Justice or appropriation?

Indigenous claims and liberal theory

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In recent years, political philosophers have paid increasing attention to the claims of indigenous people.[1] Not surprisingly, this attention has been greatest in those countries which were products of the European expansion into the rest of the world in the seventeenth, eighteenth and nineteenth centuries. In the United States, Canada, Australia and New Zealand, almost all citizens are either descendants of those who immigrated after European settlement or are themselves immigrants. These immigrants ('settlers') brought with them their own political institutions, forms of social life and cultural traditions, and it is these, modified and even transformed by the colonial and postcolonial experience, which constitute the dominant practices in these countries. In each country, the indigenous people form a very small minority of the population as a whole, are the most disadvantaged in terms of income, life expectancy, education and other standard measures of well-being, and lead a politically and culturally marginalized existence in a land which was once theirs.

According to conventional measures (economic resources, military capability, votes, etc.), indigenous people are almost completely powerless. Yet their moral presence is enormous. I suspect that almost all the citizens of Canada, Australia and New Zealand – even those who are most vehemently opposed to the claims of indigenous people – are uncomfortably aware of the immense injustice that lies at the core of their nation's history. Untold millions of indigenous people were murdered or died as a direct consequence of European settlement. Those who survived were moved off their land and subjected to horrifying and contradictory policies of discrimination and assimilation. Many of these practices continued until well within the memory of those living today,[2] and their effects remain in the poverty and cultural deprivation in which most indigenous people live. While indigenous people lack political power in conventional terms, the manifest justice of their cause is itself a source of empowerment.[3]

Recognition of an injustice is as likely to result in denial, evasion or self-deception as in action. There are enormous political problems in generating the will and marshalling the resources necessary to address the claims of indigenous people. Even were these problems to be overcome, it is not clear what the demands of justice are. Do they require restoration to indigenous people of political independence? If so, what form should this take? Or does justice require recognition of a special status as citizens of the postcolonial state? These are large questions that are in contention among indigenous people themselves. Of course much can and should be done without waiting on the resolution of these questions. But even the provision of the most urgently needed resources, such as food and medical aid to remote indigenous communities, is fraught with problems. Every intervention by a non-indigenous authority is an expression of domination; every gesture, however humanitarian, contains some aspects of cultural expropriation; and every intention, however benevolent, contains elements of paternalism and self-justification. This does not mean that action must wait on a yet to be achieved purity of act and intent. But it must embody an awareness of the history that has determined the conditions of the intervention and a sensitivity to its ambiguities.

The project of doing justice to indigenous people must also raise the question of whether the concepts of justice provided by Western moral, legal and political theory are adequate to comprehend the issue. Contemporary Western political philosophy can no more approach the claims of indigenous people with theoretically clean hands than can the postcolonial state

do so politically. The philosophies of the eighteenth and nineteenth centuries found little to object to in the European advance into the non-European world, and we must be wary of the claims of their successors to provide an account of justice that will do better. The concepts that non-indigenous people employ to understand the issues may themselves be implicated in the problems that they seek to address. Innocence is no easier to achieve in theory than it is in practice. The best we can do is to be sensitive to the possibility that the moral and political principles that we employ might themselves constitute a form of cultural expropriation. Ultimately, the test for Western political and moral philosophy is not simply that it can recognize that an injustice has been inflicted on indigenous people, or even that it can prescribe that a special place be found for them within (or perhaps outside) existing political structures. If Western theory is to find a place for the claims of indigenous people, that place must not be conceptually predetermined; it must also represent the understanding and choices of indigenous people themselves. Justice is not merely a matter of imposing a pre-existing principle of justice; it must respond to voices from outside the tradition in which that principle of justice was formed.

The issue of justice is central, and has rightly received the most attention from political philosophers. However, it is not to diminish the depth of this concern to suggest that there is another motivation present in the work of non-indigenous theorists. In being made aware of the claims of indigenous people – usually by their own struggles – many of us have been forced to confront the morally flawed nature of our own national pasts. Recognition of the genocidal nature of the founding moment of the postcolonial nation places any sense of national legitimacy in doubt. The task of doing justice to indigenous people is also that of recovering a sense of national identity – of what is to be Australian, Canadian, or whatever – in the light of the shameful nature of that inheritance.[4] And although a sense of national illegitimacy may lead to denial and repression, there is some reason to hope that it could also generate the political will necessary to undertake the immense project that justice to indigenous people will require.

In the following discussion I will concentrate on indigenous issues as they have arisen in my own country, Australia. However, I will draw on discussion from other countries, especially Canada and New Zealand. Where there seems to be a significant difference between the countries, I will draw attention to it.

The claims of history

The increasing visibility of indigenous struggles over the past twenty or thirty years has coincided with the emergence of multiculturalism as a significant political issue. Too often, the issues are conflated. But this is a mistake. Multiculturalism is characteristic of the politics of immigrant groups – either as demand or accommodation. It emerged at a time when new forms of media, changes in communication technology, and the development of relatively cheap mass transport were enabling recently arrived immigrants to keep in contact with each other and with their home countries. In this context, the project of maintaining a version of their national culture in a new environment began to make a good deal more sense than it had, say, fifty years previously. Immigrant groups began not only to resist the pressures to assimilate to the cultural agendas of their newly adopted countries, but to argue for the public recognition of their own cultural identities.

To subsume indigenous claims under the rubric of multiculturalism is to blur three significant differences. The first is that the cultural differences between (and among) recently arrived migrants and their more established predecessors are small compared with those between *all* colonial and postcolonial migrants and *their* indigenous predecessors. From the perspective of indigenous people, the project of multiculturalism is a readjustment of the hierarchies *within* a dominant culture.[5] A second major difference is that for indigenous people there is no distant homeland which is the source of their culture and to which they may return to recuperate their identities. The ground of their cultures is near at hand; but it belongs to and has been infused with a new and alien culture. The very survival of indigenous cultures is at risk in a way in which those of migrant communities is not.

A third and crucial distinction between indigenous claims and the multicultural agenda lies in the different histories of the communities involved. The vast majority of recent migrants have chosen to leave their home country in order to settle permanently in another. Though there are important and relevant differences in the circumstances in which this choice is made,[6] for most it is a choice, not a necessity (after all, most of their compatriots do not emigrate). This decision renders some measure of cultural alienation inevitable; and while there is good reason for this to be lessened as much as possible, there are limits on the extent to which all immigrant cultures can and should receive public recognition.[7] On the other hand, indigenous people made no decision to migrate; as far as they are concerned, they have inhabited their country since

the beginning of history. Far from agreeing to its occupation by Europeans, they resisted as strongly as they could. Their land was taken from them by force and deception. This very different history marks an enormous moral difference between the claims of indigenous peoples and other cultural minorities.[8] The fact that they were the prior inhabitants of the land is an important part of the self-understanding of most indigenous peoples. In Australia, for example, most have retained the previously pejorative term 'Aboriginal' as a signifier of their identity as the original inhabitants of the mainland of Australia and Tasmania.[9] For indigenous people, justice does not consist merely in recognition of their distinct cultures; it also requires appropriate compensation for a historical expropriation.

Despite its centrality for indigenous people's self-understanding, liberal political theorists have had a great deal of difficulty in accepting the historical dimension of their claims. Astonishingly, many – including some who are otherwise most sympathetic to the claims of indigenous people – simply deny the continuing moral relevance of the past history of European contact with indigenous people. The consequence of this denial is an evasion of the responsibilities of justice. Or so I will argue.

The key contribution on this issue was made by the New Zealand philosopher, Jeremy Waldron.[10] Waldron argued that the fact that considerable injustice was done to indigenous people in the past does not mean that there is *now* a responsibility to compensate the descendants of those who suffered the injustice.[11] Circumstances have changed: the land and resources wrongly taken from indigenous people now play a central role in the lives of many who were not themselves involved in the expropriation; what is more, they are used to provide food and other goods for many who might otherwise starve or live in poverty. The enormous growth in the world's population over the past few hundred years has increased the relative scarcity of land, and made it much more important that it be used productively. The change in historical circumstances is such that it would not have been right for indigenous people to have retained sole possession of the land and resources which once belonged to them. To return these to indigenous people – as a stolen car might be returned to its owner – fails to take into account these changed circumstances. Waldron does not deny the injustice of the original expropriation. His argument is that it has been 'superseded': what was unjust has become just. Waldron concedes that there might be a place for a symbolic acknowledgement of the past injustice – perhaps a formal apology or ritual gesture – but argues that this should not be confused with reparation.[12] He also recognizes that there is much in the current circumstances of indigenous people which calls for rectification. But this is not the same thing as compensating indigenous people for what happened in the past.[13]

In the next section, I will question Waldron's assumption that what was taken from indigenous people in the past is best conceived of as *property*, albeit property of a particularly important kind. If we put this point aside for the time being, one point should be conceded straight away. Property rights – even those of indigenous peoples – are not absolute; circumstances may arise when the rights of one group must be overridden in the name of a greater good. One need not accept Waldron's overly sanguine view of the use to which the land and resources of settler societies have been put to recognize that there is no way in which indigenous people could have preserved their relationship to the land unchanged through the nineteenth and twentieth centuries. This is not just a matter of historical inevitability (though this too must be given some weight). Given the needs of the rest of the world, some sharing of land and resources was required. One does not have to be a utilitarian to think that sometimes the needs of many count against the rights of the few.[14] Nor should we ignore the claims of the non-indigenous citizens of postcolonial societies, many of whom have committed a good deal of their lives and emotions to the land which once belonged to indigenous people. In the time-scale of indigenous people, they may be recent arrivals; but most of them know no other homeland.[15]

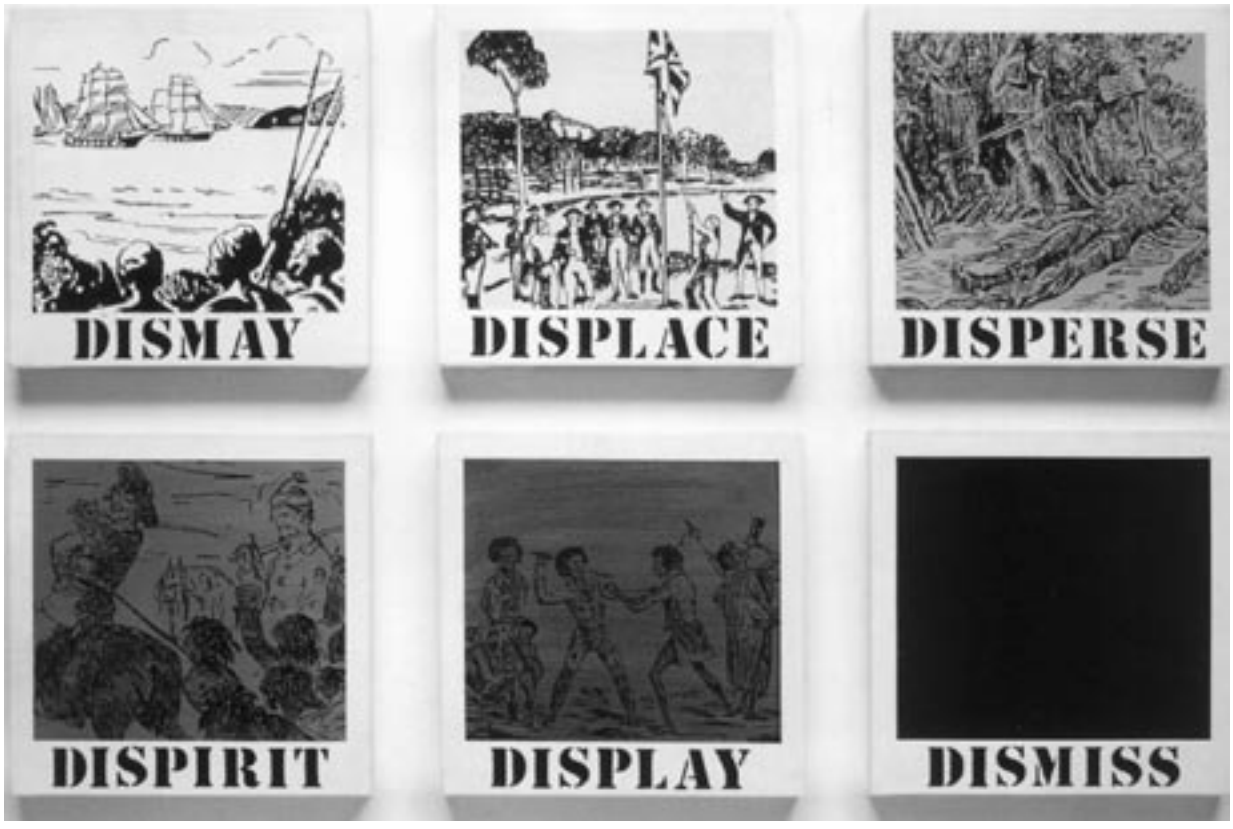
However, these considerations do *not* show that the original injustice has been 'superseded'. The moral requirement that relatively scarce resources be shared does not mean that everything considered of value must be taken from the original owners; nor that they should be murdered in large numbers, their children taken from them, and the conditions of their traditional way of life destroyed. Even if we focus more narrowly on the expropriation of land, there is no reason to think that the original injustice has been annulled. In the familiar cases in which an overriding social benefit does mandate expropriation – as, for example, when privately owned land is required for a public park – compensation is due to those whose rights are overridden. However justified the expropriation, an injustice is done to the original owners unless and until there is appropriate compensation. Why, then, should justice to indigenous people require anything

less? Indeed, given that the relationship that indigenous people have with the land is much more crucial to their identity and way of life than the ownership relation characteristic of modern Western society, justice would surely require more. Even if changing moral circumstances mean that it is neither possible nor appropriate to return what has been taken, this does not mean that the injustice of the expropriation has been 'superseded'. On the contrary: it becomes all the more crucial to address that injustice.

The superficial plausibility of Waldron's argument depends on an implicit assumption that what is demanded in the name of historical justice is a return of *all* that was taken – of the Australian continent to the Aboriginal people, of the United States to the native Americans, and so on. The philosophical argument against such restoration is buttressed by the tacit knowledge that such a proposal is simply not on the cards.[16] But this is a straw man: *no one* engaged in indigenous issues has seriously proposed this. Indigenous people have generally asked that the enormity of the loss they have suffered be recognized in order that meaningful discussion of what might count as compensation can begin. Certainly, substantial land rights are usually on the indigenous agenda. But this is nothing like the demand for a return of *all* that was taken. Indeed, in many cases, the land rights demanded by indigenous people involve sharing the land with non-indigenous people, and are often compatible with its continuing productive use.[17]

Although Waldron claims to take history seriously, he assumes an ahistorical conception of what the rectification of a historic injustice would require. Justice to indigenous people cannot mean the restoration of the original: there are both practical and moral reasons why this is not possible. Nor can it mean the provision of an equivalent: there is no measure to commensurate what can be provided now with what was done in the past. This does not mean that the demands of justice lapse; it does mean that we must search for a practice of justice beyond that provided by the standards of reparation appropriate to the exchange of commodities. At the very least, justice requires negotiation and consultation with those who have suffered the loss as to what *they* would accept as reparation. It also requires an understanding of the nature of the historic injustice. The possibility of further consequential injustice might severely limit what reparation might be made. But this should not limit the search for understanding. Indeed, it demands that it take place.

Justice also requires recognition of its own limitations. Nothing that can be done now – no procedures of compensation or reconciliation – will compensate for the suffering and tragedy which European settlement inflicted on indigenous people. An important part of



Gordon Bennet, Untitled 1989, Museum of Contemporary Art, Sydney

what can be demanded in the name of justice – of what is due from the present and future generations to those who suffered in the past – is that these events not be forgotten.[18] Justice is not always – or perhaps ever – merely a matter of compensation; it sometimes requires an acknowledgment of what is beyond compensation.[19] Talk of 'supersession' is an evasion of the responsibilities of justice.

Perhaps the most powerful and certainly the most influential case for recognizing the special claims of indigenous people within an essentially liberal discourse has been made by the Canadian philosopher Will Kymlicka. But Kymlicka is strangely reluctant to appeal to the historical expropriation of indigenous people. While he concedes that historical arguments may have some force, the only ones he explicitly considers are those in which an indigenous claim is based on a past treaty. Even in these cases, he suggests, the case must also be supported by arguments based on considerations relating to the present situation, and it is these which form the substance of his argument.[20] It is a mistake, he argues, to 'try to turn back the historical clock'. What is due to indigenous people is not reparation for what was lost in the past, but for what is lacking in the present. His main argument – the 'Equality Argument' – is, as he puts it, situated 'within a theory of distributive justice, rather than compensatory justice.'[21]

Liberalism, as Kymlicka conceives it, is committed to two essential principles: (1) the moral primacy of the individual – the principle that it is individuals, not groups, who have rights; (2) egalitarianism – the principle that all individuals have the same basic rights. However, he argues that most liberals have not sufficiently recognized the importance of *culture*, and especially of deep and pervasive cultures, to the individual. In his early work, he argued that these cultures provide the essential framework within which individuals exercise their freedom of choice; a liberalism which values freedom of choice must therefore also value its cultural preconditions. While he reiterates this argument in more recent work, he also suggests – what is surely more fundamental – that our culture is an important constituent of individual self-identity.[22] For both these reasons, he argues, a worthwhile liberalism should recognize that all individuals have a legitimate claim that their cultural identities be protected. And although this right can only be exercised through the maintenance of communities, the right is not itself an attribute of the community, but of the individuals who form those communities.

The right is not, however, indefeasible. For the members of many cultural minorities, the claim to maintain their culture is diminished, though certainly not annulled, by their decision – or that of their forebears – to migrate. For Kymlicka, this decision makes some measure of accommodation to a dominant culture both inevitable and appropriate. Members of immigrant communities certainly have cultural rights (confusingly, Kymlicka refers to these as 'polyethnic rights'[23]) – for example, to be treated with respect and not to be discriminated against. However, they cannot expect their language, history and traditions to have the same public presence in their new country as in the old. On the other hand, the marginal and disadvantaged position of indigenous people is not a consequence of their own choice or that of their forebears, but of the actions of others. For this reason, indigenous people have a much greater claim to cultural protection than immigrant communities. This claim will extend to the protection and support of their language, religion and other cultural practices. But it will go further: given the central role that land plays in their culture, Kymlicka argues that indigenous people should be granted special rights to those areas of the country to which they have a special affiliation. In many cases, these rights will include a strong form of self-government, including the right to place restrictions on the entry and residence of non-indigenous peoples. In other words, indigenous people should be treated as *national*, rather than merely cultural, minorities. This argument does not depart from the liberal principle that all people have the same fundamental rights. However, here as elsewhere, the securing of equal rights requires different treatment, and in the case of indigenous people – and perhaps other national minorities – they justify measures of cultural support and territorial self-government which are not available to other cultural groups.

I have no quarrel with the claim that indigenous people have special rights. But it is important to point out the implicit appeal to history in Kymlicka's argument. Immigrant groups have lesser claims than indigenous people because their decision to migrate can be interpreted as the historically given consent to some degree of cultural marginalization.[24] Given the reliance on a past act of migrant consent, there is some inconsistency in Kymlicka's reluctance to base the special rights of indigenous people on a past act of expropriation. If the appeal to history is appropriate in the case of the 'original consent' of migrants, then it is hard to see why it is not appropriate in the case of the 'original expropriation' of indigenous

people. The appeal to historical consent is legitimate if there is a historical narrative by which the consent of past migrants commits their present descendants. However, there is no reason why there should not be other historical narratives by which the past expropriation of indigenous people is transmitted as continuing injustice to present and future generations. And indeed, there are such narratives: they are an explicit part of indigenous cultural traditions, and they constitute the repressed knowledge of postcolonial national traditions as well.

An appeal to history is implicit in Kymlicka's argument at an even more fundamental level. If cultural deprivation is part of the subject matter of a theory of distributive justice, then distributive justice must concern itself not merely with the current allocation of goods and resources, but also with the past. Or, to put this another way, the distinction between distributive and reparative justice becomes blurred when the objects of justice are cultural deprivation or advantage. If, as Kymlicka rightly argues, indigenous people have rights to certain land, this is because that land is defined by and redolent of a historical narrative which forms part of the group's culture – a narrative which also records their dispossession. Concern for the current position of indigenous people cannot but address the issue of past injustices.

It is at this point that Kymlicka's argument moves beyond its liberal parameters. A concern with culture cannot simply be added to liberalism, leaving its individualist framework intact. In so far as our identities are formed though culture, we also acquire the rights and responsibilities which are defined by that culture. These are not acquired by each individual *de novo*. Individuals find themselves written into a moral agenda which they do not choose, and often would not have chosen. Indigenous people have an identity which is in part defined by a narrative of dispossession and loss. Non-indigenous citizens find, often against their will, that they are inscribed within a narrative which assigns them some measure of responsibility for that dispossession and loss. Coming to terms with the present situation of indigenous and non-indigenous people means addressing these different but complementary pasts. For mainstream liberalism, the scope of our special responsibilities extends no further than the reach of our individual existence and memories. However, the sphere of culture provides an identity and storehouse of social memories – and also repressions – which go beyond the individual. Understanding the cultural, and therefore the historical, source of many of our rights and responsibilities takes us beyond the individualistic terms in which liberalism has classically been conceived. This does not necessarily mean, however, that the group (the culture, the community) has rights over the individual; it does mean that membership of the group plays a crucial role in the creation and acquisition of the rights and responsibilities of the individual.[25]

Indigenous people are not merely another cultural minority seeking a place in the public sphere of postcolonial societies. They represent the expropriation – the original sin – on which these societies were founded. Far from this injustice having been 'superseded' by the onward march of history, it continues in the material and cultural conditions of indigenous life. If we are to understand the present, we must also come to terms with the past.[26] It is this challenge which liberal political theory has to meet.

Coming to terms with the past

Every indigenous group has its own story of struggle and resistance, occasional victory, and overall dispossession and loss. There is, however, one significant difference in the relations between European settlers and Aboriginal and Torres Strait Islander people, compared to those of other colonies. In Australia, there was no formal recognition of the independent legal and political status of the Aboriginal people. In the United States, Canada and New Zealand, there were any number of treaties made between European authorities and representatives of the indigenous people. These treaties were regularly broken, and the concessions made were revoked when the European settlers felt they were in a position to do so. No doubt they were usually made in bad faith. However, they did imply a recognition of the political status of the indigenous people, and often today appeals to these treaties play a not insignificant role in political debates about the rights of indigenous people.[27] In Australia, the original settlement and the expansion into the rest of the continent took place without these niceties. No treaties were made; no acknowledgement of the legal and political standing of the various indigenous groups was given.[28] Sovereignty was asserted on behalf of the British Crown (the Aboriginal people thereby becoming British 'subjects') and inherited by the various colonial authorities and eventually by the Australian Commonwealth. The colonial expansion into the rest of Australia was justified by the convenient fiction of *terra nullius*. In so far as this doctrine had a rationale, it was that the Aboriginal people had no agriculture (they were 'hunters and gatherers') and did not have a sufficiently settled relationship with the land to be the

legal owners of it. The land was therefore owned by no one, and available to be appropriated without consent, consultation or compensation. While there was some concern for the fate of indigenous people expressed by philanthropists and occasionally by the British government, by and large expropriation proceeded without consideration for the way of life, culture and even survival of Aboriginal people.

The doctrine of *terra nullius* symbolizes in an especially stark form the failure of settlers to recognize the rich and complex web of social relations which pre-existed their arrival. For this reason its repudiation by the High Court of Australia in the case of *Mabo* v. *Queensland* in 1992 is often – and rightly – regarded as a breakthrough in Aboriginal/non-Aboriginal relations.[29] Two aspects of this judgement are important – one positive, the other negative. The first and positive aspect was that it held that the Aboriginal relationship to the land included (although also went beyond) a concept of ownership as that notion was understood in the system of common law the Australian courts had inherited from England. The judicial recognition of 'native title' provided many tribal Aborigines with the opportunity to have their ownership of traditional land legally recognized. Even where Aborigines had been effectively dispossessed, the judgement exposed the morally, if not legally, indefensible nature of the dispossession.[30] Much of the significance of the Mabo judgement lies in its recognition of the racist nature of the Australian past and its implicit challenge to do something about it.[31] Its immediate political impact was to bring compensation and land rights to the forefront of the political agenda.

The second – and negative – aspect of the judgement is implicit in the first. 'Native Title' was recognized, but only because it could be held within the existing Australian legal system. What the court did not do – and perhaps could not have done – was recognize the independent validity of the Aboriginal system of law. While it acknowledged that Aboriginal people had a form of property right over vast portions of Australia prior to 1788, it did not allow that Aboriginal communities had exercised legal and political *sovereignty* over that land. Indeed, it explicitly refused to do this, reaffirming a decision made in a previous case (*Coe* v. *Commonwealth*) that to do so was outside its powers. The assertion of British sovereignty was an 'act of state' which was the ultimate foundation of the Court's own authority. It could not, therefore, affirm a pre-existing but residual sovereignty of the Aboriginal people – as it had affirmed a pre-existing but residual property right – without invalidating its own position. It is not to diminish the enormous importance of the Mabo judgement to suggest that its failure to recognize the political rights of Aboriginal and Torres Strait Islanders continued the colonial tradition of expropriation.

It is a moot point whether it is legally coherent to recognize property but not sovereignty.[32] I will not pursue the issue here. What is at stake is ultimately a political and a moral issue, not a legal one, and the language of sovereignty is only of limited use in pursuing this. Indeed, the very distinction between property and sovereignty is an artefact of a system of law which is not that of Aborigines. The characteristic Aboriginal relationship to the land involves a complex of relationship of various kinds of use mediated by positions held within larger communities (tribes or 'clans'). These relations were mutually recognized and – more or less – respected by other Aboriginal groups. If one aspect of these relations can be translated into the Western legal language of property (as 'native title'), another aspect will need to be translated into the language of sovereignty – and there will also remain a good deal left untranslated.

European settlers in the Americas and Australasia were always reluctant to recognize the status of indigenous peoples as independent political units. When it came to the point, recognition of sovereignty only took place when indigenous people were able to pose a significant threat to settlement. It was then that negotiations would be entered into with indigenous leaders, concessions made, and treaties signed. The treaties would be broken as soon as the balance of power shifted in a direction favourable to the colonists; however, they remained as a reminder that the indigenous people were – for a moment – regarded as sovereign political entities.[33] They are a continuing trace of the political rights which indigenous people once enjoyed, and which ought to have been recognized and respected by those who came into contact with them.

Indigenous people could not have maintained an unchanged relationship to the land given the enormous changes that were taking place in the rest of the world from the sixteenth century onwards. This applies to the issue of sovereignty as well as that of ownership. Indeed, the use of this concept to describe a privileged political relationship between indigenous people as a whole and their territory involves elements which are extrinsic and perhaps even alien to traditional indigenous social and political life. Its use is justified, if (and only if) it provides a way of attributing to indigenous people the right and capacity

of self-determination. The injustice done to indigenous people was not that they were not left alone to continue their traditional ways of life unchanged. That was not a historically available option. It was rather that European contact with the various 'new worlds' took the form of an invasion, and did not allow indigenous people to respond in their own ways to the enormous challenges provided by the encounter with the more technologically advanced European world. This task of justice is to provide the support and resources necessary for indigenous people to meet these challenges today.

Justice for indigenous people is not restoration of the property which was taken from them, nor is it remedy for present disadvantage, though restoration and remedy must play their part. Justice also means enabling indigenous people to exercise the capacities for sustaining, changing, developing, and perhaps even repudiating, their traditional ways of life in the light of the now global context of their lives.

Forms of self-determination

The principle that indigenous people have the right of self-determination is implicit in the First Article of the International Covenant on Civil and Political Rights adopted by the United Nations in 1966, which reads: 'All peoples have the right of self-determination.' It is explicit in Article Three of the Draft Declaration of the Rights of Indigenous Peoples, submitted to the United Nations by the Working Party on Indigenous Populations in 1994: 'Indigenous peoples have the right of self-determination. By virtue of this right, they freely determine their political status and freely pursue their economic, social, and cultural development.'[34] It does not need saying that these declarations are as honoured in the breach as in the observance, and that many of the relevant states – including Australia – do not accept the principle of self-determination for indigenous peoples. What does need saying is that it is not at all clear what the relevant practice of self-determination should be.

To some extent this unclarity is inevitable and desirable. Self-determination is an exercise in freedom: a community (or an individual for that matter) developing the appropriate form for its existence. In principle, the form should not be given in advance, to be discovered (with appropriate guidance from philosopher-kings!); it is rather to be made. Self-determination is also a process of self-formation (*Bildung*, as that term was understood by the German philosophers of the late eighteenth century); the self makes itself in the process. But self-determination does not take place in a void. There is a context, and while some aspects of the context are subject to change, others are not. Self-determination involves finding forms of existence – and thus forms of the self – which are appropriate to that context.

An initial problem concerns the nature of the indigenous group – the 'self' – which is to determine itself. In Australia, for example, prior to British settlement there were somewhere between three hundred thousand and a million Aborigines spread over a vast continent with a range of different ways of life and cultures. It is estimated that there were over two hundred and fifty different languages with six hundred dialects.[35] Some outback tribes have succeeded in maintaining their distinct traditions, and the recognition of their title to their traditional land has allowed them to continue to do so. In some cases, they have even retained their own laws and modes of punishment, and these are taken into account by magistrates and judges. However, this is not available for most Aborigines, especially those who live in urban centres. While kinship and tribal links remain strong, it is not plausible to suggest that these might form self-sustaining communities, especially given the pressures of urban life (unemployment, crime, drugs). Indeed, even the tribal micro-autonomy made possible by isolation and security of land holding (as well as a good deal of government assistance) depends ultimately on the political initiatives and strengths of a larger Aboriginal movement.

The different Aboriginal communities became one people, both conceptually and practically, through the historical experience of European invasion and settlement. Self-determination for the Aboriginal people is not the re-creation of the multiple forms of traditional life – though in some cases this is appropriate and possible. It involves the formation of the kinds of structures through which indigenous people can meet the political, social and cultural challenges of living in the modern world. Self-determination requires the formation of a political movement capable of not merely representing, but to some degree of forming, one people.

There are clearly problems in this process. There are often conflicts between the interests of tribal and of urban Aborigines and between the demands of local communities and the movement as a whole. Every process of political unification implies some measure of homogenization and the assimilation of difference. There is no guarantee – and, indeed, no necessity – that there should be only one indigenous people. There are, for example, cultural and (as we

shall see) political differences between Australian Aborigines and Torres Strait Islander people (many of whom live on the Australian mainland), and the fragile unity represented by such representative bodies as the Aboriginal and Torres Strait Islander Council may well sunder. But these tensions and possible realignments are to be expected. Self-determination is a *political* process, and there is no reason to suppose that indigenous politics are immune from the conflicts and compromises characteristic of politics in general.

Self-determination also requires cultural change. This is apparent to most Aboriginal leaders. It is often not apparent to many non-indigenous sympathizers, who operate with an unrealistic conception of indigenous culture as the idealized other of all that is wrong with modern Western life. More importantly, it is often opposed by the law courts and tribunals interpreting land-rights claims. Aboriginal people are asked to prove not merely that they have a continuing association with traditional land, but that they have retained precisely the beliefs of that tradition. The legal system thus re-creates a familiar colonial paradox: indigenous people are asked to assimilate and make their way in the new world, but also to demonstrate their authenticity by retaining their separation from it.[36]

The most obvious historical model for indigenous self-determination is some form of territorial self-government. As we have seen, this is Will Kymlicka's preferred solution.[37] It may be appropriate in some cases. Large areas of Canada can be (indeed, already have been) set aside for the Inuit people. These areas will never achieve the social and political independence and the kinds of international recognition traditionally demanded on behalf of nations. However, they do provide a space within which indigenous customs, laws and forms of life can be recuperated and practised; they allow for forms of self-rule which reflect indigenous traditions and practices; and they promise a public institutional framework which reflects the identity of indigenous people. Inevitably, these areas of indigenous self-government will diminish the rights of non-indigenous Canadians. They are required not merely to satisfy the universal right to culture, but to re-create the specific moral boundaries between indigenous and non-indigenous people which have been so brutally transgressed by centuries of colonialism.[38] In Australia, something similar is sought by many Torres Strait Islanders, and, given the cultural difference from the rest of Australia, and the potential for some independent economic development (fishing, tourism), this could be achieved within the existing Australian federal structure.

However, the solution of territorial self-government is not available for the majority of Aboriginal people; nor is it sought by most Aboriginal leaders.[39] Probably 75 per cent of Australian Aborigines currently live in the cities and towns of Australia. Land rights are important to these non-traditional Aborigines – both symbolically and as places to return to. However, there is no reason to expect that large numbers will live in those areas in which land rights are obtained. Territorial self-government for these urban indigenous people would only be possible after massive relocation, either of the indigenous people themselves or of non-indigenous citizens. The practical and moral problems consequential upon this form of indigenous self-determination are on a level with those of the expulsion of all non-indigenous citizens – a 'solution' to the problem of justice which Kymlicka rightly rejects. This does not mean that rather strong forms of local autonomy are not possible; indeed, as I have noted, they are already in place in regions of Northern and Central Australia. But they do not address the issue of self-determination for those indigenous people for whom this option is not available.

There is a further – and perhaps deeper – problem with this solution. National self-determination is a form of separate development. It promises indigenous people a distinct space – in the literal sense – in which they may recuperate their cultures and ways of life. In most cases, however, the people who live in these areas will be heavily reliant for subsidies, medical aid, housing, and so forth, on the state and federal authorities. The underlying reality is one of dependence. It is the need for a close and continuing relationship with non-indigenous Australians (or Canadians, New Zealanders, etc.) that the rhetoric of national self-determination obscures. For better or worse (or both) the fate of indigenous people is inextricably bound up with that of non-indigenous people, and vice versa. The resolution of the tensions at the heart of this awkward symbiosis must lie in some form of coexistence. The self-determination which is the right of the Aboriginal people must work itself out, not as separate development, but in relationship with non-indigenous Australians. Self-determination is possible only as part of the overall political framework. Though separate development is possible and appropriate for some indigenous people, in practice most will occupy the same footpaths, go to the same schools, be treated at the same hospitals, play the same games, and compete for and work at the same jobs as non-indigenous people. Many of the interests and divisions (of religion, of political persuasion, of gender, etc.) which are

characteristic of the non-indigenous community also exist among indigenous people. The political project of bringing some measure of justice to relations between indigenous and non-indigenous people is a task they share – though for different reasons. In any event, it requires the participation of both groups. Citizenship is the political identity appropriate to these forms of social interdependence.

Bicultural citizenship

However, if citizenship is to provide for indigenous self-determination, it must provide for the different histories, cultures and forms of life of indigenous people: the social, if not the physical, space for the reproduction and transformation of Aboriginal cultures; forms of self-government which are appropriate to the needs and desires of Aboriginal people; and a representation of the interests and cultural forms of Aboriginal people in the state and its associated public spheres. What is required, to adopt the terminology developed in New Zealand, is a form of *bicultural* citizenship, not the multiply differentiated citizenship recommended by many recent theorists, and most notably by Iris Marion Young.[40] There is no doubt that cultural diversity is a fact of modern social life, especially in the great urban centres which serve as Young's inspiration. There is every reason to anticipate, and also to celebrate, a greater diversity in the future. However, it is not likely that a unifying practice of citizenship can fully embody all that diversity. Nor should it.

In a democracy, the practice of citizenship should involve attending to public debates and occasional participation in them. But if informed public debate is to take place in which all voices are not only raised but listened to, there can only be a limited number of languages used in this debate.[41] Something similar is also true of the social activities of 'civil society' (unless these are restricted to members of one cultural group). This does not mean that the linguistic and cultural diversity of the modern social world should or will be diminished; it does mean that there are good democratic reasons why not all of that diversity can be represented in the language of citizenship. However, there is no reason why a smaller number of languages and their attendant cultures would not be acceptable in public discourse: tri-cultural Switzerland is a case in point. A bicultural policy envisages two such languages and cultures playing a complementary, if not equal, role: that of the non-indigenous majority and the indigenous minority. It need not – and should not – deny the considerable diversity within the two component cultures; however, this diversity is contained within the overarching categories of immigrant and indigenous. The idea behind the policy is to provide for institutional recognition of the special moral claims of indigenous people.

There are good reasons for indigenous people to be wary of the ideal of a multiply differentiated citizenship. The special place which indigenous people have – or should have – in the public realm of the postcolonial state is likely to be lost if they are merely one of a vast number of different communities seeking a voice in it. The deep cultural difference and the special moral claims of indigenous people will be submerged in a sea of difference. What is more, they risk losing the appropriate audience to their claims. It is the postcolonial nations formed by European settlement that have the claims of the indigenous people on their moral agenda. However, in the brave new post-national world of difference and diversity, their history may become merely a matter of academic investigation, and cease to be part of the identity of modern citizens. The claims of indigenous people will persist; but it will become unclear who has the responsibility to listen and attend to these claims.

Paradoxically, then, indigenous people have some interest in the sustaining of a continuing national identity. However, if the public space is to be genuinely bicultural, forms must be achieved which emphasize the historic priority of indigenous people and their complementarity. Here, as elsewhere, there is an enormous risk of indigenous culture being diminished by alien forms of representation; nevertheless the project must be risked if indigenous people are not merely to recognize, but also to form themselves as citizens through the public culture. Often recommendations of this kind are dismissed as being concerned with symbols and not reality. But politics is also about symbols; or, to put it better, symbols are part of politics.[42]

A change in public culture is a necessary part of the project of justice to indigenous people, but it is not the whole of it. Political, legal and social forms must be constructed through which indigenous self-determination is possible. The recognition of the residual sovereignty of the Aboriginal people of Australia must be worked out, not merely through land rights, but also on the formation of independent political institutions representing and with authority over aspects of non-tribal indigenous life. There must be some recognition of Aboriginal laws and customs, and tribunals which can deal with the conflicts between two sets of legal and moral traditions; educational bodies to teach indigenous culture as well as the skills necessary to flourish

in a bicultural environment; programmes to educate non-indigenous citizens about the history and culture of their indigenous compatriots; and so on.[43]

Many of the problems here are practical ones: how these institutions might work without merely further appropriating indigenous interests (and their leaders) into non-indigenous forms. But there are theoretical issues in the close background: how is the duality of sovereignty to be recognized within the one political order? The very possibility of such a duality is ruled out by the dominant Western tradition, beginning with the centralization of state power in the seventeenth century, and the philosophies of the state begun by Hobbes. However, as James Tully has argued, there are within the Western legal and political tradition dissonant lines of thought which are much more accommodating to diversity.[44] These must be explored if the indigenous presence is to find appropriate recognition in the postcolonial political and legal order.

Justice to indigenous people is a project, but not a programme. It makes demands on non-indigenous people: to come to terms with their past; to come to some understanding of indigenous culture and ways of life; to provide political, legal, social and cultural space for indigenous people to reproduce their culture; to transfer the massive resources to indigenous people which will be necessary to make self-determination possible. It makes much greater demands on indigenous people: they have the task of remaking their cultures and their lives in the new environment that has been imposed upon them. This challenge is inescapable and is one which only indigenous people can undertake. The responsibility of non-indigenous people is to make it possible.

Notes

1. This article was written while I was a Visiting Fellow at the Walt Whitman Center for the Culture and Politics of Democracy, Rutgers University. (My thanks to the members of the Center for their hospitality. Thanks also to the readers for *Radical Philosophy* for useful criticisms of the penultimate draft.) It takes as its starting point some problems raised in my 'Autononomie gouvernmentale et peuples autochthones: libération nationale ou citoyenneté?', in Michel Seymour, ed., *Nationalité, Citoyenneté et Solidarité*, Liber, Montreal, 1999. Some passages from that essay are translated here.
2. In Australia, for example, it was government policy to remove indigenous children (especially those of mixed descent) from their families into institutions and foster homes well into the 1960s. The impact of this policy on the children and their parents is documented in *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Human Rights and Equal Opportunity Commission, Sydney, 1997.
3. I am moved here by Joshua Cohen's argument that the justice of the anti-slavery cause was itself a historical factor in the ultimate success of the struggle against slavery. See Cohen, 'The Arc of the Moral Universe', *Philosophy and Public Affairs*, vol. 26, 1997, pp. 91–134.
4. See 'Autononomie gouvernmentale et peuples autochthones', pp. 356–7 and 378. See also Richard Mulgan, 'Citizenship and Legitimacy in Post-Colonial Australia', in Nicolas Peterson and Will Sanders, eds, *Citizenship and Indigenous Australians: Changing Conceptions and Possibilities*, Cambridge University Press, Cambridge, New York and Melbourne, 1998; and Haydie Gooder and Jane M. Jacobs, 'On the Border of the Unsayable: The Apology in Postcolonizing Australia' (unpublished). However, these authors seem to think that the 'guilt' (their term) experienced by non-indigenous citizens somehow invalidates their response. I do not see this. Probably a more insightful account of the moral phenomenology involved is in terms not of guilt but of shame. See Raimond Gaita, 'Not Right', in Peter Craven, ed., *Best Australian Essays 1998*, Bookman Press, Melbourne, 1998.
5. In New Zealand, the Maori term for all the European immigrants of the past few centuries is 'Pakeha', and this term has passed into political currency. While this terminology has its problems (most notably, the omission of Asians and Pacific Islanders), it has the signal advantage of recognizing the depth and the overriding political importance of the division between indigenous and non-indigenous cultures. Associated with this terminology is the policy of *biculturalism*. I provide a more detailed discussion of this policy in the third section below.
6. See the discussion in Michael Walzer, 'Pluralism in Political Perspective', in Walzer, ed., *The Politics of Ethnicity*, Harvard University Press, Cambridge MA, 1982, pp. 1–28, especially pp. 6–7, 10; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Clarendon Press, Oxford, 1995, pp. 62–3, 95–8.
7. I argue this in more detail in *Nation and Identity*, Routledge, London and New York, 1999, pp. 116–29.
8. The case of African-Americans is different again. The fact that they were forcibly taken into the United States as slaves and have suffered discrimination ever since, makes their situation closer to that of indigenous people than of other immigrants.
9. I will mark this usage by an initial capital in the word 'Aboriginal' and cognate words. It should be noted that the Aboriginal people of mainland Australia and Tasmania distinguish themselves from the ethnically distinct Torres Strait Islanders, and vice versa. Hence the use in Australian political discourse of the cumbersome term 'Aboriginal and Torres Strait Islanders' to refer to the indigenous people.
10. Jeremy Waldron, 'Superseding Historical Injustice', *Ethics*, vol. 103, 1992/93, pp. 4–28; Waldron's arguments are cited with approval by Will Kymlicka, *Multicultural Citizenship*, pp. 219–20; Richard Mulgan, 'Citizenship and Legitimacy in Post-Colonial Australia', pp. 186–7; and Robert Goodin, 'Waitangi Tales', *Australian Association of Philosophy*, vol. 78, forthcoming, September 2000. For more critical responses, see Susan Dodds, 'Justice and Indigenous Land Rights', *Inquiry*, vol. 41, 1998, pp. 187–205, especially pp. 193–8; and Janna Thompson, 'Historical Obligations', *Australian Asso-*

ciation of Philosophy, vol. 78, forthcoming, September 2000.

11. In fact, Waldron has two arguments, only the second of which is considered here. The first is directed against the idea that justice requires establishing what the present situation would have been had the past injustice not occurred. Waldron argues convincingly that there are insuperable epistemological difficulties confronting this project.
12. Waldron, 'Superseding Historical Injustice', pp. 6–7. It is not clear why, if the historical injustice has been superseded, an apology is necessary.
13. Waldron comes close to suggesting that the past is morally irrelevant in all circumstances. He argues that the 'present circumstances are the ones that are real: it is in the actual world that people starve or hurt or degraded.… The circumstances of justice are those of the present, not of the past.' See 'Superseding Historical Injustice', p. 27. But this is hyperbole. If it were literally true, we would not have an obligation to keep *any* commitments made in the past.
14. If the point of Waldron's argument is to legitimize the property rights of non-indigenous citizens of Australia, New Zealand, Canada and the United States against the claims of indigenous people, it does so at the risk of making them vulnerable to the claims of the poor and needy outside their borders.
15. These points are made very strongly by Richard Mulgan; see *Maori, Pakeha and Democracy*, Oxford University Press, Auckland, 1989, especially ch. 1.
16. Will Kymlicka states this clearly: '[T]he idea of compensating for historical wrongs, taken to its logical conclusion, implies that all the land that was wrongly taken from indigenous peoples in the Americas, Australia or New Zealand should be returned to them. This would create massive unfairness, given that the original European settlers and later immigrants have now produced hundreds of millions of descendants, and this land is the only land they know. Changing circumstances often make it impossible and undesirable to compensate for certain historical wrongs. As Jeremy Waldron puts it, certain historical wrongs are "superseded".' See *Multicultural Citizenship*, pp. 219–20. The principle that Kymlicka is assuming here seems to be: 'If you cannot give everything, you need not give anything.'
17. This point is especially important in Australia, where vast areas of the country – the 'pastoral leases' – were granted to settlers on the condition that indigenous people have the right to carry on traditional activities. See Graham Hiley, ed., *The Wik Case: Issues and Implications*, Butterworth, Sydney, 1997.
18. On the theme of what is owed to the past, see Walter Benjamin, 'Theses on the Philosophy of History', in *Illuminations*, Fontana, London, 1973.
19. There is a hint of this in Waldron's account of 'symbolic reparations'. However, he makes a sharp distinction between these and the business of justice.
20. *Multicultural Citizenship*, pp. 116–20.
21. *Multicultural Citizenship*, pp. 219–20.
22. For the earlier view, see *Liberalism, Community, and Culture*, Oxford University Press, Oxford, 1989. This argument does not explain why it is important to retain one's own culture; nor does it explain the importance of those cultures which do not encourage freedom. For the later emphasis on culture and identity, see *Multicultural Citizenship*, especially pp. 75–106. See also Avishai Margalit and Joseph Raz, 'National Self-Determination', *Journal of Philosophy*, vol. 87, 1990, pp. 439–61; reprinted in part in Will Kymlicka, ed., *The Rights of Minority Cultures*, Oxford University Press, Oxford, 1995.
23. The terminology is confusing because many of the groups are not 'ethnic' in any recognizable sense of that very confused term, but religious, or even political. For criticisms of Kymlicka on this score, see Joseph H. Carens, 'Liberalism and Culture', *Constellations*, vol. 4, 1997, pp. 35–47.
24. Indeed, stricter liberals than Kymlicka would object to his claim that the decision of parents commits their children and grandchildren.
25. I discuss some of these issues in *Nation and Identity*, ch. 2, and in more detail in a draft paper entitled 'Responsibility and Identity'.
26. See Susan Dodds, 'Justice and Indigenous Land Rights', p. 198.
27. For an account of the role of various treaties in North America, see James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge University Press, Cambridge, 1995, especially ch. 4. For the role of the Treaty of Waitangi in relations between Pakeha and Maori in New Zealand, see Mulgan, *Maori, Pakeha and Democracy*, and Andrew Sharp, *Justice and the Maori: The Philosophy and Practice of Maori Claims in New Zealand since the 1970s*, Oxford University Press, Auckland, 1990, 2nd edn 1997. For a critique of the use of treaties as a route towards justice, see Robert Goodin, 'Waitangi Tales', *Australasian Journal of Philosophy*, vol. 78, forthcoming, September 2000.
28. There may be one exception to this. Henry Reynolds suggests that a treaty may have been negotiated between Aboriginal leaders and colonial authorities in 1830 to bring to an end a period of warfare in Tasmania. See *Fate of a Free People*, Penguin Books, Ringwood, Victoria, 1995, especially ch. 5. But there is no documentary evidence of this.
29. There is an enormous literature on the Mabo decision. For early but important collections, see *Essays on the Mabo Decision*, Law Book Company, Sydney, 1993, and M.A. Stephenson, ed., *Mabo: The Native Title Legislation*, University of Queensland Press, St. Lucia, 1995.
30. Indeed, the judgement placed in doubt all acts of expropriation that had taken place after the Racial Discrimination Act of 1975 had outlawed acts which were prejudicial to the well-being of a particular race. The government had to remove this doubt by retrospective legislation.
31. See John Frow and Meaghan Morris: '[Mabo] has assumed absolutely central symbolic importance within the Australia polity as a test of whether the national state has now the capacity to confront its racist past.' 'Two Laws: Response to Elizabeth Povinelli', *Critical Inquiry*, vol. 25, 1999, pp. 626–30, p. 629.
32. For arguments that sovereignty ought to have been recognized, see Garth Nettheim, '"The Consent of the Natives": Mabo and Indigenous Political Rights', in *Essays on the Mabo Decision*; and Henry Reynolds, *Aboriginal Sovereignty: Reflections on Race, State and Nation*, Allen & Unwin, St. Leonards, NSW, 1996; and 'Sovereignty', in Peterson and Sanders, eds, *Citizenship and Indigenous Australians*.
33. If there was a treaty in Tasmania (see note 28 above),

it was negotiated to bring about an end to a particularly bloody period of warfare.

34. For details on the United Nations policies, see Sarah Pritchard, ed., *Indigenous Peoples, the United Nations and Human Rights*, Zed Books and Federation Press, London and Sydney, 1998.
35. See Eleanor Bourke, 'Australia's First People: Identity and Population', in Colin Bourke, Eleanor Bourke and Bill Edwards, eds, *Aboriginal Australia*, University of Queensland Press, St. Lucia, 1994.
36. It is arguable that this practice is a misinterpretation of the Mabo judgement, which requires continuity of association (with certain provisos), not sameness of culture. For an account of the humiliating process by which Aboriginal people are expected to 'perform' their Aboriginality in the law courts, see Elizabeth Povinelli, 'The State of Shame: Australian Multiculturalism and the Crisis of Indigenous Citizenship', *Critical Inquiry*, vol. 24, 1988, pp. 575–610. However, Povinelli's general account of the various (and often contradictory) non-indigenous legal, political and social responses to indigenous claims tends to reduce them to a unified 'strategy of the state'. This is too one-dimensional. For criticisms on this score, see Frow and Morris, 'Two Laws', pp. 626–30. Povinelli responds in 'The Cunning of Recognition: A Reply to John Frow and Meaghan Morris', *Critical Inquiry*, vol. 25, 1999, pp. 631–7.
37. See *Multicultural Citizenship*, especially ch. 2.
38. It is one of the mildly paradoxical features of Kymlicka's own position that the national self-determination which Kymlicka argues for on liberal grounds takes indigenous people outside the bounds of liberal discourse. This does impinge on a more serious problem for Kymlicka. It is certain that some indigenous practices (i.e. the practices of judgement and punishment characteristic of some Australian Aboriginal communities) are contrary to a liberal understanding of individual rights. It is not clear to me whether Kymlicka would allow these practices (as aspects of indigenous culture) or disallow them (as contrary to individual rights). On the 'indigenous sovereignty' view adumbrated here, they would be allowed.
39. Noel Pearson, Mick Dodson, Pat Dodson, Pat O'Shane, and Lowitja O'Donohue all explicitly reject the national sovereignty model. It is, however, the policy of Michael Mansell, Paul Coe, and the Aboriginal Provisional Government. For a good coverage of the debate, see the Special Issue of *Social Alternatives*, vol. 13, April 1994, edited by Bev Blaskett, Alan Smith and Loon Wong. For non-indigenous views, see Frank Brennan, *One Land, One Nation: Mabo – Towards 2001*, University of Queensland Press, St. Lucia, 1995; and Reynolds, *Aboriginal Sovereignty*. Reynolds proposes a form of national recognition within a federal structure.
40. See Iris Marion Young, *Justice and the Politics of Difference*, Princeton University Press, Princeton, 1990, especially chs 4, 6, 8. For an argument for biculturalism in the New Zealand context, see Mulgan, *Maori, Pakeha and Democracy*. While I think that Richard Mulgan is too protective of the sensitivities of the Pakeha, I am persuaded by and indebted to his overall argument.
41. This point was made long ago by John Stuart Mill. See *Considerations on Representative Government*, ch. 16, in *Utilitarianism, Liberty, Representative Government*, J.M. Dent, London, 1957.
42. See Frow and Morris's remark about the Mabo judgement: 'large numbers of people, including Aborigines, believe its symbolic value to be of crucial *political* importance' (see 'Two Laws', p. 629).
43. Discussion of these issues has gone further in New Zealand than elsewhere. Apart from the work of Mulgan and Sharp cited above, see the chapters by Chief Judge E.T. Durie, Brenda Tahi and Andrew Sharp, in Wilson and Yeatman, eds, *Justice and Identity*; see also Roy Perrett, 'Dual Justice: The Maori and the Criminal Justice System', *He Pukenga Korero: A Journal of Maori Studies*, vol. 4, no. 2, Autumn 1999, pp. 17–26.
44. See James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge University Press, Cambridge and New York, 1995. This is not the place to discuss Tully's wonderfully illuminating development of an alternative to the mainstream conception of sovereignty. My main worry with his work is that its genuine commitment to indigenous claims is subsumed within a rather bland philosophy of difference. His suggestion (pp. 4–5) that women, multicultural groups, linguistic minorities as well as aboriginal people seek 'self-rule' seems to me to be false or strongly misleading; and to diminish the very different claims of these groups.