

EMBEDDING THE APOLOGY IN THE NATION'S IDENTITY

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In the postcolonial context, political apologies to indigenous peoples are often intended as a way of addressing past injustices. At the same time, apologies and the narratives of wrongdoing in which they are embedded, also touch on questions about national identity and the emotional fabric of a nation—its pride, shame and sense of itself. As Fraser and Honneth (2003) have argued, apologies are not simply about justice as a redistribution of rights or land, but also about *recognition*, and as such they speak to the way that peoples within a nation recognise each other and how those acts of recognition shape the nation's identity. In Australia and New Zealand, these apologies have become part of a social narrative that attempts to repair fractures in the nation's collective memory as well as assuage deep-seated public anxieties about the cultural and political encounters of the past. In this respect, they are central to the national memory-making process—a means of constructing new narratives about healing and reconciliation that frame a national identity that has made peace with history and can, accordingly, move into a “resettled” future.

The act of apologising as a practice of repair does not, however, guarantee its efficacy. As we know from the many apologies that have been proffered, but have had no transformative effect, the success of apology as a transformative speech act demands that it meets a number of conditions, including who apologises, the form of words, the extent of the acknowledgment, the timing and, importantly, the social and political processes in which the apology is embedded (Celermajer 2009). In this article we pick up on this latter criterion for success, arguing that if apologies are to be transformative, they need to engage the nation in its social dimensions and not only through its formal institutions.

Powerful claims for the recognition of indigenous rights and reparation for wrongs have been mounted by indigenous peoples in New Zealand and Australia in recent years.¹ In both countries, there have been a series of responses, including apologies. Nevertheless, the trajectories of these responses have been markedly different, particularly with respect to the relative role that formal institutional recognition and social movements have played. In light of this, we consider the ways in which social movements have, or have not, engaged apologies in Australia and New Zealand and compare how apologies

have been embedded in social movements and formal institutions. We argue that the institutionalisation of Crown apologies to New Zealand Māori has led to a certain alienation of these apologies from broader Pākehā society, whereas the failure to institutionalise recognition of Aboriginal and Torres Strait Islander rights in Australia has led to a deeper social engagement with questions of national identity but has not culminated in reparations or substantive changes in the political or economic circumstances of Aboriginal peoples.

MAPPING THE NATION-BUILDING NARRATIVE

As Benedict Anderson (1983) and Eric Hobsbawm (1984) have argued, the modern nation state is largely constituted through the construction of unifying narratives which do not simply overlay common identities, histories or loyalties, but underpin them. In particular, shared cultural memories play a crucial role in the nation-building project. They form the basis of narratives about national identity that serve to mobilise and unite diverse social groups in times of crisis or hardship. In this respect, common memories act as aggregating devices that promote social cohesion while, conversely, the disruption of those memories with alternative versions of the past heightens awareness about the fragility of national narratives. According to Ní Aoláin and Campbell (2005: 176) these competing versions of national history become especially vexing for ruling elites in societies where deep-seated divisions in the body politic have resulted in, or threatened, political violence.

In settler nations, the construction of national narratives rests on a series of competing frames of reference that disrupt beliefs about uniformly harmonious race relations. The existence of these conflicting historical memories underscores tensions in the present, particularly when marginalised groups generate a high degree of visibility around their experiences in ways that expose contradictions and inconsistencies in canonical national histories (see, for example, Eidson 2000, Moreno Luzón 2007). When these counter-memories are publicly articulated, the orthodoxies of power and collective identity that lie at the heart of postcolonial democracies are unsettled and the notion of a common historical enterprise is directly challenged.

In Australia and New Zealand, early colonial identity narratives were derived, in part, from the act of mapping the land—a new geography of place and possibility where belonging and identity were yet to be incorporated into the story of the nation. The landscape was a physical presence—a challenging, difficult and alien environment that was not yet “home”, but it was also a trope for a nascent national identity and, in this respect, early colonial narratives centred on the idea of the land as a *tabula rasa* or, in the case of Australia, *terra nullius*—a blank slate upon which meaning could be inscribed. Later, these narratives shifted as it became clear that, far from being devoid of

meaning, the landscape within which the settlers found themselves was a world that was already richly detailed and storied by those who had come before them. As Richard White (1991) noted, the 17th century French settlers who traversed the *pays d'en haut*, the lands upriver from Montreal, originally believed they were exploring and discovering new worlds but in fact they were doing considerably more than this—rather, they were “cocreators of a world in the making” (White 1991: 1).

Similarly, many of the early settlers in Australia and New Zealand began their travels in the new land with the expectation that their mapping of “place”, the very act of naming and narration through their stories of exploration and discovery, would call it into being in ways that would provide them with a topography of belonging and, ultimately, a collective sense of nationhood. In Australian discourse, this framing of their movement into and across the landscape is evident in contemporary descriptions of, for example, the “first” settlers, “first” explorers to cross overland, early “pioneers” and so on. In naming the land through the narrative conventions of their own cultural mores, the settlers were effectively re-mapping a world that had been mapped before, because sitting beneath their own cartographies were the land narratives of indigenous peoples and those too, spoke of place, belonging and identity. In this respect, the persistence of indigenous collective memories has always represented the potential for disrupting and unsettling settler narratives in ways that can fragment the nation’s sense of its historical identity.

These indigenous maps, narratives, sovereignties or patterns of meaning were in existence long before first contact, and indigenous peoples’ later efforts to bring them into the official discourses of the nation challenged the dominant narratives that had rendered them invisible. In the latter part of the 20th century, in the context of new social movements, self-determination movements, the international indigenous movement, and the new global turn to what Olick (2007) has called “the politics of regret”, indigenous claims took on an unprecedented salience. As competing indigenous and colonial historical interests entered the public domain, they were often the subject of bitter and protracted debate. In these situations, it became apparent that the nation-building project was founded on powerful and at times highly oppositional narratives of dispossession and dislocation. When these kinds of historical memories intrude upon one another and civil order is threatened, political elites mobilise to contain potential violence or social discord. This can happen in a variety of ways—through the concealment or creation of silences around the injustices of the past, as was the case in parts of German society after the Second World War (Langenbacher 2003) and in Spain in the post-Franco period (Davis 2005), or by selectively shaping national memories that speak to the *preferred* narratives of the past (Assman 2008: 55).

Indigenous peoples in New Zealand and Australia have actively challenged these political silences with respect to their own experiences of historical injustice and in doing so they have opened up new spaces for political engagement. In some cases, political apologies have subsequently been incorporated into the national conversation. Consequently, for some groups, the purpose of these dialogues is to negotiate the past so that a common memory can be established and the work of nation-building can continue in a spirit of reconciliation. Gooder and Jacobs (2000) have been critical of such reconciliation narratives which they saw as seeking to paste over the contentious politics that provide the only possibility for the claims of indigenous peoples to remain alive and thus for them to achieve some type of justice. Negotiating a space between those who look to reconciliation strategies as solutions to legacies of injustice and those who condemn them for avoiding the confrontation with injustice, Boraine (2006: 22) argued that reconciliation in divided societies is made possible by the creation of common memories that are acknowledged by those who “implemented the unjust system, those who fought against it, and the many more who were in the middle who claimed not to know what was happening in their country”. Indeed many commentators have remarked upon the need for wrong-doing to be acknowledged before reconciliation can take place and new forms of nationhood can be forged (see, for example, Boraine 2006, Karn 2006, Laplante and Theidon 2007, Webster 2007). In this sense, the question of justice has implications for issues of distribution, for example, the return of properties stolen or the redistribution of political authority—but it also has implications in terms of recognition and identity formation.

Precisely because of this two dimensional quality of justice, the mechanisms that postcolonial democracies developed in the latter part of the 20th century (including trials, reparation, truth commissions and apologies) must do more than simply re-balance the ledger. In particular, the acknowledgement of historical injustices and the delivery of apologies by political elites and state representatives in and of themselves do not lead to a reconciled set of cultural and political relationships from which the process of national identity-building automatically ensues. If apologies are to transform relationships and the dynamics of a nation comprised of groups with radically different experiences of the nation's history, then the process in which the apology is embedded is as important as the final speech act itself. In Australia and New Zealand the social and political movements that have coalesced around the demand for state apologies and reparations for historical injustices have their origins in very different historical experiences and have resulted in different outcomes. We consider each of these cases in turn.

NEW ZEALAND

Crown apologies to Māori peoples for breaches of the Treaty of Waitangi and a range of related historical injustices have become an increasingly common component of the Treaty settlement process in New Zealand. Generally speaking, it is accepted that a formal apology must be made if a settlement is to take effect, and guidelines for the resolution of historical claims subsequently have been developed that govern the Crown's handling of grievances, including the explicit acknowledgement of historical injustices and a statement of contrition (Office of Treaty Settlements 2002).

Contemporary Crown apologies are usually incorporated into the formal Deeds of Settlement that are signed by claimants and the Crown at the conclusion of the claims process. To this end, the Crown makes a formal, written acknowledgement of wrong-doing and specifies exactly what is being apologised for ("the acknowledgement"). The acknowledgement is a summary of wrongs drawn from an historical account which has been previously negotiated by both parties to the settlement.² This acknowledgement is followed by the apology which usually includes the phrase, "the Crown profoundly regrets and unreservedly apologises."³ The apology ends with a variation on the words: "Accordingly, with this apology the Crown seeks to atone for its past wrongs, begin the process of healing and make a significant step towards rebuilding a lasting relationship based on mutual trust and cooperation" (see, the Ngāti Apa (North Island) Claims Settlement Bill 2009 and the *Affiliate Te Arawa Iwi and Hapū Claims Settlement Act 2008*). These acknowledgements and apologies are then passed into legislation. In one instance, a statement of forgiveness by the Treaty partner, Taranaki Whānui ki Te Upoko o Te Ika, has been included in the Deed of Settlement.⁴ The Deed of Settlement is signed in public and a verbal apology is delivered by a representative of the Crown in a public forum, for example, on a *marae* or in Parliament, including, most notably, an apology to the Waikato-Tainui people in 1995 which was personally delivered by Queen Elizabeth II.

However apologies have not always been included in Treaty settlements in New Zealand (for example they were entirely absent from a series of proto-settlements signed in the 1940s), and it is likely that the recent inclusion of Crown apologies has been spurred by international human rights developments elsewhere and the recognition of indigenous rights in several United Nations fora (Coxhead 2002), as well as in response to growing calls from Māoridom for the Crown, as part of the reparation process, to express remorse for historical wrong-doing. Certainly, Māori protest has been pivotal in shaping the Crown's willingness to negotiate with affected groups. Indeed, the Waitangi Tribunal itself, as the state-sanctioned mechanism for the resolution of grievances between Māori and the Crown, was established during a period

of widespread Māori activism against Crown injustices and in this respect, the willingness to extend apologies can be seen as originating from the Crown's desire to circumvent social discord and protest. Yet, while the language of apologies is future-focused and accentuates the need for "healing", the Treaty settlement process has been largely one that emphasises the role of the Crown, its political representatives, and groups of Crown-mandated Māori *hapū* and *iwi* claimants, and in this respect the narratives of reconciliation have not, by and large, been taken up by the wider New Zealand public.

Indeed, many conservative politicians have had some success in rallying sections of the New Zealand public behind the argument that Treaty claims have divided the nation and impeded the nation-building project.⁵ For example, in 2004, the leader of the National Party, Don Brash, delivered a controversial speech on nationhood to the Orewa Rotary Club. The speech (known as "The Orewa Speech") received considerable media attention and the National Party's popularity in public opinion polls surged (*The Press* 2004). Brash argued that the Treaty of Waitangi, as the founding document of the nation, had in the past 20 years been "wrenched out of its 1840s context and become the plaything of those who would divide New Zealanders from one another, not unite us" (*Scoop Independent News* 2004). In effect, Brash was playing to public anxieties about Māori and Pākehā race relations. Thus, the trajectory of apologies to indigenous peoples in New Zealand has been part of a fraught process involving protest and dissent among groups with widely divergent views about nationhood and social justice. It is in this light that the origins and establishment of the Waitangi Tribunal as a state mechanism for mediating historical injustices under conditions of what has been, at times, intense intercultural tension, needs to be explored.

Māori Protest and the Establishment of the Waitangi Tribunal.

On 10 October 1975 the Treaty of Waitangi Act was passed by the New Zealand Parliament. It provided for the establishment of a Waitangi Tribunal to investigate Māori grievances. But the Tribunal was empowered solely to make non-binding recommendations to the government, and proposals for the new body to be granted jurisdiction to investigate historical Māori grievances dating back to the signing of the Treaty of Waitangi in 1840 were also dropped from the final legislation. The Tribunal was therefore only able to investigate contemporary grievances, greatly limiting its initial appeal to Māori, many of whom had been dispossessed of most of their lands and other resources in the 19th century.

Three days after the passage of the Act, on 13 October, an estimated 5000 Māori converged on Parliament as the 1975 Land March arrived in Wellington after a month-long trek from Te Hapua in the Far North. The Land March

was the culmination of long-term Māori dissatisfaction and anger about the Crown “land grab” or alienation of Māori land. Throughout the 1970s, Māori land rights campaigns had gathered in strength and numbers, and occupations at Bastion Point and Raglan served to mobilise a new generation of Māori. As Harris (2004: 70) noted: “By 1975 the many specific land issues taking shape around the country were weaving together.” Other protest groups and their activities such as the Māori Student’s Association and the Māori Organisation on Human Rights (MOOHR) and the *Te Hokioi* newsletter also gained considerable ground during this period, but it was Ngā Tamatoa, a Māori activist organisation, which provided a platform for Māori protest that has endured into the 21st century. Harris (2004: 42) noted:

Ngā Tamatoa was the progenitor of a Māori movement that would eventually comprise a potent collection of Māori protest groups and individuals; politically conscious, radical and unwaveringly committed to the pursuit of tino rangatiratanga.

As Māori protest became increasingly vocal during the 1960s and 1970s, many government ministers were alarmed by the prospect of widespread civil unrest, and the Waitangi Tribunal was established at a period when these fears were at their height. Belgrave (2005: 80) has suggested that the Waitangi Tribunal came about as a response to “requests” from Māori leaders across the political spectrum to provide a mechanism to bring the Treaty of Waitangi into the legal system, rather than as a response to “strident” Māori protest. However, given the anxieties about race relations that were expressed by many government ministers and Crown representatives at the time, it seems likely that Māori protest movements had a significant impact on the decision to create this new mechanism for resolving Treaty claims (Coxhead 2002). The anxieties of government representatives continued well beyond 1975 and evidence of their ongoing concern can be found, for example, in a letter written in 1977 by the Chief Judge of the Māori Land Court, K. Gillanders Scott, to the Secretary of the Department of Māori Affairs when delays in making the Tribunal operational were causing friction between Māori and the Crown. Scott wrote,

My concern is that the Tribunal can be seen as functioning and as being effective. ... The Treaty of Waitangi Act 1975 came into force on 11 October 1975. Irrespective of what may or may not be said as to the extent of its jurisdiction, it seems a likely safety-valve for pent-up feelings, emotions and grievances.⁶

In 1979, the Ngāi Tahu Māori Trust Board advised the House of Representatives that outstanding grievances would limit the potential for future peace and prosperity in the South Island region. It was noted by the Trust Board that,

In our view... we have less than two decades to conclude the remaining land matters. We see it as a political and cultural imperative for the harmonious development of our people and our region that the old sores must be healed over in a generous spirit of reconciliation. The old sores must not be permitted to continue unheeded and unhealed into another century. We are led to this view by our appreciation of the general situation in New Zealand, as well as by our perception of the changing Māori context of our own region. To remove the land grievance is to remove the root of the underlying resentment which feeds the increasing tensions. (Petition of the Ngaitahu Māori Trust Board on behalf of Ngaitahu elders and people of Otakou: Presented in House of Representatives, 7 December 1979, Submissions to Māori Affairs Select Committee 20 March 1980, cited in Belgrave 2005: 198)

Although the Waitangi Tribunal established after 1975 had gradually grown in stature among many Māori following a series of favourable decisions, mostly on environmental issues, its inability to hear historical claims was a source of ongoing dissatisfaction. Responding to growing agitation on this issue, in 1988 the 4th Labour Government finally passed amending legislation empowering the Tribunal to investigate historical Māori grievances dating back to 1840. The floodgates were effectively opened, and consequently the number of claims filed with the Tribunal rapidly escalated.

Many politicians admitted that a primary motive for allowing retrospective claims to be heard was the fear of Māori political unrest. Whetu Tirikatene-Sullivan, the Member of Parliament for Southern Māori, noted the potential for increased racial tension if the Crown refused to acknowledge Māori Treaty rights. In a debate in the House of Parliament in 1988, as the Treaty of Waitangi Act was in the process of being amended she said,

Now we must have effective, equal participation in the rights and responsibilities of citizenship as described in the third article of the Treaty and I dedicate myself to that end. I compliment the Minister on his continuing raft of Bills that recognise that need. If that need is not recognised in our time and age, I am afraid that there will be an explosion in race relations. This Bill, others that have preceded it, and those that are being introduced in tandem with it and being discussed in the House today, will ally that explosive potential. If they do not, I am afraid that not even logic will contain it. (New Zealand Parliamentary Debates [NZPD], 5 May 1988)

Noel Scott, the Member for Tongariro made similar statements on the Treaty of Waitangi Amendment Bill: “[t]o leave the issues unresolved,” he said, “is to leave the nation in constant turmoil” (NZPD, 15 September 1988). In light of this, the establishment of the Waitangi Tribunal at a time when relations between Māori and the Crown were at particularly low ebb prompted a state-initiated engagement with the peace process that prevented the situation

from deteriorating further (Hamer 2004: 6). Māori protest movements created a powerful counter-narrative which disrupted the myth of peaceful, harmonious race relations that lay at the heart of the nation-building project. But aside from government fears that unresolved land grievances would spark widespread civil unrest, these protest movements also triggered deep-seated anxieties about New Zealand's national identity by raising questions about the nation's founding stories. The establishment of the Waitangi Tribunal can therefore be seen as a response to the deeply fractured relationship between Māori and the Crown which threatened to accelerate into wider civil disorder if land grievances were not formally acknowledged and officially addressed. At the time, it was apparent that reconciliation could only be possible if state mechanisms were created to resolve breaches of the Treaty of Waitangi and associated land grievances.

These processes have, however, been largely Crown-driven responses to the fear of civil disorder and outside the state-sanctioned framework there has been little input from the majority of non-Māori New Zealanders. In recent years, the disconnection of apologies from wider public concerns is, in part, because of the way that political apologies have been incorporated into the Treaty settlement process. In Australia, the apology to indigenous peoples was a national event, whereas in New Zealand, Crown apologies are offered to individual *hapū* 'Māori kinship-based groupings' and *iwi* 'tribal groups' for specific wrongs committed against them. In this respect they are smaller, more regionalised, local affairs and little connection is made at a national level between the apology and its potential significance for creating new kinds of national identity narratives. Moreover, in recent years, Crown policy has been to cluster together Treaty claims within a geographical area and deal with them as part of what is referred to as "large, natural groupings". The problem here is that there are often many competing claims among different tribal groups within a particular region and as a result local tribal histories can, at some stages of the process, sometimes be subsumed by more generic claims (Birdling 2004: 279). In light of this, the absence of any effective efforts to inform the general public about the background to such settlements and apologies have provided fertile grounds for Pākehā discontent, seen most vividly in the extraordinary outpouring of support for Don Brash in the wake of his Orewa speech. Ironically, to the extent that Pākehā comprehend the process at all, it has been argued that this is largely in real estate terms—one-off arrangements aimed at eliminating the "Māori problem" through the return of land and assets unfairly expropriated; whereas the aspiration of many Māori remains the establishment of a mutually beneficial and ongoing partnership with non-Māori (O'Malley 1999: 140). Significant issues concerning future power-sharing and constitutional arrangements consistent with the Treaty have therefore hardly even begun to be considered.

Yet if the institutionalisation of historical grievances and the incorporation of Crown apologies to Māori groups as a component of the settlement process have failed to engage the wider New Zealand public, the Australian experience of official apologies to Aboriginal peoples has been very different. The refusal of successive Australian governments to proffer state recognition of historical wrongs has culminated in the formation of a broad social movement that captured the attention of indigenous and settler Australians alike. When this recognition was finally given by the Australian Prime Minister in 2008, it came in response to an increasingly vocal public dissatisfaction with the official narrative of race relations that sat at the heart of Australian memory regimes about national identity and indigenous peoples.

AUSTRALIA

Before "Bringing Them Home": Political resistance and creation of a social movement.

In 2008, as the first speech act of the new Parliament, Australian Prime Minister Kevin Rudd delivered an official apology for the forced removal of Aboriginal and Torres Strait Islander children from their families (Rudd 2008). This act was however, the culmination of ten years of social activism and viewed more broadly a prolonged history of advocacy in the face of systematic failures to recognise the rights of Indigenous Australians dating back to colonisation (Moore 1995). For the purposes of setting the apology against this contextual frame, we begin by recalling what might be termed as the period of modern activism, beginning with those movements that underpinned the 1967 Referendum. While there are a number of ways of tracing this history of activism, the dimension we wish to highlight here concerns the long dialectic between social movements and social mobilisation on one hand, and institutional resistance on the other.

Commencing with the formation of the Australian Aborigines League in 1934 and its successor, the Aboriginal Advancement League formed in 1957, Aboriginal Australians have long formed civil society organisations that sought to establish positive recognition of their distinct rights and to alleviate the negative discrimination they experienced as a result of the systematic discrimination that characterised Australian law and policy well into the late 20th century (Attwood and Markus 1999). Reaching a national climax in terms of national public recognition in 1967 with the referendum on the status of Aboriginal Australians within the Commonwealth, the 30-odd years in the middle of the 20th century represented the efforts of indigenous and a small number of non-indigenous activists to bring the largely invisible issue of the place of Indigenous Australians in the Australian polity onto the national agenda. The Referendum received an unprecedented Yes vote of 91

percent, promising enormous changes not only to the constitutional but also to the political, civil and socio-economic status of Indigenous Australians. When, however, the discrimination against and conditions of Indigenous Australians remained largely unchanged, indigenous activism took a new and more assertive turn.⁷

This was most graphically embodied in the creation of an Aboriginal “Tent Embassy” on the lawns of the Federal Parliament House, a performance of protest not simply at the failure to achieve the equality that had, so the campaign implied, motivated 91 percent of Australians to vote “Yes” in 1967, but also the failure to recognise the political dimension of the rights violations. With clear evidence that constitutional accommodation or inclusion had amounted to concealing the issue back behind the curtains, the demand now turned to a more radical call for recognition of Indigenous Australians’ status as members of political entities with some type of sovereign status, equivalent to the other nation states with whom modern Australia understood it was required to negotiate in a context of sovereign equality. Certainly, the performative gesture of the Tent Embassy was not backed up by a serious threat of secession, but it did represent a form of contentious politics indicative of the frustration over the disparity between rhetorical recognition and actual changes to law and policy commensurate with addressing, in concrete terms, the discrimination and disadvantage that communities continued to experience. A similar frustration underlay the formation of the Deaths in Custody Watch Committees in the early 1980s, largely comprising families of the disproportionate number of indigenous men who had died in custody and who, seeking to address the circumstances of those deaths, had hit the brick wall of unresponsive criminal justice systems that failed in any way to acknowledge the structural racism underpinning those deaths (Tatz 2001). These indigenous groups led mobilisations similar to those evident in the struggles for land rights, legal representation and healthcare, but were different in their particular programmes and organisational tactics. These mobilisations were characterised by the attempt to link particular patterns of discrimination in imprisonment, health care, land rights and so on with the broader features of structural discrimination and non-recognition that underpinned and linked each dimension of violation.

The Royal Commission Into Aboriginal Deaths In Custody (RCIADIC) was announced in 1987. In 1991 when the Commission produced its final report (Johnson 1991), comprising five national volumes, 99 reports for each of the deaths investigated and separate reports for the states, Australian indigenous policy entered a new phase that might be characterised as the period of reporting and institutional acknowledgment. Consistent with the structural analysis that had characterised previous activism, the report represented an

unprecedented achievement in terms of documenting and analysing the web of interconnected historical and contemporary social, economic and political structures that undermined Aboriginal and Torres Strait Islanders' ability to enjoy their rights alongside their settler co-citizens. Thus, in the wake of the RCIADIC, Australia saw the formation of the Council for Aboriginal Reconciliation, mandated "to improve the relationships between Aboriginal and Torres Strait Islander peoples and the wider Australian community", and the appointment of the Aboriginal and Torres Strait Islander Social Justice Commissioner to the Human Rights and Equal Opportunity Commission, mandated to monitor the enjoyment of human rights by Indigenous Australians and to ensure that Australia fulfilled its international human rights obligations with respect to indigenous peoples. Both offices produced extensive, detailed and broadly researched reports on the status of Indigenous Australians across a range of socio-economic, civil, political and cultural rights, and established a body of documentation on what nevertheless continued to be, despite this plethora of reporting, an apparently entrenched pattern of disadvantage.

This is not to say that the work of those offices was without effect, at least in the sense that it did raise white Australians' consciousness of the broad disadvantage that their indigenous co-citizens continued to experience. Yet, this period of intensive institutional scrutiny by statutory authorities and their accompanying non-government organisations was not matched by altered policies and certainly did not translate into substantive changes in the socio-economic status of Indigenous Australians. Even the landmark *Mabo* decision of 1992, which inscribed into Australian Common Law a recognition of the prior and ongoing land rights of Indigenous Australians met with what we might call a similar "translation deficit". That is, when the import of the judicial decision (that Aboriginal and Torres Strait Islanders retained native title rights) was translated into legislation (the *Native Title Act [1993]*), the possibilities that had opened up for rights recognition were significantly constrained. This was even more pronounced when the *Wik* decisions met with the conservative Howard Government's "Wik principles", explicitly designed to contain the claims of indigenous peoples might make. A pattern seemed to be emerging that institutions empowered to oversee the situation of Indigenous Australians, be they Royal Commissions, Statutory authorities, or courts, recognised the structural complexities of systematic discrimination but there remained major impediments to implementation.

Indeed, this period was marked by an increasing gap between the changing consciousness in the Australian public and changes in law and policy. The Council for Aboriginal Reconciliation had, for example, created listening circles across the country in which indigenous and non-indigenous people spoke about their shared but disparate histories, and non-indigenous people

came face to face, many for the first time, with the reality of a history that had, as Stanner (1969) once put it, been carefully omitted from the official view. Similarly, the judgment in *Mabo* poignantly transcended the context of legal technicalities to call Australians to account for a past and a contemporary policy stance that, as Chief Justice Brennan pronounced: "... has no place in the contemporary law of this country."⁸ Dodson, the inaugural Social Justice Commissioner, picked up this rhetorical gesture to effect when he wrote in his first "State of the Nation" report:

The deepest significance of the judgment is its potential to hold a mirror to the face of contemporary Australia. In the background is the history of this country. In the foreground is a nation with a choice. There is no possibility to look away. The recognition of native title is not merely a recognition of rights at law. It is a recognition of basic human rights and realities about the origins of this nation: the values which informed its past and the values which will inform its future. (Australian Human Rights Commission 1993: 12)

If, following a social constructivist understanding of political change, one understands norms and social expectations as key determinants of major shifts in law and policy, one could conclude that during this period of Australian public life, the key sphere of impact was not that of hard law and policy, but rather the soft underpinnings of social norms (Keck and Sikkink 1998). This is not to deny the resistance to these conscience calls that remained evident in many quarters of the Australian public, as was evident from the vitriolic advertising campaign that the National Farmers Federation and the Mining Lobby launched in the wake of *Mabo* and *Wik*.⁹ Nevertheless, as the formation of Australians for Native Title and Reconciliation (ANTAR) in 1997 made evident, the burden of advocacy that had been carried by indigenous activists and communities and a small number of non-indigenous allies had, to a significant extent, been assumed by large numbers of ordinary settler Australians. Armed with the incontrovertible evidence of historical and ongoing discrimination, marginalisation and structural racism, and unwilling to continue to uphold the national myth of peaceful settlement of an empty country, ANTAR became a large and well-organised social movement giving voice to the new normative environment.

After "Bringing Them Home"

By the time the *Report of the National Inquiry into the Forced Removal of Aboriginal and Torres Strait Islander Children from their Families (Bringing Them Home)* (Wilson 1997) was released in 1997, an exhaustive litany of the violations suffered by Indigenous Australians had been placed on the public agenda. None of these official reports, however, prepared other

Australians for the shock of reading or hearing the first person testimonies of Aboriginal Australians, often their contemporaries, who had been taken from their families and placed in institutions or in foster or adoptive homes. Unlike other reports, penned by policy analysts or lawyers, *Bringing Them Home* was largely a direct transcription of the words that Aboriginal people themselves had used when they spoke to the Commission about what had happened to them. Stripped of all mediation, they spoke nakedly and directly about the loss of parents and siblings, the disconnection from country and culture, the systematic humiliation and denigration of their identities, the physical, psychological and sexual abuse, and of the desolation they had subsequently experienced.

Of the 54 recommendations that the report made, it is worth reflecting on why it was that the two recommendations concerning an apology were those that received the most public attention. On one level, the answer might seem obvious insofar as the other recommendations demanded action from government and not civil society, but in fact the apology recommendations were also directed towards parliaments and relevant agencies, yet it was civil society that took up the act of apologising. A better explanation is that although the intention of the apology was to provide some form of recognition or reparation for the wrongs suffered by Indigenous Australians, in the context of the normative environment into which it landed, it spoke powerfully to existing concerns about the legitimacy of contemporary postcolonial Australia. One might, as Goeder and Jacobs (2000) have argued, see this concern as a type of bad faith, a melancholic nostalgia for the lost object of postcolonial innocence; or, interpreting it outside a hermeneutics of suspicion, one might see the response of other Australians as an authentic gesture towards recognition, albeit one insufficiently connected to the levers of *realpolitik* that might have made a more substantial difference to law and policy. Drawing on Nancy Fraser's (1997) matrix of justice as both distribution and recognition, settler Australians were clearly impressed by the failures of recognition and sought mechanisms whereby the field in which the meanings of Indigenous and settler identities were made could be reconstituted.

Indeed, not since the anti-Vietnam demonstrations had Australia seen anything like the social movement that developed around the apology in terms of breadth and depth with apologies written, spoken, artistically represented and even sung across the social and political landscape. First, those bodies that had been explicitly named in the recommendations, including all Australian parliaments (with the notable absence of the Commonwealth) staged apologies in their ceremonial chambers.¹⁰ During these performative rituals, Aboriginal people were invited to recount their histories and individual parliamentarians of all political colours responded in similarly personal terms.¹¹ Similarly,

apologies were given by chief magistrates, state police forces and various governmental agencies implicated in the removal process. The official organs of a number of churches apologised, including not only those that had borne some direct responsibility in removal, but also those that felt called upon to recognise the wrong.¹²

The richest swell of the apology movement occurred, however, in social spheres beyond those explicitly nominated in the report: apologies emanating from welfare agencies, trade unions, professional associations, civic clubs and associations, schools, parents' and citizens' associations, and ethnic communities. For those who belonged to no particular civil society organisation, but who nevertheless wished to join the movement "Sorry Books", open for any Australian to sign, circulated the country.¹³ For those who preferred virtual participation, an apology website was created where they could register their names. More dramatically, in October 1997, the first "Sea of Hands" in which individual Australians planted oversized red, white, green, yellow, blue or black hands into the ground, thereby creating a living sculpture, was formed on the lawns of Parliament House in Canberra. So popular was this act of popular expression that similar "Seas" were created over the following years at a range of iconic public sites such as Bondi Beach, Uluru (the symbolic heart of Aboriginal Australia) and the Sydney Harbour Bridge.¹⁴

One year after the release of the report (26 May 1997), the inaugural *National Sorry Day*, overseen by a National Sorry Day Committee, was marked by events across the country that were organised by schools, churches and local councils. On this inaugural *Sorry Day* Aboriginal people were invited to publicly recount their personal stories after which apologies were offered. The "Sorry Books" were ceremonially handed over to Aboriginal representatives.

In Sydney, a *Welcome Home* ceremony was held, during which Aboriginal elders welcomed back the (now adult) stolen children with traditional smoking, dance and song before hundreds of Australians—Aboriginal and all others.¹⁵ In Melbourne, thousands attended a service at the Anglican Cathedral and then marched to City Hall where—in a remarkably literal act of political repatriation—the mayor handed over the keys to the city to representatives of the Stolen Generation. In Queensland, every prison (and, ironically, its disproportionate number of Indigenous inmates) observed a minute's silence.

The following year, "Sorry Day" was renamed "Journey of Healing" perhaps reflecting a concern that it be conciliatory rather than divisive, but the activities were continuous with those already set in train. At Uluru, traditional owners handed members of the Stolen Generation ten pairs of music sticks, bearing the symbols of shackles, teardrops above the Aboriginal flag and a boomerang, for them to take back to ceremonies being held in

each of the capital cities (see Jopson 1999).¹⁶ In Adelaide, 1000 people walked to places important in the story of removal, but largely forgotten in contemporary Australia, such as the site of Piltawodli, a school serving the Kaurna people in South Australia, opened by German missionaries in 1839. There, school children sang in the traditional language, perhaps for the first time since 1845 when troops demolished the buildings and the children living there were moved to an English-language school that banned their language. Again on 26 May 2000, an estimated one million people across Australia took part in coordinated reconciliation marches, 250,000 alone crossing the Sydney Harbour Bridge. For the 2002 ceremony, Goanna, one of Australia's legendary bands reunited to perform *Sorry*, a song paying tribute to the Stolen Generation and their families on the lawn in front of Parliament House.¹⁷

No doubt this social movement was fuelled in part by the steadfast refusal of the Conservative Prime Minister, John Howard, to offer an apology on behalf of the nation. Indeed, at a certain point, the movement, by then embroiled in the very public battles that historians were having about the "truth" of Australia's past, became as much about contesting Howard's stance as about the apology itself. In other words, the institutional resistance to acting on the recommendations of *Bringing them Home*, the last of countless reports that had so characterised Australian politics over the previous two decades, stood in a dialectical opposition to a social movement increasingly embedded in Australian civil society. Indeed, it has been the failure of institutionalisation that has been the engine of the social movement.

TOWARDS A NARRATIVE OF RECONCILIATION?

Narratives of national identity in post-settler nations are frequently characterised by conflicting claims to physical, social and historical territories. As contemporary postcolonial nations contemplate the prospect for a "just future", they must therefore attend to the various dimensions of this dissent over the nature of the land—its meaning, its ownership and its history. As Treaty processes in New Zealand and Native Title negotiations in Australia have made clear, questions about land ownership and sovereignty are central to the attempt to construct a just nation, but beyond this, the work of reconciliation between indigenous and non-indigenous peoples lies in the capacity to offer the hope that those identity narratives can move into a new, common future. Thus, when apologies for historical wrongdoing are made to groups of indigenous peoples, a political space is opened where new possibilities come into play.

It is through the origins and social processes in which political apologies are embedded that the movement towards reconciliation becomes most visible. The urge to construct a common memory built upon a mutually

comprehensible past is a way of mending national histories that have been fractured by the experience of dislocation and loss. It is a means of bringing coherence, and perhaps cohesion, into the nation's story of itself. Thus, government apologies to indigenous peoples for historical wrongs, and the public rituals and trappings of those expressions of contrition, are central to the way that nations perceive and present themselves, and project these newly established national memories into the future. At the same time, it is when apologies emerge from civil society activism and are evidently a performance of societal recognition of the wrongs committed against indigenous peoples and their rightful place in civil society, that the weaving of the common societal future can take place.

In this respect, they are a necessary component in the construction of a new cultural logic. To return to Richard White's notion of the middle ground, new alliances forged between peoples are predicated on interests that are generated within their own cultures and societies. Far from being elaborate cultural fictions, these alliances and the attendant ceremonies and rituals are the medium through which national identities and narratives are recreated. Drawing on his examination of the construction of a shared geopolitical domain in the early contact period between the French and Algonquin people, White (1991: 93) suggested that "[t]hese rituals and ceremonials were not the decorative covering of the alliance; they were its sinews. They helped to bind together a common world". We suggest that it is through the rituals of apologies that these complex alliances take shape and open up possibilities for change. They make feasible the creation of new forms of national identity at the same time as delimiting some of the anxieties that are associated with a disrupted and unsettled past.

As we have shown in the two cases examined in this article, however, apologies may take different forms, with the relative role of state and society being one dimension along which they may differ. Thus, at one end apologies might be characterised by a high degree of "institutional capture" and at the other end by the state resisting any institutional expression of the apology. In the latter instance apologies may be characterised as performances by social movements seeking to challenge existing state practices and institutional arrangements. While a successful social movement advocating apology (through performing apology at a societal level, as in the Australian case) may eventually result in a state apology, these two processes are not necessarily contiguous and may even run in different directions.

We would argue that to begin the work of weaving a transformed national narrative, apologies must be embedded in the social narratives and lived experiences of the people of the nation. Certainly, their status as speech acts of the State are critical to their legitimacy, but unless apologies speak from,

of and to the people, there is a danger that they will remain enclosed in the formal narratives of law. In this sense, the representative power of the State apology and the degree to which an institutionalised apology is indicative of a broader social movement (and indeed crystallises and legitimises a broader social recognition) is critical to its success in achieving these broader objectives. This can be seen in the starkly contrasting origins and political outcomes associated with the apology movements of New Zealand and Australia. In Australia, the apology that was finally delivered was the fruit of many years of socially embedded debate and advocacy—a social movement that finally coalesced around the demand for an expression of contrition from the Crown. The ensuing apology was a national event that signalled the creation of a new memory regime—one that recognised the way that injustices against Indigenous Australians had fractured the nation's account of itself and acknowledged the need for new storylines of nationhood to emerge. In this sense, it was, in many respects, a redemptive narrative. At the same time the engine of this deep social significance was, to a large extent, the resistance on the part of the state to encode the demands of social movements in structural recognition of the political and land rights of Aboriginal peoples.

By contrast, Crown apologies in New Zealand had their beginnings in the government's desire to curb Māori political dissent at a time when it threatened to spill over into widespread civil disorder. In this respect, the New Zealand Crown apology incorporates elements of the redemptive narrative but can be read, in part, as a narrative of containment—a way of limiting further civil disharmony. At the same time, the New Zealand Crown has gone much further than Australia in encoding the political and land rights of Māori. Yet, the subsequent institutionalisation of the Treaty claims process has created an environment whereby Crown apologies are localised insofar as contrition is expressed to specific tribal groups in different regions, and a degree of disconnection from the nation as a whole has been the result. These disconnections have tended to increase rather than assuage public anxieties and have, thus far, failed to have much impact on the development of new memory regimes that incorporate Māori narratives of dispossession into the nation's memory of itself.

In this regard, our observations about the ways in which demands for the recognition of indigenous rights have or have not been taken up as social movements are consistent with the more complex understanding of the dynamic relationship between social movements and political opportunity structures that has emerged from the literature.¹⁸ That is, in the same way as Kitschelt (1986) read his comparative study of ecological movements as indicating that a more open political system (Sweden) may lead to the institutional assimilation of ecological movements, we have observed how

in the New Zealand case, the State's willingness to provide (at least partial) institutional recognition of the demands from well organised and resourced Māori movements stemmed the growth of broader social movements that were embraced by broader Pākehā society. Correlatively, just as the more closed system (France) led to the growth of ecological social movements in that nation and their adoption of more confrontational strategies and moves, here we have observed that the long term refusal to institutionalise demands for Indigenous recognition in the Australian case somewhat ironically provided the opportunity structure for the growth of a far broader social movement around Indigenous rights. Our observations are thus consistent with Eisinger's suggestion (1973: 15) that the relationship between the strength of a social movement and the openness or closure of opportunities embedded in institutional structures is curvilinear. Indeed, the fact that the Indigenous Reconciliation movement that coalesced around the demand for an apology in Australia has subsequently dwindled, despite the ongoing failure to deliver on a range of right related demands, is indicative of both this curvilinear relationship and the dynamic nature of such opportunity structures.¹⁹

Where the object of a social movement is to gain institutional (state) recognition or assimilation of a set of demands or form of recognition, the negative impact of such institutionalisation on the social movement itself is of course nothing but a sign of its success. In the more complex case of reforming national narratives and the lived experience of race relations in postcolonial contexts, however, such apparent successes may undercut that very process. The danger is further heightened where numerous actors, including the state, have strong incentives to reach a place of putative closure where the reparations afforded are framed as final acts in a narrative that can now be placed in the sealed past. The impact of such closure is not only that it diverts attention from the unaddressed violations of the past and the ongoing failures of justice, understood as specific acts or inequalities, but also that it renders invisible the fabric of fractured relations that continue to characterise postcolonial societies. These fractures then only come into view when conversations about identity and justice take place between living members of those societies. This is of course not to deny the importance of institutional recognition, especially where it involves symbolic and material dimensions of reparation. It is rather to remind us of the ways in which issues of indigenous rights and national identity span the many dimensions of that amorphous object, "the nation-state".

Beyond these differences, what remains true in both cases is that irrespective of the ability of reconciliation processes to effectively weave a new national narrative, for many indigenous peoples, they carry with them a particular sorrow that involves a partial and highly conditional acceptance of irretrievable loss since there can never be full compensation for the injury

to land and lives. While it is a crucially important aspect of the process, the public spectacle of the Crown apology is also, for many indigenous groups, a profound and deep-seated memory of loss. Thus understood, the reparation afforded would also, as a true form of recognition, encode the irreparable, the incomplete and the impossibility of an institutional solution that would, or should, close a national conversation.

NOTES

1. Throughout this article, we use the term Indigenous when speaking either of both Aboriginal and Torres Strait Islander peoples in the Australian case, or both Indigenous Australians and Māori. For the New Zealand case we use the common term Pākehā and for Australia we have used other Australians or settler Australians rather than the term Non-Indigenous Australians to avoid identifying a diverse category of persons in purely negative terms.
2. For example, see New Zealand Parliament, *Affiliate Te Arawa Iwi and Hapū Claims Settlement Act 2008*. (29 September 2008).
3. For example, see New Zealand Parliament. Ngāti Apa (North Island) Claims Settlement Bill 2009. *Bills Digests 1714*. (25 August 2009).
4. For example, see New Zealand Parliamentary Debates (NZPD), *Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Bill—In Committee*, (22 July 2009).
5. See, for example, ACT politician Rodney Hide's speech on Waitangi Day 2005, arguing that "[w]e need to put the Treaty grievance industry behind us for all our sakes. We must ensure that proper process prevails and that violent protest and intimidation don't pay off." *Scoop Independent News*, 7 February 2005. Waitangi Day—New Zealand's Birthday. (Rodney Hide) Act Press Releases.
6. K. Gillanders Scott (Chief Judge, Māori Land Court) to Mr. Apperley (Secretary, Department of Maori Affairs), 7 March 1977, AAMK – 869 – W3074- 1592a-19/14/1, Archives NZ.
7. The 1967 Referendum, often misremembered as the Referendum to give Aboriginal people the vote was in fact on the question of whether Aboriginal people would have constitutional power to legislate in respect of Aboriginal people. Nevertheless, it was presented, in the popular imagination, as a vote for equality and the eradication of the appalling conditions suffered by Indigenous Australians (Attwood and Markus 1997).
8. '*Mabo*', (1992) 175 CLR 1, 42 (Brennan J).
9. One of the original television advertisements can be viewed at: <http://www.mabonativetitle.com/info/NFF2.htm>
10. See, *Content of Apologies By State and Territory Parliaments* available at: http://www.humanrights.gov.au/social_justice/bth_report/apologies_states.html

11. South Australia: 28 May 1997, Western Australia: 28 May 1997, Queensland: 3 June 1997, ACT: 17 June 1997, New South Wales: 18 June 1997, Tasmania: 13 August 1997 and Victoria: 17 September 1997. The Northern Territory Government has not made a statement of apology.
12. A number of church apologies can be found on the Reconciliation and Social Justice Online Library at <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc/stolen/stolen31.html#Heading112>
13. Many of the “Sorry Books” are now being held at the Australian Institute of Aboriginal and Torres Strait Islander Studies.
14. A history and images can be found at http://www.antar.org.au/sea_of_hands
15. Smoking, a ritual form of spirit cleansing, involves burning plants and leaves in the space to be cleansed.
16. The connection between repentance and return, which is so much part of the drama around removal, is strongly resonant of the meaning of *teshuvah* as ‘return’, not simply ‘repentance’.
17. There was even a “reconcilioke”—a karaoke event dedicated to reconciliation and apology. Details about the activities can be found at the official Apology website: <http://apology.west.net.au/index.html> and links.
18. An authoritative definition of a political opportunity structure is: “... the consistent—but not necessarily permanent, formal or national—signals to social or political actors which either discourage or encourage them to use their internal resources to form social movements” (Tarrow 1996: 54).
19. Indeed, one might add that the swell of the apology movement in the late Howard years, even seven to ten years after the original report, can be partially explained by what Tilly calls the instability of political alignments and the availabilities of allies in an alternative political power arrangement. With an election on the horizon and the goals of the movement being publicly embraced as part of the election platform of the then opposition, the political opportunities fueling the movement were heightened (see Tilly 2008: 91-92).

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ABSTRACT

Both Australia and New Zealand have been marked by powerful claims for reparation for wrongs committed against indigenous peoples, with the responses to these claims including apologies. The trajectories of these responses have differed, however, particularly with respect to the relative role of formal institutional recognition and social movements. This paper argues that the institutionalisation of Crown apologies to New Zealand Māori has led to a certain alienation of these apologies from broader Pākehā society, whereas the failure to institutionalise recognition of Aboriginal and Torres Strait Islander rights in Australia has more deeply engaged questions of national identity for Australia as a whole. This comparative finding is consistent with a complex understanding of the relationship between political opportunity structures and social movements, whereby “a mix of open and closed structures” (Eisinger 1983: 15) is most conducive to social movements.

Keywords: indigenous rights, apology, reconciliation, social movements, transitional justice

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