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SOCIAL JUSTICE IN AUSTRALIA AND OCEANIA

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Introduction:

Social justice in Australia and Oceania have evolved through complex historical processes. It is shaped by Indigenous governance practices, European colonisation and struggles for equality, recognition and self-determination, the latter continue to contribute to today's disputes of Indigenous rights, welfare policy, environmental justice and regional development. Australia's and Oceania's Indigenous societies were diverse and maintained a range of systems of governance, law and social organisation prior to European colonisation in Australia.

Indigenous Societies before Colonisation:

Aboriginal and Torres Strait Islander peoples in Australia have complex kinship systems, customary law and land based spiritual frameworks that were called 'The Dreaming'. Justice in these communities was tied to relational obligations, ceremonial authority and collective accountability. Land was never in the European sense owned but believed to be ancestral and sacred, as the basis of social and moral governance. Indeed the Aboriginal societies, which we know today through anthropological research, had deep-rooted social structures of kinship and clan structures and customary law. These rules also governed marriage, inheritance, resource use, and social obligations among members of the community. The role of authority was less exercised by centralised state institutions and held by elders and ritual leaders and collective decision-making (Berndt & Berndt, 1999; Maddock, 1982). That set of arrangements encouraged social cohesion as it allowed communities to navigate different ecological environments across the Australian continent.

One of the ideas that lies at the heart of Indigenous Australian social organisation is that of "country." Country is more than the land, it is the cultural, spiritual and ecological relationships humans make to the land. Country is the landscapes, sacred sites, ancestral stories and ceremonial obligations that connect past, present and future generations. Indigenous peoples view themselves as custodians of their country, therefore responsible for the ecological and spiritual conservation and restoration of that land. Thus, the harm is not only material, but also about cultural identity, community wellbeing and cultural heritage affected by the violence over land or sacred sites. Polynesian, Melanesian and Micronesian communities throughout much of Oceania created their own different political structures through chiefly hierarchies and communal governance. The land ownership and dispute resolution in Samoa and Tonga were dominated by predominantly chiefly systems. Access to resources, marriage agreements, and mediation of all disputes were determined by customary authority. They were internally controlled and culturally grounded, though hierarchical. This is one of the most remarkable stories among human migrations, Polynesian settlement of the Pacific.

People travelled great oceanic distances, with rich lore about stars, winds and ocean currents. The Māori, descended from ancestors who settled in Aotearoa (New Zealand) who created a

triune indigenous society comprised of iwi and hapū. Māori social structure as well as conflict settlement were based on the concepts of mana (authority and prestige), tapu (sacred prohibitions regarding the act) and utu (reciprocity and balance) (Belich, 1996; Durie, 1998). These precolonial systems suggest that systems of governance and social law predate the European legal landscape and the law in Australia and Oceania. The concept of justice was rooted in cultural traditions, spiritual beliefs and communal authority rather than state institutions. Colonisation would further damage the structures, not least through land dispossession and imposed systems of governance.

Settler Colonialism and the Dispossession of Indigenous Peoples:

In 1788, with the establishment of a British penal colony, the European colonization of the Australian continent began. Unlike other colonies, Australia was proclaimed "terra nullius" – this was the legal principle that the land belonged to no one. This doctrine dispossessed the Indigenous people of their land, and it facilitated widespread dispossession. The expansion of settler agriculture and pastoralism caused violent frontier fighting and forced displacement, as well as the demographic collapse of Aboriginal communities. Indigenous people were removed from their ancestral homelands and sent to reserves or missions. Indigenous customary law was not recognised in colonial legal orders and Indigenous peoples were deprived of rights to citizenship. Scholars analysing Australian settler colonialism have focused on this for why structural inequalities and inequality still persist produced by the practices of colonisation.

Colonial governance was the replacement of Indigenous legal and corporate power structures by systems of governance and governance rules for Indigenous societies that had contained laws to govern Indigenous populations and an easier route to expropriate land (Maddison, 2019). These structures form the foundations for contemporary social and political relations in Australia (Cunneen 2001; Maddison 2019). Under law, British colonisation in New Zealand was different when the British Crown signed the Treaty of Waitangi in 1840 with Māori chiefs. The treaty enshrined Māori rights to land and self-government. The Treaty was highly regarded, but two opposing interpretations of the document and land confiscations and its impact on Māori self-government led to decades of controversy (Orange, 2015).

Elsewhere in Oceania, the colonial powers — initially Britain, France, then Germany, then the United States — gained administrative control over island land. This led the original land tenure systems to be redeveloped and established by the colonial authorities to permit plantation economies and resource extraction. Essentially, this reformation rearranged usual types of governance and integrated Pacific people into global economic affairs (Crocombe 2008). Colonialism was also accompanied by racial hierarchies and assimilationist policies. In Australia, policies of protection and integration attempted to assimilate Indigenous peoples into settler society based on rigid rules. One of the most damaging was the forced removal of Indigenous children from their families — sometimes referred to as the Stolen Generations, as this practice is known today. The Bringing Them Home report described the far-reaching social and psychological effects of these removals on Indigenous communities.

Twentieth-Century Reform and the Struggle for Recognition:

Indigenous exclusion and a push toward law and politics were issues addressed in the twentieth century. When an Indigenous referendum was held in 1967, Australia instituted the national census and amended the constitution so that the federal government can become involved in

the affairs of the Indigenous inhabitants. This was an important symbolic milestone in the official acknowledgment of Indigenous people's rights. It was finally brought to a legal end when the High Court accepted land protection in Mabo v Queensland (No 2) (1992), where they threw the terra nullius doctrine out of the hat and confirmed the native title. The Native Title Act 1993 following in its wake provided a framework of formal legislation upon which Aboriginal communities were able to make claims for rights to traditional land.

The recognition of those people's rights opened up negotiations which Indigenous peoples could negotiate with businesses for mining and other development project related development on their land. In the late twentieth century, negotiations such as these were increasingly used as Indigenous groups sought to protect their culture by integrating it into economic progressions (O'Faircheallaigh, 2008). Meanwhile in New Zealand, in 1975 the Waitangi Tribunal investigated breaches of the Treaty of Waitangi and recommended settlement schemes between Māori groups on the one hand, and the state on the other.

However, in New Zealand, Treaty settlements had given Māori on some level cultural recognition and compensation for cultural pain, although the sufficiency of such measures is a matter widespread debate in Māori society. Debate in Māori society as well over the status of sovereignty itself also remains. In the Pacific Islands, decolonisation movements paved the way for independence for numerous states in the mid- to late 20th century. Among Fiji, Papua New Guinea, Samoa and others, constitutional regimes contained parliamentary authority and customary power (Ghai 1988).

Welfare Policy, Social Inclusion, and Economic Inequality:

Australia created a welfare structure throughout the 20th century that provided concentrated social help rather than universal social democratic delivery. Social security programs such as unemployment benefits, family allowances and age pensions expanded during and since World War II. Medicare was founded in 1984 to provide universal health coverage. But the social inequities are still too stark, in spite of welfare institutions. Aboriginal and Torres Strait Islander people have shorter life expectancy, higher unemployment and lower educational attainment than non-Indigenous citizens. Government policies including the Closing the Gap strategy are designed to address these inequities in regard to health, education and job success.

Criminological studies have found major gaps in the justice system, too. This overrepresentation of Indigenous Australians in prison reflects overarching patterns of socio-economic marginalization and historical disadvantage (Cunneen, 2001; Anthony, 2013). The mid-twentieth century witnessed social welfare restructurings that laid large public health and pension programmes for New Zealand. Nevertheless, economic restructuring in the 1980s and 1990s saw an overall role of the state in the economy diminish and income inequality slowly expand (Boston et al., 1996). Nations of the Pacific Islands face added restraints resulting from a disinvestment in economic diversification and a inability to respond to global changes in a changing economy. Migration remains very crucial to regional economies; labour mobility programs enabling workers from Pacific Island states to leave to work in the Australian and New Zealand shores. Remittances from migrant workers make up a considerable part of household income and a very crucial part of the national economy in many Pacific countries.

Reconciliation, Constitutional Reform, and Indigenous Sovereignty:

Reconciliation now plays a large role in the Australian social justice talk. The 2008 National Apology to the Stolen Generations recognised the injustices as a result of removal through

government policies of children from their parents. The constitutional status and the political representation of the Indigenous People has been central to public dialogues about reconciliation. But other scholars have argued that processes of reconciliation are largely symbolic, mainly about tokenizing recognition, without substantive change and not deeply, structurally transformative. The state and colonial traditional constructs of the Indigenous people are well-served by reconciliation policies that are largely incomplete and fragmented.
Damien Short, however, asserts that reconciliation policies more often than not function as part of existing colonial structures rather than a genuine change to Indigenous peoples' relationship to the state (Short, 2008). Subsequent issues such as the Uluru Statement from the Heart (2017) (and its aftermath) suggested that attempts were ongoing to create processes for Indigenous representation in the Australian governance institutions. It was the call for constitutional recognition for Indigenous people and for a Voice to Parliament, revealing ongoing calls for sovereignty, representation and political inclusion for Indigenous peoples. It is no different in New Zealand where the co-governance agreements seen within some policy areas reflect the maturing recognition of Māori cooperation that the Treaty of Waitangi is witnessing. Even in much of Oceania, discussions on indigenous autonomy and the exercise of customary authority continue to be at the heart of the national conversation about constitutional reform and government.

Environmental Justice and Climate Vulnerability:

The ecological difficulties are becoming an increasingly important aspect of social justice in Australia and Oceania. Climate change poses serious risks to Pacific Island countries, such as low-lying states like Kiribati and Tuvalu. Sea level rise, coastal erosion and extreme weather are jeopardizing infrastructure, livelihoods and the integrity of territory. Studies have reported that human activities, for example, emissions of greenhouse gases have been attributed to global temperature rise that rates far beyond those before the formation of industrialised countries. Those changes add to sea level rise and environmental fragility, with particular burden falling on at-risk populations such as small island states (IPCC, 2023).
Climate change has a series of very challenging legal and ethical concerns and challenges around displacement and migration, too. It has been argued, by scholars, if environmental destruction compels people from peripheral island states to move to larger ones, that, in the process, it generates a new kind of cross-border migration that does not fully address, under their existing legal framework, international refugees in question (McAdam, 2012). There are also overlaps with rights around Indigenous land in discussions on protection of Indigenous rights in Australia's environmental justice system. In the Australian context, several mining sites are located on Indigenous lands and the development and exploitation of such land raise issues of stewardship of cultural heritage, environmental protection and economic development (O'Faircheallaigh, 2008).

Contemporary Inequality and the Future of Justice:

Australia and New Zealand, with an average income that averages high, income disparities on an Indigenous/ migrant basis. Indigenous Australians have significantly higher levels of incarceration, inferior health outcomes compared to non-Indigenous Australians and fewer access to education. Housing affordability, labour market insecurity, and digital access are also shaping current social inequalities. It should come as no surprise that most Indigenous communities in far-flung places do not have access to adequate infrastructure or even the ability

to provide access to basic services. For Pacific island countries, youth unemployment, migration pressures and climate vulnerability have their way of making the future harder. Inter-state, as can be seen in the case of the Pacific Islands Forum, cooperation mitigates a host of mutual economic and environmental challenges.

Conclusion:

The above discussion suggests social justice in the context of both Australia and Oceania is inextricably linked with settler colonialism, the dispossession of Indigenous peoples, and the emergence of political recognition. Landmark legal developments — notably the Mabo ruling and the New Zealand treaty settlements — have been pivotal in ensuring Indigenous rights come to be recognized. But the persistent health, educational, economic and political inequalities render social justice in the region an unfinished and debated endeavour. In Australia and Oceania, a potential future in social justice will depend on how thoroughly the different nations and/or communities, and/or institutions are able to engage with the challenge of structural inequalities, along with the legacy of colonialism that leaves a lasting mark on the society on the one hand and environmental pressures and the spectre of earlier injustice on the other hand.

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