902* with the stipulation that, 'No aboriginal native of Australia, Asia, Africa or the Islands of the Pacific except New Zealand shall be entitled to have his name placed on an Electoral Roll unless so entitled under section forty-one of the Constitution.' The right to vote would be circumscribed by what Senator O'Connor had only a few weeks before disparaged as 'a monstrous and a savage application of [the] principle of a white Australia'.

One reason many senators agreed to pass the amended franchise Bill is that they believed section 41 of the Constitution guaranteed the federal vote to Aboriginal people in those states where they already possessed the franchise.¹⁸ Section 41 provided that:

No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

This provision had been inserted to ensure that women in South Australia (the only colony to have enfranchised women at this stage of the Constitution's drafting) would qualify for the federal vote. It also might appear to protect an Aboriginal right to the federal vote in those states that enfranchised Indigenous people.

However, Robert Garran and fellow lawyer John Quick propounded a different interpretation, insisting that a right under section 41 must have been acquired by an individual prior to the passage of the 1902 *Franchise Act*. Thus only those Aboriginal persons who were on the electoral rolls of New South Wales, Victoria, South Australia and Tasmania in 1902

possessed the Commonwealth franchise under this section. For all others, including later generations of Aboriginal people, the provision was inapplicable. It was an extraordinarily narrow construal of section 41. However, it prevailed throughout the first half of the twentieth century, despite a 1924 ruling in the case of an Indian, Mitta Bullosh, which interpreted section 41 as a guarantee of prospective, rather than merely retrospective, voting rights. In the *Bullosh* case, the Commonwealth failed to press a High Court challenge because of pressure from Britain, concerned about the status of its Indian subjects throughout the empire.¹⁹ Lacking supporters as influential as the British Secretary of State for the Colonies, Aboriginal people continued to have their voting entitlements under section 41 curtailed.

The *Franchise Act 1902* set the precedent for future legislation. Acts such as the *Invalid and Old-Age Pensions Act 1908* and the *Maternity Allowance Act 1912* included similar clauses excluding ‘aboriginal natives of Australia, Asia, Africa and the islands of the Pacific’ (usually excepting New Zealand) from rights and entitlements enjoyed by other Australians. John Chesterman and Brian Galligan observe that, once in place, ‘the exclusionary regime developed an administrative logic of its own in which the category of “aboriginal native” was developed by generations of ministers and bureaucrats’.²⁰ A fast-growing thicket of legislation and interpretation progressively excluded Aboriginal people from the political nation.

The states, meanwhile, developed their own regimes in Aboriginal affairs. Before Federation, each colony had its own Aboriginal laws and administrations, and the differences between them deepened in the decades thereafter. State policies in the early twentieth century were inconsistent, vacillating between protection, segregation and absorption. While Queensland, for example, adopted an increasingly rigorous segregation policy, New South Wales and Victoria pursued a course of partial absorption, interlaced with contradictory elements of segregation and protection. Some public figures recommended that the chaos of state Aboriginal laws and administrations be replaced by a unified system of Commonwealth control since, as Hugh Mahon put it, responsibility for the native people ‘is one of the inevitable appendages of nationhood’.²¹ The Commonwealth’s acquisition of responsibility for the Northern Territory in 1911, and thereby its entry into Aboriginal administration, raised hopes that this might be a step towards federal control of Aboriginal affairs.²² It was not. Divided responsibility continued, as did the *de facto* national policy in Aboriginal affairs: neglect.

Aboriginal exclusion from the rights and entitlements of citizenship was complicated by the ambiguity of the word 'aboriginal'. In the early twentieth century, the legal category 'aboriginal native of Australia' was much narrower than that encompassed by today's 'Aboriginal'. Following Attorney-General Deakin's 1901 determination that half-castes were not 'aboriginal natives' within the meaning of section 127 of the Constitution, the rule followed for determining a person's eligibility for the Commonwealth franchise and social welfare payments was that those who were preponderantly of Aboriginal descent were 'aboriginal natives', while those of 50 per cent or less Aboriginal ancestry were not. Thus a person who was literally half-caste was not an 'aboriginal native' for Commonwealth legal purposes and was, in theory, entitled to the rights and benefits of the white citizen. For many, this was negated by a further proviso that those persons of any degree of Aboriginal ancestry who lived on state reserves or received state welfare benefits were ineligible for Commonwealth welfare payments.²³ In this, as in most respects, the federal authorities shrugged aside responsibility for Aboriginal people on to the states.

Deakin's 50 per cent ruling was a mere legal convenience drawing boundaries around the category 'aboriginal native'. It meant little in practice, since each state had its own definition of 'aboriginal' and 'half-caste', usually inconsistent with each other and with the Commonwealth determination. Nonetheless, Deakin's ruling carried the implication that quantum of white ancestry determined whether an individual was included within the community of Australian citizens. The fact that Deakin set the quantum at 50 per cent indicates that appearance and colour were not to him the sole criteria; persons of 50 per cent Aboriginal ancestry are overtly Aboriginal in complexion and physical features. Yet the notion that the 'crimson thread of kinship' could draw persons of Aboriginal descent across the racial divide into white Australia had a long, albeit contested, career. Some administrators in the interwar years took the notion much further than Deakin's determination of convenience, as we shall see in Chapter 1.