

Māori Self-determination and a Liberal Theory of Indigeneity

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DOMINIC O'SULLIVAN, MAY 30 2014

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Māori and other indigenous scholars (Alfred 1999; Moreton-Robinson 2004; Maaka and Fleras 2005; Stewart-Harawira 2005) have well canvassed liberal democracy's tendency to affront the extant rights of indigeneity and constrain equitable indigenous political participation, even as both are admitted at international law (UN General Assembly 2008). Shaw proposes that the responsive politics of indigeneity is "an attempt to come to terms with how discourses and practices of sovereignty still set the conditions under which Indigenous – and other forms of 'marginal' politics occur at all" (Shaw 2008: 8). Indeed, Hobbes's account of sovereignty provides some understanding of why the democratic exclusion of indigenous peoples occurs:

The structure of sovereignty that Hobbes produces is enabled and authorized through the production of a shared ontological ground, and identity. This identity, in turn, rests upon the necessary exclusion of Indigenous peoples at several different levels, not least through the explicit marking of Indigenous peoples as "different" as "Other". What is more crucial in determining the character of contemporary Indigenous politics, however, is that Hobbes renders the construction of this exclusionary identity, the process through which authority is produced and guaranteed, as pre-political, as necessary and natural rather than contingent and violent (Shaw 2008: 9).

Sovereignty reflects prevailing ideas about the sources, location, and nature of public power and authority, which means that its attendant discourses "are neither natural nor neutral. They reproduce a space for politics that is enabled by and rests upon the production, naturalisation and marginalisation of certain forms of 'difference'" (Shaw 2008: 8).

This purpose here is not to diminish indigenous critiques of liberal practice, but to propose that rather than "move beyond the liberal paradigm" it may, in fact, be of greater pragmatic value to explore ways of broadening liberal democratic practice by advancing a liberal theory of indigeneity (Little 2003: 25). Such a theory would mean, at least, that one has the right to difference in cultural expression, but sameness in political opportunities; difference in forms of land tenure, but sameness in capacity to make decisions about how land will be used; difference in the way one is taught at school, but sameness in terms of educational quality. Indeed, a liberal theory of indigeneity constitutes a politics of distinctiveness, necessarily dependent on group rights – such as the rights to land, language, and culture –

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as inescapable constituents of individual liberty. Individual autonomy is contextualised, conditioned, and given substantive meaning and value with reference to culture and the inter-relationships that people, themselves, decide are important.

Indeed, there does remain scope for substantive “participatory parity” through a liberal theory of indigeneity that is beginning to replace biculturalism as the most influential political philosophy informing New Zealand Māori politics (Fraser 2003). Biculturalism assumed influence during the 1980s and proceeded on the assumption that the contemporary state comprised two distinct peoples, Māori and Pakeha (New Zealanders of European descent), living in a political partnership instituted by the Treaty of Waitangi in 1840. The Treaty saw Māori agree to the establishment of colonial government in return for the protection of their lands and resources and the rights and privileges of British subjects – the precursor to modern citizenship. However, the partnership developed as one where Pakeha effectively became the Crown, a term loosely used to mean the state, and senior partner to Māori, who were positioned beyond an inclusive sovereign polity (O'Sullivan 2007). Biculturalism did not protect Māori against the “tyranny of the majority” in ways that participatory parity proposes (Mill 1869). Participatory parity is concerned with the equitable distribution of the determinants of political authority and equitable opportunities for all people to deliberate in public decision making, for the citizen is, indeed, “he who deliberates” (Aristotle 1988). Public debate’s importance “to the formation of values and priorities” makes participatory opportunities essential to people’s sense of belonging to a political community that actually adds value to people’s lives (Sen 1999: 153). It is also significant that

In the absence of a Philosopher King who reads transcendent normative verities, the only ground for a claim that a policy or decision is just is that it has been arrived at by a public which has truly promoted the free expression of all (Young 1989: 263).

Participatory parity is a determinant of political capabilities, which are maximised when broader political arrangements bring “the people as close to good functioning as their natural circumstances permit” (Nussbaum 1987: 36). In other words, politics is “not simply the allotment of commodities, but [concerned with] making people able to function in certain human ways” (Nussbaum 1987: 1). This includes ways that flow from the enjoyment of the political conditions that allow *all* and not just *some* citizens to contribute to the determination of “the conditions under which and the practices through which authority is constituted and legitimated, and what these constitutions and legitimations enable and disable” (Shaw 2008: 1). It is in this context that a liberal theory of indigeneity requires ways of thinking about reclaiming the greatest possible political authority within the state, to confront prevailing prejudices and create opportunities to contextualize the meaning of individual liberty. A liberal theory of indigeneity grounded in the extant rights of first occupancy might attempt to re-shape public sovereignty to admit space for the culturally contextualized expression of common liberal democratic rights, as the first of a two-tiered differentiated citizenship (shared government), along with specific space for independent collective political authority as citizens of the tribal nation (iwi) – self-government. The second tier gives effect to the *Universal Declaration on the Rights of Indigenous Peoples’* recognition that the “right to lands, territories and natural resources is the basis for the collective survival and thus inextricably linked to their right to self-determination” (Daes 2008: 8).

Differentiated citizenship is a constituent of a liberal theory of indigeneity that is required to find

A space within liberal democracies and liberal thought in which... Aboriginal perspectives and philosophies cannot only be heard, but given equal opportunity to shape (and reshape) the forms of power and government acting on them (Iverson 2002: 1).

The theoretical obstacles to thinking about indigenous politics in these ways are those proposing that there is no liberal democratic obligation to provide indigenous peoples with *particular* political recognition. Their capabilities are properly identical to those granted all citizens, and measures that transcend such a principle are illiberal privileges that affront the equal rights of other citizens. This is, as Kymlicka observes, culture’s centrality to the claims of first occupancy creating a tension with the popular liberal perspective that “ethnic identity, like religion is something which people should be free to express in their private life, but which is not the concern of the state... it is not the place of public agencies to attach legal identities or disabilities to cultural membership or ethnic identity” (Kymlicka 1996: 4). Waldron’s account of liberal obligations to indigenous peoples is similarly restrictive. It arises from his “supersession

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thesis," which holds that the entitlement to common, undifferentiated, liberal citizenship is sufficient to create just relationships capable of superseding historic injustices. Waldron associates the supersession thesis with a "principle of proximity," holding that people have a paramount duty to come to terms with, and to deal justly with, those with whom they are, in Kant's phrase, "unavoidably side by side in a given territory, irrespective of cultural or national affinity" (Waldron 2002: 30). However, if one is obliged to engage justly with all others, one must be attentive to the determinants of their political positioning in the present, because the present does not simply exist: it develops from history and is the product of political relationships and structures. If it is these relationships and structures, themselves, that are unjust because they are exclusive, one must consider their modification for inclusivity, and admit that the terms of inclusivity are necessarily culturally understood. The alternative, for minority indigenous populations, is that "belonging" to the liberal polity becomes "inextricably tied to white possession" (Moreton-Robinson 2003: 137) as the "definitive marker of citizenship" (Moreton-Robinson 2004: 79).

Nor can the inclusion of indigenous peoples in the sovereign whole occur under Waldron's proposition that "the general duty of a government to do justice to all people is [not] trumped by any special duty it owes to those of the inhabitants who can claim Indigenous descent" (Waldron 2002: 30). The equality that undifferentiated citizenship and liberal egalitarianism imagines is not the same as "substantive" political equality and stands well apart from the Rawlsian proposition that

In the original position, the principles of justice are decided upon by free and equal citizens who do not know their own social status, class position, psychological tendencies, endowments of natural abilities or even their own beliefs about what is good (Hunter and Jordan 2009: 7).

Alternatively, the liberal order is equipped to admit theories of justice that codify the "duties of institutions and actors in reducing inequalities" (Ruger 2004: 1092), where a liberal theory of indigeneity would privilege particular measures to reduce political inequalities because "the goals of remedialism" must be transcended, not just "balanced" (Kowal 2008: 346).

Transcending the goals of remedialism might recognize group claims as an essential liberal concern, because group identity and experiences contextualize and shape the ways in which people experience liberty. The privileged group claims that Māori might then make are to a substantive share in national sovereignty that counters the assumption of the modern state as a Leviathan-like entity. Sovereign political authority might then be recognized as liberal indigeneity grounded in the claim that *all* and not just *some* people ought to share the "people's" sovereign authority.

The character of one's claim to a share in sovereign authority is an expression of the ways in which one prefers to "belong" to the political community so that sovereignty is inclusively "grounded in the right of all citizens to shape the society in which they live" by sharing in the setting of political agendas, priorities, obligations, and entitlements (Clarke 2006: 119). From this perspective, it is odd for the Māori party Member of Parliament, Te Ururoa Flavell, to have remarked that Māori ought to "get rid of the Crown's unconstrained sovereignty," because it is an argument that presumes Māori positioning beyond the Crown to set aside citizenship's first tier as the site of Māori participation as equals in the day to day affairs of the state (Flavell 2006). It positions Māori as interest groups, rather than peoples collectively entitled to certain rights of citizenship.

The Crown is not neutral, but nor is it the sole repository of the people's sovereignty. Its political authority is constrained and conditioned to create scope within the liberal paradigm for more inclusive and flexible understandings of political opportunities than that which Waldron proposes as the limits of indigenous entitlements (Waldron 2002). Flavell's ascription of sovereignty to the Crown from which he, as Māori, is distinct – even as he sought and was to become a member of the Government – makes irresolvable the perceived conflict between Crown sovereignty and Māori rangatiratanga, the term used in the Treaty of Waitangi to denote extant political authority exercised as chieftainship (Orange 1987).

Flavell's view can be rationalized according to a position that rangatiratanga constrains sovereignty. It is a common position that has distinguished conflicts between Māori and governments since the nineteenth century. However, one might alternatively understand rangatiratanga as providing a jurisprudential and practical liberal argument for Māori

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to claim both common and specific parts in a shared and dispersed national sovereignty, because rangatiratanga is always and inevitably exercised in relative and relational fashion to balance Māori interests against those of other citizens (O'Sullivan 2007). Rangatiratanga is not only legitimately part of the sovereign whole, but such positioning is necessarily preliminary to substantive self-determination *within* the state.

Rangatiratanga is also significant to the potential impact of citizenship's second tier, which is, for example, demonstrated through tribal commercial entities' increasing significance as economic and political actors (Nana 2012). Their significance among the sites of dispersed and evolving national sovereignty rises with their relative national economic importance. Their relative influence, as sites of public authority, increased with the devolution of public service delivery to iwi providers under new public management arrangements developed from the 1980s. Consumer "choice" in the receipt of primary health and other social services became marks of liberal freedom to complement the developing Māori education system's attention to Māori cultural and economic aspirations from Māori epistemological perspectives. These instances of liberal democratic choice give effect to a liberal theory of indigeneity's foundational assumption that "Māori should formulate policies for Māori and the role of the Crown should be to ensure that those policies were integrated into a workable state framework" (Durie 2003: 304). However, a liberal theory of indigeneity extends the aspiration to eliminate conceptions of the Crown as a distinct and exclusive non-Māori entity. Instead, there might emerge an inclusively constituted "people" from whom consent must be obtained for legitimate government (Locke 1887). Differentiated citizenship's first tier means, then, that Māori are necessarily positioned among the sovereign people in whose name the Crown governs. The best political arrangements are those that allow people to live "flourishing" lives (Aristotle 1998), which, among other considerations, depends on the distribution of sovereign authority according to principles of "objectiveness, reasonableness, necessity and proportionality" (Xanthaki 2008: 282).

Contemporary Māori politics reflects the beginnings of a liberal theory of indigeneity as an alternative to both biculturalism and undifferentiated liberal egalitarian citizenship as philosophical frameworks capable of providing Māori with a just share in national sovereignty, both as indigenous citizens and collectively through membership of the modern New Zealand state. Further development and practice of a liberal theory of indigeneity, through differentiated citizenship, is important to liberal democracy, which succeeds only when people have reason to share confidence in the system's capacity to distribute power and authority fairly, reasonably, and inclusively.

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