

# Reconciling Indigenous rights to lands and resources and Georgism

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# Georgist Philosophy: Background

- Henry George's proposed a solution to poverty by achieving equality and social justice through correcting notions of private **ownership** in land
- His resolution lay in according exclusive rights to the fruits of one's **labours** but equality in rights to what nature has provided for free – the land, defined as the location and the **use of** its natural resources
- **Unearned increments** in location **values**, and increments generated by the cooperation of human society that adds benefits to the location, must be taxed and equitably applied to the society that generated it

# The international and domestic entrenchment of Indigenous rights

- Over the past fifty years, there have been significant advances in Indigenous rights, including land and resource rights (Anaya, 2004)
- International developments - the ILO Conventions, International documents on International human rights treaties (eg. ICCPR, ICESCR, ICERD, CRC) and the 2007 United Nations Declaration on Indigenous Rights (UNDRIP)
- Domestic developments (eg. *Mabo* (1992), *Native Title Act 1993*, earlier state aboriginal land rights legislation in Australia)
- Trend of developments – From assimilation and integration towards internal self-determination and collective rights
- Indigenous rights are internationally entrenched but the scope and extent of such rights vary in each State

# Georgism and Indigenous land and resource rights: Possible conflict?

- Consistent with prevailing contemporary Western perceptions on Indigenous communities during the 19<sup>th</sup> century and the lack of recognition for Indigenous rights, Henry George was silent about the situation of Indigenous peoples and their lands and resources
- However, his principles clearly suggest that first peoples have no special rights compared to other human beings by virtue of having “priority of occupation” (Progress and Poverty [1931 reprint] (“*P and P*”), 244; The Condition of Labor—An Open Letter to Pope Leo XIII (1891, 2)
- There are also arguments that single tax threatens or conflicts with the preservation of underdeveloped land (Day (2005))
- For a contemporary application of Georgist philosophy in the context of Indigenous rights, it would be helpful to appreciate the basis and concept of Indigenous rights

# The relationship with the land as a basis for rights

- It must be appreciated that Indigenous rights do not arise solely from claims of prior “ownership” or “occupation” as understood in legal terms but are rooted in the traditional and spiritual connection that a local Indigenous community possess with their customary areas; this connection includes a mutual social responsibility towards kin and the area
- The right to maintain this special connection has been recognised internationally (UNDRIP, art 25) and domestically (see eg. *Mabo* (1992) (High Court of Australia); *Delgamuukw* (1997) (Supreme Court of Canada))
- These connections have been acknowledged to vary according to the customs of the local community and can range from a non-exclusive right of way to rights approximating to full communal ownership (eg. *Delgamuukw* (1997); UNDRIP, preambular paras 7 and 23, arts 15 para 1 and 16 para 2)

# Equality, justice and sustainable development and in the recognition of Indigenous rights to lands and resources (1)

- Equality - Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity (UNDRIP, art 2)
- Justice - Indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests (UNDRIP, preambular para 6); Advocacy of superiority of peoples based on race, identity etc is unjust (UNDRIP, preambular para 4)

# Equality, justice and sustainable development in the recognition of Indigenous rights to lands and resources (2)

- Sustainable development – Acknowledges that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment (UNDRIP, preambular para 10)
- The UNDRIP contains principles that already form part of international law (Anaya (2004); Allen and Xanthaki (eds) (2011) and is to be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith (UNDRIP, art 46 para 3)
- Although the UNDRIP may not be a **legally** binding international document, the UNDRIP is a standard of achievement to be pursued in a spirit of partnership and mutual respect (UNDRIP, preambular para 24) supported by 147 states (including Australia subsequently)

# Georgist philosophy – Equality, justice and sustainable management (1)

- Consistent with the principles underscoring the recognition of Indigenous rights, *Progress and Poverty* is a plan for peace, prosperity, equality, and justice (Drake (ed), *Henry George: Progress and Poverty* (2006), xii) but was written in the context of the Industrial era in the late 19<sup>th</sup> and early 20<sup>th</sup> century
- Civilizations advance as their social arrangements promote justice and acknowledge equality of human rights (*P and P*, 372-3)
- Henry George appreciated the need for a “higher standard of morals” to accompany social advances (Henry George, *Social Problems* (Chicago, 1883), 242).

# Georgist philosophy – Equality, justice and sustainable management (2)

- He illustrated the positive correlation between common property and the sustainable management of natural resources in Alaska (Drake (ed), *Henry George: Progress and Poverty* (2006), 221-2; in respect of the compatibility of Georgism and ecological economics, see eg. Batt (2003))
- Modern ideas of an ecological equilibrium and an ecologically sustainable process of production have been observed in his writings (Backhaus and Krabbe (1991), 494)
- These ideals underscored his relatively progressive views on social justice and equality, albeit within a very different societal setting from that of today.

# George's appreciation of the experiences of Indigenous peoples (1)

- Henry George's social perspectives corresponded with European social doctrines current in the eighteenth century, including evolutionary theories for social development (eg. Spencer, Darwin) that differentiate between "savage and civilised man" (see eg. Durocher 1961, 497-9, *P and P*, 354)
- Amongst other things, these social theories predicted that Indigenous and tribal communities were on a slow boat to assimilation for their own progress and enlightenment, or in some cases extinction
- Did not foresee the resilience of Indigenous societies and the subsequent development and recognition of Indigenous communal rights and the rights to self-determination
- Nonetheless, George had the foresight to appreciate of the injustice perpetrated by dispossession of lands (the "manifest absurdity" of expelling of the native population whose ancestors had lived on the land from time immemorial (*P and P*, 245))

# George's appreciation of the experiences of Indigenous peoples (2)

- In relation to the treatment of Indigenous peoples at the time, George saw the injustice against Indigenous communities: "Civilisation, as it pushes the red man, shows no virtues. To the Anglo-Saxon of the frontier, as a rule, the aborigine has no rights which the white man is bound to respect. He is impoverished, misunderstood, cheated, and abused. He dies out, as, under similar conditions, we should die out." (*P and P*, 354; 90-1)
- In his denunciation of private ownership, George echoed the virtues of a common right to land as practised (and still practised) by many Indigenous communities:

The opinion that private property in land is necessary to society is... as artificial and as baseless as the divine right of kings... **Wherever we can trace the early history of society, whether in Asia, in Europe, in Africa, in America, or in Polynesia, land has been considered as common property, in which the rights of all who had admitted rights were equal.** All members of the community had equal rights to the use and enjoyment of the land of the community. This recognition of the common right to land did not prevent the full recognition of the exclusive right to the products of labor. (*P and P*, 263)

# George's appreciation of the experiences of Indigenous peoples (3)

- George's philosophy on land resonates with Indigenous perspectives of their traditional lands:

**On land we are born, from it we live, to it we return again.** We are children of the soil as truly as a blade of grass or the flower of the field. **Take away from man all that belongs to land, and he is but a disembodied spirit.** Material progress cannot rid us of our dependence on land (*P and P*, 210-1)

# But is the Georgist remedy (single tax) cast in stone? (1)

- It must be borne in mind that Henry George was express:

(1) on the need for critical thinking and “men who think for themselves” even when appraising his own work (*A Perplexed Philosopher* (1892) [Digitized 2008], 6, 219-220)

(2) that “imagination fails” when we try “to think of what knowledge and power progressive civilization may give to the men of the future” (*Social Problems* (1883), 11)

(3) that a just remedy for inequalities should accord with social development, be of practical application and be harmonious with other reforms (*P and P*, 234; see also Pullen (2005), 171)

# But is the Georgist remedy (single tax) cast in stone? (2)

- George's views calls for a purposive and flexible application of the single tax remedy that is aligned with contemporary societal issues and needs (eg. Would it be just to tax owner-occupiers in Australia (see Pullen (2005), 170; Pullen (2014), 192)? Would taxing Indigenous title holders for environmentally sustainable use of their land in its natural state be just?)
- A practicable remedy (ie. a land tax system) would call not for 'the regurgitation of 19<sup>th</sup> century doctrine' but the appreciation of the utility of broader Georgism in addressing contemporary issues and enhancing the existing tax system eg. the need for sustainable environmental/ecological development (Stilwell and Jordan (2005), 216-42; Day (2005), 251-3)
- As argued by Day (2005), the real evil, as perceived by Henry George is "the unearned increment derived from the private **exploitation** of land and other natural resources (irrespective of tenure)" (261)
- Efficient tax system criteria (simplicity, equity, efficiency, potency and sustainability (Stilwell and Jordan (2005), 216-7) should consider this perspective of "unearned increment" in achieving a just and equitable tax outcome for society

# Considerations for Georgist land value tax proponents in respect of Indigenous rights to land and resources (1)

- Notwithstanding the diverse “bundles of rights” held by Indigenous title holders, the following specific concerns on the imposition of single or land value tax affecting these holders should be considered:
  - (1) “Ownership” or possession with conditions (envisaged by George (see *P and P*, 243-4 ; cf Pullen (2005), 172-3) – Traditional possession, occupation, use or enjoyment or native title by Indigenous communities should be tax exempt (see *Local Government Act 1993* (Queensland)) unless any activity is damaging to the environment; For areas used or enjoyed not subject to Indigenous title, eg. protected areas, a tax exempt pre-emptive licence to possession, management and control with conditions is a viable alternative

# Considerations for Georgist land value tax proponents in respect of Indigenous rights to land and resources (2)

(2) “**Unearned increments**” and “best use of land” – The monetisation of Indigenous conservation efforts, stewardship of land and resources and environmentally sustainable activities (eg. subsistence hunting) (see eg. Small (1998)) as labour applied to land (when people put a value on the resources they tend to protect, conserve and manage them (Industry Commission Report (1998, 15)); Introducing a polluter (includes proposed extractors and developers) pays tax for privilege (Gaffney and Harrison (1994), 223) and impairment of natural resources (Backhaus and Krabbe (1991), 491-2) in respect of Indigenous areas

# Considerations for Georgist land value tax proponents in respect of Indigenous rights to land and resources (2)

(3) **Increments in value** of land – Taxing Indigenous right holders for increases in the value of their land when they do not speculate on and alienate or rent their land (aimed at the “idle rich”?) would be unjust (akin in some ways to injustice perpetrated by such tax on owner-occupiers/homeowners). Taxation for the increment in value should be considered where Indigenous rights holders alienate land or alternatively, perhaps possess rights of alienation

(4) Citizen’s dividends and/or tax incentives for Indigenous conservation efforts

# Conclusion

- This paper suggests that a liberal, progressive and equitable application of Georgism, and in particular the remedy of land value taxation, to the context of Indigenous rights to lands and resources is possible and indeed consonant with Henry George's ideals for equality and social justice
- Such an approach, if appropriately utilised, has a lot to offer in terms of:
  - (1) providing incentives for the environmentally sustainable management of Indigenous lands and resources and more broadly, the conservation of the environment;
  - (2) potentially levelling the playing field in evaluating the potential use of Indigenous areas for intended extractive and development activities; and
  - (3) ensuring that marginalised Indigenous communities are taxed equitably and receive dividends with a view to correct inequalities in the distribution of wealth sought to be remedied by Henry George.