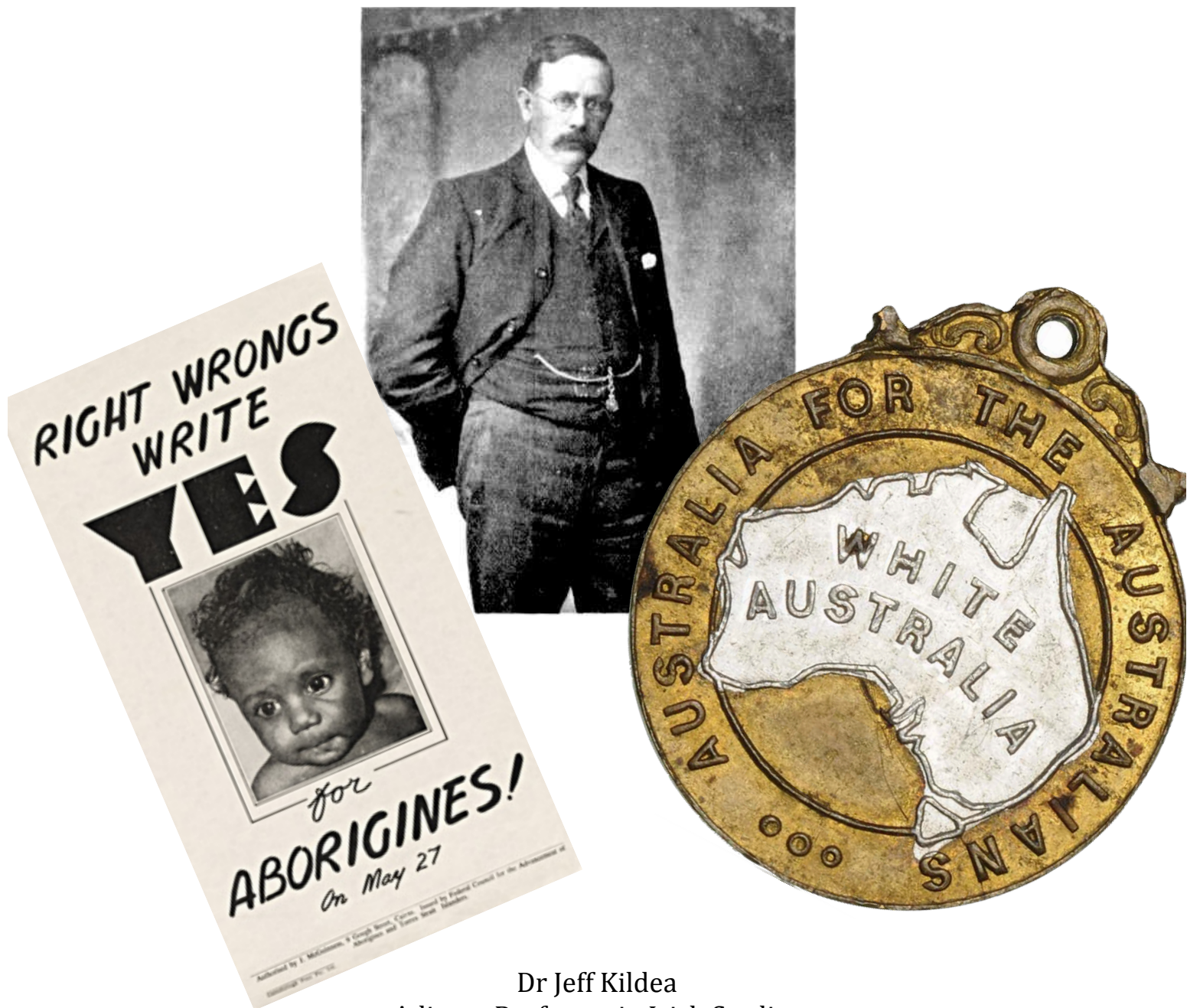


# The Paradox of Prophecy: Hugh Mahon and the constitutional recognition of Aboriginal rights



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## Introduction

On 27 May 1967 the Australian people voted overwhelmingly to amend the Constitution to give the Commonwealth parliament power to make laws in relation to “the aboriginal people in any State”. Previously, only the states themselves had that power. This was a significant reform which enabled the Commonwealth to deploy its considerable resources across the nation so as to improve the lot of Australia’s indigenous people.<sup>1</sup>

More than 65 years before the referendum, Hugh Mahon, the Irish-born Labor member for Coolgardie, had moved in the House of Representatives a motion proposing such a constitutional change, but to no avail. Mahon’s prophetic motion was not his only action in support of Aboriginal rights. In addition, he wrote articles advocating better treatment of indigenous Australians and opposed moves to exclude them from the franchise.

Nevertheless, Mahon was also a strong supporter of the white Australia policy, urging strict controls on immigration and describing non-Europeans in the most disparaging terms, particularly Asians who had been attracted to the Western Australian goldfields.

This paper examines Mahon’s words and deeds on issues of race and seeks to resolve the apparent paradox between Mahon’s progressive views on Aboriginal rights and his overtly racist and restrictive attitude towards Asian immigration.

## Parliamentary motion

Hugh Mahon was born in King’s County, Ireland in 1857 and emigrated to Australia in 1882 following his release from Kilmainham Gaol, where he had been imprisoned with Charles Stewart Parnell and other members of the Land League under the Coercion Act of 1881.<sup>2</sup> A journalist by profession, Mahon owned and edited newspapers initially in New South Wales and then in Western Australia following the discovery of gold there in the early 1890s. He was elected to the first Commonwealth parliament in 1901.

On 26 July 1901 Mahon moved a motion in the House of Representatives that a royal commission be appointed to investigate and report on the condition of the Aboriginal inhabitants of Western Australia north of the 30<sup>th</sup> parallel. Mahon was well aware that the federal government had no right to interfere in what the Constitution had designated an exclusively state affair. To justify the Commonwealth’s appointment of a royal commission, the motion stated that the purpose of the investigation was to determine the expediency of a change to the Constitution to permit the Commonwealth to pass laws in relation to Aborigines living in any of the Australian states.<sup>3</sup>

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<sup>1</sup> The referendum was the culmination of a political campaign which had been waged for ten years following the Grayden Report, which in December 1956 had exposed the appalling conditions under which Aboriginal people were living in the central desert of Australia. See Report of the Select Committee appointed to inquire into Native Welfare Conditions in the Laverton-Warburton Range Area, presented by William Grayden on 12 December 1956, Parliament of Western Australia (National Archives of Australia: A452, 1957/245)

<sup>2</sup> *An Act for the better Protection of Person and Property in Ireland 1881.*

<sup>3</sup> CPD HR 26 July 1901, pp. 3150-3155.

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The rights of Aborigines was not a topic likely to win Mahon votes; on the contrary, he risked alienating voters in the north-west of the state.<sup>4</sup> However, the issue had gained prominence in April and May when the Melbourne *Age* published letters and reports alleging ill-treatment of indentured Aboriginal workers in Western Australia, describing their situation as akin to slavery and calling for an inquiry and federal intervention.<sup>5</sup>

The controversy had been started by another Irishman, Walter Malcolmson, a native of Belfast, who for four years had lived and worked in north-west Western Australia. Using the pseudonym "White Worker" Malcolmson wrote to the Melbourne *Age* a letter, published on 17 April, describing the brutal treatment accorded Aborigines in Western Australia and referring to an infamous case in 1897 concerning Bendhu Station, in which three runaway indentured natives were caught, driven back to the station in chains and beaten to death. He wrote, "My earnest prayer is that the Federal Government may early put a stop to this abuse". In an editorial in the same edition, the *Age* called for an inquiry into the condition of the Aborigines in Western Australia. The *Age's* coverage of the issue was picked up and commented on by newspapers overseas, a fact on which Mahon relied to justify the Commonwealth parliament's taking an interest in the matter.

Others took up the cause, including Presbyterian minister Rev J Laurence Rentoul, a native of County Derry, whose father had been active in the Land League.<sup>6</sup> On this issue Rentoul had a significant influence on Mahon, introducing him to Malcolmson<sup>7</sup> and advising him on his speech to parliament in support of the motion.<sup>8</sup> Moreover, on the day Mahon gave notice of his motion, he attended a meeting of the Peace and Humanity Society, of which Rentoul was president, and seconded a motion that measures be adopted for the protection of the Aborigines of Western Australia's north-west.<sup>9</sup>

Mahon's well-prepared speech to the House included quotes from a number of sources and citations from numerous Western Australian statutes that Mahon claimed were discriminatory. However, he was unable to finish his speech in the short time allotted to private members' motions – "I have hardly had time to introduce the matter", he complained – and the debate was adjourned to 6 September.<sup>10</sup>

While some newspapers applauded Mahon's speech, others, especially in Western Australia, were quick to point out that the welfare of the Aborigines was exclusively a state matter and the Commonwealth had no business to interfere. Even the *Kalgoorlie Miner*, a newspaper generally liberal in its views, said that tinkering with the

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<sup>4</sup> He was at pains in his speech to avoid criticizing the settlers: "I feel perfectly sure that the natives have been generously and fairly treated by a great many of them". He quoted an unnamed government official as saying that "the cases of cruelty were very rare ... and that on the whole the natives were very fairly treated" (CPD HR 26 July 1901, p. 3154).

<sup>5</sup> *Age* 12 April 1901, p. 7; 17 April 1901, pp. 6, 9; 18 April 1901, p. 6; 19 April 1901, p. 6; 27 May 1901, p. 5. The *Age's* interest in the condition of the Aborigines also extended to Queensland (*Age* 2 July 1901, p. 4).

<sup>6</sup> Stuart McIntyre, "Rentoul, John Laurence (1846-1926)", *Australian Dictionary of Biography*, Vol 11, MUP, Melbourne, 1988.

<sup>7</sup> Newspaper clipping Mahon Papers MS 937/871. Like Mahon, Malcolmson was both an advocate for the Aborigines and an opponent of Asian immigration to Australia on racist grounds. See, for example, his polemic "Australia and the Empire" (Mitchell Library MLMSS 1131).

<sup>8</sup> Letter 11 June 1901 from J. Laurence Rentoul to Hugh Mahon (Mahon Papers MS 937/241).

<sup>9</sup> *Ballarat Star* 10 June 1901, p. 3; *Age* 8 June 1901, p. 9.

<sup>10</sup> Mahon later argued his case in "The Native Races under the New Constitution, *Austral Light*, 1 March 1902, pp. 198-201.

Constitution “cannot be too strongly deprecated, particularly when ... the avowed object ... is to take away from the States rights of jurisdiction and administration”.<sup>11</sup>

Prime Minister Edmund Barton stated the federal government’s position on the subject when on 22 July he met with a deputation from the Peace and Humanity Society led by Dr Rentoul. Barton told the deputation that the Commonwealth parliament had no power over the Aborigines of Western Australia and that reforms would be postponed if the Commonwealth interfered unnecessarily with matters confided exclusively to the states.<sup>12</sup>

One effect of Mahon’s motion was to prompt Dr John Hicks in the Western Australian Legislative Assembly to move for the appointment of a select committee to inquire into the treatment of the Aborigines of the state.<sup>13</sup> However, Mahon criticised the proposal, arguing that no inquiry by the Western Australian parliament could altogether satisfy public opinion and that it provided the federal government with an excuse for refusing to appoint a royal commission. He said he would not withdraw his motion unless an independent inquiry were established.<sup>14</sup>

But it never came to that, for Mahon was not given the opportunity to resume his speech. With government bills taking precedence over private members’ business, the resumption was postponed from time to time and eventually lapsed with the end of the parliamentary session.<sup>15</sup>

### **Promoting the Aboriginal cause**

The Irish troika of Mahon, Rentoul and Malcolmson were all experienced propagandists. They would have known that the governments and parliaments of both the Commonwealth and of the states would oppose the foreshadowed constitutional change. And time proved them right. The idea of constitutional reform of the race power languished for decades before coming to fruition in 1967. Nevertheless, for a time the issue attracted widespread attention in Australia and overseas, briefly reviving three years later, due once again to the efforts of Walter Malcolmson.

After returning to Belfast at the end of 1901, Malcolmson continued to write to Irish and British newspapers about the condition of the Australian Aborigines. Eventually, on 6 May 1904, one of his letters was published in the *Times*. The publicity it attracted provoked a reaction that ultimately saw the Western Australian government appoint a royal commission into the condition of the state’s natives.

Headed by Walter Roth, Chief Protector of Aborigines in Queensland, the commission heard evidence that painted a stark and brutal picture of the ill treatment of Western Australia’s Aborigines. The report recommended numerous administrative changes and

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<sup>11</sup> *Kalgoorlie Miner* 30 July 1901, p. 4. See also Newspaper clippings in Mahon Papers MS 937/828, 830.

<sup>12</sup> *Argus* 23 July 1901, p. 6. Mahon received backing for his proposal from the *Murchison Advocate* 17 May 1902, p.2, which argued that Australia’s national reputation was at stake.

<sup>13</sup> *West Australian* 29 August 1901, p. 6.

<sup>14</sup> *West Australian* 13 September 1901, p. 6; *Age* 17 September 1901, p. 6.

<sup>15</sup> CPD HR 13 September 1901, p. 4918. In the adjournment debate on 20 September Mahon complained about the government’s monopoly of the notice paper, but to no avail (CPD HR 20 September 1901, p. 5082).

led to the introduction of new legislation governing native affairs.<sup>16</sup> Following publication of the Roth Report in 1905, Mahon wrote:

If Dr Roth's recommendations should result in some amelioration of the unhappy lot of this fading race, I venture to say that the credit belongs in greatest measure to Mr Walter Malcolmson, of Ireland.<sup>17</sup>

Mahon's advocacy on behalf of Aborigines predated his entry to parliament. In 1899, as editor of the *Kalgoorlie Sun* he castigated a local magistrate for mistreating a 12-year-old Aboriginal servant boy, provoking the magistrate to launch a prosecution for criminal libel, which Mahon successfully defended. In the article Mahon wrote:

The unfortunate aboriginals, whose helplessness should touch our hearts, have suffered too much in the past from the unrestrained ferocity of brutal men, and it is time we began to redeem our character respecting them.<sup>18</sup>

After his parliamentary motion lapsed Mahon continued to champion the rights of indigenous Australians in and out of the parliament. In April 1902, during parliamentary debate on the *Franchise Bill*, Mahon argued against an amendment excluding from the vote "aboriginal natives of Australia". In his speech to the House, Mahon began, "I am sorry that the Government have decided to accept an amendment which places a stigma upon the race that held this continent long before white people came here". He suggested there should be an educational qualification instead of outright exclusion. However, Mahon found himself in a small minority when the amendment was approved 27 votes to 5.<sup>19</sup>

In 1902, 1905 and 1913 he contributed articles on Aborigines to the Catholic literary journal *Austral Light*.<sup>20</sup> In the 1902 article, "The Native Races under the New Constitution", Mahon developed the case for constitutional reform, arguing:

Those who desire that the national Government shall care for the native race are impelled by the strong conviction that some of the States have failed in their duty, and cannot be trusted to deal mercifully with the aborigines in future.<sup>21</sup>

To the question as to why the national government would be more lenient and more just than the state governments, he answered:

[T]he national executive is not amenable to the influence of those who profit by the serfdom of the natives. ... No local interest is strong enough to intimidate it from a policy dictated by humanity, and which will redeem the good name of Australia.<sup>22</sup>

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<sup>16</sup> Government of Western Australia, *Royal Commission on the Administration of Aborigines and the Condition of the Natives*, Government Printer, Perth, 1905. For a discussion of the Mahon's motion and the Roth Report see Malcolm Allbrook, *Henry Prinsep's Empire: Framing a distant colony*, ANU Press, Canberra, 2014, pp. 271-283 and Jane Lydon, *The Flash of Recognition: Photography and the emergence of Indigenous rights*, NewSouth, Sydney, 2013, pp. 42-55.

<sup>17</sup> Hugh Mahon, "The West Australian Black", *Austral Light*, 1 April 1905, p. 231.

<sup>18</sup> *Sun* (Kalgoorlie) 30 July 1899, p. 4.

<sup>19</sup> CPD HR 24 April 1902, p. 11978.

<sup>20</sup> "The Native Races under the New Constitution, *Austral Light*, 1 March 1902, pp. 198-201; "The West Australian Black", *Austral Light*, 1 April 1905, pp. 231-239 (NLA Mahon Papers MS937/978); "The Australian Aborigines: Present-Day Methods for their Protection and Preservation", *Austral Light*, 1 October 1913, pp. 867-872 (NLA Mahon Papers MS937/975).

<sup>21</sup> Mahon, "The Native Races", p. 199.

<sup>22</sup> Mahon, "The Native Races", pp. 199-200.

Conceding that no government “can prevent isolated acts of cruelty, however vigorous and complete may be its supervision”, Mahon countered, “But outrages committed under the form and with the sanction of law can and should be repressed”.<sup>23</sup>

His 1905 article, “The West Australian Black”, was a review of the Roth report. In it Mahon argued that a fixed proportion of Western Australia’s land or territorial revenue should be set aside for the use of the state’s Aborigines:

The aborigines having been dispossessed of their lands, on and by which they subsisted, their claim to a part of the revenue derived therefrom has special justification.<sup>24</sup>

He pointed out that, in the bill conferring a constitution on the Commonwealth’s newly acquired territory in New Guinea, the federal parliament had accepted an amendment proposed by Mahon apportioning 10 per cent of the territorial revenue to the upkeep of the natives. Interestingly, in 1983 the New South Wales parliament passed land rights legislation granting Aborigines a proportion of the state’s land tax revenue.

Mahon’s article advocated another far-sighted proposal: the payment of reasonable remuneration to Aboriginal workers on the state’s sheep and cattle stations, instead of supplying them merely with food and clothing.<sup>25</sup> Mahon concluded the article by expressing the hope that Australia would “stand resolutely behind the demand that the native race shall receive just and humane treatment from the usurpers of their country”.<sup>26</sup>

In the 1913 article, “The Australian Aborigines: Present-Day Methods for their Protection and Preservation”, Mahon reviewed the situation over the preceding decades, acknowledging that there seemed to have been “a healthy change in public sentiment towards the survivors of the original inhabitants of Australia”. He gave praise to the church-run missions at New Norcia and Beagle Bay. However, he was less enthusiastic about the success of state-run reserves, particularly island reserves, the use of which he had earlier advocated. Nevertheless, he retained his optimism arguing:

The Aborigine has been proved capable of such mental and manual development as will enable him, while still a denizen of his ancestral hunting grounds, to become a useful and self-supporting unit of the community.<sup>27</sup>

### **Mahon on immigration**

Mahon’s advocacy of the Aboriginal cause and his attempt at constitutional amendment might be considered to mark him out as a progressive on the issue of race relations in Australia. However, it would be a mistake to draw such a conclusion. Mahon was also a strong supporter of the white Australia policy and he had a reputation as a hardliner. In the lead up to the debate on the *Immigration Restriction Bill* the *West Australian* newspaper reported, “it is Mr Mahon’s hope that Australia will eventually become purely a white race”.<sup>28</sup>

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<sup>23</sup> Mahon, “The Native Races”, p. 200.

<sup>24</sup> Mahon, “The West Australian Black”, p. 237.

<sup>25</sup> Mahon, “The West Australian Black”, p. 237.

<sup>26</sup> Mahon, “The West Australian Black”, p. 239.

<sup>27</sup> Mahon, “The Australian Aborigines”, p. 872.

<sup>28</sup> *West Australian* 18 September 1901, p. 2. This was stated in the context of Mahon’s having given notice that he proposed to move another amendment, one that would enable the minister for immigration to deport “any aboriginal native of Africa, Asia, or Polynesia” or other prohibited immigrant convicted of an

Mahon's views on Asian immigration were well known before he entered the Commonwealth parliament. In 1897 he unsuccessfully stood for election to the Western Australian parliament for the goldfields seat of North Coolgardie. During the campaign he made clear his attitude to the issue through his newspapers. In an editorial in the *Miners' Daily News* he declared:

The preservation of Australia from contamination by alien and barbaric races is a labor worthy of the highest patriotism ... Our continent, 'Encompassed by the inviolate sea', must remain also inviolate from Asiatic admixture of blood, and be reserved for the race that colonised it.

While acknowledging that the Chinese and the Japanese were entitled to live their lives as they chose, he argued they should do so in their own country, adding:

[W]e do not want them here because of their strange diabolic vices [and] above all they are the willing instruments of the capitalistic sweater to curtail the already scanty wages of the Australian worker.

Mahon's critique of Chinese and Japanese ethnicity was mild compared with what he reserved for the Afghans:

In many respects ... [the Afghan] is more objectionable than the Chinaman. He is cruel, treacherous and cowardly; and when opportunity offers, aggressive and murderous.

At a public meeting where he was elected to the committee of the Anti-Asiatic League, Mahon moved a motion calling on the government to pass a regulation "prohibiting inferior races from trafficking on the goldfields".<sup>29</sup>

### **Resolving the contradiction**

At first sight, Mahon's hardline opinions on immigration appear to sit uneasily with his benevolent attitude towards the Aborigines. But, on a closer view a clearer picture emerges.

Firstly, while Mahon expressed his views on immigration in language which today would be regarded as racist, his approach was not totally driven by considerations of race. It reflected the two-part rationale which buttressed the white Australia policy for much of the twentieth century: the ethnic, which regarded Asians as inferior and repulsive, and the economic, which saw them as cheap labour and a threat to Australian jobs.<sup>30</sup>

Like many in the Labor Party, Mahon feared the economic consequences of uncontrolled immigration for unionised workers, the backbone of the labour movement. But the fear was not confined to immigration from Asia. In a speech to the House of Representatives in April 1902 on the operation of the *Immigration Restriction Act*, Mahon called for the

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indictable offence. This amendment was subsequently adopted by the parliament with some changes to Mahon's wording (CPD HR 1 October 1901, pp. 5385-5390).

<sup>29</sup> *Miners' Daily News* 4 February 1897, p. 2; *Menzies Miner* 6 February 1897, p.9; *North Coolgardie Herald* 4 February 1897, p. 2.

<sup>30</sup> In his 1897 editorial Mahon claimed that capitalists opposed the exclusion of Afghans because 'the fact that the Afghan is a cheap labourer outweighs the ruin and suffering inflicted on the toilers of our own blood' (*Miners' Daily News* 31 December 1896, p.2). As if to prove the editorial's point there appeared on the same page a report, headed 'Those Afghans Again', of a 'violent assault' by three Afghans and a report stating that there was considerable indignation at Niagara due to the government's accepting the tender of an Afghan firm for the conveyance of telegraph material to the Lawlers telegraph line. See also *Menzies Miner* 22 January 1897, p.12; 12 June 1897, p.3; *Miners' Daily News* 30 January 1897, p.2.



dictation test to be applied to any foreigners who might take jobs from Australian workers, regardless of their colour.<sup>31</sup> He later told a reporter that no one objected to Italian migrants arriving “in small numbers, as they were good colonists, but he objected to their arrival in hundreds, and being marched straight into positions on mines, displacing competent Australian workmen”.<sup>32</sup> He also claimed that the parliament had passed a comprehensive immigration law whereby “Australia can exclude anybody it wishes to exclude, black, brown, or even white”.<sup>33</sup>

Secondly, Mahon was no “bleeding-heart” liberal when it came to indigenous Australians, and his approach to immigration and Aborigines was consistent, at least in one respect, in that on both issues Mahon argued from a belief in the innate superiority of the whiteman. According to Mahon, “there is perhaps no lower type of humanity on this planet than the aboriginal people of Western Australia”.<sup>34</sup> In an editorial in 1899 he contrasted Britain’s conquest of the Cape Colony in South Africa with its colonisation of Australia, stating “we walked in and acquired it by some means or other from a handful of ignorant savages”.<sup>35</sup> Moreover, he seemed not to have any appreciation of the Aborigines’ spiritual attachment to particular land, the land of their dreaming, seeing it more as an economic resource, eg. “their ancestral hunting-grounds”,<sup>36</sup> the loss of which could be compensated by providing other land or a share of land revenue.

Thirdly and most importantly, the two issues differed in a significant respect, which is the key to explaining the apparent paradox. As far as Mahon was concerned, the “Asiatics” who had come to Australia, not to mention the hundreds of millions of them poised to arrive, posed an immediate economic and moral threat to the welfare of white Australia that could only be averted by exclusionary legislation. In the 1901 debate on the bill to deport Pacific Islanders working in Queensland, Mahon argued: “Never yet has a servile race existed alongside a superior race without sooner or later resulting in the downfall of the civilization and institutions of that country”.<sup>37</sup>

The Aborigines on the other hand posed no significant threat to white Australia. The view then prevailing, even among advocates of the Aboriginal cause such as Mahon, was that the Aborigines were a dying race. An editorial in the *Age* summed up this attitude:

Enthusiasm for the Federal policy of a “white Australia” cannot blind the people of the Commonwealth to the facts that the original possessors of the continent are black, and that, though they are rapidly disappearing, to accelerate that disappearance by oppression, misuse, starvation and cruelty is an outrage and a blot on British justice and civilisation.<sup>38</sup>

While today it might be considered unusual for a politician to be both a supporter of Aboriginal rights and an opponent of Asian immigration – “a Greens/Hansonite”, perhaps? – the case of Hugh Mahon reminds us that the past is indeed a foreign country and that to understand it we do need to leave the baggage of the present at the border.

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<sup>31</sup> Hansard CPD HR 29 April 1902, p. 12073.

<sup>32</sup> *Laverton Mercury* 21 June 1902, p. 3.

<sup>33</sup> *Westralian Worker* 27 June 1902, p. 2.

<sup>34</sup> CPD HR 24 April 1902, p. 11978, 11980.

<sup>35</sup> *Sun* (Kalgoorlie) 22 October 1899, p. 4.

<sup>36</sup> Mahon, “The Australian Aborigines”, p. 872.

<sup>37</sup> Hansard CPD HR 6 November 1901, p. 6917.

<sup>38</sup> *Age* 2 July 1901, p. 4.