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INDIGENOUS JUSTICE STRUGGLES AND REFLEXIVE DEMOCRACY

by

Michael Elliott

Thesis for the degree of Doctor of Philosophy

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ABSTRACT

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This thesis is concerned with the public sphere of justice in the contemporary internal colonial contexts of Australia and Canada. More specifically, it examines the way in which Indigenous actors are generally impeded from participating in public disputes of justice on equitable and self-determined terms. It develops and applies a position centred on the recent theoretical work of Nancy Fraser, and particularly her thinking around the concept of "abnormal justice". Fraser's reflections on the deeply contested nature of justice in contemporary times – and the accompanying absence of agreement and certainty about justice's most fundamental meaning and character – provide, I suggest, first, a valuable new framework for understanding the complexities that presently pervade public spheres shaped by colonial pasts and presents, and, second, the outline of a means for dealing with those complexities in more sensitive and productive ways. Accordingly, Part 1 of the thesis introduces and elaborates the 'diagnostic' side of Fraser's theorising, and applies it to the internal colonial contexts of Australia and Canada. The outcome is a deeper appreciation of the ways in which the experiences of injustice and aspirations for justice possessed by Indigenous actors are frequently obscured by the dominant (or 'normal') bounds of justice within these societies. Part 2, in turn, focuses on the 'reconstructive' side of Fraser's work and its potential to inform a progressive response to a meeting with abnormal justice in internal colonial contexts. I contend that the reflexive-democratic character of Fraser's thought provides the basis for a mode of politics through which Indigenous actors might begin to realise greater participatory parity in the terms of public disputes. Though, I hold, a reflexive democratic politics does not necessarily remove, or even automatically reduce, the senses of injustice presently felt by Indigenous actors, it does at least open up spaces by which they can begin to participate more equitably in naming those injustices and authoring possibilities for overcoming them. The position thus defended is that a reflexive democratic politics can help in the task of dismantling obstacles to equitable Indigenous participation in *ongoing* public disputes. This, I contend, must represent an essential step in any effort to begin to convincingly address the continuing and past violences of internal colonial contexts.

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Declaration of Authorship

I, Michael Elliott, declare that the thesis entitled

"Indigenous justice struggles and reflexive democracy"

and the work presented in it are my own and that it has been generated by me as the result of my own original research.

I confirm that:

1. This work was done wholly or mainly while in candidature for a research degree at this University;

2. Where any part of this thesis has previously been submitted for a degree or any other qualification at this University or any other institution, this has been clearly stated;

3. Where I have consulted the published work of others, this is always clearly attributed;

4. Where I have quoted from the work of others, the source is always given. With the exception of such quotations, this thesis is entirely my own work;

5. I have acknowledged all main sources of help;

6. Where the thesis is based on work done by myself jointly with others, I have made clear exactly what was done by others and what I have contributed myself;

7. None of this work has been published before submission:

Signed:.....

Date:.....

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I dedicate the following to the memory of my mother, Jayne Elliott.

Southampton,
September 2014

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Introduction

1.1 Background and argument

The violences of European colonialism provide for an enduring source of moral and political concern in the contemporary era. Arguably, nowhere is this more vividly apparent than in the advanced liberal-democratic and so-termed 'Settler' societies of Australia and Canada. At the heart of each of these wealthy, highly developed, democratically proud, and ostensibly justice-seeking societies lies an "original sin" (Poole 2000; Short 2012; Smith 2012): a history of coercion, violence, exclusion, exploitation, and theft enacted against the Indigenous peoples of those lands that has not only been integral to the emergence of the political institutions and identities that now dominate on them, but which also remains visible and active as a problem of justice in the contemporary public sphere. Today, Indigenous actors within these contexts forcefully claim to be subject both to the enduring legacies of past processes of colonialism, state-building, and Settler governance, and to *ongoing* forms of colonial domination and violence that are enacted through the concrete actions of actors in the present. Conspiring to suppress opportunities for collective freedom and leaving Indigenous actors exposed to patterns of profound physical, psychological, social, and spiritual suffering, this mix of historical and still-unfolding colonial processes gives rise to a range of specific and more general senses of injustice. Yet, for the most part, efforts to raise and communicate these senses of injustice within the public sphere – and to thereby also take an active and equitable role in shaping the possibilities for beginning to address them more effectively – remain seriously and problematically constricted by the context of domination in which they arise. Constructed most directly around the

histories, philosophies, worldviews, and self-understandings of the Settler population, the public discursive spaces available to Indigenous actors within these contexts seem to presently embody a deep hostility to the experiences of injustice, and the aspirations for justice, that they hold.

This thesis is directed towards providing a closer examination of the way in which this kind of exclusion from the public sphere of justice manifests for Indigenous actors in the contemporary Australian and Canadian contexts, and, further, towards developing a constructive way of responding to it. To this end, across the following chapters I seek to introduce, develop, and apply a perspective on justice that is structured around the theoretical work of Nancy Fraser, and particularly the idea of "abnormal justice" that she has recently introduced us to (2008; 2010). I seek to show how, in following the path laid down by Fraser's reflections on the deeply contested nature of justice in the contemporary era – and on the accompanying absence of certainty and assurance about justice's most fundamental meaning and character – we stand to gain a better understanding of the complexities that presently pervade public spheres shaped by colonial pasts and presents, and to find ourselves in a better position from which to begin to deal in a sensitive and effective manner with the difficult and far-reaching senses of injustice held by actors within them. This approach can, I will argue, provide the basis of a better way of dealing with the forces that presently work to deny Indigenous actors equitable roles in exposing and naming the injustices they experience and in authoring the possibilities for justice towards which public thoughts and actions are directed. As such, this thesis aims to theorise how a deeper democratisation of the public sphere of justice in these contexts might be achieved, and how this might assist Indigenous actors in particular in progressing disputes of justice associated with colonialism.

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The position that I seek to develop over the course of this thesis understands the contemporary Australian and Canadian contexts to embody a distinctly *active* form of colonial domination. This requires immediate clarification since, no doubt, for many actors within (and, indeed, outside of) these societies, the suggestion that colonialism marks an ongoing feature of contemporary social, political, and economic relations – and is even a process in which they themselves are likely to be actively implicated in one way or another – is likely to meet with considerable resistance. After all, according to the conventional view, insofar as colonialism serves to tell us anything important about these societies, it would seem to do so only in a predominantly historical sense. With the

liberation of the Australian and Canadian states from the last vestiges of formal external (British) control through the twentieth century, and thus their emergence as fully independent sovereign states, we would seem to have witnessed a clear transition towards a condition of *post*-coloniality. In this light, the suggestion that these societies nevertheless remain very much active colonial contexts is at risk of seeming, if not simply offensive, then plainly absurd.

However, our perception as to whether colonialism represents a thing of the past or of the present depends very much upon who we take the subjects of colonial domination to be, exactly. For, if the view we hold is calibrated not on the Australian and Canadian states and the Settler populations within them, but instead on the Indigenous peoples presently subject to (but contesting) their authority, we arrive at a rather different picture. From this angle, we see that the transition to post-coloniality that has been experienced by members of the Settler populations within these contexts has not, for the most part, been shared by Indigenous actors. Rather, the basic subjection to an external form of power that formerly characterised Indigenous experiences under assertions of British (and other) colonial authority, along with the occupation, appropriation, and exploitation of homelands by foreign populations that came along with it, remains firmly in place with the substitution of that claim to authority by another. From the point of view of Indigenous peoples, although the particular identities of the agents of colonialism might have changed, and so too might their specific aims and means, the basic *fact* of colonial domination has remained constant across the transition to sovereign independence of the Australian and Canadian states. Indigenous peoples have continued to be subject to a form of external and foreign control that suppresses opportunities for collective freedom. Consequently, from this direction, it is the claim that *post*-colonial might serve as a suitable descriptor of these societies that starts to ring with an offensive and absurd tone.

Undoubtedly, however, whilst the basic existence of a relation of colonialism has, in this sense, remained a constant feature of the Australian and Canadian contexts through the transition towards sovereign independence, the precise character of that relation is nevertheless now fundamentally different. This is perhaps best captured through a distinction that James Tully (2000) draws between two forms that colonialism can take. Tully notes that, whereas colonialism has, in its more familiar and conventional guises, generally involved the exertion of control over a society by and for the benefit of another society that exists on a separate territorial base – and has revolved around an 'external' relation in this sense – no such territorial separation exists in the case of

contemporary Settler states. Rather, in these contexts, Indigenous peoples and the peoples exerting control over them exist together on the same territory and mutually depend upon it for their own structural form and sense of self-identity. This helps to give the colonial relationship in these situations a markedly different character from that associated with the more familiar external colonialism. Here, the root driving force behind colonialism is not composed of hopes of exploiting local Indigenous labour, nor of removing local Indigenous populations, nor even of interrupting powers of local self-government (although each of these have certainly been apparent in Australia and Canada, and often to devastating effect). Rather, as Tully explains, the essential ground of the colonial relationship here:

> is the appropriation of the land, resources and jurisdiction of the indigenous peoples, not only for the sake of resettlement and exploitation (which is also true in external colonialism), but for the territorial foundation of the dominant society itself.
>
> (2000, p.39)

The essence of this 'internal' relationship revolves around the apparent need of the dominant society to secure, once and for all, the moral and legal legitimacy of its claims to sovereign authority over and ownership of the territory, a need which is at all times countered by the resistance of Indigenous peoples who seek to avert any such legitimising moment and to regain their own collective freedom. The situation is complicated by that fact that there is now no external territory that the dominant society could withdraw to even if it were compelled to do so, and so the possibility that the colonised people(s) could gain freedom by 'simply' securing the removal of the dominant society is rendered remote, or even eliminated entirely. Consequently, the internal colonial relation has a very pronounced sense of entanglement and contradiction at its heart. It is characterised by a palpable (and seemingly insurmountable) conflict between the assertions of sovereign authority over lands and individuals made by the dominant society, and the equivalent (though not identical) rights of authority claimed by Indigenous peoples. For dominant society, the emphasis is on resolving the relation by moving towards a final – and fully morally and legally coherent – legitimising moment, wherein its own presence is secured absolutely. For Indigenous peoples, the emphasis is on resolving the relation by recapturing powers of collective self-determination and control of lands and waters, each of which appear to be unachievable in the shadow of the state's sovereign claims. And so, the whole internal

colonial relation seems to stand, as Tully (2000, p.40) puts it, as the "irresolution" of the situation from the point of view of each side.

It is on this basis that I understand the contemporary Settler states of Canada and Australia to be – and to be best understood as – contexts defined by *ongoing* colonial relationships. Throughout the thesis, I employ the phrase 'internal colonial context' consistently as a term of both specific and general reference in this regard, with the intention of reinforcing awareness of the profoundly active and politically immanent nature of the senses of injustice that are felt by Indigenous actors in these societies, and which are discussed at length in the following chapters.

The perspective that I seek to develop and apply in respect of the internal colonial contexts of Australia and Canada is, as I have already said, centred on the recent theoretical work of Nancy Fraser, and particularly her work on the concept of abnormal justice (2008; 2010). Fraser has introduced this concept in response to the empirical observation that many disputes of justice in contemporary public contexts are characterised not simply by the forms of disagreement on substantive questions of justice that we would expect, but also by a range of more difficult and far-reaching disagreements about the fundamental meaning, shape, and application of justice. She finds that, today, it is often the case that actors engaging one another in the public sphere possess (sometimes very) different sets of presuppositions about "what" substance it is that justice\injustice ought to be taken as a relative measure of, about "who" counts as a proper moral subject of justice in respect of a given issue and where the locations of proper authority lie, and about "how" any progress in order to process or resolve public disputes can be made (Fraser 2008). As a result of these scenes of disagreement about the 'what', the 'who', and the 'how' of justice, contemporary public contexts are awash with expressions of discontent that frequently spill over from the conventional or familiar 'first-order' bounds of justice and enter into the realm of 'meta-order' contestation. Here, the constitution of the basic grammar of justice also becomes a subject of dispute, and is even itself implicated as a source of moral injury and exclusion for some actors.

The result is a general breakdown in the certainty and assurance with which we can begin to think about and pursue justice in contemporary public contexts. With the realisation that no single set of assumptions or norms seems capable of adequately accommodating the range of different meanings and shapes given to justice by differently situated actors, we also find that we are lacking an uncontroversial grammar

that could serve to structure public disputes. This represents, for Fraser, one of the defining challenges of the age for critical theorists of justice. There is an urgent need for us to find more sensitive and productive ways of dealing with such scenes of 'abnormal justice' if we are to be in a position to offer meaningful and relevant guidance to disputes in contemporary contexts, and are to find ways of better overcoming the experiences of injustice that actors within them possess.

This way of conceptualising the complexities of contemporary public justice disputes provides us with, I contend, a particularly valuable position from which to approach internal colonial bodies of dispute in the Australian and Canadian contexts. Not only can it help us to better clarify, in an analytical sense, the way in which disagreements about justice and injustice relating to colonialism arise and function at the public level within these contexts – and in doing so help us to come to better appreciate some of the more difficult and far-reaching implications that they hold – but it can also form the basis of a more constructive and progressive approach to dealing with them in theory and in practice.

Specifically, the approach that Fraser introduces us to, and which I seek to develop and apply across the following chapters, helps us to understand the need *for*, and to move towards better realising the achievement *of*, a deeper democratisation of the discursive terrain on which disputes of justice take place. For Fraser, it is only by subjecting the fundamental conceptual parameters of justice to more direct democratic demands – not just as an isolated moment but as an interminable public project – that we can begin to deal sensitively with the abnormality of different and non-standard views of justice that we encounter. Importantly, however, for Fraser, this move towards better processing the abnormalities of disputes and the uncertainty that arises with them, must not translate into impotence to act in respect of harm, suffering, and injustice in the real world. Rather, the approach that Fraser calls for is a deeply *reflexive* one that takes responsibilities of democratic responsiveness and action to pertain equally to the meta- and first-order of justice, and which refuses the notion that progress in respect of one must equate to regression or stalling in respect of the other. The reflexive path that Fraser begins to lay down aims, as such, to ensure that our efforts to respond to 'metadisputes' of justice does not unduly threaten our capacities to act decisively in spite of them.

This reflexive perspective, and the deeply democratic mode of politics that it calls for, offers to provide a way of better addressing some of the more fundamental imbalances

and exclusions that presently pervade internal colonial disputes of justice in Australia and Canada, and which tend to leave Indigenous actors at a constant and injurious disadvantage in public disputes. Though this approach does not, I will argue, offer assured resolution to the many discontents and injuries that are presently felt by Indigenous actors within these contexts – and does not, in this sense, provide or claim a vision of a fully 'just' future of political ordering in which the violences associated with colonialism have entirely evaporated and no cause for disputation remains – it nevertheless does offer to provide the basis of a more constructive and equitable public discursive terrain on which those disputes can *continue* to take place into the future.

The approach that I seek to develop in this thesis takes the equitable participation of Indigenous actors in the social construction of public understandings of justice and injustice to be an absolutely vital part of any effort to seriously challenge the fact and the consequences of colonialism in the Australian and Canadian contexts. It is only once we have begun to better address the deeper imbalances and exclusions that presently constitute the public sphere of Settler societies, and which serve to continually deny Indigenous actors the opportunity to participate on equitable terms in shaping public understandings of injustice and possibilities for justice, that opportunities for genuine progress might be found. It is therefore towards highlighting how such constructive participation is presently denied to Indigenous actors in these settings, and towards finding a way of beginning to address this disparity, that this thesis is directed. In short, I will argue that a mode of democratic politics structured around the theoretical perspective that Fraser offers us – and, particularly, the intense commitment towards reflexivity that characterises her position – can perform this role. In compelling us to extend demands of democratic responsiveness and justification into the meta-order and thereby to even the most fundamental aspects of the public discursive sphere – including the full array of assumptions, norms, values, and principles that conspire to give it shape – (what I will come to refer to as) *reflexive democracy* stands as a viable means of beginning to challenge and transform the deeper forms of exclusion presently experienced by Indigenous actors in bringing their experiences of injustice, and their aspirations for justice, to public prominence in Australia and Canada. A reflexive democratic politics therefore offers to provide opportunities for Indigenous actors to better contest matters of justice and injustice *on their own terms,* and for the future of internal colonial disputes to be conducted on a more equitable basis as a result.

In summary, the thesis aims to take both the diagnostic concept of abnormal justice that Fraser offers us, and the reconstructive perspective that she begins to sketch as a way of

dealing with it, and to bring these into direct and sustained conversation with the internal colonial contexts of Australia and Canada. This is a conversation which has (to the best of my knowledge) not yet been undertaken anywhere else, but which offers to provide us with both (1) a new and valuable way of thinking about bodies of justice dispute centring on colonialism within these contexts, and, moreover, to begin to develop an approach to processing them with greater success; and (2) clarification on some of the more general and some of the more specific implications of the theoretical approach that Fraser sets out, and thus enables us to push that perspective further than Fraser herself has so far taken it. The thesis therefore aims to make original contribution to the present literature on justice in each of these areas: both in terms of the disputation of justice in internal colonial contexts – with, of course, a particular focus on the Canadian and Australian contexts – and the literature on contemporary theories of justice with which Fraser is most frequently associated.

1.2 Justification of case study choices

This thesis offers detailed examination of, specifically, the Australian and the Canadian internal colonial contexts. This concentration of focus requires justification since these two cases do not constitute the entire population of contemporary Settler societies with vocal Indigenous populations raising difficult and far-reaching claims of justice\injustice in the public realm. Indeed, more or less the whole of Latin America could be understood to similarly qualify in this regard, as could, of course, the other Anglophone Settler states of New Zealand and the USA. Whilst the depth of inquiry intended with this study means that an examination of this population in its entirety, or even perhaps of more than two cases, would be unachievable within the given constraints, it remains true that conceivably any combination of these contexts would also provide a viable and interesting set of cases for a study of this kind. The decision to focus on the Australian and Canadian cases in this instance rests partly on reasons of a pragmatic nature, and partly on the interesting blend of similarities and dissimilarities that these two particular contexts display.

Firstly, in terms of the latter, there are a number of substantial reasons as to why these two contexts make an interesting couplet for a study of this kind. Perhaps most obvious is the fact that Canada and Australia today both stand as highly developed, wealthy, and proudly liberal-democratic societies that were founded through processes of (mainly) British colonialism, beginning in earnest in the late-C18th in Canada and in the early-C19th in Australia. Both have also, of course, since moved to free themselves from the

control of British governments and thus have emerged as fully independent sovereign nations, similarly structured around principles of federalism and constitutionalism. Each has also, importantly, retained a Common Law system in the image of the British tradition, meaning that legal decisions and precedents laid down in one context potentially exert influence over legal processes and decisions in the other. Both countries also have long and fraught histories of dealing with Indigenous populations within their claimed borders, and of pursuing policies and processes geared towards the resolution of the 'Indigenous problem' that have been frequently violent and damaging in their effect.

Alongside these general similarities, however, are also a range of more specific differences in the ways that colonialism has progressed in each context. These are explored in greater detail in the two contextual analyses offered in Chapters 3 and 4, but it suffices to say at this point that, despite the ostensibly similar background processes of colonialism and state-building that have occurred, the specific forces to which Indigenous peoples have been subject to in each context, both historically and still today, have been importantly different. Nevertheless, there remains a basic similarity of character in the challenges that Indigenous actors in each context face in pursuing their struggles for justice at the public level today. In both cases, there remains a distinctive disparity in the constructive powers that Indigenous actors possess in the public discursive sphere, and a similar form of exclusion from positions of authorship in respect of public understandings of justice and injustice occurs as a result.

This blend of historical and contemporary similarities and dissimilarities serves to aptly demonstrate the value of the reflexive perspective, both in terms of its ability to provide detailed and sensitive accounts of the distinctive complexities that the Australian and Canadian contexts each hold, and also in terms of drawing out the similar nature of the basic problems of justice that currently pervade the current public sphere in each. Consequently, a study of the Australian and Canadian cases helps us to realise, I contend, both the diagnostic versatility of the perspective that I seek to develop and apply, and its capability to provide a more generalisable constructive response, one that is capable of adapting itself to the specific complexities of different political contexts whilst honouring the same principles of better democratising the public field in which disputes of justice take place.

In addition to these more substantive reasons, the choice of case studies was also influenced by reasons of a more pragmatic nature. During the course of conducting

research for this thesis I was lucky enough to have the opportunity to spend substantial study periods at universities in each of these two countries – spending four months at the University of Victoria, Canada between July and December 2012 and three months at the University of Sydney, Australia between February and May 2013. These opportunities came about through academic links between my principal supervisor at the University of Southampton, Professor David Owen, and leading figures in the area of Indigenous justice struggles resident at each of these institutions who were willing to offer me temporary supervision – respectively, Professor James Tully and Professor Duncan Ivison. The time spent in each of these places helped to profoundly shape my understanding of the issues of justice with which this thesis is concerned, and equipped me with a deeper understanding of the intricacies of ongoing disputes around colonialism in these particular contexts. This was achieved not only through consultation with, and learning from, my supervisors in each location, but also by participating in the wider academic communities there and by discussing these issues with a range of different actors, some of whom are involved in studying or teaching these issues at the university level, some of whom are working in more directly politically focused organisations, and others for whom these are very personal and lived experiences. The more specific understanding of the Australian and Canadian contexts that these visits allowed and the influence that this has had on the more general aspects of my thought concerning disputes of justice in internal colonial contexts made the decision to focus in on them as the central cases for the study an easy and obvious one to make.

1.3 Terminological issues

There are some terminological conventions that I employ that ought to be qualified from the outset. The most important of these is, undoubtedly, my use of the term 'Indigenous'. I employ this term consistently throughout the course of the thesis in reference to individuals, communities, and peoples – and, as appropriate, to the distinctive cultures, philosophies, languages, and social and legal systems belonging to them – that have been, and are, subject to processes of colonialism by virtue of the construction and the continuing presence of Settler states.

The term 'Indigenous' rose to widespread political prominence in the 1970s as groups from around the world that were similarly subject to forms of colonial domination, dispossession, and marginalisation began to more directly coordinate their struggles across state borders and at the international level, particularly through the United

Nations. 'Indigenous' emerged as a self-claimed collectivising term for this movement partly for its power in aptly communicating the historical basis of discontent felt by the groups aligning themselves with it (i.e. inferring a direct and prior link to lands subject to colonial process and now under the control of state institutions), and partly because it signalled a departure from the nomenclature that colonial and state powers had themselves commonly employed in order to oppressively collectivise those groups in the past. Yet, a specific definition of 'Indigenous', and a set of criteria to determine assuredly which groups it ought to be seen to apply to, has proven a difficult and elusive thing. Undoubtedly, this is to a large extent due to the overwhelming diversity of the peoples identifying as Indigenous in the contemporary era. The UN currently recognises in excess of 370 million people worldwide as Indigenous, living across some 90 countries (United Nations 2009). A huge amount of historical, cultural, and political diversity exists between groups within this global population, as indeed it does between groups even within the same contemporary state contexts. Finding a definition expansive and adaptable enough to capture this diversity whilst still carrying sufficient substantive meaning has proven very difficult – and potentially even a counterproductive endeavour. For instance, particularly at the UN level, there has been a reluctance to endorse any kind of definition that could risk excluding some groups from participating in relevant working groups and forums purely on the basis of a technicality. Consequently, self-identification has been the preferred route in most cases. Nevertheless, a working definition is generally considered to be a beneficial accompaniment to such practices of self-definition, and, in this, the outline offered by Ecuadorian diplomat Jose Martinez Cobo in a study conducted for the UN through the 1970s and 1980s still tends to carry much weight. Cobo set out his working definition thus:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.
>
> (Quoted in United Nations 2009, p.4)

As Coates (2004) cautions, however, although this has proven a popular and useful standard, there remains some uncertainty in the international sphere about which groups can convincingly claim to be Indigenous on this basis, and, moreover, which cannot. However, this enduring ambiguity over Indigenous identification when viewed on the global scale is not, for the most part, mirrored at the scale of the contemporary Canadian and Australian contexts. There, the presence of groups claiming Indigenous identity is now a relatively settled matter, and there is little space for doubt about the applicability of the term (at least at the group level). Much of this comparative certainty about the use of the term reflects, it ought to be noted, the systematic way in which British Colonial and, later, state governments and societies have attempted to deal with the 'Indigenous problem' by pursuing a wide range of formal and informal exclusions, separations, and violences against the original inhabitants of the so-called New World, but it has also been assisted in the Canadian (and broader North American) context by the existence of treaty agreements between Indigenous peoples and colonial and state governments. In any case, that 'Indigenous' is a term that can be used with considerable conviction and certainty in reference to specific groups (and not others) in these contexts is a fact of the present era.

Arguably, the far more important issue in using the term in discussion of these contexts comes with the need to emphasise the fact (starkly obvious at the global level) that 'Indigenous' should not be misunderstood to signify any specific cultural form, political or economic situation, or historical experience, nor as representing any kind of homogeneity across the actors now identified, or identifying, as Indigenous. Rather, even within these single state contexts, 'Indigenous' operates as a way of incorporating many diverse communities, language groups, and nations – each possessing their own distinctive identifications, experiences, and interests – within a single grouping that bears relevance and meaning to contemporary disputes of justice, but which does not come close to comprehensively capturing the identities of actors claiming it (Smith 2012).

My use of the term throughout this thesis is in keeping with this political understanding. I do not infer any essential features belonging to those individuals and groups that I refer to as 'Indigenous', and nor do I presume there to be any necessary uniformity in terms of political ideology, interests, and aspirations between them. I also do not presume that 'Indigenous' in any way fully captures the identifications of those individuals and groups, or that it is without controversy and itself subject to consistent problematisation through the course of contemporary disputes. After all, the fact

remains that although it has obtained a rather emancipatory edge over the past few decades and generally possesses a degree of distance from the favoured lexicons of past colonial and state governance, the term 'Indigenous' remains firmly and obviously rooted predominantly in the language and conceptual history of the colonisers. Though it undoubtedly signifies a greater diversity of constructive influence within that tradition, there are still important questions to be asked of it in this regard. For these reasons, I choose to capitalise 'Indigenous' in order to maintain a closer focus on its deeply political nature in contemporary disputes, and to thereby distinguish from the more literal connotations of its non-capitalised form.

Where I depart from the collectivisation 'Indigenous' in the text, this reflects the specificity of the case in question and a need to differentiate it from more general arguments or experiences. In Canada, Indigenous peoples are commonly also recognised (both on their own terms and through the practices of state) through reference to three more specific categories: Inuit, First Nations, and Métis. In Australia, a similar level of distinction occurs through use of the terms Aboriginal and Torres Strait Islander (see Dudgeon et al. 2010). These terms capture a greater degree of specificity in detailing the experiential, cultural, and socio-political histories of the actors to whom they pertain, and on occasion it is necessary to employ these more precise terms within the discussion. It should be noted, however, that these are also most often themselves collectivising terms (albeit at a slightly reduced level of abstraction) that similarly cover a range of diverse groups who find themselves to be, relationally, more similar to one another than to other Indigenous groups. As such, it is important to bear in mind the limitations of the language employed in this respect throughout this thesis and, indeed, commonly within the body of public disputes in the contemporary era.

Finally, I use, variously, the terms 'non-Indigenous' and 'Settler' in referring to the populations, governments, institutions, languages, and philosophies that now hold a position of dominance and privilege within internal colonial contexts. Whilst the former of these terms clearly draws its discursive meaning in relation to the construction of Indigenous political identity discussed above, the second is more problematic and contested. Indeed, many Indigenous disputants would consider 'invader' a far more apt description of the processes by which those populations have attained their present physical and political position, and that colonialism has more often been a process of violence and destruction than one of peaceful settlement. In acknowledgement of this, I also choose to capitalise 'Settler' in order to draw attention to its political form and to go some way towards disturbing historical assumptions drawn from its literal meaning. It

should also be noted that in employing the distinction between Indigenous and non-Indigenous/Settler I do not mean to infer a strong or stable line according to which all actors within these contexts fall neatly onto one side or the other. Rather, my employment of these terms simply draws on the discursive and analytical power of the distinction they suggest, whilst I recognise that this (rightly) remains itself a subject of some dispute and disagreement in the context of contemporary internal colonial societies.

1.4 Structure and chapters

The main substance of the thesis is divided into two parts, broadly mirroring a distinction that Fraser herself draws between the "diagnostic" (chapters 2-5) and "reconstructive" (chapters 6 & 7) sides of her work on abnormal justice.

Chapter 2 begins the discussion with a more detailed look at the diagnostic account that Fraser offers in respect of abnormal justice, before moving on to further draw out and reflect upon the distinctive kinds of implication and commitment it carries. Arguing that the perspective Fraser sketches demonstrates an ethical commitment towards balancing two conflicting types of responsibility – namely, *a responsibility to act* and *a responsibility to otherness* – identified by Stephen White (1991) as marking an important distinction between modern and postmodern modes of political thought, I seek to better situate her work in respect of contemporary thought on justice in the Western tradition and to demonstrate the depth of reflexivity that it displays. In Chapter 3, I begin to bring this reflexive perspective into direct conversation with internal colonial bodies of dispute, first, setting out specific arguments as to why it provides an attractive mode of inquiry to pursue in respect of them and, second, addressing the methodological challenge of how to conduct detailed contextual explorations in this tone. In terms of the former, I discuss three beneficial consequences of the reflexive theoretical perspective that serve, I claim, to imbue it with a particular sensitivity to the complexities of Indigenous struggles in contemporary internal colonial contexts. In terms of the latter, I set out an analytical framework constructed around a reading of the more specific characteristics that these struggles display. The framework employs five different analytical vantage points – *presence, control, voice, recovery,* and *equality* – each of which operates to centralise within the discussion a distinctive face of struggle. Accordingly, the framework intends to provide an effective and usable vehicle for drawing out the complexes of meta-order and first-order contestation that these struggles contain in practice.

Chapters 4 and 5 employ the framework in the construction of detailed analyses of contemporary internal colonial disputes in, respectively, the Australian and the Canadian contexts. The intention with these contextual studies is to give insight into the different ways in which forms of meta-order contestation and dispute intermingle with first-order problems and claims, and why, therefore, they can be understood to display characteristics of 'abnormality' in the sense that Fraser uses the term. Showing, in each case, how Indigenous actors are subject to experiences of injustice that the normal bounds of public discourse seem unable to sufficiently accommodate, and how the aspirations for justice that those actors hold also tend to become marginalised as a result, I seek to highlight the exclusionary basis of the existing terrain of public disputes and the potential consequences that this carries for those on the losing end of it.

In Part 2 of the thesis I move on to address the challenge of how to respond in a constructive way to the diagnostic picture drawn in Part 1. Chapter 6 begins this reconstructive task with a look at Fraser's own recommendations as to how we ought to go about better dealing with contexts of abnormal justice in theory and in practice. Here, I introduce and examine each of Fraser's proposals from a perspective attuned to the claims of Indigenous justice struggles in internal colonial contexts. I argue that these claims offer a particularly stern test for Fraser's recommendations, and that, whilst not causing us to turn away from or reject them, require that we start to understand those recommendations in a different light. Arguing that the success of Fraser's reconstructive approach depends to a large extent upon the levels of *self*-reflexivity that it can generate and maintain – that is, the degree to which it can, in working to better democratise the public sphere of justice, also remain itself structurally open to a reflexive kind of democratic scrutiny and transformation – I seek to draw out the deeper theoretical implications of Fraser's recommendations and make clear what is required if this approach is to perform its intended function consistently, particularly in the context of internal colonial disputes.

In Chapter 7, I take this reconstructive task a step further by bringing the reflexive perspective into conversation with agonistic veins of democratic thought. Drawing out a number of important consonances and dissonances between the agonistic and reflexive positions, here I seek to give more detailed shape to a reflexive mode of democratic politics and to the kinds of commitments that are central to it. I argue that a form of *reflexive democracy* can serve to open up the constitutive bounds of justice to deeper and more consistent processes of dialogical justification amongst actors engaged around them whilst not, importantly, resulting in the kinds of uncertainty or impotence that risk

putting capacities to act decisively in order to address instances of harm, suffering, and injustice at risk. In the second half of the chapter I move on to discuss specifically how this reflexive democratic approach can serve to beneficially alter the terrain of ongoing disputes in the internal colonial contexts of Australia and Canada, principally by better enabling Indigenous actors to participate within those disputes on their own terms and thus to take up more equitable roles in the authorship of public understandings of justice and injustice. Accordingly, the reflexive democratic position that I put forward does not claim to *resolve* the senses of injustice that lie behind internal colonial disputes in contemporary Australia and Canada, rather, it claims to better democratise the context of *ongoing* dispute.

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Part 1

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2

A reflexive perspective on justice

2.1 Introduction

In some contexts, individuals engaging one another in public disputes of justice share some basic assumptions about their socio-political world. Though they may disagree markedly as to the correct embodiment of justice in any given situation – hence the very fact of dispute to begin with – this disagreement is set against a more fundamental background of *agreement* concerning the basic conceptual parameters of justice. In such contexts, disputants seem to share assumptions about which types of actors are entitled to raise claims of injustice (e.g. individuals or perhaps groups), about the legitimate locations of authority to preside over their disputes (e.g. the institutions of the state), about the appropriate boundings of interests and obligations relevant to disputes (e.g. the citizenry of the territorial state), about the 'conceptual space' to which questions of justice should pertain (e.g. the distribution of goods or the recognition of identities), and about the social cleavages that can harbour injustices (e.g. class, ethnicity, or gender) (Fraser 2008). Whatever the specific content of these background agreements in any local context, the fact that they are held in common, and usually silently, by all or most actors sees them exert a structuring force over the character of public disputes. Standing as pillars of certainty that anchor the field of contestation, such agreements enable actors to engage one another on mutually predictable terms. Knowing in advance the arenas in which their claims will be heard, the criteria on which they will be assessed, and the kinds of reparations they can hope to receive, actors within these contexts can approach disputes with a considerable degree of certainty. It is this regularity and stability of discursive ground that Nancy Fraser characterises as one of "normal justice".

Though, Fraser concedes, this kind of background agreement might in practice never be truly complete, with dissent from dominant assumptions always likely to some extent, so long "as deviations remain private or appear as anomalies, so long as they do not accumulate and destructure the discourse, then the field of public-sphere conflicts over justice retains a recognizable, hence a 'normal', shape" (Fraser 2008, p.394).

By this measure, Fraser posits, the present era is one of "abnormal justice". Today, it is often the case that disputants in public arenas do not only contest substantive questions of justice, but also regularly seek or act to disturb the underlying conceptual frameworks that are used to publicly describe, assess, and respond to experiences of injury and discontent. Here, claims of injustice are not only contained within, and do not only refer to, the dominant 'normal' view of justice. They also frequently erupt in the form of "metadisputes" through which the constitutive assumptions of normality are themselves brought into view and challenged. Disputants invoke a variety of different or nonstandard views as to the appropriate conceptual parameters of justice, and through this highlight both the non-universal nature of the grammar that has historically dominated the public discursive field and the range of potential moral harms that are associated with that dominance. These scenes of deep disagreement as to the most basic elements of justice have a tendency to produce a "freewheeling character" within public disputes, where no sooner have first-order questions arisen than they "become overlaid with metadisputes over constitutive assumptions concerning who counts and what is at stake" (Fraser 2008, p.395). Absent the pillars of certainty that stabilise and orientate disputes under normal conditions, under these abnormal conditions there is no solid or uncontested ground from which to begin to think about, let alone satisfy, justice.

In quite broad and basic terms, this is the *zeitdiagnose* that lies behind the theoretical perspective that Nancy Fraser has been developing since the late-1990s (Lawson 2008; Owen 2014). Principally, this chapter intends to give a closer look at the diagnostic view that Fraser offers us in this regard. The intention is to develop a rather more complete picture of this diagnostic purview, not only in terms of its specific elements as set out in the essay 'Abnormal Justice' (2008) and across other writings over the past two decades or so, but also in terms of the deeper theoretical commitments that inform and shape it. It is particularly in drawing these deeper, structural elements of Fraser's theoretical work to the surface that we can begin to truly appreciate what is distinctive and useful about the approach she is offering us. It is also in pursuing this deeper exploration that we stand to realise the potential relevance of Fraser's work to the study of Indigenous justice struggles in internal colonial contexts.

2.2 An abnormal field of dispute

The diagnostic perspective that Nancy Fraser offers us through 'Abnormal Justice' owes much to an empirical encounter with contestation around the basic meaning and scope of justice in the contemporary social world. It is not, as such, a perspective that is motivated wholly or simply by a set of relatively abstract ideas about difference and disagreement, but is instead imbued with a very pronounced sense of ethical duty and responsiveness in respect of the actual *experiences* of injustice amongst social actors in the contemporary world. This is not to say, however, that Fraser's perspective is attuned exclusively to empirical questions of difference in the here and now, or that it embodies any necessary hostility towards, or disregard for, deeper or more 'radical' understandings of difference. As we shall see, the diagnostic position that Fraser has developed is in fact of a quite sophisticated character in this respect. Nevertheless, the empirical encounter with contestation in the contemporary social world undoubtedly plays a fundamental conditioning role in the diagnostic picture that Fraser draws, and, as such, represents a good place to begin a deeper consideration of the specific form and implications of that picture.

The prominence and importance of this encounter with the historical specificities of contemporary disputes within Fraser's work is evident in the fact that it is the particular destabilisation of what she refers to as the "Westphalian-distributivist" framework that occupies her attentions most directly (Fraser 2010). For better or worse, Fraser contends, this framework has represented the overwhelmingly dominant paradigm of political thought and practice on the global stage in the post-WWII era. This hegemonic grip has brought with it a variety of assumptions about the fundamental character of justice\injustice that have become normalised in a range of contemporary settings. Under the Westphalian-distributivist paradigm, for instance, it has conventionally been presumed that the proper subjects of justice in any given dispute should be limited to the citizenry of bounded political communities (in most cases territorial states). It has also been presumed that the public institutions of those bounded communities ought to possess sole legitimate (usually sovereign) authority to preside over disputes, and that the principal focus of justice should be the achievement of fair allocations of social goods between members (i.e. that justice is primarily a question of equitable distribution). Although discourses of justice that deviate from, or go beyond, these normal bounds have, no doubt, also been present to some degree – with one obvious example being the global human rights discourse that emerged through the middle of the twentieth century – such deviations have tended to be conceived and pursued on terms that tie

them back to the primacy and moral efficacy of the Westphalian-distributivist paradigm in one way or another. As a result, until relatively recently, the central tenets of the Westphalian-distributivist paradigm held a more or less stable position in political life since they were not subject to significantly threatening levels of challenge, helping to establish a widely accepted 'normal' face of justice.

Particularly since the 1970s, however, the dominant Westphalian-distributivist paradigm has increasingly been subject to serious questioning and disturbance. Due largely to rapidly globalising economic, social, cultural, and political spheres, coupled with the breakdown of the polarising consequences of Cold War politics, a range of new and complex forms of discontent have emerged and, along with others that were formerly obscured or suppressed, been rendered immanent to public consciousnesses in unprecedented, and often unexpected, ways. The result is that many formerly unseen, unproblematised, and taken-for-granted features of justice have begun to unravel somewhat in contemporary social contexts. The specific presumptions upon which the normal view of justice has been based, and those which it has operated to inscribe in political and social life, have increasingly been exposed and opened up to processes of public scrutiny.

The forms of contestation brought against the Westphalian-distributivist normal in this respect are not, however, wholly random. Rather, Fraser finds that they tend to constellate around three primary "nodes": the 'what', the 'who', and the 'how' of justice. It will help to consider each of these in turn.

'What'

The 'what' of justice relates to the conceptual space that disputants use to identify and theorise the injustice(s) they experience. That is, if justice\injustice can be understood as a relative measure, the 'what' describes the substance that should be measured in order to assess it. As Fraser understands it, there are at least three rival understandings of the 'what' active within contemporary disputes, each of which corresponds with a particular "species" of injustice (2010, p.16).

First, there is the familiar grammar of *redistribution* which locates the substance of justice within the economic or class structures of society. This distributivist conception, which has had such a hugely influential role in the way that justice has conventionally been conceived and institutionalised over the course of the twentieth century, takes as its central principle the idea that justice is realised (or approximated) insofar as the

wealth, resources, and other divisible goods within a societal context are allocated in an open and equitable manner amongst its members. Accordingly, the principal form of injustice according to this view is *maldistribution* of some form.

Second, and situated alongside the distributivist conception in many contemporary disputes, are claims and discontents couched in a grammar of *recognition*. Coming to prominence following the flourishing of identity- and difference-based social movements through the 1960s and 1970s, here, the principal substance of justice is not the equitable allocation of material goods (although this usually remains important for disputants) but rather the way in which society is structured so as to implicitly or explicitly support some identities, values, and cultures whilst unfairly hindering or marginalising others. Whether the injustices of *misrecognition* claimed by disputants are conceptualised according to markers of gender, age, ethnicity, religion, or anything else, their common central root resides with the presence of oppressive status hierarchies within society, and they provoke an accompanying desire to transform norms of recognition within the public realm in one way or another.

Third, Fraser finds that contemporary disputes also frequently include appeals to the grammar of *representation,* centred primarily on issues of community membership and associated procedure within social life. This, for Fraser, is the most overtly political grammar insomuch as it directly pertains to the criteria of social belonging that determine "who is included in, or excluded from, the circle of those entitled to a just distribution and reciprocal recognition" (2010, p.17). In this register, the injustice of *misrepresentation* occurs when "political boundaries and/or decision rules function wrongly to deny some people the possibility of participating on a par with others in social interaction – including, but not only, political arenas" (Fraser 2010, p.18). Though in practice usually closely entwined with claims of maldistribution and misrecognition, the substance of justice here is not located directly with the economic or status order of a social context, but with the manner in which its boundaries are politically constituted and policed. Fraser contends that such experiences of misrepresentation can occur even in the absence of instances of misrecognition or maldistribution, and so are not reducible to either of these other grammars. Accordingly, the experience of misrepresentation arises as a third distinctive species of injustice claimed within contemporary disputes.

Each of these three grammars attempts to describe a plausible form of moral injury that cannot be fully or consistently collapsed into the others, since each attempts to isolate a

different basic substance connected with the concept of justice. In contemporary disputes, Fraser argues, claims pertaining to these distinctive views of the 'what' regularly butt up against one another as disputants find that the injustices they experience and seek to address are conceptualised on different terms, or are sometimes missed entirely, by the individuals, groups, and institutions with whom they are engaged. As a result, absent a settled norm regarding the basic substance of justice, these disputes also lack a settled way of describing senses of injustice and discontent even when there is general agreement that some form of injury has occurred.

It is important to take a moment here in order to note that, conceptually speaking, the distinction that Fraser draws between normality and abnormality does not depend upon the substance of justice being contested in these *specific* ways in order for it to hold the same critical function. Rather, insofar as a condition of abnormality is seen to reflect merely the absence of agreement as to the basic substance of justice, it matters less what the precise nature of that disagreement is than it does the fact that disagreement pervades the discursive sphere. As such, though the identified competing grammars of distribution, recognition, and representation say something important about the empirical reality of abnormality as it presently confronts us, it should not simply be presumed that these grammars fully exhaust ideas about the substance of justice in this time or in any other. It is at least conceivable that these three grammars do not possess a total critical efficacy and that some experiences of injury are not sufficiently described through reference to the ideas of substance that presently occupy the discursive sphere most visibly. Consequently, it serves to be at least open to the possibility that additional conceptions of exactly what it is that justice should be taken to measure might emerge, become necessary, or even already be present but subverted within existing bodies of dispute.

'Who'

The 'who' of justice is used by Fraser in order to describe questions of scope and framing within disputes. On one level, this can relate to challenges of whether only individuals can be considered suitable subjects of justice or if other sorts of actors (for instance, groups) might also present a reliable moral unit. On another, it describes how the bounding of political space (i.e. who is included/excluded), and also the location of institutional authority in respect of those constructed perimeters, are themselves subject to contestation.

Previously, uncertainty surrounding the 'who' of justice rarely erupted into public discourse due largely to the overwhelming dominance of the Westphalian (and increasingly liberal) paradigm on the global stage. The normal assumption held in place by this paradigm was that only individuals could be suitably regarded as moral subjects of justice, and that the proper bounding of communities in respect of justice coincided exactly with the borders and sovereign reach of the modern territorial state. This "territorializing" of justice had the effect of restricting expectations about the validity and relevancy of interests and concerns almost solely to the citizenry of geographically bounded political communities, and in doing so drastically limited ideas about binding obligations of justice that transgressed those borders or operated along altogether different pathways (Fraser 2008, p.400). Assumptions about the sole authority of state institutions to adjudicate over disputes within those territories, and to legitimately impose binding outcomes on community members, also became habitually re-inscribed under the hold of this hegemonic normal.

In the contemporary era, however, these assumptions are regularly challenged from multiple directions. Fraser identifies three general forms: (1) through the claims of *localists and communalists* who reject the frame of the territorial state in favour of subnational units; (2) through the claims of *regionalists and nationalists* who propose larger (though non-universal) units such as Europe or Islam; and (3) through the claims of *globalists and cosmopolitans* who "propose to accord equal consideration to all human beings" and question any non-universal bounding of subjects (2008, p.401). In different ways, each of these positions contests the assumption that the territorial state represents a morally valid and/or practically viable bounding of political space. Accordingly, arguments abound as to whether the imposition of the Westphalian frame can, in and of itself, be regarded as a form of injustice in at least some contexts; whether the Westphalian paradigm demands a partitioning of political space that too readily leaves those subject to injustice unable to effectively challenge the forces that oppress them; and whether building sufficiently detailed understandings of experiences of injustice becomes impossible so long as a strong adherence to the Westphalian normal holds, with potentially catastrophic consequences in terms of mounting effective responses. As such, in many contemporary disputes there is a high degree of abnormality concerning the appropriate 'who' of justice, and the formerly stable presumptions of the Westphalian and liberal paradigms are now subject to serious challenge from a multiplicity of directions.

It is again worth noting, however, that, in terms of the broader diagnostic view of abnormality, the particular way in which the hegemonic 'who' is being empirically contested in the contemporary era is again, conceptually speaking, less important than the fact that a resolute absence of agreement as to its proper form prevails. In an abnormal context, disputants regularly disagree about which interests and voices must be included within justice deliberations (or excluded from them), have different ideas about which arenas disputes should be assessed within (and by whom), or else highlight how politically constructed boundaries may operate to place the causes of some injustices beyond the effective reach of those that are constrained by them. Thus, in addition to uncertainty over what it is that justice should be taken to measure, we also encounter deep uncertainty as to its scope and who counts in relation to it.

'How'

The destabilisation of assumptions surrounding the 'what' and the 'who' of justice inevitably leads to contestation over 'how' injustices can or should be addressed. When we lack settled norms about what it is that justice should measure in any given case (e.g. whether it should pertain to distribution, recognition, or representation, to some combination of these, or to an entirely different substance of justice) as well as who counts in respect of it, there is an associated breakdown in certainty over how such contests can be equitably addressed. On what basis are we to decide which substance of justice should prevail when we lack an uncontroversial authority to adjudicate between competing views? And how can we devise effective and fair reparations when disagreements on the substance of justice seem to persist? Likewise, how can we begin to even organise disputes when there exists fundamental disagreement about whose voices ought to be included (or excluded) in consideration of them (i.e. who the 'we' in question should be), and when the locations of authority that some consider vital, legitimate, and unassailable are impeached as unjust and inadequate by others? In an abnormal context, the means by which deep disputes over the 'what' and the 'who' of justice might be equitably assessed and effectively resolved are also subject to profound and far-reaching contestation. Inevitably, a multiplicity of views of the 'what' and the 'who' evoke a plethora of visions of the 'how' of justice.

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It is already apparent that although Fraser's focus in painting this diagnostic picture is strongly influenced by an empirical encounter with justice disputes in contemporary social contexts, the distinctions that she provides, and the processes of public contestation that they help to capture, resonate beyond this historically specific aspect

of her work. In addition to contributing towards a critical clarification of the present era, Fraser's work also offers a steady and clear depiction of the way in which public disputes of all kinds may expand to encompass the most fundamental conceptual features associated with the concept of justice\injustice. The notion of abnormality can therefore be understood to hold relevance in all situations in which no single collection of assumptions, values, or norms seems able to adequately accommodate – and still less to resolve – the range of discontents experienced, whether or not those contexts demonstrate more substantial similarities with the disputes that have guided Fraser's thinking most directly.

A further critical aspect of Fraser's diagnostic work in this area relates to her resolute insistence upon reckoning with the full array of repercussions that any abnormalisation of the social sphere brings. For, in one sense it seems likely that, as the hold of the exclusionary normal becomes destabilised, there is an increased potential for injuries and discontents that were hitherto obscured by it to begin to receive more successful articulation in public exchanges. In this sense, the expanded field of contestation signalled by abnormal justice means that public attentions stand to be directed towards coming to recognise unfamiliar forms of harm and perhaps even finding new possibilities for social ordering that can begin to better address them. From this direction, then, abnormality presents an emancipatory face and seems to hold rather positive connotations in respect of justice.

At the same time that we meet with this positive potential of an abnormalising social sphere, however, we also meet with its negative side. For, as the dominance of the established conventions of normality become increasingly destabilised, so too does the sense of certainty in respect of understanding and responding to injustice that the sharedness of those basic assumptions makes possible. As such, the development of an abnormalising social sphere also brings with it a considerable threat that some experiences of injustice will in fact become *further* distanced from a viable means of assessment and redress. When there is deep disagreement over the appropriate measures and framings of justice, the location of proper authority and sources of moral or legal obligation also becomes uncertain. If expanded contestation has the effect of clouding which actors and institutions must hear and respond to injustice claims, and which conceptual standards can be drawn upon in order for decisive assessments to be conducted, there is a worrying risk that some experiences of injustice may continue or even be compounded through the abnormalisation of the public discursive sphere. In

Fraser's words, "here, then, is the negative side of abnormal justice: amidst expanded contestation, reduced means for corroborating and redressing injustice" (2008, p.402).

This recognition of the combination of profound opportunity and threat in respect of experiences of injustice is one that deeply inflects Fraser's understanding of abnormality and its relationship to justice. This side of her work deserves particular attention because it underpins not only the understanding of abnormality she would have us adopt in a diagnostic sense, but also how she would have us begin to respond to it in constructive ways. We stand to gain a better insight into this area of Fraser's work by turning to consider how the distinctive mode of theorising that she calls for in response to abnormality is situated in respect of a wider body of political thought in the Western tradition.

2.3 Balancing two responsibilities of critique

Fraser is keen to emphasise an important mismatch between the world of deep contestation that she describes and the "familiar theories of justice" available to us (2008, p.396). The theoretical perspectives that currently hold the most sway in the Western liberal world in particular are, she claims, insufficiently accommodating of abnormal situations in which the basic substance, framing, and application of justice are also absorbed into the field of contestation. This is because, at their base, these 'normal' modes of theorising are formulated in light of contexts – whether real or imagined – in which some level of fundamental agreement on such features exists between disputants. Relying in a more or less unproblematised fashion on some key assumptions about the proper practical and conceptual limits of justice, these modes of theorising tend either to shield those assumptions from view (holding them as natural or self-evident truths) or else present them as possessing a kind of universal normative validity (and therefore as external to the contexts of contestation engaged). In either case, the accommodation of disputation around issues of justice is restricted in some fashion. The underlying drive in these normal modes of theorising is to connect the concept of justice with an uncontroversial ground: a form of settled norm, convention, rule, or grammar that can be applied to all cases and which ought to provide a skeleton of certainty upon which an otherwise (potentially) radically contested discursive space can be anchored. Consequently, though a deeply disputed social sphere and an ineliminable plurality of subjective positions might be well recognised within these normal ways of thinking about justice, this accommodation of difference does not go all the way down, so to speak. At some juncture, however discreet, there is the imposition of a limit beyond

which contestation ought not to pass – whether that be in the form of assumptions about the correct way of framing disputes, or about the particular substance(s) justice can be taken to measure, or even the establishment of an apparently impartial procedure or principle promising to provide a means of fair adjudication between disputing positions in all cases. The precise strategy taken in this respect in normal modes of theorising no doubt varies considerably, but the uniting factor is that the conceptual boundaries of justice are shielded from the full impact of the public discursive sphere. As such, on Fraser's terms, for all their present influence and value in efforts to understand and institutionalise justice, these normal modes of theorising "fail to provide the conceptual resources for dealing with problems of abnormal justice" (Fraser 2008, p.396). A different kind of response, one that is more directly attuned to a deeper and broader condition of contestation, is therefore required for abnormal times.

It is not my intention yet to look in any real detail at Fraser's specific recommendations for how such a response ought to look (that task is undertaken in Part Two of this thesis). For now, the matter of greater interest is the distinction being drawn here between 'normal' and suitably 'abnormal' modes of theorising and what this can tell us about the broader theoretical perspective that Fraser is constructing. For, whilst it seems obvious that Fraser is adverse to any mode of theorising that threatens to unduly close down possibilities for contestation (and therefore establish a hostility to the *positive* aspects of abnormality), it is equally clear that she is unwilling to simply commit to, or unabatedly revel in, a critical project that takes the dismantling of certainty and assurance as its only concern. Rather, there are two definite forces directing Fraser's thinking: one corresponding with the positive side of abnormality and the new opportunities to challenge injustice that it heralds; and another corresponding with the negative side of abnormality and the threat of impotence to take effective action against harm and suffering that it carries.

This conjunction of concerns for the positive and negative sides of abnormality, and the air of tension that it operates to establish, is acutely indicative of the more general theoretical-philosophical position that underpins Fraser's diagnostic account. The conflict made visible here synthesises a broader set of tensions that have emerged within contemporary Western political philosophy, drawn between committed defences and critiques of modernity. Fraser's aversion to a course of theorising that trespasses too far in favour of either force – that is, which centres itself too completely or too permanently on either the positive or the negative sides of expanded contestation – also provides insight into the space that she is trying to occupy in respect of this wider body

of political thought. We can gain a clearer picture of this position by briefly turning to consider a distinction offered by Stephen White (1991).

White sets up the frequently encountered tension between modernity and postmodernity as corresponding, principally, with a distinction between two different "senses of responsibility" that drive political reflection: namely, (1) a *responsibility to act* and (2) a *responsibility to otherness* (1991, p.19). White finds that the first of these, the *responsibility to act*, is resolutely embedded within modern life and within the dominant styles of Western political and ethical thought connected to it. Deriving from an encounter with the everyday pressures of physical and political life to which we are each exposed (e.g. to meet needs of survival and to avoid harm, to satisfy certain time constraints or to honour certain values and expectations, and so on), this sense of responsibility reflects "a moral-prudential obligation to acquire reliable knowledge and act to achieve practical ends in some defensible manner" (White 1991, p.21). There is a strongly familiar, even common-sense tone to this sense of responsibility, and it is accompanied by an associated impulse towards the creation of *action-coordinating* forms of knowledge: contributions that directly address the encountered pressures of physical and political life and, in doing so, also lend themselves to the construction of senses of tractability, order, and conviction in responding to those pressures.

The second sense of responsibility, in contrast – the *responsibility to otherness* – is more apparent within postmodern streams of political thought, forming a central pillar of the critiques that thinkers such as Foucault, Derrida, and Lyotard (amongst others) have brought against modernity and its ideologues. Here, the emphasis of political and ethical inquiry falls less onto the themes of action and order that dominate the modern mindset, and more onto exposing and tracking the way in which that "modern cognitive machinery operates to deny the ineradicability of dissonance" – or, put differently, an inevitability of 'otherness' – within the world it engages (White 1991, p.20). Typically driven by strong commitments towards the idea that all forms of meaning and identity are borne out only in relations of difference with constellations of other meanings and identities, and that, since all subjects are similarly embroiled in this process of perpetual constitution, none can ever anchor it permanently or absolutely, proponents of this form of critique consider there to be a resulting 'impossibility of closure' around all meaning and identity. Accordingly, the *responsibility to otherness* derives from the expectation that any human construct inevitably spawns a perpetually under-definable set of 'others' that, whether existing in possibility or in fact, always also partially constitute that construct itself. Consequently, exposing the ways in which an inevitable and

ineradicable otherness is concealed in social and political life is essential if potential violences associated with it are to be minimised. In improperly or insufficiently acknowledging this need, thinkers in the postmodern vein argue, the action- and order-orientated preoccupations of modernity come at a high cost. As White puts it:

> What the postmodern thinker wants to assert here is that meeting [the 'modern' *responsibility to act*] always requires one, at some point, to fix or close down parameters of thought and to ignore or homogenize at least some dimensions of specificity or difference among actors.
>
> (1991, p.21)

Accordingly, the *responsibility to otherness* encourages a contrasting mode of political critique, one that possesses, instead, a *world-disclosing* impetus. The overriding urge from this direction is to disturb or (on slightly more radical terms) to dismantle the apparent self-certainties that lay behind the preference of modernists for action-coordinating forms of knowledge and language, and to demonstrate the violence toward otherness that exists within the worlds they seek to defend or construct. Again, as White puts it:

> Both of these tasks require a deep affirmation of the world-disclosing capacity of language, since it is the use of that capacity that can loosen our world's hold upon us by confronting us with the ways in which it is structured by unrecognized or wilfully forgotten fictions. And as this hold is loosened, we become far more sensitized to the otherness that is engendered by those structures.
>
> (1991, p.27)

This way of framing the clash between modernity and postmodernity as a meeting of *action-coordinating* and *world-disclosing* preoccupations is useful, first, because it affirms something important of what is shared across the differences signified via this tension: most notably, a mutual concern for adopting an ethical stance in relation to the political world and an interest in pursuing justice. Of course, each camp would, by its own standards, tend to understand the other to be importantly 'irresponsible' in its endeavours and would seek to offer criticism on that ground. Nevertheless, setting out the problem in this way at least reminds us that such disagreements do not determine the relationship completely, and that space for productive conversation is certainly also apparent. More specifically for the present discussion, the idea of *action-coordinating* and *world-disclosing* functions of critique is one that can be traced relatively neatly onto

the diagnostic account given to us by Fraser, and so offers a way of further developing our understanding of its general character.

2.4 From empirical to reflexive

The mode of theorising that Fraser seems to be calling for in response to an abnormalising social sphere is, as I have noted, one that must reckon equally with both the positive and the negative sides of expanded contestation. The positive side is here defined in terms of the increased possibilities to disturb dominant assumptions, norms, and grammars that in some ways or at some moments operate to conceal certain experiences of harm and suffering; whilst the negative side is defined in terms of the threat of inaction that shadows a breakdown in social certainty and stability.

Clearly, there are close and immediately obvious parallels between Fraser's identification of positive and negative features of abnormality and the world-disclosing and action-coordinating functions of political reflection brought to our attention by White. Honouring the positive side of abnormality would seem to require a strong commitment to exposing and disturbing concealments of difference and disagreement, and a constant refusal of homogenising presumptions and precepts that restrict the space for alternative positions to make themselves heard (i.e. a world-disclosing function). At the same time, honouring the negative side of abnormality seems to require an equally strong commitment to maintaining a clear capacity for action – a willingness to recognise and respond to experiences of harm in a convincing manner (i.e. an action-coordinating function). An abnormal mode of theorising must, then, attempt to carefully negotiate a terrain that is supported by the tensions between world-disclosing and action-coordinating forms of concern. Were it not to tread this in-between space in a relatively consistent manner, the result would be an unbearable hostility to experiences of injustice, manifest, respectively, through either the indefensible restraint or the reckless validation of contestation, difference, and uncertainty.

Fraser's strategy for occupying this space, whilst most fully developed in her reconstructive arguments for dealing with abnormal justice, is already evident in the diagnostic account she gives us. It is visible through two distinguishable qualities of that account – one of which I have already explicitly identified, the other which I have indicated only less directly.

The first is the clear empirical element to the diagnostic picture outlined above. Closely tethered to the historically specific 'abnormalities' that haunt the present era, the account presented to us is one that expressly intends to establish a basis by which we can approach contemporary contexts in an effective critical manner, that is, from a direction more conducive to meaningful and valuable commentary and insight, and thus able to inform or modify disputes in positive ways. There is, as such, here, a certain urgency and value placed upon coming to 'know' the character of contestation as we encounter it in the present, such that we might put that knowledge to use in action-coordinating contributions to the disputes and experiences of harm around us.

Yet, operating at the same time and alongside this empirical element is a further, let's call it, 'extra-empirical' element that is of equal importance. The theoretical work Fraser is doing in the diagnostic account she provides goes beyond a simple attempt to catalogue contestation as it is manifest in the here and now; it is also imbued with a structural potential to accommodate forms of contestation that exceed the critical limits of the categories employed in that empirical description. This is so, as I have already indicated, in terms 'internal' to the nodes of *what*, *who*, and *how*, where the broader conceptual operation of those categories is not restricted only to the forms of disagreement that Fraser empirically identifies. Rather, it is at least conceivable that questions relating to the substance and framing of justice, as well as disagreements concerning how to deal with those questions, might arise in ways that are ill-accounted for by the grammars and possibilities already theorised around these nodes, and that new theoretical work will have to be done in order to more accurately describe novel or as yet unheard or under-acknowledged conceptions of the substance, framing, and application of justice. The parent categories *what*, *who*, and *how* are structurally hospitable to this possibility insomuch as they do not impose prima facie restrictions on the ways in which the features of justice that they signify are contested; at the most basic level, they simply provide a mechanism by which we can begin to think in a more coherent way about the presence of any such contestation.

In a similar manner, this extra-empirical element is also apparent at a deeper level, which can also be described through reference to the nodes *what*, *who*, and *how*, albeit in a more 'external' sense. For, the primary normal/abnormal distinction on which Fraser's diagnostic view is built, in signalling at a fundamental level the absence of agreement concerning the meaning or shape of justice, is not essentially reliant upon all such disagreement configuring itself into the general form associated with the present era. That is to say, there is no necessary assumption contained within the idea of

abnormality that contestation *must* constellate about the nodes *what*, *who*, and *how* in the sense that Fraser has described them in order for its condition to be realised. Rather, these parent categories are also marked with a degree of historical specificity. It remains conceivable that the way in which these nodes are interpreted may become transformed, or that different or further nodes may at some juncture need to be theorised so as to better capture, in a descriptive sense, the character of abnormal contestation in different social or historical contexts. Again, the broader, extra-empirical qualities of the abnormal diagnostic view render it structurally hospitable to contestation beyond that, or at least different to, the forms presently familiarised most directly through Fraser's own offerings, and it is thus able to perform something also like a world-disclosing function.

This combination of empirical/action-coordinating and extra-empirical/world-disclosing elements is at the heart of the distinctive perspective on justice that Fraser is offering. There is an overriding concern to both establish the theoretical terrain through which existing and emerging sites of contestation can be brought to the fore and worked upon – that is, to enable us to begin to better understand and contend with experiences of injustice encountered in the here and now – and, crucially, at the same time, to hold that terrain always open in a more radical sense to a future of contestation that is, and must be, at least partially indeterminable from the present.

Through her diagnostic account, then, Fraser strikes a path between a frequently erected divide in contemporary Western political thought between projects of modernity and postmodernity (broadly defined). The view Fraser constructs is both sensitive to, and affirmative of, the contrasting senses of responsibility that underpin each of these positions, and asserts that both are absolutely essential to a suitably critical way of thinking about justice and injustice as they are disputed in the contemporary era. Whilst it is, of course, unlikely that the abnormal diagnostic model given would, on this account, fully satisfy the thoroughly 'modern' or thoroughly 'postmodern' thinker, this is exactly the point. The underlying argument is that each of those positions, if followed with an absolute assurance, is likely to result in the perpetuation or the creation of harm and suffering that might otherwise be avoided or at least reduced. Taking a more positive stance towards issues of justice today requires us to productively harness the conflict between action-coordinating and world-disclosing responsibilities and to put it to effective public use.

In order to further underline the position that the Fraser is adopting here, it is useful to consider her aspirations for the direction that political theorising should take in light of a diagnosis of abnormality. She anticipates two. The first of these is defined by a desire or tendency towards a process of "renormalization" in the face of deep contestation (Fraser 2008, p.418). Fraser concedes that a likely (and largely understandable) response to the acknowledgement of a fundamentally contested, 'abnormal' discursive sphere in the present would be to direct energies principally towards arresting its potential to critically impede our capacity to positively intervene in observed instances of harm and suffering. On this view, the threat of impotence is enough to warrant an attempt towards the construction of a new normal, albeit one that is considerably more sensitive to the differences that present themselves through public disputes today. As Fraser notes:

> The result, were things to go well, would be a new paradigm of normal discourse about justice, premised on new interpretations of the 'what', the 'who', and the 'how' more appropriate to a globalizing world.
>
> (2008, p.418)

Better resourced to accommodate differences in how these features of justice are themselves presently understood and contested in contemporary contexts, this new standard of discourse would nevertheless be designed to maintain capacities for action akin in character to those present under existing normal conditions. Thus, weighted in favour of new stable structures built around the empirical features of the abnormal diagnostic account, this strategy seeks to privilege stability and certainty over their opposites. As such, the 'new normal' strategy, whilst no doubt offering an improvement on the present normal, shies away from the extra-empirical elements of Fraser's diagnostic work and fails to satisfactorily straddle the tension between action-coordinating and world-disclosing motivations. Though valuable opportunities for action are very pronounced here, the potential for new forms of exclusion to become entrenched and for emerging forms of contestation to be closed down in advance remains an inherent threat. The new normal is, as such, at risk of simply re-inscribing the shortcomings of the old – albeit in arguably more nuanced or subtle forms. For this reason, Fraser prefers (and it seems that the abnormal diagnosis, properly understood, demands) a different kind of response.

The alternative strategy Fraser has in mind she terms *reflexive justice*. The intention, here, is to instead strive for an outcome that consistently unsettles the distinction

between normality and abnormality. Better recognising the shortcomings that accompany both action-coordinating and world-disclosing impulses, this model of justice discourse seeks to incorporate the positive elements of each whilst also actively trying to avoid their respective defects. Thus;

> Unlike abnormal discourse, the desired model would have sufficient structuring capacities to stage today's justice struggles as *arguments*, in which the parties *confront* one another, compelling the attention and *judgment* of those looking on. Unlike normal discourse, however, the hoped-for model would have sufficient self-problematizing capacities to entertain novel claims about the 'what', the 'who', and the 'how'.
>
> (Fraser 2008, p.418: original emphasis)

The resulting grammar of justice does not refuse moments of closure, understanding well their power and efficacy in effecting responses to instances of harm and injustice in contemporary social contexts. It does, however, treat any and all such closures as *provisional* and thus potentially subject to questioning and reimagining through the terms of public dispute. In doing so, the intention is to bring the limits of existing institutional, conceptual, and discursive norms into better and more consistent view, *and* to instil a structural sensitivity to the potential that those norms embody exclusions which conceal or marginalise some experiences of injustice. The result, therefore, is a grammar of justice that carries momentum on two levels at once: "entertaining urgent claims on behalf of the disadvantaged while also parsing the metadisagreements that are interlaced with them" (Fraser 2008, p.419). Working at the intersection of action-coordinating and world-disclosing urges, the grammar in question "mobilizes the corrective capacities of each to mitigate the defects of the other", thus scrambling the distinction between normal and abnormal discourse in real contexts (Fraser 2008, p.419).

The reflexive justice approach is imbued with a deep commitment to the idea of justice as an always 'under-defined' feature of political contexts. Understanding contestation about the core conceptual parameters of justice – theorised by Fraser through the nodes of 'what', 'who', and 'how' – to be a prominent characteristic of contemporary contexts and as a *possible* characteristic of all contexts, the reflexive justice perspective refuses the notion that uncontroversial or final closure in respect of those parameters is possible (or valuable). As such, in addition to seeking to find new ways of rendering existing but marginalised forms of contestation more visible within bodies of dispute, it

is also a view which seeks to maintain grounds for new moments of opening to erupt and which treats with suspicion any claim to universality or final settlement concerning the norms of justice.

At the same time, the reflexive justice perspective is one that recognises a vital requirement to prevent any ensuing sense of uncertainty from manifesting itself as theoretical (or institutional) impotence in respect of instances of injury, need, and discontent in the real world. It understands inaction to be as damaging to hopes of addressing experiences of injustice as adherence to norms that obscure their presence entirely. There is, in this sense, a deeply agonistic undertone to the reflexive justice position. Finding that both *moments of opening* and *moments of closure* each possess positive and negative dimensions in respect of hopes of justice in the real world, the reflexive perspective commits itself to a careful and knowing mediation between these contrasting positions.

2.5 Conclusion

The perspective that Fraser introduces us to through her work on abnormal justice is, as I have attempted to demonstrate, imbued with a complex ethical orientation to problems of justice in contemporary public spheres. The primary impulse behind Fraser's theorising is not to simply capture a new and more comprehensive description of justice in light of the specific differences and disagreements that are now encountered in public disputes. Rather, the emphasis is on resisting all such proclivities to re-enter the mindset, and to repeat the mistakes, of 'normal' ways of thinking about justice. We must, for Fraser, be prepared to take the more difficult route of a reflexive perspective (and politics) if we are to deal equally and simultaneously with both the positive and the negative sides of an abnormal – or *abnormalising* – public sphere. That is to say, we must find ways to remain radically open to disagreement around the most basic conceptual parameters of justice whilst also remaining committed and able to act effectively in response to experiences of injustice of all kinds. Our endeavours to think about and to analyse contexts of abnormality ought, in this sense, to be evenly guided by responsibilities to action-coordinating and world-disclosing forms of knowledge. Only in this way can our responsiveness to public sphere disputes be genuinely, and sufficiently, reflexive.

In the next chapter, I move on to consider the more specific benefit that the reflexive justice perspective holds for the study of justice disputes in the internal colonial contexts of Australia and Canada, and set out a methodological approach for conducting

detailed analyses of these bodies of dispute and drawing out the particular forms of abnormality that they hold.

3

Considering internal colonial contexts

3.1 Introduction

Why should a reflexive perspective interest those of us concerned with questions of justice in internal colonial contexts? What reason is there to think that this approach can offer something of genuine value to our understanding of these bodies of dispute? And, moreover, how might we go about actually producing diagnostic discussions of internal colonial contexts in a reflexive tone? This chapter takes its lead from, and indeed seeks to satisfy, these important questions.

The first part of the chapter addresses the issue of what specific value the reflexive perspective can bring to the study of internal colonial relationships in Australia and Canada. It highlights three particular and important qualities – or, perhaps more accurately stated, *consequences* – of the reflexive perspective, each of which, it is argued, encourages a particular kind of sensitivity that ought to matter to the way in which we approach disputes of justice in contemporary internal colonial contexts. By drawing out these sensitivities – which are, it must be noted, too frequently lacking within other forms of theoretical inquiry – a case for realising the valuable contribution that the reflexive perspective can make in respect of these contexts is put forward.

The second part of the chapter moves on to more directly tackle the methodological problem of how diagnostic discussions of internal colonial contexts may be constructed in accordance with the demands of the reflexive perspective. The solution offered is, in

short, that those detailed explorations be conducted through a framework composed of five different analytical vantage points, each attending to a distinctive face of contemporary Indigenous justice struggles in Australia and Canada. Looking at these contexts, in turn, through five different lenses of struggle – namely: *presence, control, voice, recovery,* and *equality* – enables us to situate different sets of issues, aspirations, concerns, and experiences at the centre of discussion and to thereby gain a deeper appreciation of the complexes of meta- and first-order concern that they display. Accordingly, this analytical framework can provide an effective vehicle for realising the levels of 'abnormality' that they display.

We must begin, however, with exploration of the prior question of the reflexive perspective's basic suitability and promise in respect of internal colonial contexts.

3.2 Three consequences of a reflexive perspective on justice

The reflexive perspective possesses certain characteristics that make it an especially interesting one to bring to bear on contemporary justice disputes in internal colonial contexts. A useful way of isolating these features is to think of them in terms of a set of particular analytical *consequences* that flow from the distinctive mix of concerns for world-disclosing and action-coordinating functions of critique that the reflexive perspective holds. Three such consequences in particular resonate in this manner, and, although a certain degree of overlap can be found between them, each can be understood to provide insight into a distinctive layer of congeniality between internal colonial disputes and the reflexive view on justice. Together, these consequences reveal a basic structural openness and sensitivity within the reflexive perspective that aligns with the complex scenes of contestation to be found within internal colonial bodies of dispute.

The first consequence follows from the reflexive perspective's strong aversion to accepting any form of final closure around the meaning and scope of justice. This foregrounding of the idea that all norms providing an organising function over a socio-discursive field rely for their dominance and stability on the contingent forces of politics and history rather than any kind of natural or inevitable force, alerts us to the importance of constructive social power in setting out the bounds of publicly salient or 'normal' conceptions of justice and injustice.

The idea of constructive power has perhaps been introduced most evocatively in contemporary political theory by Catherine MacKinnon (1989) in her efforts to clarify

the broader basis of male power and female subordination in contemporary societies. There, MacKinnon seeks to move beyond an understanding that would recognise male power over women purely in terms of relations of external force – of the kind *A exerts power over B*, for example – so as to also account for the ways in which the social subjectivities of both men and women are constructed also through more discreet political forces (Watson 2010). For MacKinnon, accordingly, understanding the way in which male dominance maintains and reproduces itself in contemporary society requires also engaging with distributions of constructive power, understood simply as the "[p]ower to create the world from one's point of view" (1989, p.121). More recently, Anthony Laden (2001; 2007; 2012) has taken up MacKinnon's notion of constructive power, bringing it also into conversation with Michel Foucault's work on power. Laden's principal motivation in doing so has been to move towards a theory of public reason*ing* – that is, as distinct from a theory of public *reason* – that accounts for it as a kind of "reciprocal and responsive" political activity between actors, rather than simply as a logical calculation of 'correct' reasons drawn from an independent and non-political rational order (2012, p.12). The importance of the notion of constructive power for Laden is, in this sense, its productive role in sculpting the domain of 'good reasons' that are apparent in any social context. As he puts it:

> Constructive power works in part by shaping our conceptual landscape and, in particular, in determining what counts as standard or normal, and thus, in turn, what routes of criticism and argument are within the bounds of reason, and which are confused or special pleading or just 'silly'.
>
> (2012, p.124)

As such, constructive social power represents the mechanism through which some contingent determinations of meaning and reason emerge from political contests to hold particular traction at the public level, and thereby come to characterise the social field in a more general way for all actors. Importantly, then, when constructive social power is held more or less symmetrically amongst actors, each possesses a similar and equitable influence over the determination of the social identities, norms, and meanings that prevail across their association. When it is distributed asymmetrically, however, some find themselves less able to exert such influence and more likely to have certain forms of identity, norm, and meaning imposed upon them in public life.

For the reflexive perspective, given its insistence on the irreducibly political nature of the conceptual parameters of justice, distributions of constructive power are also a

matter of central concern. In providing a way of drawing to the surface and centralising this far less obvious power dimension of contemporary disputes of justice, the reflexive perspective offers a more receptive platform from which to listen to claims of injustice from groups who may be lacking in constructive social power in respect of the languages and concepts that presently dominate the public discursive field. The reflexive perspective therefore begs us to realise not only that such asymmetries may operate to partially or wholly conceal important forms of injury and discontent from the public sphere, but also that an absence of constructive social power is likely to be experienced as a form of injustice in and of itself.

Even the most cursory engagement with contemporary Indigenous critique of internal colonial contexts finds strong resonance with the reflexive perspective on this count. Indigenous voices have consistently worked to unveil the non-universal nature of the conventions of thought and practice that presently dominate the public arenas available to them, and to thereby show how the value-systems, languages, and philosophical histories and practices with which they themselves better identify – whether of more traditional or more contemporary composition – are routinely marginalised in public exchanges (see Alfred 2005; 2009a; Hart 2010; Little Bear 2000; Smith 2012; Tully 1995; Turner 2006; Youngblood Henderson 2000). In driving towards making this kind of exclusion more generally comprehensible, and so rendering its presence as not only plausible but also publicly relevant in an immediate sense, the reflexive perspective offers an orientation that is well-suited to explicating the deeper processes of domination and exclusion felt by Indigenous disputants in internal colonial contexts.

There is also a further sense in which this attunement to issues of constructive power holds value here. Since there is no necessary fixity in the types of social relation that are subject to this critical-analytical attention to distributions of constructive power, the reflexive perspective is also able to attend to instances in which asymmetries of constructive power might be experienced simultaneously across multiple and overlapping dimensions of social relations. That is, rather than hovering over only the relationships of domination-subordination that have become most politically centralised (or vocalised) within a body of dispute, the reflexive view can also attune itself to similar forms of struggle that may be running alongside. This opens up a vein of inquiry that is geared towards the acknowledgement of additional 'group-specific' senses of injustice and how these might differ in important ways from the normal face of those publicised within internal colonial disputes.

In one respect, this gives cause to think about how experiences of injustice and aspirations of justice might differ amongst Indigenous groups. For, as Taiaiake Alfred and Jeff Corntassel argue, it is a commonality of "struggle to survive as distinct peoples on foundations constituted in their unique heritages, attachments to their homelands, and natural ways of life" that Indigenous peoples share, rather than (necessarily) any kind of innate cultural similarity or identical histories of colonialism (2005, p.597). Or, from a rather different direction, as Elizabeth Povinelli puts it, "the category of indigeneity came into being in relation to the imperial state and the social identities residing in it, and it continues to draw discursive value in relation to the state…and to other emergent national [and transnational] subjects" (2002, p.49). One does not have to fully endorse either of these conceptions to garner from them the common idea that 'Indigeneity' as an identity marker does not refer to any kind of homogenous grouping, but rather to disparate groups united most directly through a basic similarity of historical and contemporary political circumstance. As a result, significant differences (as well as similarities) emerge in the experiences, interests, and aspirations of different Indigenous peoples, even within the bounds of individual states. It is conceivable, then, that we will encounter cases where some Indigenous voices wield a comparably greater level of constructive power than other Indigenous voices, and that the popular terms of internal colonial disputes are prone to reflect this asymmetry. The reflexive perspective gives scope and cause to appreciate this possibility. This does not, it must be noted, mean that it is necessary to completely abandon more generalised forms of critical discussion on the reflexive pathway for fear of blindly replicating such asymmetries and instead favour only smaller contextual discussions (though there is undoubtedly great value in such projects). Rather, it infers that it is necessary to conduct generalised discussions in ways that are more open to, and knowing of, their limitations in this respect, and which recognise that the broader critical account they offer is drawn from a vibrant political field in which disparities of constructive social power are (potentially) multifarious and dynamic in form.

This same drive also encourages us to consider possible asymmetries of constructive social power operating along other aspects of identity or circumstance. Particularly, it gives cause to attend to the possibility that some social groups experiencing forms of injustice related to colonialism also experience marginalisation or exclusion in respect of other social groups engaged in similar struggles, and that they tend to be distanced from the means of equitably determining the ideas and interests that dominate the normal face of Indigenous struggles at the public level as a result. Responding to the

possibility that some kinds of voices – such as women, sexual minorities, people with disabilities, and so on – receive inequitable representation in the terms of how these disputes take place not only helps to uncover important experiences of injury that might otherwise be missed, but also leads to engagement with some of the more unfamiliar and complex processes of colonialism. Revealed are ways in which some social groups are subject to distinctive forms of violence, marginalisation, and discrimination – sometimes as a result of the strategic goals and prejudices of dominant society, but rarely entirely reducible to these factors – that hold serious repercussions at the individual and group level today, and indeed impact in very profound ways on the broader decolonising struggles of Indigenous peoples in internal colonial contexts. In finding cause to draw to the surface multiple, and sometimes overlapping, inequities in the constructive social power that disputants possess, a mode of discussion guided by the reflexive perspective is well-situated to develop a richer account of the complexities involved in the internal colonial context and the struggles of justice occurring within it.

The second beneficial consequence of the reflexive perspective comes with its simultaneous and equal concern for first-order and meta-order forms of contestation. For, whilst the reflexive perspective is driven to render visible the fact that normal constitutive assumptions about justice are prone to being unsettled through contemporary disputes, there is no imposed assumption that these moments of meta-order challenge must exist entirely independently from the local normal bounds of justice, either in the minds or in the public voices of the disputants that raise them. In other words, there is no demand that meta-order disputants must be in possession of wholly independent and comprehensive conceptions of justice that they are able to draw upon in contesting the hegemonic normal. Rather, the reflexive perspective is accepting of the fact that normality can be (and is probably always likely to be) challenged in considerably more subtle and oblique ways as disputants struggle from within, as well as against, the bounds of the dominant normal in order to publicise the injuries that they experience. In leaving space for us to recognise that actors pursuing contests of a meta-order character are unlikely to have opportunity to fully detach themselves – physically, politically, or cognitively – from the context(s) of domination that they hope or act to unsettle, the reflexive perspective is sensitive to the fact that, within real-world disputes, any meta-order challenge is always (at least partially) situated within the hegemonic horizon of meaning and consequence that it confronts.

On one level, of course, this is important because it iterates the fact that those actors raising forms of meta-order challenge are never immune from the influence of rules,

processes, and contests associated with the existing dominant bounds of justice to which they are exposed in social life. Their lives are already, and will continue to be, affected in critically important ways by the myriad conversations, confrontations, and associated alterations to patterns of social ordering that are occurring by virtue of first-order contests and understandings of justice within society. Rules will be enforced against them, social circumstances will change around them, and different sets of opportunities and threats will periodically materialise and fade away – each of which hold serious repercussions for the day-to-day experiences of disputants, and also for their hopes of bringing any meta-order challenges to bear on public arenas. As a result, some degree of meaningful engagement with dominant norms and institutions is to be expected, will often be crucial, and is probably unavoidable amongst the majority of meta-order disputants.

Acknowledging this fact matters particularly in respect of Indigenous peoples in liberal internal colonial contexts whom have, over the course of colonial history, in addition to experiencing a more general condition of domination, also been subject to acute and entrenched patterns of social and economic marginalisation, forms of race-based discrimination, and denials of basic rights. Achieving progress towards overcoming these expressions of injustice and their effects has often necessitated acting unambiguously within the dominant institutional and ideational framework of the dominant society and employing the tools available within it in order to improve the conditions faced by Indigenous people in daily life. Notably, too, many of the most valuable advancements in this regard have been aided by shifts 'within' the hegemonic normal understanding of justice; for instance, as political discourses of recognition and difference have come to play a more influential role in liberal societies. Although emerging as part of far broader critical movements, these alterations to the dominant conception of justice (at least in terms of 'what' relations it is taken to measure) have been employed by Indigenous disputants to considerable – though certainly not uncontentious (see Coulthard 2007; 2014) – effect. Consequently, both the necessity and value of participating in first-order forms of contestation is well reflected in the history of Indigenous struggles. Understanding that such moments of engagement and compliance do not automatically denote endorsement of dominant norms, nor an absence of meta-order contestation, but instead most directly reflect particular needs or strategies of disadvantaged actors, is absolutely vital.

This consequence of the reflexive perspective also holds value beyond this largely practical entanglement of first- and meta-order issues of justice. It also encourages us to

consider the likelihood that few, if any, actors will possess conceptual perspectives on justice that are *fully* detached, or can be *fully* distinguished, from the existing hegemonic standard. The political situatedness of social actors makes it likely that any articulations of alternative conceptions of justice will be influenced by, and often share important points of convergence with, the grammars they challenge. Familiar concepts will be redeployed in innovative or unusual ways, others will be preserved or emphasised, still others will be criticised and rejected. The role played in the social construction of the senses of justice\injustice held, however, is always significant. What is more, even where relative externality might exist or be achieved at a 'non-public' level – for instance, through what James Scott (1990) refers to as the "hidden transcripts" of justice that excluded actors sometimes possess – the process of bringing those understandings to wider public attention always necessitates their transposition, to at least some degree, into languages and terms of reference that have a more general intelligibility about them. As such, the dominant normal language of justice will continue to have a clear role to play in any articulation of injury, regardless of the meta-order discontents it carries, and no contest will ever seem to be entirely disconnected from the conceptual bounds of justice that already prevail.

Acknowledging these points matters for the discussion of Indigenous struggles in internal colonial settings because it helps us to resist the misconception that expressions, arguments, or claims that seem to be substantially in conformance with the dominant conception and operation of justice are *necessarily* devoid of meta-order contestation. The inability of actors radically to escape the practical and intellectual bounds of the hegemonic context (at least whilst bringing their disputes to public attention) makes it likely that the unfamiliar will always be fused with the familiar in some way. Confronting this likelihood as an initial consideration of analysis helps to guard against forms of complacency creeping into the listening exercise that follows. Disputes can be approached in ways that resist allowing the familiar to eclipse the unfamiliar – and, indeed, vice versa.

The third consequence of particular note is the reflexive perspective's capacity to help us appreciate the presence of stabilising and destabilising forces within multi-order justice disputes, and, particularly, the difficult circumstances that these create for actors in vulnerable or subordinate positions. More specifically, I refer here to the way in which episodes of 'norm-conformance' (i.e. first-order features of dispute) might have the effect of contributing towards the ossification of social structures associated with domination (hence *stabilisation*), whilst episodes of 'norm-challenging' (i.e. meta-order

features of dispute) might have the effect of undermining and weakening structures of domination (hence *destabilisation*). This is an important area for consideration because it turns attentions towards the difficult practical realities that accompany efforts to raise and maintain forms of metadispute by actors situated within actual contexts of domination, where their own acts of contestation may also carry the potential for profoundly negative consequences at personal and collective levels.

This is of particular importance to the liberal internal colonial context because the drive towards the final legitimisation (stabilisation) of dominant society is here such a central point of contestation. The challenges raised by Indigenous peoples in Australia and Canada commonly hope precisely to prevent (or indefinitely delay) this legitimisation – that is, to produce a destabilising effect on the hegemonic order – such that spaces may be created through which its structures of unjust domination might be partially or wholly escaped. At the same time, however, the prolonged period of colonial and state rule has produced, and continues to produce, such patterns of hardship and suffering that engagement with dominant mechanisms of justice is often absolutely vital. The problem that many Indigenous disputants encounter as a result, is that advancements gained (and even failures felt) through the dominant channels of the state can have the consequence of seeming to affirm something important about the legitimacy of dominant society's own institutions and understandings of justice, thereby contributing to their stable presence as an ordering force over Indigenous lives. Where they are successful, such engagements also operate to establish chains of dependency wherein Indigenous peoples come to have increased interests in preserving the stability of the dominant order (in at least some important respects) if the progresses gained within it are to be effectively and reliably put into practice. There is an obvious potential for the stabilising momentum that comes with such engagement to conflict with the destabilising intentions of meta-order contestation, and this is a reality that many Indigenous disputants are forced to continually confront and negotiate when bringing their challenges to public prominence.

The value of the reflexive perspective, here, lies not so much with its capacity to offer effective resolution to this persistent double-bind of Indigenous struggles, but rather in its willingness to foreground the conflictual meeting of stabilisation and destabilisation when approaching disputes of justice. Fraser's careful observance of both the positive and the negative potentialities of an expanded field of contestation induce a form of structural sensitivity within the reflexive perspective that aligns (in a basic sense) with the complexities encountered in contemporary internal colonial contexts. On

methodological terms, then, this responsiveness to the deep tensions of stability/instability in respect of the experiences and interests of actors engaged in struggles of justice can help us to better see the more discreet pressures that are exerted through entrenched forms of structural and institutional domination, and to centralise this also as a matter of immediate moral and political concern within discussions.

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Together, these three consequences stand as good preliminary indication of what the reflexive perspective can bring to the theoretical representation and discussion of internal colonial justice disputes. It is a perspective that displays a genuine responsiveness to the complexities of the political world it engages, and which is attuned to the practical as well as the conceptual difficulties that actors within multi-ordered disputes of justice often face. Given the profundity with which these complexities manifest in contemporary internal colonial contexts, the potential value of the reflexive perspective in this regard is clear.

The next section moves on to consider precisely how a reflexive discussion of the internal colonial contexts of Australia and Canada might be conducted. I propose that an analytical framework, underpinned by the general commitments and qualities of the reflexive position noted above, but also more precisely structured according to the contemporary scenes of Indigenous struggle in these specific contexts, provides an efficacious way of developing more detailed explorations of the contests of justice\injustice occurring with them.

3.3 A diagnostic framework: five faces of struggle

Internal colonial contexts represent highly complex bodies of dispute. The deep entanglement of interests and claims that underpins relationships between Indigenous peoples and the broader institutions and identities of the Settler societies of which they are now a part (and yet so often also apart) gives rise to many difficult areas of contest and struggle, and manifests simultaneously on a range of different political, legal, social, and conceptual planes. This characteristic complexity is difficult to manage in any type of theoretical discussion, but potentially even more so given the reflexive perspective's explicit attentiveness to meta-order as well as first-order forms of contestation. As such, in order to offer a mode of discussion that is adequately engaging of this multi-order character yet which remains clear and accessible, it is necessary to impose some form of theoretical organisation.

One possibility for doing so would be to attempt to align the forms of contestation encountered through internal colonial disputes directly with Fraser's schema of 'what', 'who', and 'how'. Indeed, on some level, this would appear to be the most obvious and natural strategy. However, I suggest that this would be ill-advised on two counts. First, although 'what', 'who', and 'how' offer sound orienting concepts for thinking about the general directions by which the contingency of established norms and assumptions might be brought into view and challenged in the contemporary era, they are perhaps somewhat blunter instruments when applied at more concentrated diagnostic levels. If the purpose of the diagnostic exercise is not simply to ascertain the basic presence (or absence) of abnormality, but to derive a more precise understanding of how and why it arises, it is necessary to engage in a more responsive manner with the distinctive histories, interests, and perspectives that resonate within the contexts it is brought to, and to acknowledge that these have an important shaping effect on the way in which metadisputes will become manifest within the socio-discursive field. Although 'what', 'who', and 'how' no doubt stand as indispensable referents here, deeper understanding of the specific features of disputes in internal colonial contexts might require holding these primarily as background concepts of critical attention and instead pursuing more context-specific modes of theoretical organisation.

Second, the schema of 'what', 'who', and 'how', as Fraser employs it, is principally intended to provide insight into the ways that meta-order challenges arise in contemporary disputes. This is, of course, an extremely important dimension of the reflexive perspective, but there is the possibility that, especially when brought into conversation with more specific and localised bodies of dispute, such a strategy has the effect of pushing the discussion too far towards moments of meta-order contestation whilst de-emphasising the way in which these are interwoven with important first-order articulations and experiences of injustice. Holding onto the fraught interplay of meta-order and first-order concerns is, as we have seen, a crucial aspect of the reflexive perspective, and trespassing too far in the direction of either side – even if only inadvertently – is likely to carry negative connotations. Consequently, in producing more context-specific diagnostic discussions, it is necessary (or at least advantageous) to undertake additional theoretical work to that performed by the schema 'what', 'who', and 'how' alone.

Accordingly, the framework offered below is drawn from a reading of internal colonial justice disputes in Australia and Canada and based upon some key common features that they seem to display. The framework identifies five distinctive themes of struggle –

presence, control, voice, recovery, and *equality* – each of which, I contend, corresponds with a somewhat distinctive face of dispute in these contexts, and so offers a different but complementary perspective on the complex ways in which justice is contested within them. These five themes are not intended to represent entirely distinct or isolated modes of struggles, either conceptually or practically. Rather, they are intended only to provide a way of shifting the emphasis of discussion such that different sets of issues, experiences, and challenges can be centralised, and a different analytical view on internal colonial bodies of dispute developed. Thus, these categories represent no more than an analytical device: the separations they imply are not stable or dependable features of reality. As will become clear in the introductions that follow – and even more so in their contextual exploration across the following two case studies – it makes little sense to consider any of the themes in isolation from its counterparts. A struggle for *recovery* is, for example, always also about securing a *presence* and regaining a form of *control*, just as it must always also be, to some degree, about gaining a level of *voice* and *equality* that is presently denied. Thus, each of the themes marks only an altered perspective and focus on disputes, not a truly independent form of contest. Indeed, in some cases, it will be possible for the analysis given in one section to be intelligibly, and perhaps valuably, read against the heading of another. This represents a degree of ambiguity in the language selected that affirms the fluidity of these categories in the terms of actual disputes. I understand this to be a strength of their analytical applicability, not a hindrance to it. In unison, the five themes offer a way of building detailed accounts of the manner in which Indigenous peoples in Canada and Australia are subject to forms of normality around justice that they contest, and which have a central role in creating and perpetuating many of the injuries they experience.

3.3.a Struggles of presence

One of the definitive themes of colonialism in both the Australian and the Canadian contexts has been the prevalence of forces acting to displace Indigenous bodies and identities from the geographical and political landscape. The root of these forces has lain both with the needs of Settler peoples and governments to consolidate their own presences within environments that were already occupied and possessed by others prior to their arrival, and with entrenched racist assumptions about the innate inferiority of non-European individuals, societies, cultures, and ways of life. Although the manifestation of these forces has varied considerably over the course of (and across different) colonial relationships, each has remained consistently evident in the way that Settler societies have responded to the continuing 'problem' of Indigenous presences.

Settler governments have generally looked for ways to contain, weaken, or otherwise redefine Indigenous connections to the land (and often to each other) so as to ossify the state's own presence and to further its own interests; so too, and often for similar reasons, have they set in motion processes undermining the security of Indigenous cultures, ways of life, and identities on the political landscape. The overriding imperative, as Taiaiake Alfred sees it, has been to try to force a critical "disconnection from land, culture, and community" to the extent that Indigenous peoples cease to pose any serious moral, legal, or practical challenges to Settler society (2009b, p.52).

Many facets to this offensive have been evident over the course of colonial histories in Canada and Australia, altering significantly by time and place, and operating through a complex mix of formal (legislative, legal) and informal (social, economic) forces. At times, open or thinly veiled attempts to displace Indigenous bodies from the land and to assimilate individuals into the norms, values, and lifestyles of dominant society have proliferated. In both Canada and Australia, a range of coercive strategies and policies have been employed in this regard, often with highly destructive consequences for individuals and communities. One need only witness the continuing resonance of the residential school system in Canada (Castellano et al. 2008; Flisfeder 2010; Regan 2010; Stanton 2011) and the 'Stolen Generations' in Australia (Barta 2008; HREOC 1997; Irabinna-Rigney 1998) for indication of this. Even where objectives of full-scale assimilation and dispossession or displacement have been less prominent (or less clearly articulated) goals, Settler authorities have still commonly sought to formally 'domesticate' Indigenous identities by legislating away or eroding any differential forms of political status or rights associated with them.

Against this backdrop of direct attacks on physical and politico-cultural presences, Indigenous peoples have also been subject to displacing forces of a significantly more indirect form, but which have nevertheless had quite profound consequences in and of themselves – for instance, as communities have been forced to adapt the manner of their collective being on the land, and individuals forced to adapt their ways of life, in light of changing social, economic, and environmental circumstances (Coates 1999; Weinstein 2007). Indigenous community contexts under colonialism have also been interwoven with strong social and economic forces pulling on individuals, frequently operating to place significant social and geographical spaces between them. Indigenous peoples have also commonly found their own cultures, worldviews, languages, and ways of life undervalued, marginalised, or commodified in dominant society, and have been subject to pervasive patterns of racial and cultural discrimination and violence.

Though clearly representing a very diverse range of processes and experiences, the examples given above all involve forces acting to threaten, displace, undermine, or redefine Indigenous physical and politico-cultural presences. Whether effected through the direct actions of Settler governments and societies or occurring through the indirect impacts of social and economic forces, these processes have all marked an interference with both the very fact of Indigenous collective presences, and the capacity of Indigenous peoples to freely determine the form and locations of such presence.

In resisting these histories and ongoing processes of displacement, Indigenous voices today commonly pitch their struggles on multiple conceptual levels. In addition to seeking to recapture rights to lands and territories, overcome suppressions of opportunities for traditional or alternative ways of life, and to secure cultural and political identities against powerful denigrating forces, Indigenous actors also seek to problematise the continual displacement of their own worldviews, spiritual and philosophical histories, systems of law, and values from the contemporary landscape. Consequently, though much of this struggle necessarily involves engaging the dominant system and its favoured grammars and norms so as to push for greater institutional and public recognition and establish an effective body of rights within the state (and also the international) legal domain, it also dramatically exceeds these planes. These same struggles also involve dimensions whereby Indigenous voices seek to challenge the social-theoretical assumptions that are embedded in the way that their struggles of presence are heard. Indigenous disputants regularly problematise the understandings of human relationships to the land by which their claims are judged, and expose the cultural specificity of dominant notions of 'property' and 'ownership' (see Nadasdy 2002; Tully 1994); they contest the assumed primacy of the state's legal order and seek to gain recognition of the equivalent status of Indigenous systems of law (Borrows 1996; 2010; Langton et al. 2004; Webber 2009); they highlight the background power relationships embedded in practices of recognition and argue that these produce pressures of authenticity that unjustly hold individuals and peoples in positions of subordination in respect of the state and dominant society (Barcham 2000; Coulthard 2007; 2014). In all cases, the struggle is to secure physical, cultural, and political presences against continuing threats and to rectify past episodes of violence directed against them by the forces of colonialism.

3.3.b Struggles of control

If struggles of presence can be understood as those dimensions of disputes that are pitched most directly against the displacing moments of colonialism, struggles of control

instead correspond most directly with its disempowering moments. From this direction, the central focus of justice is less about securing the presence of Indigenous bodies, cultures, and identities (although this, of course, remains critical), but, rather, about problematising the locations of authority in respect of the environments in which social, economic, political, and cultural relationships are formed and conducted.

For most Indigenous disputants in Australia and Canada, the starting point for contests of this kind is expressly historical in nature. Citing their pre-colonial statuses as free and self-determining peoples, and highlighting the violent or otherwise coercive processes through which this status has been eroded or denied over the course of colonial history, Indigenous disputants express a range of discontents with the structures of authority to which they are presently subject. In doing so, they typically seek the removal or the rearrangement of the current political and legal order so as to (re)capture powers of collective self-control that have been, and are being, unjustly hindered.

Beyond this general demand for formal and effective re-empowerment, however, struggles of control assume a variety of different, sometimes even potentially conflicting, forms. This can, perhaps, best be accounted for by clarifying a distinction (and a connection) between two terms of collective self-control that have become effectively synonymous with challenges against colonial disempowerment over the past 40 years or so: *self-government* and *self-determination*.

In its common usage, the concept of self-government refers to the powers of jurisdictional authority that a group possesses over matters central to the day-to-day functioning, integrity, and well-being of its members and their local environment. This can include things such as control over membership rules, education, health care, access to lands and resources, policing, taxation, social welfare, and so on to include a wide range of matters relevant to the internal workings of the group. Because, however, it makes little sense to speak of the possession of such powers in the absence of external agents that could also fulfil them, as a political concept, self-government is a term that tacitly infers a level of formal relationality between two or more groups. It marks a measure of autonomy in the formal decision-making and implementation capacities of a group vis-à-vis the existence of 'external' governmental bodies that might – whether through force, consent, or necessity – also come to fulfil those same functions for the group. On this understanding, a power (or right) of self-government must be one that is always exercised in relation to at least one other group possessing comparable powers (or rights). It therefore infers a sharing of jurisdictions – be they conceived on criteria of

geography, population, issue, or any combination of these – between multiple governing groups.

What is not present in the concept of self-government, however – and critically so – is any clear account of where and with whom the power resides to determine the form and content of such jurisdictions and the manner of their distribution amongst governing groups. Of course, could the equality of groups in terms of such power be reliably assumed, then the construction and distribution of jurisdictions would likely be a matter of equitable negotiation between parties (and, perhaps, conflict when no agreement could be reached). However, it is observably true of the social world today that some groups possess far greater power and resources than others, and with it greater influence over processes of jurisdictional determination. The internal colonial context is a clear case in point. The sovereign claims and assumptions of the state, supported as they are by its control of vast resources and coercive potential, provide it with a grossly unequal share of power in jurisdictional negotiations with Indigenous peoples. The state has the ability to determine which areas of jurisdiction Indigenous governments should possess, to approve the legal and political norms that dominate within those jurisdictions, and even to unilaterally set out the circumstances in which state institutions can intervene in, suspend, or permanently override Indigenous authority. Self-government in this context, then, refers to the forms of authority available to Indigenous peoples *as determined by the state* (Irlbacher-Fox 2009). There is, as such, no concrete link between a power of self-government and freedom from control and domination by an external governing body. A self-governing group may certainly be so in ways that enable it to determine with considerable success the particular jurisdictions that it enjoys; a self-governing group may equally, however, find the jurisdictions over which it has control dictated to it by a more powerful group, and so also find them open to arbitrary alteration.

This marks a crucial difference between the concepts of self-government and self-determination as they play out in contemporary internal colonial justice disputes. In distinction to the former, self-determination is generally understood to refer to the (claimed) moral and political right of a people to exercise a substantive measure of control over the collective *destiny* of its members (Anaya 2004). It is important to underline, here, that the particular way in which the concept of self-determination is typically employed by Indigenous disputants marks a notable departure from the understanding that has proliferated in the discourses of international politics since the term's emergence in the early part of the twentieth century. In its conventional guise

and usage, as Iris Marion Young observes, self-determination has generally been centred on a principle of *non-intervention*:

> On this model, self-determination means that a people or government has the authority to exercise complete control over what goes on inside its jurisdiction, and no outside agent has the right to make claims upon or interfere with what the self-determining agent does. Reciprocally, the self-determining people have no claim on what others do with respect to issues within their jurisdictions, and no right to interfere in the business of others.
>
> (2004, p.181)

Intimately tied, both historically and philosophically, to Westphalian-derived norms concerning the sovereign rights of nation-states, the idea of self-determination deployed here seems to necessitate conditions of full independence and autonomy between similarly free agents. The basic presupposition is that self-determining agents "have a domain of action that is their own which is independent of need for relationship with or influence by others", and the ideal of freedom consists in agents being left alone to conduct their affairs as they see fit within this "base of independence" (Young 2004, p.182). From this perspective, then, if Indigenous peoples seek powers (or claim rights) of self-determination, it must ultimately be towards full independence and autonomy that they are directed.

Despite the pervasiveness of this understanding of self-determination in international political thought and praxis, it is a conception which seems ill-suited to most Indigenous uses of the term. To be sure, a predominantly *non-interference* conception of self-determination is certainly invoked by some Indigenous disputants and their supporters, both as a normative vision of justice and in strategic opposition to forms of domination (see, for instance, Mansell 2003; also Levy 2008). However, more frequently, the way in which the concept is employed drives against some of the non-interference conception's key assumptions.

No doubt, there are a range of possible contributing reasons for this rejection of a 'standard' secessionist agenda. One likely candidate is a degree of tension between the historically and culturally specific assumptions about political ordering that are wrapped up in the idea of independent and sovereign territorial states, and the diverse histories, worldviews, and systems of political ordering of Indigenous peoples themselves (e.g. Alfred 2005; 2009a; Blackburn 2009; Turner 2006). Another likely factor is the role that Indigenous peoples have played in the historical construction of

contemporary states, and the fact that their identities, cultural attachments, and socio-economic lives – both as individuals and as peoples – are often bound up inextricably with those of the wider societies of which they are a part (e.g. Blackburn 2009; Borrows 2010). Simply presupposing that calls for collective freedom amongst Indigenous peoples in Australia and Canada *must* equate to calls for exclusion from those societies risks reinforcing an ahistorical account of the national story in each. Yet another factor might be that, whilst Indigenous appeals to self-determination almost always do include calls for greater autonomy and control over lands and resources, they also usually include demands for state (and other) institutions to provide the means to make the exercise of self-determination effective. As Young notes;

> To be self-determining and for their people to flourish, indigenous people generally insist that the states against which they claim self-determination…ought to enable the realization of their self-determination rights by at least partly funding their governments and their government services, including bureaucratic staff, equipment, schools, health services and similar public services.
>
> (2005, p.143)

For many Indigenous disputants, it is through the seizure and exploitation of Indigenous lands that much of the material wealth of contemporary states has been acquired, and, as such, assistance of this kind would not constitute an act driven by charity or even guilt on the part of the state, but rather a fundamental requirement of justice.

Whatever the specific reasons behind it, though, the more directly relevant point here is that independent statehood, (strong) separation, or a future of complete non-interference are not goals that typically seem to configure Indigenous appeals to self-determination. As such, a different picture of that concept is needed in order to understand how it relates to these experiences of unfreedom and aspirations of freedom. For Young, a better match is found by shifting the focus of self-determination away from non-interference, and instead centring it on a principle of *non-domination*.

On this conception, collective freedom does not mean the capacity of a people to pursue forms of self-control entirely disconnected from other groups – that is, freedom via the establishment of borders of non-interference – but, instead, the absence of relational structures that render them subject to domination by another group. Domination, here, occurs when an agent is subject to the arbitrary will of another agent. Or, as Duncan Ivison puts it:

> Relations of domination exist when relations of power become fixed or stable such that, whether directly or indirectly, some are able to control – arbitrarily, and with relative certainty and without reciprocation – the conduct of others.
>
> (2002, p.169)

It is important to emphasise that the imposition of external will need not be to the obvious detriment of a group in order for it to be considered arbitrary and indicative of domination. In Phillip Petit's words, whether an act "is arbitrary is fixed by the controls to which it is subject, not the ends that it happens to effect" (2005, p.93). Consequently, "an act of interference may be done for the good of the victim, and may be successful in achieving that good, and yet be arbitrary" (Petit 2005, p.93). To be clear, this is not the same as arguing that the consequences of 'well-intentioned' interferences are necessarily as damaging or unjust as 'ill-intentioned' ones. Whilst it is certainly true that apparently good intentions can be highly destructive – as the historical drive of people in the West to bestow the 'gift of civilisation' upon non-Western peoples starkly testifies – it is also true that good intentions can result in positive outcomes. Rather, the point is that the moral basis of interference is inconsequential to its arbitrariness. Accordingly, a group can be thought to be subject to domination, and therefore lacking in powers of self-determination, when it is vulnerable to the arbitrary will of external agents, irrespective of the consequences of that relation.

Though there remains a prima facie "*presumption* of non-interference" on this understanding of self-determination – and a group has the right to make its own decisions, set its own rules, and so on unencumbered by any external authority – outside agents may legitimately seek intervention when those actions impact upon certain individuals or types of individual (whether inside or outside of the group) in adverse ways (Young 2005, p.146: original emphasis). In this sense, the norm of non-interference may be legitimately suspended in order to prevent domination occurring between engaged groups, and also to prevent instances of domination occurring internally within groups. The context of any such intervention, however, must remain one of non-domination: it cannot occur simply by virtue of the arbitrary will of more powerful groups. The potential for intervention should be equitable and multidirectional in form, with smaller or relatively less powerful groups as capable of realising intervention as bigger or more powerful ones.

This alternative account of self-determination detaches the concept from a fixation on territorial sovereignty and reconstitutes it through a lens of relational autonomy (Young

2004). On this view, appeals to self-determination stand to be understood as demands to be free from the arbitrary will of other groups, not attempts to deny or prevent strong interrelational ties with other groups. Young claims this to be a more accurate depiction of the way in which the term is put to work by Indigenous disputants, whom she regards as representing a paradigmatic case for thinking about demands of collective freedom in the contemporary era.

It should perhaps be noted at this stage, however, that this conception has only indirectly arisen from Indigenous critique, and, though drawing significantly on the moral and political challenges raised by Indigenous peoples, it remains an understanding that is most directly rooted within the texts and traditions of Western political theory. Notwithstanding this important limitation, it seems reasonable to assume that any claim made against a condition of collective disempowerment – especially when couched in the language of self-determination – has at its core an aspiration to be free of domination by another. In that respect, Young's conception is one that can be used with some confidence in thinking about Indigenous struggles against colonial disempowerment. The emphasis it places – via the idea of freedom as non-domination – on the future-orientated aspect of a group's needs of self-control, (re)focuses questions of justice more directly onto the background structures and expressions of power that, amongst other things, operate to define and limit opportunities for self-government. In this sense, it leans towards a more expansive and open-ended conception of collective self-control. It allows us to see that, whilst self-government clearly stands as a critical component of self-determination on any meaningful conception – for, it is difficult to conceive of how a self-determining people could be so without the power to govern over their own internal and local affairs – the two terms are nevertheless far from equal. Self-government, if it is constructed through (and acts to reinforce) a condition of domination, may be inherently antithetical to control understood in terms of self-determination.

It is in negotiating these differing senses of collective self-control that Indigenous peoples in internal colonial contexts must presently direct their attentions. Opportunities to recapture powers of self-government on the terms dictated by the norms and assumptions of the state (and the international community) often present themselves as impossible for communities to reject, regardless of whether their achievement symbolises and embodies the continuance of an ongoing context of colonial domination. Compared to its absence, self-government often still seems to offer greater potential for a group to direct important aspects of its own present and future course

and, crucially, better grounds from which to continue to resist and modify the terms of the continued impediment to self-determination that they experience. The question of whether such strategies can lead to the *removal* of domination rather than merely its modification is, however, as yet unanswered, and is deeply contested by many voices today. It is the particular tension between these two imperatives of self-control, and the specific way in which this becomes manifest within internal colonial disputes in Canada and Australia in the contemporary era, that the theme of *control* seeks to explore.

3.3.c Struggles of voice

Alongside efforts to challenge forces of displacement and to overcome impediments to collective self-control, contemporary Indigenous struggles in the Australian and Canadian contexts also involve efforts to increase levels of formal representation and participation in public life, and to thereby find new opportunities for effective individual and collective voice. Throughout colonial history, Indigenous peoples have commonly found the channels available to them in this regard prohibitively restrictive or desperately ineffective, or even closed almost entirely. Sometimes this has been facilitated by explicit exclusions and denials of individual rights on the part of the state, at other times it has been facilitated through considerably more inadvertent or subtle means. Howsoever it has occurred, however, Indigenous peoples have constantly fought to challenge and overcome forces that would suppress their public voices, and to seek out new opportunities for increased and better representation of their interests, experiences, claims, and aspirations in political life.

In the contemporary era, such struggles of voice are commonly conducted on two levels simultaneously: occurring both within the state contexts to which Indigenous peoples are presently bound most directly, and within the wider international and global political context.

In the case of the first of these – the 'domestic' sphere, as it were – whilst obviously maintaining struggles that are directly in opposition to the institutional framework of the state, Indigenous peoples have also consistently sought to challenge and overcome barriers to their full and effective participation *within* that formal framework. In this, efforts have been directed towards gaining full citizenship rights and enfranchisement within the state's democratic order (or to remove deleterious conditions attached to the extension of enfranchisement rights to Indigenous individuals); towards obtaining individual and group representative roles in state legislative bodies; and towards establishing Indigenous-led institutions with formal connections to the legislative and

executive functions of the state. It ought to be iterated immediately that these moves towards seeking and achieving greater representation within the formal institutional order of the state generally produce great tension and ambivalence for Indigenous actors and communities (Maddison 2010; Murphy 2008). Indeed, as Michael Murphy notes, amongst Indigenous communities, "self-determination is usually understood as a means of gaining distance or protection rather than inclusion in state institutions" (2008, p.186). The central motivation behind struggles for increased Indigenous representation is rarely to do with achieving simple or unproblematised forms of inclusion within the formal machinery of the state, and more usually to do with tackling persistent forms of exclusion that have operated to constrict opportunities to mitigate the paternalistic tendencies of state authority, and to begin to address public ignorance of Indigenous claims and needs. Accordingly, rather than marking a clear or simple affirmation of the state's institutional order, Indigenous efforts of this kind are generally about increasing levels of voice within the formal arenas of political life so as to support progresses in a range of other areas of struggle, and to ensure that any state responses towards addressing the continuing hardships and disadvantages experienced by Indigenous peoples are conducted in as an effective and sensitive manner as possible given the circumstances of continuing colonial domination. Though the likely success of these strategies is fiercely contested by many Indigenous voices, as is their basic congruity with any hopes of 'decolonisation', they remain a central feature of contemporary struggles.

In addition to these efforts towards realising greater levels of 'domestic' voice, Indigenous peoples in Australia and Canada have also devoted considerable energy towards gaining increased levels of representation on the global political stage. By and large, this has involved seeking out opportunities to engage with the moral sympathies and legal protections that prevail within the international arena – particularly around the subject of human rights – and attempting to influence their popular understanding and the standards of their enforcement in ways sensitive to the ongoing struggles of Indigenous peoples worldwide (Anaya and Williams 2001; Corntassel 2008; Pitty and Smith 2011; Williams 1990). This growth of Indigenous presence at the international level has seen (and in turn been further aided by) increased unification and organisation of Indigenous groups and resistance movements across state borders. A number of important representative organisations have emerged as a result – for instance, at the UN, the *Permanent Forum on Indigenous Issues* and the *International Work Group for Indigenous Affairs* – and there has been a significant rise in advocacy for Indigenous

causes amongst a range of influential international non-governmental organisations. Progresses have also been made in terms of establishing international standards directly pertaining to Indigenous peoples and areas of specific concern to them, which have helped in bringing international pressure (and even a certain level of coercive power) to bear on Settler states. Arguably, of most note to-date in terms of this kind of advancement has been the introduction of Conventions No.107 and, subsequently, No.169 at the International Labour Organization (see Anaya 2004, esp. Chapter 2), and, more recently, the adoption of the Declaration on the Rights of Indigenous Peoples by the UN General Assembly in 2007. These increases in (and successes of) representation in the international realm have proven extremely important (if not entirely dependable or uncontentious) instruments in progressing Indigenous struggles in a range of areas at the international and domestic levels, and in placing stronger accountability pressures on state governments. In taking their struggles of voice to these international and global arenas, Indigenous peoples have sought to move beyond the simple frame of justice historically imposed on them by the state, and have sought to trouble the assumptions and norms that support that frame at the same time they have attempted to harness greater support in tackling its effects.

The *voice* section of the diagnostic framework offers a direct focus on the ways in which the justice struggles of Indigenous peoples in Canada and Australia are directed also towards pursuing greater levels of representation within the formal political arenas available to them – both in 'domestic' and in international institutional spheres – and, further, seeks to account for the ways in which developments in this vein are put to work in efforts to unsettle norms of political functioning and assumptions about justice and legitimacy in internal colonial contexts (and, indeed, in the wider political world).

3.3.d Struggles of recovery

In addition to efforts to resist processes of displacement and disempowerment and to improve levels of representation in domestic and international arenas, Indigenous peoples in Canada and Australia are also engaged in struggles to contend with entrenched patterns of material disadvantage and social suffering. Prolonged histories of dispossession, displacement, disempowerment, social disruption, cultural destruction, and economic marginalisation have also been compounded by systemic patterns of discrimination and (more recently) rapidly changing population demographics. All have contributed to the production of a range of social maladies affecting Indigenous lives today. Across virtually every currently favoured measure of

individual and collective health and well-being, Indigenous populations register as the worst off in Australian and Canadian society.

The need to address these patterns of disadvantage and suffering – and to do so as a matter of urgency – has been a near-constant feature of public agendas in Settler societies for over 50 years. During this time, countless initiatives and programmes have been implemented by governments under the banner of tackling entrenched inequalities of health and opportunity. Despite this level of attention, however, patterns of personal and collective disadvantage for Indigenous peoples have persisted. In part, this is no doubt due to the fact that, until relatively recently, recovery programmes have been disproportionately guided by the state's own understandings of health and well-being, its own professed assumptions about the causes of contemporary Indigenous suffering, and its own solutions as to how progresses could and should be made. Often these programmes have been distinctly individualistic in their approaches and favoured biomedical indications of well-being that did little to acknowledge the collective social, cultural, and spiritual traumas of colonial domination (Adelson 2005; Alfred 2009a). More recently, following consistent Indigenous activism in this area, there has been a shift towards programmes designed and implemented by Indigenous-led organisations which employ cultural resources more appropriate to the needs of Indigenous individuals, families, and communities (Anderson 2004; Adelson 2005; Kirmayer et al. 2003). In some cases, notable advancements have been achieved in key areas following this change in approaches; in others, such shifts have failed to make significant impact, and, as some claim, have sometimes even resulted in worsening patterns of suffering and disadvantage (see, e.g., Sutton 2009). In practically all contemporary contexts, however, the need to do more to address these issues at the individual and the collective level remains a constant feature of current debate.

In pursuing these areas of dispute, however, Indigenous actors continually encounter a dominant assumptive framework that implicitly (and sometimes overtly) shapes the way in which their suffering is understood and represented at the public level. Stephanie Irlbacher-Fox (2009) refers to this framework in terms of a "dysfunction theodicy". In its standard scholarly usage, a theodicy is a theological construct employed in reference to monotheistic religions in order to attempt to justify the existence of human suffering, pain, or torment in the presence of an all-powerful, all-knowing, and all-loving God. Its function is to rationalise suffering – both to observers and to sufferers themselves – by showing it to be the result of human imperfections or as a necessary juncture on the pathway towards a better future, not as evidence as to the fallibility (or

fallacy) of God as protector and saviour. Irlbacher-Fox's contention is that a similar logic can be found within state representations of Indigenous suffering, and that it operates through two interrelated assumptions.

The first assumption is that there is a temporal distance between the enactment of colonial injustices and the contemporary practice of Settler governance. Though the fact that colonialism has brought a range of harms to Indigenous lives is certainly now acknowledged and widely condemned, these injuries are rhetorically positioned as corresponding only with historical moments, temporally removed from agency and culpability in the present. As injustices, these events were visited unto Indigenous peoples through the ill-intentioned or ill-informed actions of past governments and society, and whilst they have clearly spawned harmful legacies of structural exclusion and a range of damaging social pathologies today, the injustices themselves are confined to history – regrettable mistakes of the past, but not an active dimension of contemporary relations.

Second, there is an implicit assumption concerning the presence of a constitutive gap between 'Indigeneity' and 'modernity'. Irlbacher-Fox notes that state authorities consistently place an onus on Indigenous peoples to adapt their ways of life, their value-systems, and their preferred modes of social and political organisation so as to better align with the pressures and realities of the 'modern' world. In adapting to these pressures of modernity, the logic goes, Indigenous peoples can find ways to better overcome many of the social ills that presently befall them – ills that are, of course, not so acutely felt by those already better adapted to the pressures of modernity (i.e. members of dominant society). The problem that Irlbacher-Fox finds with this approach, however, is that in emphasising that it is Indigenous peoples themselves that need to change in order to overcome suffering not enough is done to acknowledge the exclusionary and oppressive basis of dominant society. More specifically, the 'modernity' of dominant society is not itself recognised as being of a distinctive cultural character, nor as the product of identifiable practices of colonial oppression and the aggressive projection of specific (largely non-Indigenous) sets of interests. Rather, 'modern' is represented as a faceless and natural fact of contemporary life. Insofar as things 'Indigenous' are distinguishable from this naturalised image of modernity, they must logically be situated outside of it – as 'pre-modern' or 'non-modern' in some meaningful sense, defined by their failure to sufficiently mimic the basic lifestyles and norms fitting of modernity. This is a failure both in terms of the skills needed by individuals and communities to properly meet their material and social needs, and also

in terms of the capacity of Indigenous peoples to independently determine and pursue effective strategies to overcome suffering in the modern world. On both counts, Indigenous peoples need to, under the guidance of the state, change so as to better resemble the well-adapted, 'non-suffering' members of dominant society.

This is a valuable insight, I believe, into the general assumptive background that Indigenous struggles of recovery confront in Australia and Canada today. In both contexts, Indigenous disputants commonly seek both to implicate contemporary practices of state in the continued enactment of the suffering that they experience, and to disturb assumptions about the apparent naturalness and cultural neutrality of the modern world and the particular pressures it places onto Indigenous individuals and communities. Though there is, of course, no standard or stable view amongst Indigenous disputants as to the most advantageous strategy for material and social recovery – and nor, incidentally, should any be expected or demanded – challenges against the external 'naming' of their suffering and disadvantage are common to virtually all, as are challenges brought against the presumptions underpinning response policies and programmes. The theme of *recovery* seeks to give these streams of dispute due consideration and for the specific challenges to normal assumptions that they might contain to be given expression in a way that resists their immediate consumption by the more familiarly 'political' issues of dispossession, displacement, disempowerment, and representation.

3.3.e Struggles of equality

The preceding four faces of struggle, whilst deeply interconnected in the context of actual contemporary disputes, have each taken a distinctive stream of concerns, needs, and challenges as their respective focus. The intention in doing so has been to provide a way of giving detailed expression to the often complex ways in which these disputes are entangled with – and also entrenched within – a context of hegemonic normality. In this respect, the final category is no different. It does, however, perform this function by shifting analysis onto a somewhat different trajectory.

As understood here, the theme of equality pertains to modes of struggle that cut across the previous four categories to reveal ways in which each of those areas of dispute is itself 'internally' contested. The intention here, then, is to give space to experiences of dispossession, displacement, disempowerment, suffering, and denials of voice that differ in important ways from those captured through the 'normal' face of Indigenous

disputes, and to begin to unpack the difficult implications that those differences hold for considerations of justice in internal colonial contexts.

Arguably, the most prominent area of dispute in this regard in recent times, in both the Canadian and the Australian contexts, centres on issues of gender and, particularly, the claimed historical and contemporary collusions between colonialism and patriarchy (Huhndorf & Suzack 2010). Indigenous women in each of these contexts frequently claim to encounter patterns of disadvantage, violence, and marginalisation based on their gender and, simultaneously, on their containment within a condition of colonial (and often also racist) oppression, and thus seek to draw attention to the fact that they are negatively positioned in social relations of all kinds. It is claimed that the distinctive structural vulnerability that ensues from this double-bind of colonial and gendered oppression renders Indigenous women susceptible to patterns of injustice that, whilst certainly reflecting important aspects of the forms of gendered oppression that have been highlighted through the work of non-Indigenous feminists and women's movements, and important aspects of the forms of colonial and racial oppression that are made visible through broader Indigenous justice struggles, also differ from those accounts in important ways. The intersection of these two forms of oppression has been, and still is, it is argued, more complex and more destructive than the sum of its parts. The specific voices and interests of Indigenous women are frequently rendered marginal to the mainstream face of decolonising struggles, as well as to the struggles of women on a more general level within contemporary internal colonial societies. On these terms, each of these emancipatory projects has arisen so as to offer a normal face that consistently neglects the particular experiences, needs, and aspirations of Indigenous women.

This claimed marginalisation of Indigenous women matters not only in terms of their status as a specific social group – it is also deeply entangled with the contemporary justice struggles of Indigenous peoples in a far broader sense. One of the common themes to emerge from recent critical work in this area is of how the destructive blend of European/Settler patriarchal and colonial interests has, over the course of the colonial era, effected a catastrophic disruption to the intricate 'balance' of pre-colonial Indigenous gender relations. It is claimed that the undermining of the particular social and structural positions of Indigenous women has both complemented the preservation of male dominance in a far broader respect across the whole of society (A. Smith 2005), and also assisted efforts to create divisions within Indigenous communities that reduce overall capacities to resist the various displacement, disempowerment, and assimilation

projects of Settler governments (Simpson 2006). In this sense, the specific domination experienced by Indigenous women today (and, indeed, throughout colonial history) is increasingly perceived not only as a violence against them as individuals or as a distinctive social group, but also a violence against the well-being and integrity of Indigenous peoples more generally.

On this view, then, although imbalances in gender relations may now be well established in Indigenous societies, and so are typically perpetuated through the direct actions of individuals within those contexts, they reflect most vividly a history of colonial intervention. Accordingly, addressing forms of gendered oppression stands as crucial to any more general hope of realising a deeper return of self-determination. As Kim Anderson writes:

> We can talk about self-government, sovereignty, cultural recovery and the healing path, but we will never achieve any of these things until we take a serious look at the disrespect that characterizes the lives of so many Native women. We must have a vision for something better, because our future depends on it.
>
> (2000, p.14)

The fact is, however, that addressing the gendered injustices associated with colonialism remains a highly contentious area of struggle. Much confusion and dispute has arisen concerning the apparent cultural authenticity of gender inequalities and whether, in fact, male privilege in key areas of political, social, and cultural life should be seen to reflect traditional norms of Indigenous societies. This has seen some challenges against Indigenous male dominance themselves come under fire for potentially furthering threats of assimilation rather than diminishing them. Joyce Green (2007) notes that it is relatively common for Indigenous 'feminist' activists and scholars to be criticised for embracing 'White' theories and practices that, rather than providing the fundamental strengthening function they claim, in fact weaken the positions of Indigenous peoples by attacking cultural integrity and impeding unity of political voice. Even where gender-based inequality and oppression is readily acknowledged as a product of colonialism, it is common to encounter the view that overcoming it is most likely to occur only once political autonomy has been regained and traditional cultural norms can be rejuvenated unencumbered by Settler control. It is important to note that this is not simply a position forwarded by Indigenous men, but also one that is frequently deployed by Indigenous women for whom the agendas of mainstream feminist politics often seem at odds with the realities of oppression and disadvantage that they are exposed to. Bonita

Lawrence, for instance, notes that the basic expectation that challenging gender-based forms of oppression requires, principally, addressing entrenched power imbalances between men and women is difficult to prioritise for many Indigenous women:

> Because what positions are Native men really in? Some Native men have had access to economic power, just through being men. But on the other hand, large numbers of Native men have been cut out of the power structure. So the gender inequalities, the disproportionate power that white men have that fuels feminism, often doesn't apply in Native communities.
>
> (Quoted in Anderson 2000, p.276)

The result is that, in many cases, "feminist research and politics often appear to be irrelevant to the concerns of Indigenous communities and may even seem to be implicated in ongoing colonial practices" (Huhndorf & Suzack 2010, p.2). In either case, gendered oppression is commonly subject to a process of political peripheralisation – typically incorporated into broader justice efforts only to the extent that it does not disturb the momentum they have already built.

This issue is given an added degree of complexity in light of voices challenging assumptions about the non-oppressive form of 'traditional' or pre-colonial gender relations. As Emma LaRocque (2007) has argued, the notion of 'balance' around gender that is so often heralded of pre-colonial times and held up as an orienting standard of present struggles, does not automatically equate to substantive levels of equality between the sexes, and can in fact be employed as much to justify the maintenance of oppressive conditions as to mark deliverance from them. For LaRocque, this is an under-acknowledged possibility within the work of many currently tackling issues of gendered colonial injustice:

> While intending to affirm Aboriginal women and cultures…many writers readily criticize … colonial forces (not a bad thing in and of itself), but they tend to both gloss over Aboriginal practices that discriminate(d) against women, and they generalize and romanticize traditions. There is an over-riding assumption that Aboriginal traditions were universally historically non-sexist and therefore are universally liberating today.
>
> (2007, p.65)

For LaRocque, it must be towards confronting "imperial, systemic, and personal dominations" in all forms that efforts are directed, and "no injustice against any

persons…should ever be tolerated in the name of advancing any collective or political interests, even when idealized as some kind of decolonizing reconstructive process" (2007, p.68). If depictions of Indigenous women's present subordination fail to sufficiently illuminate and interrogate its multidimensional character, including the (potentially) oppressive features of Indigenous societies and cultures absent a colonial hand, they do not do enough to take that oppression seriously. The result may still be little more than the appropriation of Indigenous women's experiences of subordination for strategic use in male-dominated struggles of justice.

It is important to emphasise, here, that the line of critique proffered by LaRocque does not construct itself in opposition to broader ideals of decolonisation. Rather, the concern is to provoke the spirit and the confidence needed to recognise and contend with domination in all its forms – including those which cannot be entirely reduced to colonialism – as a crucial function *of* decolonisation. It is the context of colonial oppression that has for so long acted to stifle the capacities of Indigenous peoples to pursue such processes of 'internal' social struggle, and overcoming the continuing violences of colonialism must entail nurturing a revival of that suppressed ethic of self-criticism.

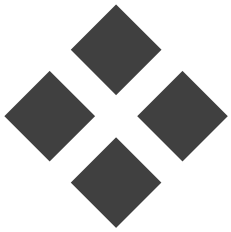
These continuing contests around gender signify a further dimension along which certainty around the meaning, scope, and progressive direction of justice in internal colonial contexts is disturbed. As Indigenous women (and, we should not forget, other social groups) articulate their own distinctive experiences and perceptions of exclusion and oppression, the deeply contested nature of justice across multiple social dimensions is further revealed. It becomes evident that colonialism has not simply been experienced in a uniform fashion by all social groups. Rather, there is great diversity in the difficulties and injuries that members of different social groups experience – a diversity that also melds with many other cultural, social, and historical differences to produce a wide array of non-standard aspirations and strategies for justice.

The theme of *equality* seeks to render these different yet interrelated forms of struggle more visible and accessible within discussion, and to directly connect them with other planes of contestation in which abnormalities may be apparent. In providing access to the (potentially) multi-dimensional nature of abnormality, the theme of *equality* is vital to the accurate depiction of the types of contestation presently occurring within contemporary internal colonial contexts.

3.4 Conclusion

The five categories of struggle – *presence, control, voice, recovery,* and *equality* – together provide a layered lens through which to consider abnormality in the internal colonial contexts of Canada and Australia. Each theme enables particular forms of contestation to be centred and examined in a more detailed way, thus providing opportunity for us to see how dominant assumptions about justice – always including claims as to the appropriate 'what', 'who', and 'how' – are being challenged in relatively discreet and subtle as well as more overtly visible ways. In doing so, we stand to gain a greater appreciation of the levels of difference and uncertainty about justice that presently pervade these bodies of dispute at the public level, as well as an increased awareness of how yet more forms of contestation may be bubbling somewhere just below the surface.

Alongside this increased sensitivity to meta-order forms of contestation, the analytical framework also provides means of gaining a better understanding of the practical difficulties that actors face when the meta-order forms of discontent they experience are interwoven with individual and collective needs that require immediate action within the horizon of practical possibilities open to them. As the next two chapters attempt to show in detail, this level of accord with the first-order components of contemporary justice struggles as well as their meta-order components is crucial to the development of accurate contextual explorations of internal colonial disputes in Canada and Australia.



Introduction to case studies

Across the next two chapters, the analytical framework set out in Chapter 3 is applied, respectively, to the Australian and the Canadian contexts. These chapters offer detailed examinations of two different bodies of internal colonial dispute, showing how, despite a range of important differences between them, both are replete with deep and profound challenges to the normal ways of thinking about justice in those societies. The intention is to develop understanding as to why theses contexts deserve to understood as 'abnormal' in the sense that Fraser describes, and why we might, therefore, benefit from pursuing a reconstructive discussion also informed by the insights of the reflexive perspective. Before commencing these contextual explorations, however, it is important to briefly address a couple of points.

First, as must be the case with such relatively short, chapter length explorations of highly complex and diverse societal contexts, the analyses developed over the next two chapters are not intended to be comprehensive accounts of these bodies of dispute. Rather, the aim is to provide a focus on areas of contestation that most vividly indicate the presence of meta-order as well as first-order streams of contestation. Establishing this abnormal character offers the best justification for pursuing a reconstructive effort in the reflexive mould, and so the focus falls primarily onto aspects of dispute that offer the most convincing insight in this regard. In short, then, the goal of the case studies is to show that abnormality is a valid descriptor of justice disputes in these contexts, not to exhaust the ways in which abnormality might be found within them.

Second, the two case studies are not intended to be exact carbon copies of one another. Contemporary disputes of justice in these contexts, along with the broader social and

cultural histories behind them, are not uniform despite a range of basic similarities. Different sets of discourses, issues, and areas of debate and contestation presently take centre stage in each, and accurately reflecting this distinctive local character is important. Since the intention here is not to develop a close comparative study of the Australian and Canadian contexts but, rather, only to signal the presence of abnormality in each, this is arguably best achieved by flexing to the terms and issues of dispute as they appear in each context rather than attempting to achieve a strict replication of examples across them both. An additional benefit of this approach is that, taken together across their similarities and differences, the two independent case studies offer a more diverse account of the ways in which themes of presence, control, voice, recovery, and equality might be contested in internal colonial contexts. Obtaining a broader picture of the ways in which the struggles of Indigenous peoples act and seek to challenge hegemonic bounds of justice and injustice, and of the themes of critique that arise, can increase our sensitivity to similar forms of struggle as they are (and become) manifest in other contexts.

The two case studies are followed by a short conclusion, drawing them together and offering reflection on the first, 'diagnostic', part of the thesis.

4

The Australian context

4.1 Introduction

Internal colonial disputes in Australia today remain profoundly shaped by some crucial assumptions made by British colonists in the late-eighteenth century. Of greatest note in this regard is the continuing relevance on the contemporary landscape of the doctrine of *terra nullius* – which translates literally as "land of no one" or "vacant land" – that underpinned British claims to the legal possession of the Australian continent in its entirety. Despite this literal translation, the notion of 'vacancy' carried by *terra nullius* never reflected British ignorance as to the presence of peoples already occupying the lands and waters over which it sought to claim authority. Rather, it refers specifically to the absence of any *rights bearing* people. Rooted in a Lockean philosophy of private property, recognisable ownership rights were seen to emanate from the mixing of human labour with the land in order to raise it from a 'state of nature', and were thus intimately connected with European norms of agriculture and infrastructure. Since Indigenous relationships to, and uses of, the land typically differed greatly from this normal European model, they were generally dismissed as being wasteful, trivial, and primitive (Behrendt 2003). Indigenous peoples had not, in the eyes of the colonisers, attained the levels of development that were necessary for them to accrue any rights in the land. The doctrine of *terra nullius* thus enabled the British to pursue a legal narrative of colonisation by settlement of unclaimed lands rather than colonisation by consent (through treaty) or by conquest (through war), the latter of which would have at least required the newcomers to observe certain protocols in respect of existing Indigenous systems of law and the associated rights and obligations of people living under them.

These incipient assumptions about (i) the absence of any legal rights prior to the assertion of British sovereignty and (ii) the innate inferiority of Indigenous people, cultures, and societies have fundamentally shaped the character of Euro-Australian colonialism ever since, and they remain crucial to the senses of injustice that fuel contemporary disputes. Virtually all areas of present Indigenous struggle – though not reducible to them – are tied to the fact and consequences of these assumptions in some intimate way.

The specific experiences of injustice claimed by Indigenous individuals, groups, and communities in connection with these assumptions differ significantly according to a myriad of cultural, geographical, and historical factors. This is continually reflected through the precise character of discontent expressed in contemporary disputes by Indigenous actors, and in the diversity of interests and aspirations that they possess. Comprehensively charting this intricacy of contestation is far beyond the scope of this chapter, however. Instead, the aim is to identify tones of discontent and contestation that carry a more general resonance, and which offer best insight into the ways in which normal assumptions about justice and injustice are being challenged and unsettled.

Before starting this discussion, it is worth offering a short clarification on terminology. In line with the rest of the thesis, I prefer the term 'Indigenous' in describing the disputes engaged here. In addition to the more general rationale for this decision that was offered in the introductory chapter, there are also further reasons why this term is, I believe, a more suitable one to use in a broad contextual study of internal colonial justice disputes in Australia. Undoubtedly, the more familiar term performing the same function over the course of colonial history in Australia, and that which still dominates in many aspects of public discourse today, is 'Aboriginal'. Until relatively recently, this has been readily applied as more or less a blanket term covering, by implication, all Indigenous people(s) on the Australian continent. However, as Dudgeon et al. (2010) note, the Indigenous peoples of Australia are in fact better understood as comprising, through their many diversities, two broader and distinctive historico-cultural groups: *Aboriginal* and *Torres Strait Islander*. Though there are undoubtedly strong similarities of experience and interest between these two broad groups, and it is disadvantageous to suppose any strong substantive or essential divide between them, there are also important differences in the cultural, social, and colonial histories that underpin the contemporary identities and contexts of dispute associated with them. This fact is now firmly recognised at the official policy level in Australia, and most relevant legislation now refers to both groups in a direct manner. Nevertheless, it remains common for a

discreet slippage to occur in academic and political discussion, and for 'Aboriginal' to be used as a term of general reference that includes Torres Strait Islander peoples. Though the discussion below is pitched towards a more general look at the Australian internal colonial context, and does not therefore centre on the specific differences between the struggles of Aboriginal and Torres Strait Islander peoples in regard of their present political circumstances, it seems important to try to limit the scope for misunderstanding in this regard. As such, I stick to the term 'Indigenous' for instances of general reference, and reserve 'Aboriginal' and 'Torres Strait Islander' to use in more specific cases as necessary. However, I do not attempt to 'correct' the secondary sources used where my preference for this convention is not (I think) matched. This is due to the ambiguity of the term 'Aboriginal' in practice, and the possibility that I may read generality into a case where specificity is intended. The arguments I raise and reflect upon do not depend upon resolving this uncertainty, and so it is only something which I ask the reader to bear in mind in the discussion that follows.

4.2 Presence

Over the last few decades, the concept of *reconciliation* has emerged to become the principal reference point in public debates surrounding Indigenous presences on the contemporary geographical and political landscape of Australia. The term came to favour in Australia during the mid-1980s following the state's retreat from the idea of pursuing a treaty agreement in order to resolve the 'unfinished business' of colonialism. Indigenous voices had been forcefully calling for treaty throughout the 1970s, arguing that overcoming patterns of suffering and disadvantage and finding ways to protect and rejuvenate Indigenous cultures, languages, identities, and societies fundamentally depended upon achieving substantive recognition of their sovereign rights and status(es) (see, for instance, Gilbert 1987). However, despite some support by the Labor Party through the early 1980s, serious progress towards treaty never materialised. Instead, the Australian establishment shifted towards a strategy that placed societal attitudes at the heart of the issue and, in doing so, advocated a grand project of social education, communication, relationship building, and attitudinal change in order for Australians – Indigenous and non-Indigenous alike – to come together and begin to collectively contend with the lingering injustices of colonialism (Behrendt et al. 2009; Short 2003).

This initiative became formally instituted in 1991 with the *Council for Aboriginal Reconciliation Act* which established a lead body – the *Council for Aboriginal*

Reconciliation – to guide the nation through a nine year long process of confronting, coming to terms with, and responding to the legacies of the nation's violent historical foundations (Behrendt et al. 2009; Muldoon and Schaap 2012; Short 2012).

A telling feature of Australian reconciliation discourse, however, and one which has endured well beyond its initial institutionalisation, has been an ever-present overtone of 'uniting Australia' in order to tackle Indigenous discontent and suffering. This was perhaps taken to its most extreme under the tutelage of Prime Minister John Howard (1996-2007) through the consistent emphasis that his Liberal-National coalition government gave to 'practical' over 'symbolic' reconciliatory strategies, and an outspoken resistance to any response that would seem to bring the simple ideal of 'Australian unity' into question (Robbins 2010). Nevertheless, this basic sentiment has more generally and consistently (if often also more subtly) accompanied reconciliation discourse at the public level in Australia. The language of reconciliation is punctuated with rhetoric about overcoming the misrecognitions behind past violences, pressing towards a future centred on the mutual prosperity and well-being of Indigenous and non-Indigenous Australians, and building a more respectful, unified, and inclusive society. These, no doubt, worthy sentiments have gained broad public support – demonstrated aptly by the mass mobilisations that took place across state and commonwealth capital cities in 2000, which cumulatively saw almost a million Australians of all backgrounds take to the streets to march in support of reconciliation (see Ellis, Pratt & Elder 2004). This popular notion of reconciliation has, however, also drawn considerable criticism from Indigenous voices and others concerned with the tacit expressions of power that it may carry.

Central to the contestation brought against reconciliation in this regard are claims that it is a process founded upon, and acting to reinforce, a deeper subversion of Indigenous sovereignty. Kevin Gilbert, for instance, summarises this concern when he asks:

> What are we to reconcile ourselves to? To a holocaust, to a massacre, to the removal of us from our land, from the taking of our land? The reconciliation process can achieve nothing because it does not ... promise justice. It does not promise a Treaty and it does not promise reparation for the taking away of our lives, our lands and our economic and political base. Unless it can return to us those very vital things ... what have we? A handshake? A Symbolic dance? An exchange of leaves and feathers or something like that?
>
> (Quoted in Muldoon and Schaap 2012, p.536)

A large part of the complaint, here, is that reconciliation seems to premise itself on the re-inscription of a popular presumption that achieving justice in Australia must be about progressing towards the moral teleology of the state. Reconciliation ought, that is, on the normal view, to be about better realising that which the Australian state was always intended or destined to be – a source of universal legitimacy and justice – but which the misguided or ill-intentioned actions of the past have so far prevented it from becoming. For Gilbert, however, and for many others, reconciliation discourse therefore tends to gloss over the possibility that a 'fully legitimate' Australian state cannot represent the elimination of injustice and violence for Indigenous peoples, but only its further enactment. In quietly rejecting the idea of Indigenous sovereignty as something capable of existing independently of the state – not only in the past but also, crucially, in the present and future – the normal language of reconciliation seems prone to marginalise experiences of injustice felt on these terms.

For many Indigenous critics (and others sharing their concerns), this tendency towards bracketing important aspects of discontent related to colonialism is starkly familiar. It has also been consistently encountered through efforts to gain recognition of Indigenous land rights. Arguably nowhere is this more apparent than in respect of the landmark legal case brought by Eddie Mabo and a group of Murray Islanders against the state of Queensland in 1992. The importance of the *Mabo* case (as it is popularly termed) lies with the fact that in considering the claim the High Court made the highly significant step of overturning the doctrine of *terra nullius,* which had until then prevailed more or less undented in the Australian national story and in its body of law. The court found that, contrary to all previous jurisprudence, Indigenous systems of law had been in effect at the time of British colonisation and that rights held in lieu of those systems could, potentially, have legally survived assertions of British and Australian sovereignty. Most importantly, this finding led to the establishment of Native Title within the state's common law: a distinctive form of property right seen to derive not directly from the common law itself but instead from Indigenous customary law, thus recognised under, but not defined by, the state's common law (Brock 2001; Webber 2000).

Yet, despite the court's focus on the legal (in)validity of the doctrine of *terra nullius*, the legitimacy of state sovereignty founded upon it was not at any point drawn into consideration. This refusal to hear on the matter of sovereignty was clarified by one of the judges in the case, Justice Brennan, when he contended that entertaining challenges to the sovereignty of the court (by implication of challenges to the sovereignty of the Australian state) would "fracture the skeleton of principle which gives the body of our

law its shape and internal consistency" (quoted in Reynolds 1996, p.14). This was in keeping with the position adopted some 13 years earlier in *Coe v. The Commonwealth* (1979). There, the question of Indigenous sovereignty was placed directly before the court, but was summarily rejected on account of such claims being not 'justiciable' (McGlade 2004; Reynolds 1996). In both cases, the stated view was that Settler sovereignty had been established through an 'act of state' and was, as such, beyond contestation within a municipal court (Schaap 2009). In other words, the court would be unable to hear claims as to the illegitimacy of its own sovereign authority because such claims violate the logic on which it depends: theoretically, if the court were to hear and find sufficient reason to uphold any such claim, this would also invalidate its authority to impose that finding in the first place. Finding in favour of its own illegitimacy, the decision would, in effect, create a paradox within the conceptual and institutional logic of the common law. As such, by virtue of their very nature, claims of this kind are to be considered practically unintelligible within the existing bounds of the common law, and the sovereignty of the court (and thus also the state) must logically remain beyond question in all contests set before it.

One effect of this structural constraint is a continual subversion of Indigenous presences to that of the sovereign state. Whilst the recognition of Native Title clearly marked an important advancement in the formal recognition of Indigenous presences in Australia, its legal finding also signalled a performative re-inscription of the state's overriding sovereign claims. Whatever specific rights could be acquired through Native Title would need to be anchored against an unshaken assumption as to the state's legitimate underlying radical title to the Australian continent in its entirety. It is only from this assumed prior and inalienable possession of *all* lands that the court could find in itself the authority to recognise the specific rights of Indigenous peoples, and by which it could legitimately seek to uphold those rights against any competing claims. Consequently, whilst *Mabo* may have signalled the discarding of *terra nullius* as a legal fiction in respect of Indigenous property rights, it was upheld in relation to matters of sovereignty (Reynolds 1996). Insofar as the presence of independent Indigenous systems of law is acknowledged via this mechanism, not only are they held as politically subordinate to that of the state, but the institutional moment of their recognition is also appropriated in the strengthening of the state's own sovereign position.

Importantly, this structural constraint on Indigenous struggles of presence does not only represent a background political condition that, it could be argued, holds limited relevance to most day-to-day experiences; it also manifests in ways that have very real

and immediate consequences for Indigenous actors. Elizabeth Povinelli (2002) has observed how the Native Title model provides the state with a means of increasing its scrutiny of, and control over, Indigenous social, cultural, and material presences. The success of Native Title claims hinges, first, on establishing that the state has not previously explicitly extinguished such rights through direct legislation, and, second, on proving an unbroken chain of occupation and 'traditional' usage and connection with the land (where such connection and usage is consistent with the body of rights and principles already recognised under the common law) (Brock 2001; Povinelli 2002). Not only does this reveal some crucial limitations to Native Title rights in practice – i.e. (1) that they are contingent upon criteria that are often extremely difficult to fulfil, with Native Title claimants required to "pass through the eye of a needle", as Justice Paul Finn (2012, p.6) has put it, in proving their basic eligibility; (2) that the purview of Native Title excludes any lands that have historically been the subject of explicit territorial claims by the state; and (3) that, irrespective of (1) and (2), Native Title rights remain always subordinate to other existing property rights – it also highlights the state's assumed position to judge the *authenticity* of an Indigenous group's connections to the land, of its system of law, and of the socio-cultural relations of its members. In this, the court demands that a people claiming Native Title display a substantive level of cultural continuity from the time of first-contact to the present day. Though some moderate leeway in terms of adapting to changes in social and environmental circumstances is deemed permissible, successful Native Title claimants must, Povinelli notes, "embody and perform the ideal of 'tradition' and 'locality'" in terms of their contemporary socio-cultural presence on the land (2002, p.164). Significant deviation from these 'traditional' ways indicates a deterioration of the substantive differences between Indigenous and non-Indigenous peoples on which Native Title is supposed to be based, and thus negates its applicability. For Povinelli, this establishes a moment of recognition wherein Indigenous alterity and being is rendered subject to examination against an asymmetrically constructed and conceptually impossible image of authenticity. The consequence is that Indigenous socio-cultural presences are approved or rejected according to their success in having resisted externally, but also *internally*, generated change since the onset of colonialism. The expressions of state sovereignty structured into Native Title do not, then, merely represent a background (and relatively abstract) component of Indigenous struggles for presence. For many Indigenous actors, they also translate into very immediate forms of pressure and constraint. Hopes of gaining greater formal security of collective presences on the land are constrained by the need to display a particular kind of separation from the 'modern' world. Indigenous peoples

are under pressure to be present in ways that the state endorses as authentically Indigenous, whilst their right to simply embody their own authenticity is restricted.

Indigenous actors in Australia have long struggled against the fact and consequences of this kind of external pressure (see Taylor 2003; also Povinelli 2002). Insofar as normal assumptions of state sovereignty serve to perpetuate these kinds of forces, even in moments of apparent progress in recognising experiences of injustice and working to overcome them, their function has an importantly violent component. As Michael Dodson (1994) sees it, an important part of this is that they deny Indigenous peoples the right to collective self-definition. For Dodson, all peoples possess and should be able to freely exercise a right to self-definition, which

> must include the right to inherit the collective identity of one's people, and to transform that identity creatively according to the self-defined aspirations of one's people and one's own generation. It must include the freedom to live outside the cage created by other peoples' images and projections.
>
> (1994, p.5)

The impediments brought against Indigenous self-definition by virtue of (but of course not *only* by virtue of) Native Title mark a continuous – rather than simply an isolated – violation of this requirement of justice. The state gaze towards 'continuity of tradition' offers scope for the future extinguishment of land rights in the event of greater Indigenous involvement in the social and economic norms of dominant society, that is to say, in the event of a seemingly more substantial disconnect from pre-colonial times (Brock 2001). Consequently, the opportunity for Indigenous peoples to engage in practices of collective redefinition is impeded indefinitely rather than only at a single historical juncture, and the possibility of becoming recognised as 'un-Indigenous' carries with it a risk of losing rights to, and security of presence on, the land.

It is important to acknowledge, however – especially if we are to avoid reducing political history of Indigenous peoples to "a narrative of the settler colonial state's persistently limited concessions to the Indigenous grievance" (Rowse 2010, p.81) – that Indigenous peoples have not only struggled to assert their presences within the constraining framework of state sovereignty so far described, but have also consistently sought to engage this framework in more oppositional ways.

One of the most poignant examples of this lies with the 'Aboriginal Tent Embassy', established in the summer of 1972. Following a renewed governmental rejection of

Indigenous land rights (this was pre-*Mabo* era), a group of Indigenous activists assembled themselves under a beach umbrella on the lawns of Old Parliament House in Canberra with a sign saying "Aboriginal Embassy", declaring that, since the government's stance on land rights effectively rendered them aliens on their own land, like other aliens in Australia they would need an embassy in the federal capital in order to represent their interests (Schaap 2009). A fortunate quirk of federal legislation meant that the police were legally unable to remove the protesters from the site, and the Embassy soon developed in size and reputation. The single beach umbrella was replaced with several tents, the Aboriginal flag was hoisted above, a letterbox installed, and the embassy began to receive government officials and other dignitaries from around the world who came to discuss and sympathise with the Indigenous cause in Australia (Muldoon & Schaap 2012).

The Tent Embassy is an important episode because it marked a particularly vivid rejection of the constraining relational dynamic inherent within the state-centred recognition model. As Muldoon and Schaap put it, the Embassy did not represent "a plea *for* sovereignty, but a performative assumption *of* sovereignty" (2013, p.196: original emphasis). It situated itself outside of the state's normal assumptive framework and instead positioned itself as a political symbol of a distinctive sovereign people whose interests and needs could not be legitimately captured within the institutions of the state. This gesture of political externality was rendered more poignant by the occupation of (effectively) the same physical space as those contested state institutions – with the Embassy standing almost literally in the shadows of the old parliament building – symbolising the degree to which the two claims to sovereignty were now geographically and socially entangled. The transient physical form of the Embassy also, as Schaap notes, resembled "the fringe dweller camps of rural Australian towns" and, in so doing, made "visible the dispossession of indigenous people [and] their lack of [effective] sovereignty over their lands" in practice (2009, p.219). This profound symbolic resonance imbued the Tent Embassy with a strong and, as it has since transpired, lasting appeal. Not only has the Embassy in Canberra been re-established on numerous occasions since, but others have recurrently been constructed in other cities around the country. The common rhetoric attached to these displays continues to be one regarding the historically unceded nature of Indigenous sovereignty and the need for the state to move to recognise this fact, preferably through treaty.

It would perhaps be easy to view discontent surrounding discourses of reconciliation and 'oppositional' performances of sovereignty like the Tent Embassy as unavoidably

relating to a claim for independence, and driving towards a form of Indigenous secession from Australia. It is certainly true that a considerable number of Indigenous voices would endorse this interpretation and outcome – if not as an essential condition of justice, then at least as an option that Indigenous peoples could freely choose to pursue if they find it in their interests to do so. Michael Mansell (2004), for instance, argues that having full independence as a very real political possibility would fundamentally alter the context of any future state-Indigenous negotiations over land and jurisdiction, greatly increasing the bargaining position of Indigenous peoples. Nevertheless, it remains observably true that a great many Indigenous voices in Australia do not desire this kind of separation. Whilst continuing to assert their distinctive sovereign statuses, these disputants resist the assumption that this might, even hypothetically, require them to relinquish political membership within the Australian state, or that Australian identities cannot simultaneously and complementarily be Indigenous identities. Agreeing that Indigenous presences should not be subject to the constraining forces that presently befall them, but disagreeing that Indigenous presences should (or, in many cases, perhaps can) be extricated from the Australian state, these disputants unsettle the conventions by which their disputes are normally understood and engaged in the public domain.

Whilst it is true that, as Larissa Behrendt observes, the use of the word 'sovereignty' in relation to these particular tones of struggle may seem somewhat misleading, especially for some non-Indigenous observers;

> It has been difficult to find another catchword, expression or phrase within the English language which could state more accurately the claims of the Indigenous community. The semantic confusion reflects the poverty of political and institutional language, the limited number of alternatives available and the uniqueness of the relationship that Aboriginal people seek to forge with Australian society.
>
> (2003, p.103)

This perhaps suggests an even more complex stream of dispute about the future of Indigenous presences. On this track, just as the state-centred recognition model seems to constrain Indigenous presences by way of premising them on a fact of *inclusion* within an unproblematised sovereign Australian state, the oppositional model (taken simply *as* 'oppositional') seems to effect a comparable constraint by receiving Indigenous contestation in terms of progressing towards *exclusion* from a similarly unproblematised sovereign state. In both cases, the impetus is to resolve disputes over

presence according to norms, concepts, and grammars that have themselves gained prevalence through and because of the existing context of domination, but which seem ill-suited to the needs and aspirations of many Indigenous actors constrained to use them. Relatively little attention is currently paid towards exploring the political moments embedded within the conceptual horizons that underpin these normal grammars in Australia, and the possibility that the prevalence of an inclusion/exclusion logic problematically constricts public disputes of presence is not yet widely, or at least consistently, appreciated. Indeed, this is an area of contestation that tends to gain little purchase within most public disputes, where the historical impetus of the dominant inclusion/exclusion dichotomy sees it quickly regain supremacy on the rare occasions when non-conforming moments of debate do take hold. Yet, especially as Australians continue to ponder the question of whether the national constitution ought to be altered so as to provide some symbolic and political clarification over the place that Indigenous peoples hold on the continent (see Davis 2013), the importance of engaging a greater diversity of discourses for potential progress is clear. At present, contestation in this area is too readily couched or received on terms that seems to reduce the issue to a 'simple' problem of inclusion/exclusion, and perspectives and interests that do not easily conform to this logic too frequently become misheard or marginalised as a result.

Indigenous struggles of presence in the contemporary Australian context clearly act, and often expressly seek, to unsettle dominant assumptions in a variety of important ways. Although there is undoubtedly considerable diversity amongst Indigenous actors in terms of the actual experiences and aspirations that configure their participation within ongoing struggles of presence, there is also significant unity in terms of the more basic claim that the norms presently dominating the Australian context are dramatically ill suited to adequately satisfy those struggles. In a complexity of ways, Indigenous disputants bring the standards and conventions of justice and legitimacy in contemporary Australia into question, disturbing the fundamental ideational, linguistic, and institutional standards through which their discontent is given public salience.

4.3 Control

Contestation surrounding claims of Indigenous and Australian sovereignty relates not only, of course, to questions of presence, but also (and equally) to the locations of authority and control in respect of those presences. In bringing their challenges to public attention in Australia, Indigenous disputants also seek to highlight the ways in which practices of Settler governance have historically operated to unjustly distance

them from powers of collective self-control. This clear pattern of disempowerment, it is argued, has been crucial to (and also exacerbated by) the forced displacement of communities from lands and the coercive separation of individuals from kinship networks, the appropriation of Indigenous (including slave) labour, and the advancement of programmes of assimilation – all of which have been fundamental to the historical emergence of contemporary Australian institutions, society, and identities.

In approaching the contemporary face of these areas of struggle, however, it must be acknowledged that many Indigenous communities in Australia presently possess an ostensibly greater level of control over internal and local affairs when compared to past eras of Euro-Australian governance. The late-1960s and 1970s saw a general shift in state policy when, under pressure from changing moral positions at home and internationally, Australian governments began to retreat from policy approaches centred on paternalistic presumptions and (at least overtly) assimilationist ideals. The so-called 'protection era' of Settler governance that preceded this shift had been characterised by an overarching expectation that Indigenous decision-making capacities and commands of material resources were inadequate in order to meet their basic needs and to serve their best interests in the modern world (Behrendt et al. 2009; Tatz 1999). Accordingly, the state found within itself a moral obligation to intervene into Indigenous affairs in comprehensive fashion. The power to govern, in a very direct sense, over virtually every aspect of Indigenous community life was invested in Settler officials and institutions. As Behrendt et al. note, "the breadth of discretion afforded superintendents and protectors meant that there was very little restrain on their exercise of power" (2009, p.25), and Indigenous people were systematically distanced from positions of influence in respect of many critical areas of political, social, and economic life.

As the deeply paternalistic nature of protectionist policies and ideals became more unpalatable on liberal terms, however, and the intrusive forms of control it imposed became increasingly criticised as unjustly stifling the social development of Indigenous peoples, community self-determination emerged as the logical policy counterbalance. Under the banner of self-determination, the direct interference of Settler officials and institutions into Indigenous life began to be rolled back, and communities were able to (re)gain the power to control some important aspects of internal and local affairs. Importantly, however, the model of self-determination that guided state thinking and policy in this regard arose in direct reaction to the perceived problems with the old protectionist policies. The primary focus for the Australian government was, as a result, arguably less with finding the most sustainable and sensitive realisation of Indigenous

re-empowerment, and rather more with quickly eliminating the specific *dis*empowering aspects of protectionist policies. Effectively, this meant transferring control of local government to Indigenous communities, most of whom had little or no experience in such areas given the acute disempowerment that had come before, and making them responsible for the day-to-day administration and implementation of state programmes and services.

This move had two important consequences: first, it rapidly removed the local structures of authority around which social and economic relations had long been organised, and paid insufficient attention to ensuring their adequate replacement in the process; second, and irrespective of the dubious way in which it was actually conducted, this policy shift did nothing to disturb the background structures and assumptions of authority that rendered Indigenous individuals and groups subject to the will (and intervention) of the state and thus gave rise to experiences of disempowerment in the first place. Self-determination as it emerged in the Australian context effectively consisted of community self-management within a policy space constructed and ultimately regulated by the state (Howard-Wagner 2010).

This basic limitation to Indigenous collective self-control in Australia has endured over subsequent decades, and still sets the context of such struggles today. The inherent precariousness that this arrangement represents, and its potential consequences for 'self-determining' communities, has been nowhere better illustrated than in the controversial *Northern Territory National Emergency Response* – also commonly referred to as the *Northern Territory Intervention* – that has been ongoing since 2007. Following reports of epidemical levels of abuse directed against women and children within Aboriginal communities in the Territory, the Howard-led Liberal-National government declared a national emergency and instigated a comprehensive programme of federal government intervention in affected communities. It passed legislation enabling it to seize control of in excess of sixty communities in the Northern Territory, a step that included the suspension of community self-government rights and of some individual rights of community members (Altman 2007; Watson 2009). The legislation gave the federal government the power to acquire compulsory leases on Indigenous community lands (and, subsequently, to unilaterally extend those leases); to intervene into local organisational structures and take direct control of service delivery and welfare (including the placing of government officials in positions of direct authority); to pursue a regime of compulsory income management for individuals receiving welfare; and to place strict bans on alcohol and pornography (Anaya 2010). This legislation was

devised and implemented without any significant consultation with the Aboriginal communities involved (Anaya 2010; Howard-Wagner 2010; Watson 2009). At the time of writing, the Intervention is ongoing, having been preserved in a general sense, but also developed in a number of specific ways, across subsequent changes of federal government.

In terms of broader Indigenous struggles for control in Australia, the Northern Territory Intervention symbolises the distance that exists between the opportunities for self-control presently available to Indigenous groups, and a condition of freedom from the arbitrary will of Settler-dominated governments. Of course, in making this point it is important to immediately underline the fact that few would seriously deny that some kind of intervention was necessary (or at least advantageous) given the severity of the problems at hand in affected communities. The idea that inaction towards abuse can ever be justified purely on grounds of respecting claimed rights to political authority and autonomy is clearly one with little normative purchase, and it is not one seriously put forward by Indigenous disputants.

Rather, the more pertinent issue is the unilateral manner in which this overriding of Indigenous authority and the suspension of associated rights occurred. The lack of equitable consultation with the institutions, leaders, and general membership of affected communities – both in the initial stages of the Intervention and in its ongoing expression – makes clear the level to which Australian governments retain an assumed power and right to limit or remove Indigenous structures of authority based on its own expectations of good governance. In situations where such expectations are not being sufficiently met, the state possesses the capabilities and the sense of legal and moral legitimacy needed to (again) assume a distinctly paternalistic role in respect of Indigenous communities, and to do so by unilaterally determined means.

Realising this continuing background imbalance is important to understanding the dynamics of ongoing Indigenous struggles of collective self-control in Australia. Certainly, the past 40 years or so has seen important advancements in terms of removing some of the most acute forms of paternalism enacted through state governance structures and officials, and in reducing their role in the determination of Indigenous lives and affairs on a day-to-day basis. Indigenous individuals now fulfil roles of greater prominence in community governance (and also in national politics) than at any time under the protection era of Australian policy (Behrendt et al. 2009; Sutton 2009), and there has been a general rise in Indigenous-led organisations

responsible for the management and delivery of community services and resources (see Hunt et al. 2008). However, these advancements have emerged without the removal, or even significant modification, of the underlying power and authority of the state – that is, the broader "governance environment" (Smith and Hunt 2008, p.3) – that has historically given rise to Indigenous experiences of disempowerment. In fact, these returns of self-control to Indigenous groups remain unambiguously secured against, and inherently vulnerable to, assumptions of state authority. The result is that forms of self-control presently realised and practiced at the community or local level, whilst no doubt remaining incredibly important, nevertheless fall desperately short of the levels of collective freedom that many Indigenous actors take to be an essential component of justice. Insofar as opportunities for formal Indigenous self-control in the Australian context remain dependent at all times on the decisions and goodwill of state governments, Indigenous self-governing groups remain vulnerable to direct and unilaterally imposed suspensions of authority and control.

Conceiving of possibilities for collective re-empowerment purely within the terms of existing normal assumptions about the supremacy of the state and its institutions problematically limits the extent to which crucial aspects of Indigenous discontents surrounding disempowerment are entertained. Seriously overlooking the fundamental sense of injustice arising in relation to the experience of subjection to an external arbitrary power – and thus a denial of collective freedom – the assumptive framework that dominates the Australian public sphere at present continually works to re-inscribe a crucial aspect of that which is in dispute, and in doing so instils a fundamental precariousness within all other apparent advancements towards realising and practicing forms of collective control – not only in theory but also, evidently, in practice.

4.4 Voice

In addition to progressing disputes of presence and control, Indigenous peoples in contemporary Australia also struggle to attain greater levels of representation and influence in the formal arenas of public life. This is so both in terms of achieving greater voice within the 'domestic' sphere of Australian politics and within the broader international sphere.

As it has actually transpired over the course of the past 40 years or so, these efforts towards increasing levels of representation at national and international levels have often been closely entwined. Indeed, arguably the first significant emergence of Indigenous Australians onto the international political scene was realised primarily

through what was initially intended (on the part of the state at least) to be a representative channel with a solely national focus – the *National Aboriginal Conference* (NAC) established in 1976. The NAC, in line with its immediate predecessor the *National Aboriginal Consultative Committee* (NACC) (1973-76), was created in response to calls for dedicated Indigenous representation in the formal arenas of national politics. Nevertheless, it was implemented as a purely advisory body to state policy-making on Indigenous affairs, and thus held no real discernible power. This limitation of formal power and influence in domestic politics – where the NAC was regarded by state officials solely as a forum for the expression of opinion, and certainly not a body to which government would be held accountable in any respect – provoked the Conference's members to concentrate their efforts on pursuing the internationalisation of their cause (Beresford 2006). They sought and gained attendance at UN human rights conferences, offering a platform from which to better publicise the conditions of Indigenous life in Australia directly to UN members and in front of the world's media and to thus also begin to generate greater awareness of self-determination and treaty aspirations.

This initial success in terms of realising increased international voice was continued and expanded to significant degree in subsequent years. However, despite the embarrassment caused by heightened international scrutiny of its conduct, the Australian government did not significantly yield to external pressure regarding further advancements in terms of Indigenous self-determination. What is more, the continuing ineffectiveness of NAC at the national level – with its recommendations typically at best only minimally incorporated into state policy – contributed to growing disenchantment with it on all sides. These factors contributed to NAC's abolition in 1985, and work began on devising a new and improved representative body for Indigenous Australians.

The convergence of Indigenous national and international formal representational activities witnessed through the NAC brought to the fore a tension that has been played out again, in some comparable sense, in the most influential Indigenous representative body to-date, NAC's eventual replacement, the Aboriginal and Torres Strait Islander Commission (ATSIC) established in 1989. The importance of ATSIC lies, partly, in its sheer scale – it consisted of a large representational structure of periodically elected regional councils that in turn elected a national board and commissioner – and also in the fact that, unlike the bodies that preceded (and, indeed, have followed) it, ATSIC possessed quite extensive executive powers, controlling a sizeable budget for use on Indigenous welfare and development initiatives throughout the Commonwealth (at

ATSIC's height, in 2003, the budget was in the region of AUS$ 1 billion) (Pratt & Bennett 2004; Robbins 2010).

ATSIC's organisational objectives were to enhance Indigenous representation in Australian political life and to further the social, economic and political interests of Indigenous people at local, national, and international levels (Pratt & Bennett 2004). Thus, as well as increasing voice at the domestic level, ATSIC's organisational structure gave scope for delegations and individual representatives to continue working in the international sphere in attempting to both raise awareness of conditions in Australia and, along with Indigenous activism on a wider global scale, to attempt to inform and influence human rights norms and other aspects of international law that could be brought to bear on UN member states. This led to greater activity in relevant forums and working groups at the UN, and a strong role in the drafting of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Over the course of it organisational lifespan, ATSIC thus became an important method of political representation, enabling, as it did, local and national interests, needs, and aspirations to flow together throughout its multi-level structure and influence political discussion and norms at all levels.

Ultimately, however, ATSIC's executive role proved a crucial factor in the demise of these important representative functions. The celebrated financial clout of ATSIC rendered it subject to an extraordinarily intense level of public and political scrutiny. This was exacerbated by the popular misconception (one that the Australian political establishment did little to correct) that ATSIC was responsible for all of Commonwealth spending on Indigenous health and welfare programmes (Pratt & Bennett 2004). In reality, as much of 85% of ATSIC's budget was "quarantined" by the government for expenditure on pre-designated programmes, and the total ATSIC budget never exceeded 50% of the annual Commonwealth expenditure on Indigenous programmes (Pratt & Bennett 2004). As such, its true level of executive influence over the social and economic situations of Indigenous people was heavily constrained. Nevertheless, ATSIC bore the brunt of public dismay at the continued failure to improve the social conditions of Indigenous communities. Under the Howard government's emphasis on the need for 'practical reconciliation', ATSIC was disbanded in 2005 on account of its apparent failings in this regard, and its services and programmes were subsumed into mainstream healthcare, education, and welfare policies. That this simultaneously resulted in the removal of what had become a valuable source of Indigenous representation in regional, national, and international politics was, at least in the view of the state, negated by the formation of the *National Indigenous Council* (NIC) – an

appointed body of "distinguished Indigenous people" that would offer advice to government on Indigenous issues and interests (Robbins 2010). Nevertheless, the void that this created in terms of Indigenous representation was lost on few. This was particularly acutely felt at the international level, where the gap in funding for participation at international forums was not properly filled following ATSIC's abolition (Aboriginal and Torres Strait Islander Social Justice Commissioner 2008).

What is most poignant about the cases of both NAC and ATSIC is that they provide insight into the tensions that are inherent within contemporary struggles for Indigenous representation in Australia. In one sense, Indigenous peoples have struggled to gain greater influence in matters of policy-making and service provision, and have, at times, evidently achieved success in gaining and gradually improving such opportunities for voice in national politics. These representative channels have also, importantly, provided invaluable platforms from which to pursue struggles of voice at the international level more effectively, and to thereby promote greater and more specific external accountability demands on the Australian state in terms of its treatment of Indigenous peoples. This international presence has contributed (as part of the broader global Indigenous movement) to the clarification and modification of human rights norms and laws – that is, has contributed towards the transformation of the international 'normal' – in ways that have proven crucial for furthering a variety of different areas of struggle at home. Whilst the achievements in this regard have, to-date, remained stunted by the insistence of state governments that they be held as 'aspirational standards' for UN member states rather than fully binding laws (see Joffe 2013), there can be little doubt as to their importance in enabling Indigenous people in Australia to bring a greater level of external pressure to bear on states. This was recently evident, for instance, with the 2010 visit of the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, to Australia, whose report to the UN Human Rights Council highlighted the ongoing problems and disadvantages faced, and took a particular critical interest in the Northern Territory Intervention (see Anaya 2010). This international attention, backed by a strengthening body of human rights standards and conventions specifically attuned to Indigenous struggles, therefore continues to prove absolutely vital.

Nevertheless, the fact remains that the institutions that have been central to providing the opportunities for representation and voice at the international level that have led to these general advancements have remained deeply embedded within, and dependent on, a state-centric framework that renders them inherently vulnerable to arbitrary

removal. It is state governments that are positioned so as to determine the organisational structure, powers, and limits of these representative channels, and which have the power to transform, replace, or even simply remove them as deemed appropriate. The removal of representative opportunities at the national level, then, and typically for reasons associated with inefficiency in service provision or changes in state policy, has the further consequence of undermining representative opportunities for Indigenous peoples at international levels.

Perhaps the greatest irony here is that one area in which Indigenous peoples have undoubtedly already seen considerable success through these struggles of voice is in gaining recognition from the international community – and also from the Australian state, specifically – of the legitimacy of their participation in political processes at the international level (Aboriginal and Torres Strait Islander Social Justice Commissioner 2008). This is in itself a significant destabilisation of the former normal presumption that the 'peoples' referred to in the United Nations mandate should be seen to equate simply to the citizenry of sovereign states, and it has been made possible largely by the opportunities and resources that institutions such as NAC and ATSIC have provided.

This success in challenging assumptions about legitimate participation at the international level has not, however, been sufficiently replicated at the domestic level in Australia. Although it is, of course, now popularly accepted that some form of formal and dedicated Indigenous representation at the national level is not only legitimate but is, moreover, basically essential, little concession has been made in terms of finding ways to liberate such opportunities for representation from a structural dependency on, and constant vulnerability to, state governments. Even the most recent effort in this regard, the National Congress of Australia's First Peoples (NCAFP), which has been created in a corporate model precisely in response to calls for realising greater levels of financial independence and autonomy from state governments, has been found to be problematically constrained to comply with state policy in order to ensure access to key revenue streams (see Anthony 2010). Consequently, whilst these channels have undoubtedly offered a better alternative in comparison to situations of no direct representation in national politics at all, their basic insufficiency in terms of genuinely satisfying Indigenous struggles for better voice in public life is clear to see. Insofar as they conform to a normal model that places the state as the legitimate shaper and facilitator of Indigenous representational presence in national politics – not simply in an initial sense but also continuously – these channels mark an important (and, for many,

an unacceptable) suppression of voice in some key respects, whilst nevertheless also remaining an important vehicle for it.

Contemporary Indigenous struggles of voice in the Australian context, then, indicate a difficult set of challenges. In pushing for formal and direct representation in public life, Indigenous actors continually work to trouble the background contexts in which those episodes of voice occur. This has been particularly evident in the way that actors have, at times, employed the rather restrictive bounds of representative channels at the national level in order to exert influence at the international level, and to thereby bring external pressures to bear on the Australian establishment. That these struggles have so far failed to bring a truly secure and sufficient representative channel for Indigenous peoples at the national level signals the continuing prevalence of key assumptions and norms that are deeply contested, and the fact that Indigenous struggles of voice are unlikely to be satisfied so long as they are constrained by that normal framework.

4.5 Recovery

Contemporary efforts to secure and affirm Indigenous presences, to recapture powers of collective control, and to increase representation in domestic and international arenas all occur against backdrops of widespread suffering and disadvantage amongst Indigenous peoples in Australia. Patterns of poverty, violence, abuse, alcohol and substance dependency, poor health, lack of education opportunities, unemployment, welfare dependency, high levels of incarceration, suicide and other forms of premature death are all now desperately familiar realities for Indigenous individuals and communities in contemporary Australia. Whilst these scenes of disadvantage and suffering are by no means experienced in the same way or to the same intensity by all, there is an abundance of evidence indicating that across all regions, all social settings, and all relevant measures, Indigenous populations register as significantly worse off than non-Indigenous Australians. The gap in life expectancy between Indigenous and non-Indigenous Australians, for instance, although narrowing considerably over the last few decades, still sees Indigenous individuals likely to die at least 10 years earlier, with chronic diseases representing the major contributing factor in this persistent mortality gap (AIHW 2011; Phillips et al. 2014). The infant mortality rate also remains much higher amongst Indigenous populations (Phillips et al. 2014), and Indigenous children are significantly more likely to be victims of abuse (AIHW 2011). Alcoholism and other forms of substance misuse are widely, and acutely, apparent in the majority of

Indigenous communities throughout Australia, as are disproportionately high levels of violence, incarceration, and unemployment (Paradies et al. 2008).

At present, the dominant position in Australian public discourse and policy in respect of these inequalities is structured around an ideal of "normalisation" (Sullivan 2011). In this, the overriding imperative is that the statistical indications of Indigenous health and well-being ought to be brought into alignment with those of non-Indigenous populations – to "close the gap" as the present policy directive succinctly puts it (see Holland 2014). This basic sentiment has been a recurrent theme amongst Australian policy-makers at least since census data on Indigenous individuals first became available in 1971 and comparisons between 'Indigenous' and 'non-Indigenous' populations started to be drawn in a systematic manner (Altman 2009).

Yet, the present sway that normalisation discourse holds also marks something of a revival. The salience of self-determination and rights discourses throughout the 1970s contributed to a general preference for facilitating Indigenous community-run health programmes, legal services, and housing cooperatives in order to tackle suffering and disadvantage (Kowal 2008). Though financially supported by Australian governments, these organisations were charged with delivering essential services according to culturally and locally appropriate methods, particularly in remote regions. The emphasis was on Indigenous communities taking charge of their own social needs and devising programmes tailored to the problems they faced. Over the ensuing decades, however, patterns of disadvantage and suffering were not reduced and, in some cases, seemed to worsen considerably. By the 1990s, it was clear that the conditions faced by Indigenous people in all regions, but particularly in remote rural areas, were spiralling downwards. What is more, pre-existing social problems were being exacerbated by new destructive patterns – such as widespread alcohol abuse and suicide – which had previously been more or less unknown to many communities. This deteriorating social condition fuelled claims about the 'failure of Indigenous self-determination' and arguments for Settler governments to once again assume a more interventionist role into Indigenous social life. This perspective perhaps came to its greatest overt public prominence under the Howard government's 'practical reconciliation' focus and distaste for 'symbolic' reparations, its moves to dismantle Indigenous representative structures, and the beginning of the Northern Territory Intervention. Nevertheless, a similar sentiment underpins a far broader body of recent thought on the subject of Indigenous suffering, where the return to favouring active measures of normalisation between Indigenous and non-Indigenous populations has received growing support.

Peter Sutton (2009) offers a prominent view in this vein. He has recently put forward the argument that the deteriorating conditions witnessed in many Indigenous communities since the 1970s – when also considered in light of the fact that some of the now worst-affected are also those that have historically been least directly subject to the heavy paternalistic and assimilationist hand of the state – signals the insufficiency of a narrative of colonial domination and state intervention in explanation of contemporary Indigenous suffering. Instead, for Sutton, that which was previously heralded as necessary in order to overcome disadvantage and suffering – namely, recognition of Indigenous culture and rights of autonomy – must now be examined for its role in creating and perpetuating suffering. He asks us to look towards the socio-cultural norms of communities for their role in producing negative cycles of behaviour, and, further, to consider how the local governance structures established under the banner of self-determination may be unsuitable in order to control negative behaviours and to effectively prevent poor social situations spiralling entirely out of control. For Sutton, it is ultimately the absence of suitable social control mechanisms and the perpetuation of cultural traditions that are ill-suited to contemporary social and economic circumstances that fuels the patterns of addiction and dependency, abuse, and poor health which are currently afflicting Indigenous communities. On this view, addressing Indigenous disadvantage and suffering is paramount, and this must occur in a manner that refuses to be paralysed by sentimentality or fear of infringing on ideals of self-determination and cultural protection.

There is an interesting degree of overlap between this view of Sutton's and that presented by one of the most prominent (and often divisive) figures of Australian Indigenous politics in the contemporary era, Noel Pearson. Pearson (2000) echoes the view that many of the traditional values that arose and aptly served communities when hunter-gatherer ways of life were the norm are nevertheless dramatically ill-suited to present contexts, especially as they have often become seriously distorted under the grip of the pathological social situation which now prevails. Pearson argues that it is often aspects of 'tradition' that now serve the perpetuation of substance abuse, violence, and neglect rather than offering a means of countering them. He also notes how the rapid deterioration of many communities has occurred since the shift in state policy that ended the protection era. Although the cause on Pearson's view is located more directly with matters of economy – specifically, Indigenous people's current containment within an "irrational" economic relationship based around "passive welfare" (2000, p.141) – rather than the practice of self-government, his assertions regarding the need for

Indigenous people to take some degree of ownership over their current social circumstances and to be willing to recognise and change the pathological aspects of present socio-cultural norms have gained considerable support amongst policy-makers and commentators within the normalisation bracket.

But it is precisely this emphasis – whether implicitly or explicitly conveyed – that Indigenous individuals and communities must seek change *in themselves* in order to overcome suffering and disadvantage that stands as one of the most controversial aspects of present struggles of recovery. For, as Patrick Sullivan notes:

> Normalisation is a positive goal if this means that Aboriginal people can expect a standard of living at the national norm. It is a challenge if it means that Aboriginal people are required to reflect socially, culturally, and individually an idealised profile of the normal citizen established by the remote processes of bureaucratic public policy making.
>
> (2011, p.3)

If responding to suffering and disadvantage is attached to any manner of coerced or forced change, its relationship to justice becomes intensely dubious in a normative sense, and will undoubtedly be the subject of profound contestation amongst Indigenous actors. Given the broad and often deeply ingrained assumptions about the ill-fit between Indigenous peoples and the 'modern' world that has dominated so much of colonial history in Australia – arguably most poignantly captured in the policies of forced child removal that Australian governments pursued against Indigenous peoples until the 1970s (HREOC 1997) – the inadequacy of a simple emphasis on realising change 'within' Indigenous populations is obvious. Observing, as Sutton (2009) does, that those communities arguably less affected by these past patterns of colonial injustice are now those which most acutely experience patterns of social suffering is undoubtedly important. But it cannot reliably serve as justification for any mode of response that would serve to deploy worryingly familiar sets of presumptions about the need for externally demanded change in Indigenous individuals or communities. Whilst a growing number of actors (Indigenous and non-Indigenous alike) now contend that the causes of contemporary Indigenous suffering and disadvantage in Australia cannot be reduced simply to the past actions of the state, there can be absolutely no doubt that these histories of colonial intervention *have* contributed in hugely significant ways to many experiences of injustice that are still widely felt at the individual and community level (and beyond) today. As such, pursuing any course that would invoke updated

versions of these same basic ideas and sentiments, albeit in guises more palatable to contemporary liberal sensibilities, risks creating further experiences of injustice and contributing to new, or exacerbating existing, forms of suffering.

There is clearly profound difficulty involved in tackling Indigenous suffering and disadvantage in Australia today. Neither simple forms of isolation and autonomy nor strong forms of state paternalism and intervention seem to offer truly plausible routes to recovery, yet these too often remain the central turning points in public discussion. In some cases, this neglect of the subtleties and complexities involved is likely a strategic one that arises through attempts to counterbalance extreme positions in one direction or the other. Notwithstanding this, such a polarisation in the way that Indigenous needs and struggles of recovery are discussed at the public level inevitably misses the crucial and inescapable tensions faced by individuals and communities in real terms. There can be little doubt that the need to overcome the social, cultural, and economic maladies that presently befall Indigenous people is one that is widely, and genuinely, shared by the overwhelming majority. Nevertheless, questions as to how any such recovery will be realised, and even what specific goals efforts should be directed towards, remain highly contested and produce tensions that undermine the certainty with which the issues can be addressed. If the strategies pursued to counteract suffering act to re-inscribe important experiences of injustice associated with displacement, assimilation, disempowerment, and denials of voice, it is likely that they simply feed into longer-term cycles of suffering rather than offer genuine opportunities to escape them.

4.6 Equality

The preceding areas of dispute and struggle are each further complicated by the exclusionary terms on which they have historically occurred. Each of those veins of struggle is permeated with claims that the needs, interests, and voices of Indigenous women have been significantly and unjustly marginalised, even as important advancements on understanding and addressing critical issues have been achieved. It is claimed that the interests of men – both Indigenous and non-Indigenous (albeit in somewhat different manners and to somewhat different degrees) – have so far dominated the discursive and political spaces in which internal colonial disputes take place and, as a result, they have at best been poorly attuned to, and at worst have acted to support, many gendered injustices of colonialism.

Marcia Langton (2008) has recently attempted to draw attention to this general imbalance around gender in contemporary Indigenous politics, and is particularly

critical of what she calls the "big bunga" political culture that has come to dominate Indigenous struggles over the past 30 years or so in Australia – where "bunga" translates as "men", or, as Sutton (2009, p.28) has it, "penis". For Langton, this describes the patterned concentration of power in the hands of Indigenous men (and also some Indigenous women) who as leaders in their communities have devoted much energy towards tactics of bullying, "personal aggrandisement", and "political theatre", but have consistently "failed to provide leadership on the most pressing issues in those communities" (2008, p.49). As a result, the *big bunga* way has both represented an effective marginalisation of women's voices and interests from political arenas and public discussions of justice, and has supported the profound and rapid deterioration of social life in Indigenous communities. Under its hold, patterns of 'lateral' and 'vertical' violence have become entrenched in communities to such an extent that they have become virtually synonymous with Indigenous social life in Australia today. Whilst 'vertical' violence, here, refers to forms directed towards authoritative (colonial, state) structures, institutions, and individuals – and is itself replete with self-destructive consequences – it is particularly 'lateral' violence, the oppression of Indigenous people *by Indigenous people*, that Langton considers the most destructive. For Langton, such violence can take many forms: from physical, sexual, and psychological assault and abuse, to more subverted forms such as malicious gossip, innuendo, and character assassination. All are deeply damaging, resulting in personal trauma for individuals and also producing profoundly negative consequences at community levels. Langton argues that although the social and individual harms resulting from these patterns of violence are widely felt, the most severe consequences tend to be felt by women and children.

In part, this severity of effect results from the fact that lateral violence is often disastrously compounded by the histories of gender-specific abuses that Indigenous women have endured at the hands of Settler society (and Settler men in particular). The sexual exploitation and abuse of Indigenous women by Settler men has been documented since the earliest days of colonialism, and has been deeply entangled with racist preconceptions about the apparent inferiority or 'less-than-human' status of Indigenous women specifically, and Indigenous people more generally (see Andrews 1997; Atkinson 2002; Reynolds 2006). The fact that many of these abuses have been enacted by individuals in positions of relative authority, such as mission officials or police officers (see, e.g. HREOC 1991), combined with entrenched racism and bias within the structures of the Australian justice system (Behrendt 2003; Blagg et al. 2005; Cunneen 2006), has too often resulted in these crimes going unaddressed when

reported or even resulting in further (direct and indirect) trauma for victims. Furthermore, these same institutions of authority and 'justice' were also the active face of the policies of child removal formerly pursued by Australian governments. And so, in many cases, these are not simply acts confined to the annals of colonial history, they also stand as recent and active experiences in the lives of many individuals and communities. As a result, it is common for Indigenous women in particular to carry a deep (and often well-founded) distrust of the Australian justice system and for many instances of abuse to go unaddressed as a result.

The particular tensions faced by Indigenous women in this respect are made even more difficult by the manner in which the context of colonial domination interferes with, and places pressure on, senses of community responsibility and political solidarity. There is an obvious risk that the reporting of crimes could result in further disruption to community stability and family structures if perpetrators are subject to incarceration or other punitive measures. The personal dilemmas evoked by such outcomes are further deepened by the possibility that they could lead to tension and animosity with other members of the community – a problem of particular pertinence for those situated in relatively small or remote community contexts. In addition, Indigenous women are of course often deeply politically aligned with Indigenous men on a range of crucial issues, and there is thus the added pressure that reporting violence and abuse has the potential to negatively impact on continuing struggles over, for instance, land rights or self-determination, especially when perpetrators are leading members of the community or prominent political figures.

At present, there is a general inattentiveness to the disproportionate burdens of lateral violence experienced by Indigenous women in Australia and to the complexity of (colonial and patriarchal) factors behind them within mainstream discussions of justice. The prevalence of male voices and the persistence of a male-dominated political culture has contributed to a sustained marginalisation of Indigenous women's experiences and interests from the forefront of public debate and considerations of justice. It has also helped to create a deep asymmetry in the norms and assumptions that tend to prevail within contemporary disputes, and also in the character of advancements achieved.

One particularly illustrative example in this respect lies with the process through which sites of special Indigenous cultural and spiritual significance can now receive protection under the Australian legal system. Although this legislation does not provide any specific land rights to individuals or communities, it does enable claimants to prevent

(sometimes indefinitely) the development or exploitation of lands if such uses represent an unacceptable violation of its cultural importance. This legislation has proven useful in the protection of a range of cultural sites, particularly where land claims processes have failed or stalled. Notwithstanding its importance in this regard, however, this legislation has also been strongly criticised on the basis that it is institutionally structured around an entrenched gender disparity that negatively impacts on Indigenous women.

In Aboriginal cultures across the Australian continent, it has traditionally been common for women and men to possess, develop, and disseminate different bodies of knowledge in key areas of cultural and spiritual life (Moreton-Robinson 2005; Toussaint et al. 2001). These 'gendered knowledges' often correspond with specific sacred sites whose history, as well as the powers of authority and roles of responsibility in respect of them, are possessed specifically by members of one gender. For instance, male presence is generally forbidden or restricted at 'women's sites', as is male knowledge of the full significance and meaning of the site and their right to pass on any knowledge about it to others. This gendering of cultural knowledge (and place) holds ongoing political relevance in its connections to histories of dispossession and contemporary efforts to recapture land rights, and particularly the legal protection of areas of significant cultural importance. Presently, legislation in this area is fraught with tensions for Indigenous women in particular. For one thing, gaining protection of a site through the courts usually depends upon the support of (Western) anthropological evidence as to the plausibility of its claimed sacred nature. Aside from the obvious tensions that accompany the assumption that sources of non-Indigenous expertise are the most qualified to provide evidence on Indigenous cultural issues, and, moreover, that the state holds rightful authority to pass judgement in respect of the lands in question, this reliance on anthropological testimony can be problematic for Indigenous women in very specific ways. There is now wide recognition that Western anthropologists have historically carried with them considerable conceptual baggage when documenting the roles of men and women in Indigenous socio-cultural contexts. Whilst, as Toussaint et al. (2001) observe, these anthropological investigations have perhaps been somewhat more insightful and sensitive to local gender relations than is often presumed by their critics, it is certainly true that most have in one way or another imposed key assumptions about women as lesser persons and have understood them to be in some way "excluded from the most important areas of knowledge, action and authority" associated with their societies and cultures (Toussaint et al. 2001, p.159). This proneness to write women out of the anthropological data on Indigenous cultural

complexity has also been exacerbated by the role that silence has played in the history of Indigenous women's resistance to the colonial gaze in Australia. Deborah Bird Rose (2001) contends that whereas silence in Western traditions has generally been taken to correspond with some form of absence (i.e. of knowledge or of cultural content), in Australian Indigenous cultures silence often represents something entirely different: the purposeful *withholding* of knowledge, that is, silence as an active voice of resistance. In commonly missing these subtleties of cultural difference, the Western anthropological knowledge of Indigenous societies, it is claimed, has many omissions in respect of women's cultural roles in particular, and also therefore a lack of supporting evidence to bring to the court's attention when need arises. The sacred status of women's sites is therefore considerably more difficult to prove on the court's preferred terms.

Arguably nowhere has this been more clearly evidenced than in the now infamous 'Hindmarsh Affair' of the 1990s, where a group of Aboriginal women sought to prevent the construction of a bridge from mainland Goolwa to Hindmarsh Island in South Australia that would see an important cultural sight destroyed (see Langton 1996; Watson 2009). A Royal Commission was conducted to assess the validity of the women's claim, whereupon it was judged that the cultural significance of the site – "secret women's business" as it was referred to – had been fabricated purely in order to impede construction (Watson 2009). The lack of anthropological evidence in support of the women's claims was a critical factor in the judgement, as was suspicion surrounding the piecemeal way in which the cultural significance of the site was revealed. The persistent reticence of the claimants to share information about the site was regarded as a pause indicating a *creative act*, that is, the manufacturing of cultural significance. Its potential to indicate a *protective act* was not, however, seriously accommodated. Yet, given the male-dominated and largely public arena into which women's secrets were being demanded to be released, the tensions potentially experienced by the claimants ought to have been given greater consideration. For the women, to break the silence on sacred knowledge was also to place it in jeopardy, and thus a measure of last resort. For the court, this reluctance to share "secret women's business" – particularly in its entirety or all at once – could only be viewed with suspicion, as suggestive of inauthenticity and deceit.

The Hindmarsh Affair exemplifies an important, and far broader, gendered disparity in the context of ongoing Indigenous struggles in Australia. Whilst cultural knowledge relating to the 'men's domain' is recognised by the state as more familiar, evidence-based, and integral to cultural continuance, the existence and relevance of the 'women's

domain' must be argued afresh in each instance (Rose 2001; Moreton-Robinson 2005). This is indicative of an entrenched pattern of misrecognition that bears out disproportionately negative consequences for Indigenous women. Whilst this is a pattern of male privilege which has, on just about any possible interpretation, certainly been perpetuated and strengthened by the patriarchal history and composition of Settler society and the demands it has consistently imposed on Indigenous societies, Indigenous men have nevertheless not simply been passive parties to the subordination of Indigenous female power and authority; they have also often taken up active roles in this regard throughout colonial history, and continue to do so today.

The strength of criticism against this pattern of gender-based marginalisation has, it is important to note, seen it receive significantly more public attention in recent years and the need to address the unjust fact and consequences of Indigenous women's multi-faceted subordination continues to gain greater prominence within the body of internal colonial justice disputes as a result. Nevertheless, some have also expressed serious concern as to the manner in which this increase in visibility is currently occurring and how it is frequently being connected to matters of justice. Marcia Langton, for example, criticises the way in which the "plight of Aboriginal children and women in remote areas" frequently serves as the subject of "parlour games" for those with little first-hand experience or knowledge of the communities in question – those who she refers specifically to as "Aboriginal radicals in the south" (2008, p.63). The Northern Territory Intervention, for instance, Langton notes, is condemned as purely rights violating, whereas the voices and experiences of the women and children in those communities affected by it are markedly absent from the accounts constructed. Langton's concern is that visibility alone within the terms of dispute is not enough. Too often, "[t]he most vulnerable are absent, except as symbols of a fantasia" (Langton 2008, p.59), their experiences appropriated by political and ideological agendas over which they have little control or sense of ownership. In this sense, the popular face of self-determination and sovereignty persist as discourses that are outwardly structured around principles of emancipation and justice, but are often guilty of enacting or failing to disturb the patterns of exclusion that they are themselves constructed around. Indigenous women – especially those in remote areas whose experiences provide the most urgent moral face of campaigns – are under-represented in these struggles. The alignment between their interests and those of broader anti-colonial struggles is simply assumed, whilst their opportunities to publicly (con)test these assumptions on their own terms are limited.

The examples considered here can provide only a brief and, in many respects, a relatively superficial snapshot of gendered contestation as it plays out and continues to emerge in the struggles of Indigenous peoples in Australia today. Nevertheless, despite these limitations, it is clear that in virtually every aspect of struggle, deeper forms of contestation and possible exclusion abound and serve to undermine the certainty with which assumptions about justice can be made and connected to the dominant faces of these struggles. Potentialities for enacting further injustices in respect of gender seem to linger within every possibility of responding to claims of colonial injustice. Importantly, in no circumstance can these gendered injustices and struggles simply be reduced to purely colonial influences, just as they cannot ever be reduced purely to continuances of oppressive tradition or culture. In all cases they mark an extricable confluence of agency and structure that resists any attempt to isolate individual or specific causes in uncontroversial fashion.

4.7 Conclusion

The contemporary character of Indigenous justice struggles in the Australian context demonstrates a considerable and complex entanglement of first-order and meta-order areas of contestation. In all areas of struggle, the discontents and aspirations that Indigenous peoples raise represent a profound challenge to the normal assumptions that prevail around justice and political ordering in Australian public life *at the same time* that they engage in productive ways with that context of normality. In attempting to secure forms of physical, cultural, and political presence on the landscape, to recapture forms of collective control and autonomy, to overcome suppressions of political voice, and to pursue processes of social and cultural recovery, Indigenous peoples in Australia today regularly encounter entrenched assumptive frameworks that seem ill-equipped to accommodate (let alone properly respond to) important aspects of the injustices they experience and claim. What is more, these scenes of complex abnormality are further entangled with streams of contestation that cut across them, disturbing any presumptions about the 'normal' face of Indigenous experience and dispute in Australia. The struggles of Indigenous women, in particular, suggest a wide range of historical and contemporary forces that give rise to importantly different (though obviously not unrelated) experiences of injustice in comparison to those more standardly associated with Australian internal colonialism, and produce different sets of aspirations. The result is that, across multiple dimensions of contemporary dispute, the radical absence of any stable and uncontroversial ground around the conceptual parameters of justice and injustice is revealed. Both in terms of the nature of injuries

experienced, and in terms of how progress towards overcoming them might be realised, fundamental disagreement seems to pervade the public discursive sphere.

5

The Canadian context

5.1 Introduction

Internal colonial disputes in contemporary Canada differ in an important way from the Australian context. This is because, unlike in Australia, formal treaty agreements have formed a prominent feature of political relationships between Indigenous peoples and colonial-Settler peoples in Canada. This is not to say, however, that the doctrine of *terra nullius* has been entirely without influence here; certainly, it has played an important role in the Canadian context too. Arguably, nowhere is this more poignantly displayed than in the Royal Proclamation of 1763, issued by the British Crown in order to stem the flow of settlement onto Indigenous lands following its emergence as undisputed colonial power on the continent at the end of the French and Indian War. Whilst the Proclamation decreed that all Indigenous lands could henceforth only be ceded through a process of open agreement between the Indigenous peoples concerned and the Crown – thus ultimately giving rise to the treaty processes that continue to hold traction in Canada today – it also expressly situated Indigenous peoples under the "sovereignty, protection, and dominion" of the Crown. This assertion of underlying authority and title to lands was, however, conspicuously understated at this time. Much of the reason for this relative silence on the matter undoubtedly lies with the fact that the Proclamation arose largely due to the practical inability of the British to impose effective dominance over Indigenous nations at that time, and was, as such, intended to appease rather than provoke concerns (Lawrence 2003). Nevertheless, it did contain assertions rooted in the doctrine of *terra nullius*, the foremost of which was an assumption of British sovereignty that took its lead not from any agreed transfers of authority from Indigenous to colonial-

Settler sources, but rather from an assumed right to possess the North American continent in its entirety – a right that the British imagined they had won by virtue of seeing off their European competitors, Spain and France. As such, though commitments to seek the consent of Indigenous peoples as part of any furtherance of colonial interests were apparent and applied in the ensuing centuries (albeit rather inconsistently), at least from the time of the Proclamation these were superimposed over a deeper set of commitments rooted in the doctrine of *terra nullius*.

Nevertheless, despite this underlying presence of *terra nullius* in the Canadian context, its entanglement with legal agreements between Indigenous peoples and colonial-Settler powers has, to varying degrees according to time and place, also provided a level of formal structuring to political relationships that has been effectively absent in the Australian context. Though, at times, treaty agreements have done little to shield Indigenous individuals, communities, and peoples in Canada from many of the most acute frauds and violences that European colonialism and state-building projects have inflicted, they have retained a certain traction that has been utilised in the contemporary era in particular in order to expose and challenge the terms by which those abuses have been enacted and justified. Perhaps of most enduring value in this regard is the power of treaties to signal the existence (and past European recognition) of Indigenous systems of law governing the peoples and lands over which the state now claims absolute sovereignty. These aspects of treaties have been used both to further claims for land rights and rights of self-government, and to progress arguments that forms of Indigenous political sovereignty were in place and active on the North American continent when Europeans arrived, and that they were never knowingly or willingly surrendered (Tully 1995; Turner 2006). As such, where they have historically figured, the contents of treaties and the degree to which they have been honoured, ignored, or misinterpreted over the course of colonial history remains of central importance. Equally, where they have not figured historically, the need to construct and sign modern treaties with the state is also a prominent (though far from uncontentious) feature of Indigenous struggles in Canada.

There will be more to say about these matters across the following sections of the chapter. For now, however, it is enough to note this as an important and distinctive feature of the Canadian context, and one that matters for our initial orientation in an investigation of the ways in which Indigenous disputes there today work to disturb some important conventions of political thought and practice. Before moving on,

however, it is important to again take a moment to offer clarification on the terminology employed here.

There are three distinct cultural-historical groupings of Indigenous peoples presently recognised in the Canadian context: First Nations, Inuit, and Métis. These groupings by no means themselves describe any substantive homogeneity amongst the communities to whom they refer, with great diversity in historical, geographical, and cultural terms existing between groups identifying under them. Nevertheless, it is at the level of these groupings that much identification takes place and about which present dispute at the public level most often turns. It is also at these levels of generality that the laws and policies of the state typically fix their gaze. As such, I follow this convention in the discussion that follows, using, where relevant, the terms 'First Nations', 'Inuit', and 'Métis' to mark a degree of specificity in the examples and arguments I offer, giving further clarification as and when necessary. For matters of general discussion, I again follow the convention of using the (capitalised) term 'Indigenous'. It is worth noting that, as with Australia, this choice is occasionally at odds with the norms of discussion in the Canadian context where the terms 'Aboriginal', 'Native', and, to a lesser extent, 'Indian' are still commonly employed on all sides, and to which specific areas of law and policy often pertain (e.g. 'Aboriginal rights', 'Aboriginal title'). Accordingly, my use of any alternative terms will be limited to discussion of the specific policy and/or legal areas in which conformance seems necessary, and in all other cases 'Indigenous' will continue to mark the term I prefer for discussion at the general level. However, again, I make no attempt to alter secondary sources that do not share my preference for this convention.

5.2 Presence

Indigenous peoples in Canada are today constitutionally recognised as possessing political statuses and rights that are distinctive from those enjoyed by all other Canadians. The basis of this distinctive place in the political composition of modern Canada reflects a complex combination of factors, including: (1) the pre-colonial autonomy of Indigenous peoples and their possession of the lands and waters that now form the provinces and territories of Canada; (2) the enduring fiduciary obligations of the state to 'protect' Indigenous interests – set in motion by the Royal Proclamation of 1763 and further enshrined in section 91(24) of Canada's founding legislation, the *Constitution Act*, 1867; and (3) the continuing legal relevance of the many treaty agreements entered into before (and increasingly also since) the creation of the state. These factors today coincide in the legal category of 'Aboriginal rights', which, since its

repatriation from British control in 1982, have been affirmed in section 35(1) of the Canadian Constitution, thus (and simply):

> The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

In some sense, this constitutional entrenchment of Aboriginal rights can be understood to signal the beginning of the contemporary period of Indigenous struggles of presence in Canada. Just a little over a decade earlier, the state was actively pressing for the full political assimilation of Indigenous peoples and the eradication of any kind of differentiated political statuses. This was exemplified in the White Paper issued by the Liberal government of Pierre Trudeau in 1969, which set forth a vision for a future of state-Indigenous relations stripped of all special rights and statuses, and instead built around a radical equality of citizenship between all Canadians. As the preamble to that paper put it:

> Indian relations with other Canadians began with special treatment by government and society, and special treatment has been the rule since Europeans first settled in Canada. Special treatment has made of the Indians a community disadvantaged and apart.
>
> (Government of Canada 1969)

The "special treatment" in question here effectively referred to all aspects of Settler governance that were shaped in some way by treaty and fiduciary obligations, and which had seen specific policies and legislation directed towards Indigenous individuals and communities. Of course, rhetorically presenting this history of state action as a kind of 'special' treatment marked a highly provocative turn of phrase given the scenes of violence and discrimination that it had actually so often entailed. For most of Canadian history, and certainly up until the White Paper, the state had understood a key part of its task as (more or less self-positioned) guardian of the interests of Indigenous peoples to be to do everything in its power to 'civilise' them into the norms of Euro-Canadian society. The pursuit of this goal would involve the enforcement of highly aggressive assimilation policies, a range of more indirect attacks on existing Indigenous ways of life and opportunities for economic independence, and also the creation of state legislation specifically designed to undermine Indigenous community cohesion and to erode the fact and political relevance of Indigenous identities.

Arguably the most striking example of the latter, especially in terms of its comprehensiveness and sheer scale, comes with the Indian Act, first created in 1876 and still in effect today (albeit in a significantly modified form). The Indian Act is a piece of legislation that arose through connection with the state's understanding of its fiduciary obligations and was applied to all First Nations, treating them effectively as a homogenous group (Belanger & Newhouse 2004). The Act principally sought to position First Nations individuals and groups as "wards of the state" and, in doing so, to open their lives and lands up to a more intrusive form of state management. Its provisions – until quite recently – covered virtually every aspect of community social, political, economic, and even cultural life on the small reserve lands to which groups had typically been reduced (Tully 1995), the intention being to set in motion forces that would dissolve any distinctive Indigenous political identities and thus eliminate the legal burdens on the state that they represented. In the process, forms of collective Indigenous presence on the land that threatened to impede the free pursuit of Settler economic interests would also be minimised.

A central dimension of this strategy was to deny those registered under the Indian Act full citizenship rights – including enfranchisement and a range of other important civil and political rights, such as the right to own property (Blackburn 2009). Rather, the only way that Indigenous individuals could have access to such rights would be by voluntarily de-registering as an 'Indian' (or to be involuntarily de-registered by virtue of contravening the provisions of the Indian Act), and therefore losing any special entitlements associated with that legal status. Notably, this included the right to live on reserve lands and to actively participate in the formal arenas and processes of community life. As such, although the Indian Act carried many specific injurious consequences to First Nations individuals, families, and communities, it is arguably its more general pressing towards the ultimate eradication of differentiated rights and statuses that is of greatest enduring significance. By coercively situating individuals in positions whereby a legal justification for the removal of special rights could be enforced, the Indian Act would ultimately, it was assumed, lead to the political obsolescence of any residual Indigenous identities.

However, for all of this destructive force and intent, the Indian Act remained (and remains today) structured precisely around the *presence* of distinctive political statuses amongst the individuals and groups subject to it. Though it was certainly created by the state with the intention of eliminating the political category of 'Indigenous' – and therefore turning that presence into an absence – its failure to achieve that outcome

means that the Indian Act still powerfully reflects, and in some ways protects, the legal and political difference of those to whom it applies. What is more, many of the more intrusive aspects of the Act have since been repealed and, though many voices certainly still resent its presence in any form, others have found it a useful resource in protecting interests in a range of areas. As such, the Indian Act holds a position of some ambivalence for First Nations (and more generally amongst Indigenous peoples) today: standing as a symbol and so often a weapon of Euro-Canadian colonialism, yet also embodying and preserving aspects of the political distinctiveness that First Nations see as central to their identities and contemporary struggles, and would therefore seek to protect.

The approach set out in the 1969 White Paper proposed, amongst other things, to repeal the Indian Act and to subsume all services and programmes currently performed under it into the mainstream of Canadian government. For many Indigenous voices, however, this was seen as marking a clear step towards the culmination of the state's long-running assimilative drive rather than a step away from it. Though the White Paper approach did support the retention of Indigenous *cultural* identities – and in this respect might be considered a relatively progressive stance given the history of Canadian governance in this area – it nevertheless clearly sought to realise the removal of all differentiated political statuses and legal rights. On these terms, Indigenous peoples would become equal citizens of the state in the fullest possible sense, but this equality would require them to leave behind any special rights that they might currently possess. The overriding presumption, and one which was seemingly presented as unavoidable, was that Indigenous people could not simultaneously be full members of Canadian society *and* in possession of distinctive rights.

Unsurprisingly, the vision set out in the White Paper held little sway with most Indigenous leaders and public voices. Legislating away the political basis of the relationship in the name of "equality" was widely considered to be a thinly-veiled "programme of extermination through assimilation" (Harold Cardinal quoted in Turner 2006, p.25) that ultimately sought to extinguish the challenges to state authority and legitimacy that Indigenous peoples continued to pose, and would inevitably mark an irreparable rupture of Indigenous connections with the land (Cardinal 2000). As a result, rather than producing the desired outcome of finally subsuming Indigenous political voice into the bounds of the dominant political community, the White Paper instead had the effect of uniting Indigenous groups from across the country and added new impetus to debates surrounding their place in Canadian society (Belanger &

Newhouse 2004; Jull 2001). This directly contributed to a resurgence of Indigenous political activism and a series of important land claims cases brought before Canadian provincial and federal courts (see McNeil 2013), which were crucial to achieving the inclusion of section 35(1) in the repatriated Constitution and have since aided the continuing effort to substantiate the meaning of Aboriginal rights in practice.

Besides this crucial contribution to forming the character of the contemporary era of dispute, however, the White Paper episode is also important for the present discussion insomuch as it provides clear indication of some fundamental tensions that continue to run through Indigenous struggles of presence in Canada today. At the heart of the matter here is the question of political sovereignty and the manner of Indigenous peoples' historical incorporation into the Canadian state.

Indigenous challenges in the Canadian context have always centred on claims that, as groups, and in ways that differ between groups, they possess forms of sovereignty that are equal in status (though not identical in form) to those claimed by European colonisers and settlers and, more recently, by the Canadian state. For most Indigenous disputants, it is precisely these forms of sovereignty that underpin their distinctive political position in modern Canada, and from which treaty and Aboriginal rights gain their meaning. Though, undoubtedly, colonial and Settler governments have consistently worked to re-interpret, re-define, limit, or simply ignore Indigenous sovereignties over the past 250 years or so – and have particularly sought to 'domesticate' them where they could not be eliminated outright – this has not dulled the extent to which they are felt and claimed by those peoples themselves.

The general sense of denial with which the state continues to meet Indigenous sovereignty challenges is glimpsed in the White Paper approach. Though that episode arguably marks an attempt towards the subversion of Indigenous sovereignty that is considerably more overt than is typical of the present era, the basic difficulty it illustrates with reconciling the state's sovereign impulses and liberal self-understandings with the sovereign claims of Indigenous peoples continues to hold relevance.

Dale Turner (2006) offers a useful discussion of this aspect of the contemporary Canadian context. Assessing the developments in recent liberal (and particularly Canadian liberal) thought in respect of making space through which differentiated statuses and rights for Indigenous peoples can be accommodated, Turner argues that

even the approaches that must be considered relatively receptive of, and generous towards, Indigenous claims in this regard – indeed, as many Canadians would have it, *too* generous – nevertheless fail to properly acknowledge the full force of Indigenous sovereignty challenges and the nature of their connection to Aboriginal rights. Rather, even the most ostensibly progressive faces of liberalism treat Indigenous peoples with a "fundamental disrespect" insomuch as they work to subvert Indigenous peoples' own expressions of the political injustices they face (Turner 2006, p.69).

Here, Turner examines in particular the position of Will Kymlicka (1989; 1995) who constructs a liberal defence for extending special forms of rights to Indigenous peoples that include significant levels of autonomy from the state and considerably more control over lands and resources. Whilst Kymlicka's position goes significantly beyond that currently preferred by the Canadian state, and in this respect can be seen as decidedly more progressive than the views which presently dominate the public arena in Canada, Turner claims that it still falls short of an adequate recognition of Indigenous sovereignty claims. Principally, this is because the liberal justification Kymlicka gives rests upon an ahistorical form of rationality, one that largely excludes Indigenous participation in defining the nature of the injustice to which it responds. Kymlicka presents the case that Indigenous peoples are, in a sense, 'owed' forms of special rights by virtue of their unjust historical incorporation into the Canadian state and the gross violences that have accompanied and resulted from that process. The underlying impulse, Turner finds, is to construct a case for reparative rights that is based on a rationally constructed theory of distributive justice. That is to say, the case for distinctive forms of rights is made according to the contemporary disadvantages and distresses that Indigenous peoples experience due to the creation, direct actions, and general functioning of the state. The power and validity of those rights, however, on this account, ultimately derives precisely from the supremacy of state sovereignty. They are rights – albeit, perhaps, quite extensive and useful to Indigenous peoples in many practical contexts – that emanate from *within* the dominant liberal order and are meted out to Indigenous groups suffering disadvantage of some kind. They do not, as such, truly mark a recognition of rights potentially existing *externally* to that liberal order, rooted instead in Indigenous forms of sovereignty. Consequently, for Turner, Kymlicka's justification functions ahistorically: though professing to better tackle the experiences of injustice that drive Indigenous struggles in Canada at present, this approach nevertheless re-inscribes a critical dimension of those injustices by fundamentally misrecognising the nature of Indigenous sovereignty and injustice claims associated

with it. As a result, it ultimately sanctions the historical injustices of colonisation and state-building that lie at the heart of Indigenous contestation even as it sympathises with the contemporary plights of those groups.

Understanding this potentially suppressive function of even relatively progressive liberal justifications for differentiated rights is important because it illustrates the depths to which the difficulty of accommodating Indigenous challenges of presence runs in Canada today. The securing of Aboriginal and treaty rights as a distinctive class of rights within the Canadian constitution belies the fact that they remain substantively undefined through that recognition. Quite what Aboriginal rights should be taken to mean in practice – and, specifically, whether they should be taken to represent a special class of citizen rights or offer recognition of a deeper mode of connection between Indigenous and state forms of sovereignty – remains deeply contested. The Canadian state has been steadfastly unwilling (or unable) to entertain the possibility that Aboriginal rights can derive their meaning from active and unrelinquished – rather than obsolete, dissolved, or domesticated – forms of Indigenous sovereignty. The result is a profound disparity in the ways that struggles of presence are conceived and their implications understood. Consequently, in Turner's view:

> [U]ntil Aboriginal peoples participate as equals in the discourse that determines the meaning of their political sovereignty – and the rights of governance that follow from that sovereignty – legislative instruments and the meanings of rights as found in section 35(1) of the *Canadian Constitution* will remain undefined and elusive for policy makers.
>
> (2006, p.67)

Insofar as Aboriginal rights are to continue to mark a major channel through which struggles of presence in Canada are to be directed, it is only through a more equitable role in determining the terms of dispute around those rights that Indigenous peoples might begin to address the continuing injustices they face.

It is worth underlining at this point that, although by no means uncommon amongst Indigenous actors in Canada, the desire to realise forms of full secession from the state does not necessarily underpin such claims to sovereignty. Many Indigenous voices argue precisely against any such separation and instead place the need to 're-found' the political relationship between Indigenous peoples and Settler institutions of governance on more just, respectful, and equitable bases at the centre of dispute. As in the Australian case, there is here a common resistance to any attempt to limit

progressive possibilities to a simple choice between inclusion or exclusion – a set of options that would, in either direction, risk leaving the fundamental composition of the state more or less unproblematised. Many Indigenous individuals, families, and communities profess strong Canadian identifications at the same time they hold (and live) dimensions of identity rooted in Indigeneity. Many, if not most, also regard full citizenship rights as Canadians to be of fundamental importance, even as they press for multiple, overlapping, and differentiated forms of citizenship associated with Indigenous nationalities (see Blackburn 2009). These struggles regularly refuse the notion that 'Canadian' and 'Indigenous' represent anything like mutually exclusive categories of identity, either conceptually or practically, and instead offer a more radical and in many ways more difficult form of critique than such a logic would seem to allow.

The air of tension driven by Indigenous challenges of sovereignty continues to shape the public sphere in Canada, particularly as Indigenous groups not formerly party to any treaty have chosen to seek 'modern treaties' or 'comprehensive agreements' with the state in order to better secure their presences on the land, protect collective interests, access monetary compensation, and move towards greater forms of self-government. The question of whether these modern agreements ultimately have the effect of supporting the state's assumptions about undisputed sovereignty – offering better recognitions of Indigenous rights and presences but nevertheless positioning them as subordinate to, and dependent upon, the sovereign claims of the state – is a highly charged issue and one that proves consistently divisive. Whilst it is highly doubtful that any diminution of Indigenous sovereignty is in any way accepted even by those groups who have most actively pursued modern treaty agreements, and who in doing so have accepted (what are seen by some to be) terms that serve and secure state interests in a number of important ways (see Alfred and Corntassel 2005; Tully 2000), the question continues to resonate as to whether the consequences of such agreements actually make decolonising struggles more difficult in practice at their most fundamental level. The present and future of Indigenous presences in the Canadian context thus continues to be fraught with deep disagreement and uncertainty.

5.3 Control

Since the 1970s and 1980s, many Indigenous groups across Canada have recaptured powers of self-government and significantly reduced the interference of state authorities into important areas of social, political, economic, and cultural life. This

trend towards re-empowerment was bolstered by formal state acceptance in the mid-1990s, on the back of strong Indigenous activism and following pressure from the Royal Commission on Aboriginal Peoples (RCAP), that Indigenous self-government should be understood as an "inherent" right and, as such, included in the body of rights recognised under section 35(1) of the constitution. The 'inherent' nature of this right infers that, though the right to self-government is recognised and affirmed by the state's body of constitutional law, it is not created by it. Rather, self-government is a right inherited by contemporary Indigenous groups in virtue of the pre-colonial autonomy of their ancestors, and its basis lies, therefore, also in Indigenous systems of law (Borrows 2010). Securing this specific conception of self-government was important in light of the state's clear preference for a 'contingent' model that would explicitly render the right to Indigenous self-government dependent upon the presence and supremacy of state sovereignty (Morse 1999). As such, establishing formal recognition of the independent basis to Indigenous self-government rights was widely heralded as a significant victory and one that marked an important step towards addressing the disempowerments of Euro-Canadian colonialism.

Even so, the Canadian state is presently very clear in setting out the practical limit of Indigenous self-government:

> The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states. On the contrary, implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation, and ensure that Aboriginal peoples and their governments do not exist in isolation, separate and apart from the rest of Canadian society.
>
> (Government of Canada 2010)

The message is unambiguous: whatever else they are to entail and infer, Indigenous self-government rights do not provide the kinds of authority and status that are enjoyed by the Canadian state. This application of a clear limit to the practical and conceptual form of Indigenous self-government starkly signals the degree to which, even in recognising it as an 'inherent right', the state continues to determine the extent of opportunities for formal Indigenous self-control. This is something that has been continually demonstrated in practice over the past 30 years or so, where the superior coercive potential of the state, coupled with its sovereign presumptions, has provided it with the practical means and political inclination to control the "rules of the game", so to speak,

of Indigenous self-government (Irlbacher-Fox 2009, p.61). As the acting sovereign authority in Indigenous lives and monopolising the resources necessary to make effective self-government possible, the state is able to determine with considerable freedom what areas of government are open to negotiation to begin with, to set limits on the possible transfer of powers, and to approve or reject the services and programmes that an Indigenous group proposes to pursue for its members. It also dictates the timeframe in which negotiation processes must be concluded, the language in which they are conducted, the scope of valid evidence in support of claims, the identities of 'legitimate' and 'illegitimate' negotiating partners, and many other factors besides (Irlbacher-Fox 2009; Regan 2010). This rule-setting position, along with the background distributions of power and resources that make it possible, remains essentially unaltered through all resulting moves to self-government. Though some bureaucratic and administrative restructuring may occur, the dominant position of the state in respect of self-governing Indigenous peoples remains fundamentally intact. It maintains both the capability (in light of its control of resources) and the assumed legal right (in light of its assumptions of underlying sovereignty) to intervene into the affairs of Indigenous governments on a more or less unilaterally determined basis. Although episodes of interference may become more infrequent under conditions of self-government, the *potential* for interference remains basically undisturbed, and self-governing Indigenous groups in Canada typically remain vulnerable to the arbitrary will of the state in a very real sense.

This has caused many to dispute whether the self-government model marks a genuine or a sufficient vehicle for overcoming the history of unjust disempowerment. As Alfred puts it, although the acute disempowerments of the past might be removed, the self-government model still represents a chain "strung around the indigenous neck", one that "offers more room to move, but … still ties our people to a white society that pulls on the strong end" (2009a, p.11). It is important to recognise that the concern here is not simply that the self-government model does little to seriously disturb the fundamental background structure of domination that gives rise to disempowerment in the first place – and in this sense marks simply a potential *continuing* suppression of self-determination in at least some important respects – but also that it might produce *further* infringements on the collective freedom of Indigenous peoples.

David Nadasdy (2012) provides important insight in this regard in his study of modern treaty agreements in the Yukon. Nadasdy takes particular issue with some of the basic expectations that the state attaches to Indigenous self-government by virtue of its

dominant 'rule-setting' position and how it seeks to shape self-governing polities into a particular, recognisable image. Typically, the state demands that the jurisdictional powers of Indigenous governments will be defined in respect of (1) a specific population or membership group living (or having rights to live) within (2) a stably defined land base. Whilst these may initially seem to be largely uncontroversial requirements, Nadasdy contends that these kinds of division in terms of lands and populations may in fact serve to reinforce past acts of colonial governance and strategies of disempowerment. The basis for his arguments in this vein is the observance that, in the Yukon at least, many of the political and geographical divisions that hold prominence in the region today were originally implemented through federal government policy in earlier attempts to gain greater administrative and bureaucratic control. 'Indian Bands' were created on a relatively arbitrary basis, possessing only loose similarity to pre-existing socio-political configurations, which were instead based around a great deal of freedom (and regularity) of movement and association of individuals between communities. Constituted as strictly separate administrative units, each with their own demarcated membership, reserve lands, council, and chief, Indian Bands created problems of membership that had not previously figured in social and political relationships.

Although most communities in the region have now achieved or are in the process of negotiating self-government, Nadasdy notes the great deal of continuity that exists in terms of membership and geography between self-governing First Nations and their Indian Band predecessors. He finds that, in demanding that First Nations seeking self-government conform to its own standards of political organisation – including the requirement to establish clear and stable jurisdictional boundaries – the state exerts pressure on them to adopt norms that have been unjustly imposed in the past. Consequently, for Nadasdy:

> Land claim and self-government agreements are not simply formalizing jurisdictional boundaries among pre-existing First Nation polities; they are mechanisms for *creating* the legal and administrative systems that bring those polities into being. In fact, the agreements, conceived and written as they are in the language of sovereignty, are premised on the assumption that First Nations governments must be discrete politico-territorial entities if they are to qualify as governments at all.
>
> (2012, p.503: original emphasis)

In this sense, the transfer of governmental power is paid in the "currency of territorial sovereignty" (Nadasdy 2012, p.528), which places close restrictions on the form that self-governing Indigenous polities must assume. Otherwise put: self-government is made available only in ways where the basic shape of both the 'self' and 'government' conform to state expectations, and where their legal conjunction feeds neatly into the jurisdictional matrix of the existing Canadian state.

In effect, here, the rule-setting position of the state is put to work in ways that: (1) implicitly devalue modes of socio-political organisation that do not resemble or fit with the Euro-Canadian preference for territorial sovereignty; (2) actively inhibit opportunities to pursue alternative models; and (3) create (potentially) artificial or coercively arranged divisions of identity, power, and interest amongst communities forced to draw externally demanded lines onto the socio-political and geographical landscape. What is more, rather than operating through an explicit prevention of self-control through the direct coercive power of the state (as in past eras of colonial control) and thus visible as a clear problem of moral concern, domination is here more tacitly contained within the structuring of the political relationship and is self-administered by Indigenous governments exercising forms of control within the bounds of that structure. Consequently, the enactment of colonial oppression is at risk of becoming self-inflicted and localised, resulting in a (perhaps) less acute but ever more entrenched form of disempowerment. Insofar as self-government naturalises and renders invisible such suppressions of self-determination, its effect may not simply be to replicate an existing condition of domination but also to make that condition more difficult to contest and remove.

It is important to acknowledge, however, that for some (perhaps many) Indigenous groups across Canada, powers gained through the "currency of territorial sovereignty" might be an entirely appropriate fit for their own contemporary political self-understandings and interests. In these contexts, concerns such as those raised by Nadasdy and Alfred may seem relatively inconsequential to the business of recapturing tangible forms of power and control from federal and provincial governments. In others, Indigenous groups, well aware of the risks, might pursue plans of action that enable them to safeguard against the most damaging effects. In still others, the consequences of daily disempowerment may be so great as to necessitate a recapturing of some modicum of control by any means available. Colonial disempowerment has had different effects in different contexts, and there is no single assured pathway for overcoming it.

For indication of this diversity in experiences and approaches to disempowerment, we might turn towards recent Inuit struggles of control. In discussing the successes of Canadian Inuit in pushing forward a self-government agenda that led to the establishment of the Nunavut territory in 1999 (and which may yet lead to greater autonomy for the Nunavik region in northern Quebec) Frances Abele and Thierry Rodon note that the prevailing focus there has been on securing a "sufficient and practical level of self-determination" for future generations (2009, p.125). In doing so, Inuit have actively engaged with the existing features of the Canadian state – in terms of its institutional framework and its political traditions – to develop an approach to negotiating self-government that takes full advantage of those features (Abele & Rodon 2009). They have built upon the fact that Inuit still comprise majority populations in northern regions to establish forms of public government that, whilst not providing jurisdictional authority over Inuit populations and lands in the strictest sense of self-government, have created the conditions whereby Inuit voices and interests can prevail in regional politics. This accomplishment marks a progression of struggles of control whilst not necessarily marking their culmination. It is widely regarded to offer an increase in the effective ability of future generations of Inuit to continue these struggles from an altered starting point built upon the achievements of past generations. Although the forms of control gained may fit into and meld with the existing framework of the state, they also create important new locations of formal power within that framework, and so potentially offer new and unforeseen opportunities for progress.

Irlbacher-Fox (2009) finds similar sentiments to these amongst the Dene First Nation in the Northwest Territories, where, she notes, few consider self-government to be a final stage in efforts towards decolonisation and the achievement of an equitable and mutually respectful relationship with non-Indigenous Canada. Rather, self-government is most often considered one tool amongst many possibilities that can assist communities in their drive towards self-determination.

The enduring point is that Indigenous struggles to regain self-control and self-direction in Canada today rarely (if ever) fit neatly or consistently into dominant expectations or into a single discernible mould. Though many of the aspirations, strategies, and successes involved in these struggles are broadly consistent with assumptions and norms that presently dominate Canadian society and its legal and political institutions – and it would be a mistake to underestimate the difference that such transferences of formal control have made to many communities – in most cases these mark only part of far more complex struggles pitched against deeper processes of disempowerment. It

should also be noted that, difficult as this terrain appears when considered (as has been the main focus here) in respect of territorially concentrated Indigenous groups, it potentially becomes even more so when we take into account the self-determination needs and rights of urban Indigenous populations and peoples dispersed over wide geographical areas. Little has so far been done in terms of policy in Canada to address disempowerment amongst these communities (Belanger 2011), and it is not even clear what self-government (if that is to mark the preferred course) should mean or entail in these contexts, let alone whether any such moves would carry similar sorts of tensions to those noted above.

Despite significant moves towards addressing colonial disempowerment in Canada and the recapturing of some crucial powers of self-control for Indigenous groups at the local level, these struggles remain fraught with tension. Insofar as they are bound to a context that is structured around an unyielding assumption and practice of state sovereignty, which has been historically central to the enactment and maintenance of disempowerment in specific and general terms, opportunities to seriously address those practices of disempowerment are problematically limited. Consequently, for many disputants, even those looking upon self-government from more favourable perspectives, unjust and unacceptable suppressions of self-control and self-direction continue to be a feature of life for Indigenous peoples in Canada, whether or not they have achieved formal self-government. As such, the question of whether adequate levels of collective self-control for Indigenous groups can be realised through the channels currently open is intensely uncertain and deeply contested, as are ideas about what those forms of control will or should look like and into what kinds of broader political and economic structures they should ultimately fit.

5.4 Voice

Indigenous struggles of voice in the Canadian context have been shaped in important ways by the enduring relevance of treaty and fiduciary relationships. This base of formal recognition has not only been immensely important for Indigenous peoples in terms of efforts to regain forms of control and to secure presence, it has also helped to channel struggles of voice in particular directions. Specifically, it has helped to establish a dynamic wherein the main imperative for most Indigenous actors has been to achieve and secure opportunities for representation in political life that work to reinforce their claimed distinctiveness as political groups, and thereby offer support for the nation-to-nation relationship they profess to hold with the state. In this, the emphasis has fallen

both on promoting direct Indigenous representation at the national level through institutions of self-government and other separate Indigenous representative bodies, and on pursuing opportunities for participation at the international level as political groups importantly distinct from the Canadian state.

In terms of the latter, Indigenous groups from Canada have been directly active in the international realm at least as far back as 1921, when Chief Deskaheh, Speaker of the Six Nations Council, travelled to Europe in order to generate greater international awareness of Canada's treatment of Indigenous nations and its continuing violation of treaty agreements (see Corntassel 2008). Since that time – and particularly since the global resurgence of Indigenous voice through the 1970s – Indigenous peoples from Canada have been extremely active in representing their interests and promoting their political aspirations on the international stage. This has included prominent roles in the drafting and promotion of UNDRIP, the influencing of international conceptual and legal norms around human rights and (particularly) the right of self-determination, and participation in the UN Permanent Forum on Indigenous Issues and other relevant bodies. Indigenous peoples from Canada have also actively pursued trans-border forms of organisation with groups located in other states in order to progress areas of common interest. The Inuit Circumpolar Council (ICC), for instance, formed in the late-1970s as a non-governmental organisation representing the interests of Inuit from Alaska, Canada, Greenland, and Russia, has been very active at the international level in promoting environmental, human rights, social, and cultural issues affecting Inuit communities and has also now attained consultative status at the United Nations. The ICC has taken a prominent role in pressing for progress on issues of Inuit concern at more specific national levels, and has been influential in land claim and self-government negotiation processes.

These forms of international and trans-border Indigenous representation have been crucial, both in terms of influencing the character of salient norms and standards within the international community so as to more sensitively respond to Indigenous experiences and aspirations, and also in encouraging greater direct scrutiny of the conduct of the Canadian state. In 2012, for instance, the UN Special Rapporteur for Food, Olivier De Schutter, visited Canada (the first country in the global North to be subject to such a visit) and expressed particular concern about issues of hunger and food insecurity affecting Indigenous populations (United Nations 2013). Further, in 2013, the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, also visited Canada and noted (admittedly, alongside some important positive developments) a

wide-range of problems affecting Indigenous communities and criticised the continuing insufficiency of Canadian governments efforts to effectively address them (United Nations 2014). Although such international scrutiny does not automatically equate to binding obligations on the state nor easily translate into concrete changes at ground level, and neither are the contributions of external observers entirely without controversy from Indigenous perspectives, it has proven highly important in bringing broad and specific attention to issues affecting Indigenous communities. In this sense, the success that Indigenous voices have had in terms of generating international attention to their situations in Canada has the additional benefit of providing further opportunities to access and engage new audiences, both at home and abroad, and bringing greater opportunity to reveal the complexities of the rights violations and other forms of injustice that they claim to experience.

This activity in international political arenas has often been closely connected with Indigenous representative bodies active within the 'domestic' arenas of provincial and federal politics. Probably of greatest prominence in this vein to-date have been organisations such as the Assembly of First Nations, the Métis National Council, Inuit Tapiriit Kanatami, the Congress of Aboriginal Peoples, and the Native Women's Association of Canada, all of which have been particularly active in representing Indigenous interests and attempting to influence the conduct of state governments in respect of Indigenous populations and lands. Even so, over the last couple of decades in particular, there has been a consistent call to realise a greater level of assured formal and influential Indigenous representation in national politics. The 1991 *Royal Commission on Electoral Reform and Party Financing*, for instance, focused a great deal on the need to establish dedicated Indigenous constituencies so as to address the persistent underrepresentation of the Indigenous population in state legislative institutions (Niemczak 2008; Williams 2005). The subject of dedicated Indigenous representation also featured in the negotiations around constitutional change at the 1992 Charlottetown Accord, where the idea was expanded to include greater opportunities for voice in both the federal House of Commons and the Senate, and the creation of an Indigenous consultative body to the Supreme Court (Niemczak 2008; Williams 2005). Although the proposed constitutional changes of the Charlottetown Accord were ultimately defeated at national referendum, the topic of dedicated Indigenous representation remained prominent, featuring also in the final report of RCAP in 1996 where the notion of a separate Indigenous parliament with stronger legislative powers was set out (see Government of Canada 1996, vol. 2, part 1.3).

Although none of these formal considerations has yet to actually result in the realisation of new opportunities for Indigenous representation in national politics, they have nevertheless provided important insight into the controversy that surrounds the issue. There is widely held concern amongst Indigenous voices (especially) that 'improvements' in levels of representation within the institutional framework of the state risks becoming a self-defeating endeavour in terms of broader decolonising struggles. Concern is that by increasing Indigenous participation within the institutional order of the state might have the consequence of undermining something important about the differentiated political statuses and self-government rights that Indigenous peoples have worked so hard to affirm, and might thus ultimately fuel rather than abate colonial forms of injustice. Importantly, too, for most Indigenous actors expressing them, these concerns are not simply of a conceptual nature – that is, a question of whether full participation within the state's institutional order and autonomous forms of government represent mutually exclusive political goals at a conceptual level – as they have been principally regarded amongst some prominent non-Indigenous critics (e.g. Kymlicka 1995; for discussion see Williams 2005). Rather, given the context of Euro-Canadian colonial history, for Indigenous actors, such concerns are also commonly grounded in real experience. The language of inclusion and citizenship has been intrinsic to the assimilatory strategies of the state over the course of the past 150 years or so, and, as witnessed in acute fashion with the White Paper of 1969 for example, it has often been the case that notions of 'equal citizenship' have been directly linked with the removal of formal recognition of political distinctiveness at the group level. This has helped to generate widespread and deep suspicion with the strategy of pursuing increased participation within state institutions as a way of increasing levels of Indigenous voice in public life, with some, such as Taiaiake Alfred (2009a), expressing concern that such moves act only to exacerbate the assimilatory impetuses of internal colonial domination.

Yet, at the same time, other Indigenous voices contend that greater Indigenous engagement within the political life of the state is absolutely essential if Indigenous peoples are to hold sufficient political influence and are to be able to further their interests effectively. John Borrows (2002), for instance, argues that the contemporary challenge facing Indigenous peoples in Canada is not simply a matter of gaining more influence and control over 'Indigenous affairs' – and therefore in achieving increased autonomy from the state – but, rather, also one of realising greater Indigenous control of "*Canadian* affairs" (2002, p.146). Borrows' hope is that increasing the level of influence

that Indigenous peoples have over the determination of the norms and practices of citizenship in Canada "may generate a greater attentiveness to the land uses and cultural practices preferred by many Aboriginal peoples" (2002, p.146), and thus potentially have a highly significant role to play in reducing (or at least managing) the threat of further assimilatory forces and denigrations of land. On these terms, increased participation within the institutional framework of the state – not simply in forms bound to that framework as it already exists, but also in ways that act to reshape it from within – is vital if Indigenous voices are to hold significant influence in the determination of many important aspects of social, political, and environmental futures, all of which also matter intensely for the sustainability of autonomous forms of Indigenous self-government.

These controversies and difficulties surrounding contemporary Indigenous struggles of voice in Canada demonstrate a multi-dimensional challenging of established normalities. In one sense, assertions of Indigenous voice in the international sphere continue to be central to the gradual destabilisation of norms that have historically shielded or supported many of the injustices of internal colonialism in Canada, and also bolster resistance to state efforts to 'domesticate' Indigenous political identities. In this sense, Indigenous groups in Canada have already realised considerable success in gaining recognition of their rights, needs, and aspirations on the international stage, and thereby bringing increased levels of external scrutiny and accountability to bear on the Canadian state. This international activism has also enabled Indigenous groups to form cross-border alliances and organisations and to begin to work across the separations invoked by the imposition of arbitrary state borders – as the Inuit Circumpolar Council aptly demonstrates.

At the same time, Indigenous voices have maintained challenges against any assumption that the present conditions of state domination are able to offer uncontroversial grounds for greater representational voice, and claim that simple forms of inclusion within the state's existing institutional framework actually threaten to inhibit justice struggles in important respects rather than assist them. Whilst some critics, accordingly, posit that *any* form of closer proximity to the institutions of the state brings damaging connotations and must be rejected, others contend that it is precisely in pursuing inclusion in ways that offer opportunity to begin to reshape the institutional and conceptual framework of Canada from within – that is, to disturb the norms of citizenship and social ordering that presently prevail and to realise a greater role for Indigenous voices in authoring future dominant norms – that efforts ought to be

directed. There is, as such, a complex and contested feel to contemporary Indigenous struggles of voice in the Canadian context. Not only are proclivities towards normal assumptions in terms of the dominant aspects of Canadian society subject to consistent disturbance, but there is also an important absence of agreement concerning the direction that Indigenous struggles should take and which specific goals ought to orientate them.

5.5 Recovery

Indigenous populations in contemporary Canada are subject to clear patterns of disadvantage and individual and collective suffering. The current generation of research shows that, in comparison to Canadian norms, Indigenous individuals today are more likely to live in conditions of poverty (Adelson 2005; Wilson & Macdonald 2010), to lack adequate housing (Statistics Canada 2006), and to have fewer opportunities for suitable education and employment (Ball 2004; Usalcas 2011). Infant mortality rates are significantly higher amongst Indigenous populations and life expectancies in general are significantly lower (Statistics Canada 2006; Tjepkema et al. 2011), and Indigenous individuals are more likely to suffer from chronic health conditions (Adelson 2005; Frohlich et al. 2006; Tjepkema et al. 2011). Within many communities, suicide rates have reached near-catastrophic levels (Regan 2010; Tousignant et al. 2013; Tjepkema et al. 2011), and there are few lives that are not touched in some way by alcohol and drug misuse (Bopp et al. 2003). Indigenous individuals are much more likely to fall victim to violent crime, including homicide and domestic or family violence (Bopp et al. 2003), and comprise a disproportionate number of those in state institutions of custody or care (Dauvergne 2012; Farris-Manning & Zandstra 2003). These problems are often also exacerbated by recent rapid population growth, which has added pressure to already strained support mechanisms and fundamentally changed the demographics of many communities.

For most contemporary critics, the root of these scenes of disadvantage and suffering lies both with the history of colonial and state intervention to which Indigenous peoples have been subject, and with the ongoing practices of domination that structure present economic, political, and legal relationships between Indigenous people and the state (Alfred 2009a; Kirmayer et al. 2003). The sustained displacement and disempowerment strategies and effects of Euro-Canadian colonialism have, along with the more explicit pursuit of aggressive policies of assimilation, produced a broad range of damaging consequences for Indigenous individuals and communities. Of greatest significance in

this respect – both symbolically and in terms of the profundity of its continuing consequences – has been the residential school system. This was a grand project of social engineering (spanning from the mid-C19th until the 1970s and even 1980s in a few cases), premised on ideals of assimilation. It centred on the coerced manufacture of physical, emotional, and cultural distance between Indigenous children and their families and communities. Children at the schools were typically prevented from using their own languages and from partaking in any Indigenous cultural practices. Many were given new European names and were made to dress and behave in ways expected of European children. Contact with relatives was often severely restricted or even prevented entirely, and the children were also commonly separated from siblings and other close relatives in the same school as much as was possible (see Castellano et al. 2008). All of these suppressive actions were designed to undermine the resistance of the children to re-education into European cultural norms, and all were enforced in frequently brutal fashion. Physical, emotional, and sexual abuse were systemic features of the residential schools, and an overwhelming number of children were directly exposed to such trauma (Castellano et al. 2008; Flisfeder 2010; Stout and Kipling 2003).

As only one face of a far broader state assault against the social, economic, and cultural integrity of Indigenous communities, the damaging effects of the residential schools were dramatically exacerbated by the wider-scale scenes of social destruction in which they were embedded. Though the assimilative goals of the schools were, for the most part, a resounding failure, and children generally did not simply adopt European identities and nor did they readily integrate into dominant society in the ways imagined, the schools greatly contributed to what Leroy Little Bear has called a kind of "cultural pollution" that still affects Indigenous peoples in Canada today (quoted in Alfred 2005, p.11). The claim in this regard is that the violences enacted in serving the acute assimilative goals of Euro-Canadian governments created unprecedented scenes of personal suffering and distress at the same time that they worked to diminish the capabilities of communities to deal effectively with those experiences. Individuals leaving the schools were often caught between two worlds: still facing discrimination and marginalisation within dominant society, but yet also feeling alienated and detached from Indigenous society and often even from their own families. A great many were, accordingly, deprived of the kinds of support networks needed in order to deal with the traumas they had experienced and with the uncertainties and difficulties they now faced. The deep imbalance created by state actions in this way has carried with it a self-reinforcing impetus, replicating and embedding itself over time as the unresolved

psychological traumas of abuse and marginalisation suffered by one generation become central to the determination of social relations with the next. Families, communities, and entire peoples have been thrown into this destructive cycle under the auspices of Euro-Canadian governance, and it is this pattern of 'pollution' that is partially glimpsed through statistical accounts of Indigenous suffering today.

The challenge of how to interrupt these cycles and recover the social, economic, and cultural resources necessary to overcome suffering is at the forefront of dispute in Canada at present. A range of critics have sought to highlight important disparities between what are seen as overly reductive conceptions of health coming from the European-Settler tradition – focusing, for instance, primarily on biomedical indicators both as evidence of suffering and as signalling the way to overcome it – and more expansive or holistic conceptions of health emanating from Indigenous peoples (see Corntassel 2008). The general argument is that, whilst statistical accounts such as those historically preferred by the state can give valuable and powerful indication of the presence of Indigenous disadvantage, these approaches nevertheless insufficiently capture the depth of suffering experienced and may even work to direct energies towards inappropriate and even damaging methods of response (Adelson 2005). These kinds of concern have succeeded in gaining quite wide recognition in the contemporary era on all sides of dispute, and there has recently been a notable rise in the number of Indigenous-devised and –implemented health and social service programmes as a result (Hylton 1999). This change in norms of response was aided by the influence of RCAP in the mid-1990s and its recommendations concerning the need to move away from existing and largely paternalistic approaches to Indigenous health, and for Canadian governments to instead devise more equitable ways of dealing with continuing disadvantage and suffering in collaboration with Indigenous groups. These recommendations directly led to the establishment of a number of dedicated institutional bodies, including, perhaps most notably, the Aboriginal Healing Foundation which undertook an extensive amount of research into the diversity and complexities of contemporary Indigenous experiences of suffering, and sought to build towards more sensitive and effective recovery efforts (Kirmayer et al. 2003).

However, notwithstanding the clear improvements that these moves represent, there remains broad concern that such approaches remain too precarious and dependent on state governments. Indigenous-led programmes are often extended very little opportunity to establish themselves and prove their value, typically remaining vulnerable to changes in government policy and standing first in line to be cut when

official budgets become stretched. As a result, for many, these approaches occupy an uncertain and frequently unreliable aspect of Indigenous recovery struggles insofar as they remain dependent upon capricious state support and facilitation. It is widely held that more needs to be done to shift the balance of power away from the state and its own determinations of appropriate responses to Indigenous suffering in this regard, and further towards a strong and consistent Indigenous 'ownership' of recovery strategies and programmes (Archibald 2006) .

Arguably even more challenging, however, is a continuing prevalence of voices that contest the possibility that Indigenous suffering can ever be genuinely overcome whilst an ongoing context of domination and state sovereignty remains in effect. Taiaiake Alfred, for example, offers the view that:

> The social and health problems besetting Onkwehonwe [Indigenous peoples] are the logical result of a situation wherein people respond or adapt to unresolved colonial injustices. People in indigenous communities develop complexes of behaviour and mental attitudes that reflect their colonial situation and out flow unhealthy and destructive behaviours.
>
> (2005, p.163)

For Alfred, though there can be no doubt that histories of colonial and state violence have certainly had an enormously destructive effect on Indigenous peoples (and one that continues to be felt), ongoing suffering cannot be reduced purely to the results of historical injustices or the insensitivity of state-devised response programmes. Rather, suffering is also actively driven on a day-to-day basis, and in a wide variety of explicit and inadvertent ways, by the ongoing context of domination to which Indigenous peoples are presently subject in Canada. It is through the continuing disconnection from land and culture, and the continuing suppression of Indigenous self-determination that contemporary suffering is propelled. An adequate response, then, necessarily involves directly attending to the background context of colonial domination in which suffering continues to arise. Without this more directly political dimension to recovery efforts – looking not simply to the past but also to the present and the future of internal colonial relationships – the focus of recovery initiatives tends to fall too readily onto questions about what is required of Indigenous peoples in order to 'change' and 'adapt' to the circumstances of modern Canada, whilst too little attention is directed towards problematising and potentially unsettling the context to which Indigenous peoples are compelled to adapt in the first place. The result is, for Alfred and for others (e.g.

Corntassel 2008; 2012; Irlbacher-Fox 2009), that following this path risks making Indigenous suffering likely to continue even as, arguably, more is done to ostensibly address it.

There are, evidently, a range of important tensions apparent in the ways that Indigenous suffering is understood and addressed in Canada today. Indigenous voices forcefully cite the importance of employing their own (rather than European) conceptions of health and well-being so as to give shape to the suffering they experience, and also to structure initiatives designed to address it. In doing so, however, they frequently encounter difficulties brought about by the state's continuing position of economic and political dominance in respect of Indigenous lives, which works to render Indigenous-led responses too often vulnerable to changing attitudes and priorities in Settler governance. Difficulties such as these are further superimposed onto streams of deep concern about whether Indigenous suffering can ever be adequately addressed under the shadow of state sovereignty. Particularly for proponents of the so-termed 'traditionalist' resurgence behind much Indigenous critique in recent years, it is only by turning away from the state in more radical fashion and rejuvenating Indigenous societies according to their own values and strengths that progress in terms of suffering will be made (Alfred 2005; 2009a; Corntassel 2008; 2012). There is, as such, currently deep contestation and a good deal of uncertainty at the public level both in respect of what the specific goals of recovery efforts should be, and what is required in order to progress towards them.

5.6 Equality

Indigenous women in contemporary Canada frequently claim to be subject to patterns of displacement, disempowerment, suffering, and suppressions of voice that differ in important ways from those standardly associated with Euro-Canadian colonialism. It is claimed that the histories of external interference and influence which Indigenous peoples have been subject to, along with the profound societal disruptions that have resulted, have not been uniformly felt by all social groups. Rather, Indigenous women have tended to bear a particular and disproportionate burden of the destructive forces involved. This is so both in terms of Indigenous women's subjection to unique forms of discriminatory practices on the part of Settler governments and society, and in terms of exposure to the violent consequences of broader colonial processes. Consequently, finding themselves disadvantaged in social relations of all kinds – both in respect of non-Indigenous men and women, and Indigenous men – Indigenous women in Canada today

occupy a position of distinctive structural vulnerability, one that results in high levels of personal and collective trauma and disadvantage – witness, for instance, the patterns of domestic and family violence that pervade present social relations (Anderson 2000; Culhane 2003; Czyzewski 2011), or the high levels of missing and murdered Indigenous women (Brennan 2011), or the lower health statuses of Indigenous women in comparison to the rest of Indigenous and non-Indigenous society (Bourassa et al. 2004) – and frequently works to render their voices and interests marginal to the mainstream of public dialogues about injustice and justice (Lawrence & Anderson 2005).

Over the past few decades, a key strategy for many seeking to tackle the fact and consequences of this multi-faceted oppression has been to demonstrate how the present conditions faced by Indigenous women in Canada are in stark contrast to those associated with traditional or pre-colonial Indigenous societies. Accordingly, much energy has been devoted towards establishing the extent to which the oppressive socio-cultural gender relations that have become normalised in many contemporary Indigenous community contexts have arisen through the distorting influences (and intentions) of Euro-Canadian colonialism. In this, Indigenous women and their supporters have forcefully challenged the view that the relative dominance presently enjoyed by Indigenous men represents an authentic cultural arrangement. They have sought to trace out the ways in which the presence and actions of Euro-Canadian society and governments (along with European traders and colonists before them) have effected a deep and sustained corruption of Indigenous societal functioning around gender (Green 2007; St. Denis 2007). Much of the power of this critical movement has rested with this overriding suggestion that the violences that have been most acutely felt by, and directed towards, Indigenous women also represent violences against Indigenous peoples on a more general level, contributing towards deep disruptions and distortions of community life, patterns of disempowerment, increasing disconnections from land, and causing the loss of important aspects of culture and language for all aspects of Indigenous society, not just for women.

The basis of these arguments tends to lie with a claim that there are, in at least a historical sense, crucial differences between Indigenous socio-cultural configurations around gender and those of Europeans Settlers in North America. It is often claimed that women in traditional Indigenous societies held positions of authority, autonomy, and status in their communities that were (and in some respects *are*) far greater than those of women in European societies (Alfred 2009a; Sunseri 2011; Tobe 2000). In some Indigenous societies, for instance, it was women that had the power to select and

dismiss leaders, to admit new members to the community, and to make decisions about if and when to go to war (Alfred 2009a; Sunseri 2011). Though distinctive gender roles were normally well-established and prominent in these pre-colonial contexts, those roles were, it is commonly claimed, assigned similar economic and social value, and in many cases actually favoured women in respect of their unique life-giving and nurturing capacities (Lavell-Harvard & Lavell 2006). Although instances of abuse and violence inevitably arose within these pre-colonial social contexts, it is argued that sophisticated mechanisms were in place to deal with them in a swift and comprehensive manner, and that the values of deep respect and reciprocity that lay at the heart of Indigenous social ordering prevented the emergence of gender-based forms of oppression (Alfred 2009a).

These traditional forms of societal ordering first came under increasing pressure, however, with the arrival of European fur traders, and women's social statuses and economic autonomy has been steadily undermined ever since. Arguably, this may initially have been by largely inadvertent means as the early fur trade brought with it capital-based norms of economic structuring that, in enabling communities to easily purchase goods which women had traditionally provided, resulted in a devaluation of those skillsets and the rise of a public-private divide that increasingly consigned Indigenous women to a 'domestic' sphere (Anderson 2000; LaRocque 2007). With their economic autonomy radically undermined, women found their power and status within the community also restricted in new ways.

These incipient pressures on the particular positions of Indigenous women were, however, only multiplied as European powers began to project their political interests across the continent in more direct fashion. Guided by entrenched patriarchal assumptions and interests, the newcomers showed little regard for the nuances of power and status around gender that existed within the Indigenous societies they engaged. They typically entered into negotiations and agreements only with Indigenous men, and for the most part simply refused to acknowledge any forms of female authority. It is possible that, in the early colonial era at least, these actions were guided as much by entrenched patriarchal thinking and the need of European men to consolidate their oppressive hold over European women as anything of a more colonial nature. Andrea Smith (2005), for instance, contends that the relatively powerful position of Indigenous women in their own societies threatened to undermine claims about women's 'natural' inferiority and dependence on the protection and guidance of men – and the repercussions of this both in the 'new' world and the 'old' could be immense. Nevertheless, whether or not any such separation was apparent in early

relationships, patriarchal imperatives soon became unambiguously entwined with the colonial need to control Indigenous lives and lands. Attacking the presence and status of women within Indigenous community and cultural life would offer an effective way of weakening resistance to pressures of settlement and land acquisition. Thus, actions directed specifically towards attacking the positions of Indigenous women became a regular, even characteristic, feature of colonial and state history in Canada.

Undoubtedly, one of the most sustained and damaging examples of colonial influence in this regard has been directed through the Indian Act and the sexist provisions concerning 'status' that it has imposed on First Nations. For most of its history, to register as an 'Indian' under the Act, and thereby have access to the rights associated with that status, was "dependent on being a male Indian, the child of a male Indian, or the wife of a male Indian" (McIvor and Grismer 2010, Article 7). This meant that First Nations women marrying 'non-status' men – whether non-Indigenous or Indigenous but not registered under the Indian Act – lost their legal status as a member of a First Nation, as did their children. With this loss of status, the women and their children also lost the automatic right to live on reserves, to benefit from Band revenues and services, and were not recognised as possessing any treaty or Aboriginal rights. In contrast, men registered under the Indian Act who chose to marry non-status women retained their own status and passed on status to their spouse and their children. These discriminatory measures led to many thousands of Indigenous women being excluded from their communities and left economically, socially, and emotionally isolated.

This pattern of obvious gender discrimination persisted until 1985 when, through sustained action by Indigenous women in Canadian courts and in the international arena (see Lawrence 2003), the Indian Act was amended through Bill C-31. This altered the provisions of the Act to enable Indigenous women that had lost status through marriage to non-status men to reclaim it and for their children to be registered on Band membership lists. In the ten years following the introduction of C-31, approximately 100,000 individuals were able to regain status having been previously denied it on discriminatory grounds (Switzer 1997). Given that immediately preceding the Bill's introduction in 1985 there was a total of around 350,000 individuals registered under the Indian Act, the significance of the number reclaiming status is obvious (Lawrence 2003).

Yet, whilst some heralded this effort to tackle gendered discrimination as a positive step forward, the influx of individuals possessing status that it produced also brought serious

difficulties for communities in which financial resources and services were already often overstretched (Carey 2012; Simpson 2007). Accordingly, some Band councils – generally already built around male-dominated hierarchies – sought to address this problem by imposing new membership codes (which moves towards self-government had enabled them to do) that were in some instances deeply reminiscent of the pre-1985 Indian Act and themselves racist and sexist in their effects (Green 2007). As such, Indigenous women (and their descendants) deregistered through the discriminatory state legislative mechanisms of the past continued to find themselves marginalised from the social, economic, and political life of Indigenous communities even following the removal of those mechanisms. These enduring consequences have been exacerbated by the fact that, in actuality, Bill C-31 did not fully address the gender biases of the Act. Rather, the Act continued to be structured so as to allow the inheritance of status to travel more easily along patrilineal lines than along matrilineal ones. Even more recent efforts to overcome these discriminatory outcomes – most notably Bill C-3 which was implemented in 2011 – have fallen drastically short of tackling gender inequalities in the Act, and it continues to both cause, and leave unaddressed, patterns of injustice directed disproportionately against Indigenous women and their children (Lavoie et al. 2010; Palmater 2014; Simpson 2007).

The Indian Act sits as only one example – albeit an extremely visible, well-documented, and illustrative one – of broader processes of Canadian governance that have worked to undermine, particularly, the positions of Indigenous women. Comparable patterns of discrimination have been apparent for Métis and Inuit women such that, as a broadly defined group, Indigenous women have "historically and continually been denied many of the rights that others take for granted in [Canada], with a range of often devastating results for many of these women on an individual level" (Lavell-Harvard & Lavell 2006, p.185). These devastating results have been exacerbated by the fact that formal discriminations have only acted to support the deeper and more comprehensive distortions of Indigenous gender relations that Euro-Canadian colonialism has brought. Patterns of violence and marginalisation have emerged to become not only troubling social problems of the modern age, but defining characteristics of life for a great many Indigenous women in Canada.

These cases suggest three interrelated pathways through which the state and Settler society in Canada have operated in respect of gender in particular: (1) working to place real distance between Indigenous women and positions of power and voice within struggles against colonialism and the state, at the same time leaving them prone to

serious forms of disadvantage and patterns of lateral violence; (2) attacking (via women) the presence and political strength of Indigenous identities, cultures, and societal forms more generally, and working to undermine the capacity of Indigenous individuals to enforce claims relating to Aboriginal and treaty rights; and (3) generating a fracturing force within Indigenous political struggles, as the interests of otherwise broadly politically aligned individuals and groups are pitted against each other.

The last of these effects has been of particular resonance for Indigenous women progressing gender-based struggles in contemporary Canada. As Sharon McIvor points out in relation to the activism that led to the introduction of Bills C-31 and C-3, for example:

> [T]he use of the courts to advance women's collective and individual rights has pitted these women not only against Canadian and Aboriginal patriarchy, but also against other women in the Aboriginal community who do not share their view of women's equality.
>
> (Quoted in Huhndorf & Suzack 2010, p.6)

The contemporary context in Canada is such that efforts to address gendered forms of oppression often provoke serious consternation and seem, for some engaged perspectives at least, to jeopardise broader decolonising efforts and opportunities to recapture forms of collective freedom from state control. Consequently, even when openly driven by rationales of exposing and confronting unjust colonial distortions of Indigenous society and culture, and thereby claiming to represent an absolutely crucial aspect *of* decolonisation, efforts to tackle gendered injustices nevertheless provoke a great deal of animosity and uncertainty within Indigenous communities.

This tension is even more evident when it is not only aspects of non-Indigenous or 'White' critical thought that are used in progressing Indigenous women's struggles, but also the more concrete aspects of the state's sovereignty framework. The Canadian *Charter of Rights and Freedoms*, for instance – which constitutionally commits the state to recognising and guaranteeing fundamental human rights for all citizens – has been central to a range of recent efforts to tackle gender-based oppression. Many Indigenous women have argued that, as a minimum, the Charter must continue to apply fully to all Indigenous communities, regardless of increased levels of self-government and autonomy from the state, in order to provide a higher legal authority by which individuals can hold those governments accountable for violations of equal rights and opportunities around gender (Shaw 2007). The fact that such appeals to state

institutions seem to come perilously close to legitimising something of the sovereign position of the state, and thereby also reinforcing an underlying vulnerability to its arbitrary will, has seen them meet with considerable hostility from a variety of sections of Indigenous society. Nevertheless, few amongst those seeking to progress gender issues in this way understand them to be at all separate from, or opposed to, broader decolonising struggles; rather, they are taken to be at the very heart of those struggles, whether or not this is more widely realised or accepted. In appropriating the strength and the stability of the state in order to advance these areas of dispute – or at least to prevent them from being further marginalised from public discourse surrounding colonial forms of injustice – these strategies highlight the ambivalent nature of some of the characteristics of colonial domination in Canada today.

This deep sense of uncertainty around justice is only exacerbated by the fact that, at the same time, dispute proliferates amongst those fighting against colonial patriarchy as to whether efforts should be expressly directed towards recovering 'traditional' or pre-colonial forms of social relations, or whether they should be directed instead towards establishing new paradigms of gender relations within Indigenous communities – which may involve fashioning forms of equality that bear closer resemblances to the tone of 'Western' feminist agendas. Importantly, this is rarely encountered as a simple conflict between honouring the 'old' or 'authentic' cultural forms and values, or preferring the construction of 'new' norms fit for the 'modern' world and sensibilities (Green 2007). Rather, it is also commonly pitched as a matter of finding the correct *interpretation* of traditional values, and of determining the most appropriate expression of those values in contemporary circumstances.

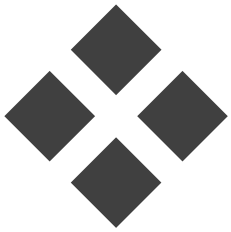
These multi-faceted struggles around issues of gender reveal the deeply contested character of each of the areas of broader Indigenous struggle occurring in Canada today. Exclusionary forces run through and behind the normal face of each of those areas of dispute and indicate the absence of fundamental agreement concerning the nature of injustices experienced and concerning the ways in which addressing or possibly overcoming them might occur. Whilst, historically, these struggles have been rather peripheralised in the Canadian context, their importance to how understandings of justice are constructed for Indigenous peoples, and in wider Canadian society, is clear.

5.7 Conclusion

Indigenous justice struggles in the contemporary Canadian context involve a wide range of challenges to normality. Efforts to assert, secure, and embody forms of presence,

control, voice, and recovery are each replete with historical and contemporary claims of injustice that disturb the assumptive foundations of Canadian public life in crucial ways. Whilst these struggles of justice are, no doubt, frequently directed through the prevailing institutional framework and dominant languages of Canadian society, and often seem even to meet with its conceptual expectations in at least some respects, these bounds are also dramatically exceeded. As Indigenous disputants seek to realise progress on aspects of discontent that can be intelligibly and convincingly raised within the existing norms of Canadian public life – and perhaps even addressed to some extent through those channels – they also maintain (often simultaneously) claims of injustice that are resoundingly ill-accounted for within those normal bounds.

This complex picture of justice is also, at all times, further complicated by the presence of crucial differences amongst Indigenous peoples and social groups in terms of experiences of injustice, and in terms of understandings of what is required in order to overcome them. Euro-Canadian colonialism has impacted in different ways on different groups and there is, accordingly, no fundamental agreement about the shape of justice and injustice within the 'Indigenous' bracket. Consequently, just as normal assumptions in dominant society are frequently disturbed through the context of contemporary Indigenous struggles, so too are comparable kinds of normal assumptions *within* those struggles. The scenes of contestation that dominate the contemporary internal colonial context of Canada thus display a highly complex and broad degree of disagreement about the fundamental measure and direction of justice.



Conclusion to Part 1

The preceding chapters have been directed towards introducing and clarifying the reflexive perspective on justice, and subsequently bringing it into conversation with the contemporary internal colonial contexts of Australia and Canada. The aim has been to show how the reflexive perspective's sensitivity to complex entanglements of meta-order and first-order forms of contestation can provide a way of constructing sophisticated diagnostic pictures of public sphere disputes relating to colonialism within these contexts, and why we might, as such, benefit from looking upon them as abnormal bodies of dispute in the way that Fraser describes.

In both the Australian and the Canadian contexts, the contemporary struggles of Indigenous peoples reveal a profound lack of stable and uncontroversial agreement around the basic conceptual parameters of justice. Efforts to unveil and challenge the historical and contemporary forces that give rise to experiences of injustice for Indigenous individuals, communities, and indeed entire peoples frequently involve a disturbance of the basic normal assumptions about legitimacy and justice that prevail at the public level. These struggles provide insight into the exclusionary character of presently dominant conventions of thought and practice at the public level, and draw attention to the injurious consequences of this exclusion for many Indigenous actors. Although the particular experiences of injustice and aspirations for justice that Indigenous disputants claim no doubt differ – and sometimes to quite significant extent – they nevertheless commonly trouble the normal bounds of justice in Australia and Canada. Further, and as we have also seen, these scenes of complexity pertain not simply to a meeting between 'Indigenous' and 'non-Indigenous' positions, but also

manifest simultaneously along many different relational axes, as diverse peoples and social groups bring different sets of experiences, understandings, ways of knowing and being, and aspirations to internal colonial disputes. Tendencies towards assuming simple agreement about any fundamental features of justice\injustice are thus continually challenged and undermined in practice from multiple (and frequently overlapping) directions.

This diagnostic exploration has provided a clearer picture of the kind of contestation that currently pervades the internal colonial contexts of Australia and Canada. Such a picture corresponds with only one side of Fraser's work on abnormal justice, however. Indeed, arguably more pronounced is the desire to find a way to respond to this encounter with abnormality in a productive manner. It is in this 'reconstructive' counterpart to the diagnostic side of Fraser's work that some of the most interesting and challenging aspects of her thought are to be found, and it is here that arguments for the normative value of the reflexive perspective are progressed. Following Fraser along this reconstructive journey is therefore vital if we are to move beyond a purely diagnostic view of the present abnormality of internal colonial disputes in Australia and Canada, and are to begin to understand how we might respond to that complexity in more sensitive and more positive ways. Accordingly, it is towards this task that we now turn in Part 2 of the thesis.

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Part 2

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6

Responding to abnormality

6.1 Introduction

The question of how to respond constructively to a situation of abnormal justice is one that Fraser has devoted considerable energy towards. This reconstructive accompaniment to her diagnostic work reflects a long-standing commitment to pursuing a mode of critical social theorising that carries a genuine potential for practical application, and it is a side of Fraser's thinking that has been developed across a number of writings over the course of the two decades or so in particular (Fraser 1995; 1997; 2008; 2010; Fraser and Honneth 2003; Fraser and Nicholson 1999). As such, the quite sharply focused reconstructive strategy set out in 'Abnormal Justice' is in fact hewn from a considerably larger body of work, and the normative arguments it offers have grown through a range of sustained critical conversations between Fraser and her contemporaries. These dialogues have enabled Fraser to construct and clarify her vision as to an appropriate way of responding to abnormality in contemporary disputes of justice, not only in an ethical and philosophical sense but also, crucially, in a practical one.

In this chapter, my aim is to introduce and examine this reconstructive side of Fraser's work, and to reflect on its value in dealing with contexts of abnormal justice. I do so, however, from a perspective that directly attends to the distinctive kinds of 'abnormalities' that we have encountered through a closer analysis of internal colonial disputes in Australia and Canada. I contend that those bodies of dispute not only help to further elucidate certain aspects of Fraser's recommendations, but also provide a

particularly strong test for them – having the potential to trouble the normative strategy that she constructs in a number of important ways.

The principal common base to these challenges can be simply stated, and it is something that must (as we shall see) hold a particular and striking resonance with Fraser's approach: the fact is that Indigenous voices, values, worldviews, and practices of knowledge production have not held positions of substantial (let alone equal) influence in the construction of the normative principles that Fraser asks us to endorse. In other words, Fraser's theorising, and the normative approach she argues for, emanates and speaks from a position that is supported by, and is in some ways representative of, the very relations of ('Western') domination against which Indigenous struggles are so often pitched. Her position is, as such, inescapably also a politically situated and constructed one. This must, I will argue, be more explicitly understood and openly acknowledged if Fraser's normative position is to fulfil the kind of function that it intends.

Accordingly, by revisiting the original nodal schema of 'what', 'who', and 'how' through which Fraser organises her reconstructive recommendations in 'Abnormal Justice', I attempt to show how each must be understood in more careful terms when held in light of internal colonial disputes, and that none can be *simply* endorsed as a result. However, my intention is not to contest the value of the individual recommendations that Fraser puts forward – far from it in fact. Instead, the point is to make a case for understanding each of these normative components from a slightly nuanced direction: primarily for their potential to encourage a destabilising force from 'within' a position of structural domination and privilege as they engage contexts of abnormal justice. Thus, whilst I seek to show that the approach Fraser sets out is not entirely absolved of potential criticism borne in concerns of Western imperialism, the continued colonisation of knowledge-worlds, and an exclusory domination of the terms of public discourse – criticisms which are shared by many Indigenous disputants in internal colonial contexts today – I will nevertheless argue that it offers resources capable of establishing a space through which such problems of justice can be accommodated in a more (though, perhaps, not entirely) non-imperialistic manner.

Adopting a reflexive justice approach, I suggest, can help to better agitate a consistent 'self-problematising' energy within the dominant positions from which it is drawn and to which it speaks most directly, and in doing so might provide a channel through which efforts to expose, challenge, and transform the social conditions behind that dominance can be fruitfully directed.

6.2 In response to the 'what' of justice

The first problem of abnormality to which Fraser turns her reconstructive attentions is the presence of disagreement and uncertainty about the appropriate 'substance' measured by relations of justice\injustice – that is, the 'what' of justice. In circumstances where the public sphere is characterised by competing or even conflicting ideas concerning which fundamental dimensions of social relations give rise to experiences of injustice, and there is, therefore, disagreement about the exact terms and concepts by which senses of injury can be successfully articulated, Fraser contends that any suitable mode of response must be prepared to combine "a multidimensional social ontology with normative monism" (2008, p.403).

The first part of Fraser's argument in this regard relates to the need to practice "hermeneutical charity" in respect of nonstandard views as to the appropriate substance of justice (2008, p.404). Importantly, this openness needs to stretch not only to the array of different understandings that are already active within contemporary disputes, but also beyond this to be always open to the possibility of novel articulations of justice and injustice emerging. This receptiveness is compelled, in no small part, by the fact that the three competing genres of justice that Fraser finds operating within contemporary disputes – namely redistribution, recognition, and representation – have gained the traction that they presently enjoy through processes of social struggle whereby disputants have toiled to describe new or obscured species of injustice, and to thereby direct public attentions towards deficiencies in existing grammars. This would seem to suggest, then, that new grammars of justice are constructed and disclosed historically as actors seek to carve out public space for experiences that are concealed through the established grammar(s) alone. As a result, for Fraser, a suitable approach to theorising should at least be open to the possible incomprehensiveness of the grammars presently established and must accord all irregular claims of injustice with a "presumption of intelligibility and potential validity" (2008, p.404). This initial hospitality is essential if we are to avoid simply foreclosing the possibility that, as dissatisfied actors test and challenge the bounds of established grammars or explicitly claim experiences of injustice that operate outside of those bounds, a hitherto unseen dimension of justice is in fact in the process of being revealed.

At the same time, however, receptiveness towards a (potential or actual) multiplicity of views of the appropriate substance of justice is not, in itself, enough. If we are to be in a position to test nonconforming claims and come to see if they do (or might) pertain to

previously unseen forms of injustice, we also require a reliable way of evaluating across any such multiplicity. That is to say, we require a stable normative principle that can be applied to all species of injustice so as to offer opportunity to assess the respective merits of emerging or nonstandard grammars. It is, for Fraser, by holding onto a common normative principle in this way – one that is able to function evenly across all possible measures of justice\injustice – that we stand the best chance of seeing whether innovative or unfamiliar articulations actually do render previously obscured forms of injustice more visible, and whether the injustices they suggest are rooted in dimensions of social ordering that have until now been somehow overlooked by, or at least ill-accounted for within, the prevailing grammar(s) of justice.

The principle that Fraser puts forward to fulfil this role is one that has long occupied a central place in her thinking and has, accordingly, been a recurrent feature of her writing over the past two decades: the *principle of participatory parity*. In basic terms, "[a]ccording to this principle, justice requires social arrangements that permit all to participate as peers in social life" (Fraser 2008, p.405).

However, although this principle has been a very regular feature of Fraser's work for some time, it is worth noting that its usage in the context of discussion around abnormal justice is subtly different to most other appearances. In its more generally apparent guise, as Thompson and Armstrong (2009) note, Fraser's conception of participatory parity has represented (and been widely received as) an explicitly egalitarian ideal (also Thompson 2009). This is clearly illustrated in Fraser's iteration that the principle of participatory parity "presupposes the equal moral worth of human beings" (Fraser 2001, p.30) and is oriented towards conditions of equal autonomy between actors, entailing "the real freedom to participate on a par with others in social life" (Fraser 2003, p.231n). Much of the uptake of the principle has consequently focused specifically on what demands the idea of participatory parity actually places on the social ordering of societies, and how it might be realistically implemented (see Thompson and Armstrong 2009; Thompson 2009; Zurn 2003).

In 'Abnormal Justice', however, Fraser leans more upon another, what we could perhaps call a more *structural*, component of the principle of participatory parity. To be sure, the egalitarian commitment does not ever really wane, but, in tailoring the principle to dealing with uncertainty around the 'what' of justice, another aspect of it is foregrounded in the justification that Fraser gives. This aspect is rooted in the understanding that all matters of justice, whatever their more precise form, must

fundamentally describe something of the *social relations* between actors. That is to say, for an injury or discontent to actually be convincingly invoked as a matter of *justice* – rather than, say, simply as an instance of misfortune – it must be connected to some kind of disparity in the standing of some social actors in relation to other social actors. Were the experience not to have roots in this social dimension, the harm described and felt would not be intelligible as a matter of justice *per se* since it would seem to infer no remedial obligations in respect of other social actors – there would be no onus on 'balancing the scales', as it were. Consequently, Fraser wants to say that what we are really talking about when we employ the notion of justice in any particular context, and in relation to any particular measured 'substance', is some kind of (contested) imbalance in the social order, where so ever located.

In its application to abnormal bodies of dispute, the principle of participatory parity is directed towards exactly this property of justice since it seems to hold a degree of independence from other contested or contestable properties. In all cases, it would seem, injustice marks the experience of being denied the opportunity to participate on a par with others in some regard, as full partners in an identified domain of social interaction. For Fraser, all grammars of justice deserve to be understood on these terms in at least a basic sense: all represent ways of bringing claimed disparities of social participation to prominence, and of drawing attention to the precise fields of social relations in which obstacles to fully equal participation are encountered.

This usage of the principle of participatory parity more directly reflects its apparent capacities for a kind of universal communication about the meaning of justice over and above its explicit egalitarian prescriptions for social ordering. Inspired by contexts in which multiple social ontologies and views on justice pervade the public sphere and drive uncertainty about what justice actually *is*, the principle of participatory parity offers to establish a single "discursive space" that is receptive to, and reliably able to accommodate, such multiplicity and enable evaluative discussions of justice\injustice to be conducted across it (Fraser 2008, p.407).

There is clearly good reason to be interested in Fraser's argument for centralising the principle of participatory parity in this way when attending to internal colonial bodies of dispute. As we have witnessed in respect of the Australian and Canadian contexts disputes here frequently involve the articulation of irregular conceptions of justice\injustice, often seriously challenging the normalised grammars and assumptions within liberal democratic societies (and in the international sphere beyond them).

Whilst, no doubt, some of the injuries and dissatisfactions conveyed through these disputes do pertain to forms of material and status inequality and political marginalisation that are, to varying extents, cognisable (and perhaps even addressable) within presently dominant grammars of justice, rarely are they entirely reducible to these familiar forms. Rather, Indigenous claims of injustice also often seem to go beyond the bounds of normalised grammars and infer forms of injury and violence that are connected to otherwise ill-accounted for realms of social relations and aspects of societal ordering.

Yet the precise way in which such deviations and non-conformances actually offer or demand something different to the existing dominant grammars of justice is not always easy to determine. As 'irregularities' rather than fully consistent, pre-configured, and objectively intelligible alternative grammars of justice, these nonstandard articulations of injustices are embroiled in the difficult process of trying to map new networks of meaning onto the public discursive terrain. Insofar as the principle of participatory parity might offer a more receptive layer to that terrain and thus provide a way of evaluating whether nonstandard claims arising from Indigenous struggles, first, actually do reliably pertain to the domain of justice, and, second, whether they describe hitherto ill-accounted for dimensions of social relations (or should be taken to further deepen and nuance our understanding of already accounted for dimensions), it potentially offers a valuable resource through which Indigenous disputants can begin to better establish their claims in public disputes. What is more, this focus on social parity similarly provides a way of raising experiences of injustice that seem to be operating also 'within' the broader flow of Indigenous struggles. It allows a ready appreciation of how the experiences of Indigenous women (and other social groups) might lead to distinctive, though not necessarily unconnected, forms of injustice, and provides a way of holding these in more productive evaluative conjunction with other claims of injustice.

However, as promising as participatory parity appears in this respect, there is also reason to be cautious in how readily we capitulate to its claims to a kind of universal normative validity. For, it is important to consider the full implications of Indigenous discontents concerning marginalisation and oppression within the intellectual landscapes that underpin the presently dominant conceptions of justice\injustice within internal colonial contexts, and how the reconstructive approach that Fraser is developing here, and the justifications concerning participatory parity that she puts forward, might also themselves be involved in the webs of social relations that

Indigenous disputants challenge. Specifically, it must be considered that Fraser's is an approach that, whilst clearly critical and emancipatory in its intentions, is nonetheless rooted primarily in the traditions of 'Western' political philosophy. In so being, it is also a voice that speaks from a position of definite structural privilege in respect of Indigenous peoples. If we are to better understand the suitability of Fraser's reconstructive recommendations to the particular abnormalities of internal colonial contexts, it is necessary to be prepared to investigate the politicality of the position from which she is theorising, and to think about the potential effects it may have.

One initial cause for hesitation here must accompany observation of the entrenched imbalances in constructive power present within internal colonial contexts, and the possibility that the extent of the conditioning force that this imposes on all subsequent public disputes of justice is not fully appreciated in the approach Fraser sets out.

One of the most challenging and prominent branches of recent Indigenous critique has been the claim that the contemporary public discursive field through which contests of justice must be directed is overwhelmingly dominated by Eurocentric languages, value-systems, philosophical histories, and worldviews; the counterpart dimensions of Indigenous horizons of knowing and being are, in contrast, more or less excluded. As it stands, then, the situation is such that, in order to publicly raise claims of injustice, Indigenous disputants are under a consistent requirement to couch their discontents and senses of injury in ways that are at least minimally suited to the contours of an exclusionary discursive terrain, even as they attempt to bring nonstandard conceptions of justice to bear upon it. That is to say, if they are to hold any realistic hope of bringing otherwise ill-accounted for or ignored experiences of injustice to public prominence, Indigenous disputants are compelled to engage in discursive practices which are themselves conditioned at their outset by a situation of deep disparity. In this sense, as Dale Turner puts it, Indigenous disputants are subject to an ingrained "asymmetry" insomuch as they are under pressure to utilise the "normative language of the dominant culture to ultimately defend world views that are embedded in completely different normative frameworks" (2006, p.81). Of course, if successful, engagement on these terms can contribute towards the destabilisation or modification of the dominant understanding of justice\injustice, and perhaps even some sort of measure towards balancing the offending domain(s) of social relations. Notwithstanding this, the more pertinent point is that the onus continually falls onto Indigenous disputants to prove the plausibility of the injustices they face – both standard and nonstandard – *to* the dominant public, and to do so using languages and norms by which *that* public can begin

to understand those claims and assess their validity. The opposite arrangement, however, never arises.

It remains questionable as to what extent a discursive space configured by the principle of participatory parity genuinely interrupts this dynamic. There is a sense that, even in attempting to prise open the exclusionary character of the dominant conception of justice and encourage a new receptiveness to Indigenous experiences and cognitions of injustice, the discursive space established here is still flawed to some extent because it is necessarily superimposed over a more fundamental and broader context of domination and disparity. The kind of participation made possible even within a discursive sphere of participatory parity is not, as such, for those possessing marginal or excluded normative languages, ever really conducted 'on their own terms'. Whilst the context of conversation may be one in which Indigenous voices can become *more* successful in exposing and challenging the limitations of the dominant conception of justice, it is considerably less assured that this process significantly alters the more fundamental power asymmetries that currently underlie and condition disputes of justice in internal colonial contexts. Insofar as it remains that the burden of proof always falls onto Indigenous disputants in this way, a major aspect of the injustice they claim seems to go ill-addressed.

At this point, we might quite reasonably interject in defence of the principle of participatory parity and argue that this does not represent anything like a genuine challenge to its claim to a kind of universal normative validity – in fact, it really only suggests that we need to be prepared to pursue participatory parity even more fervently and deeply than previously thought. Though, we might admit, the task may be more complex than was previously assumed, there is no reason to suppose that the practical complexity of its implementation seriously jeopardises the principle's universal normative force. Since the crux of the complaint continues to revolve around a damaging disparity in social relations – albeit dimensions of social relations that appear more difficult to accurately capture in investigation and tackle in practice – participatory parity's functioning as a generally applicable normative standard is not undermined; we just need to be more committed and inventive in applying it.

The implications of this side of Indigenous critique, however, run deeper than this response appreciates. For, what is fundamentally in question here is the way in which such constructions of apparently universally valid normative principles might contribute towards what Edward Said has called the "flexible positional superiority" of

Western thought and ways of knowing (2003 [1978], p.7). Said employs this concept in attempting to bring into view the way in which Western ways of knowing are organised so as to constantly (re)iterate and (re)affirm their occupation of the intellectual centre-ground by demonstrating their apparent superiority in relation to 'non-Western' bodies of thought. For Said, securing this functioning superiority of Western intellectual horizons has always required the capacity to be flexible, adaptive in incorporating new or different ideas in order to situate the 'Westerner' in "a whole series of possible relationships…without ever losing him [sic] the relative upper hand" in respect of the 'non-Westerner' (2003, p.7). Though the specific focus in Said's account is on the history of Western constructions of, and persuasions towards, the Orient, this mode of critique is one that also holds considerable resonance for Indigenous peoples in internal colonial contexts. There too, the constant centralising impetus of European knowledges, and the intimate connection between this intellectual realm and the maintenance of colonial power relations on a broader scale, has been identified and criticised.

Linda Tuhiwai Smith (2012), for example, calls into question the common Western presumption to produce forms of universal knowledge. This claim to universality, she argues, implies that ideas coming from or through the Western tradition are "available to all and not really 'owned' by anyone", but that the observable effect is to "constantly [reaffirm] the West's view of itself as the centre of legitimate knowledge, the arbiter of what counts as knowledge and the source of 'civilized' knowledge" (Smith 2012, p.66). James Youngblood Henderson sees this Eurocentrism as part of the "cognitive legacy" of colonialism and, closely echoing Said, contends that it is "ever changing in its creativity to justify the oppression and domination of contemporary Indigenous peoples" (2000, p.58). Henderson argues that 'progress' under the hold of this paradigm seems to singularly involve the spread of innovative or emancipatory ideas *from* European traditions and voices, and their application to contexts in which the dominant bodies of thought have been exposed as exclusionary or oppressive in some manner. Yet, the fact that such 'progressive' moments generally take as the primary reference and justification for their present validity the encountered shortcomings of the history of only *European* thought, and how, in doing so, they act to recentralise that history of thought despite its seemingly violent composition and application, is not adequately interrogated. The result is a constant reaffirmation of the knowledge produced in and from Western philosophical (re)sources at the cognitive centre of contemporary social contexts, even as the history of that domination is brought into view and criticised. The superior relative position of European normative languages and histories of thought vis-

à-vis non-European equivalents is not seriously disturbed, and neither, as a result, is the basic institutional fact of colonial domination.

In light of this aspect of Indigenous and postcolonial critique, it is important to consider more carefully what is at stake in arguing for the universal normative validity of the principle of participatory parity. Given that the ('Western') intellectual position from which this argument is forwarded most directly is also that which Indigenous disputants implicate in experiences of injustice, and that pretensions towards universality come in for direct criticism in this regard, there is cause to be wary of endorsing it without qualification. If one effect of assuming the universality of the principle of participatory parity is to (even unwittingly) re-inscribe the positional superiority of Western thought, albeit in a form that is presented as being more consistent with an expanded understanding of justice, it would seem to do little to address the kinds of injury brought into view and claimed by Indigenous disputants in this regard.

It is important to acknowledge the fact that we are in danger of falling into a kind of circularity here. It would seem that (in the terms through which I have presented it at least) the fundamental challenge brought to bear on the participatory parity principle even here – and, thus, the potential experience of injustice we are to understand as connected to it – is cognisable in a way that actually seems to *affirm* the universal validity of that principle. Insofar as the challenge in question can be understood to relate to, and stem from, a consistent structural disparity in social relations around knowledge production, again, it appears to inadvertently support rather than undermine the claim of participatory parity as a universal normative standard in relation to all species of injustice. As such, even in seeking to challenge that principle, we inevitably find ourselves arguing again on its behalf.

However, that participatory parity seems capable of providing consistent answers to questions posed to it principally from within the dominant normative language of which it is a part should not be entirely surprising. The more relevant point is that as long as this remains an exclusively self-referential process occurring only *within* the normative language of domination (as experienced by Indigenous peoples), its claims to universal validity cannot simply be taken for granted. Reliance on such a monological defence is precarious at best, and there is a pressing need to see how participatory parity stands up to questioning from alternative normative horizons. Thus, if we are to properly heed Fraser's argument for the need for hermeneutical charity in respect of nonstandard views of injustice, we would do well to avoid foreclosing the possibility that an

otherwise ill-accounted for species of injustice stands behind this vein of criticism, and that it is potentially one that cannot be adequately accounted for through any means that refuses or neglects to look outside of the dominant normative tradition.

It is not my intention to overstate the reach of this kind of criticism. Clearly, on just about any interpretation, the principle of participatory parity represents a hugely promising resource in contending with abnormalities around the question of the substance of justice. It displays a deep connection with the concept of justice (rather than simply with any specific *conception* of justice) and so offers to assist a level of meaningful communication and evaluation across a heterogeneity of views as to the appropriate 'what' of justice. As such, participatory parity seems to provide a way of better bringing otherwise unseen or under-acknowledged harms and injuries to public attentions.

Nevertheless, there is reason to resist simply accepting its claim to *universal* normative validity. We would do well to keep in mind (and in discussion) the political factors and implications associated with the centralising impulse that participatory parity seems to carry. Whether participatory parity does or does not represent a sufficiently universal normative standard is something that can, surely, if it is to abide by its own standards, only be realised in practice as the disparities that are (or are at least claimed to be) presently constitutive of it are destabilised and overcome, and when the intellectual construction and defence of that principle is conducted in a way that is convincingly absent of such disparity. Without this, any defence of the principle seems vulnerable to claims that it is internally incoherent – resting on the bracketing of a domain of social relations to which it is not prepared to entertain claims of disparity or to apply the standards of the principle argued for – and thus less suited to abnormal bodies of dispute than it pretends.

Perhaps unexpectedly, however, it is precisely in encountering this present limitation to participatory parity as a normative principle that we stand to realise its greatest value in respect of internal colonial bodies of dispute. For, since the case for engaging in a more diversified normative exploration of the principle of participatory parity is one that can be constructed relatively coherently and convincingly from *within* the normative bounds prescribed by that principle – even as it seems to also point towards a normative world outside of those bounds – it carries a certain self-problematising force that can be put to constructive use. That is to say, if, within the dominant normative language, we find reason to endorse participatory parity as an attractive evaluative standard in respect of

disagreement and uncertainty about the 'what' of justice, in the same stroke we also find reason to put the implied universality of that principle to the test in practice. It is in this capacity to generate an 'inward' critical force – and to thereby draw the structures of privilege supporting it directly into questions of justice – *at the same time* that it offers an improved way of articulating nonstandard views of justice in public disputes, that the best justification for pursuing participatory parity in the context of internal colonial bodies of dispute might be found. Insofar as the principle of participatory parity might, in the process of enabling disputants to better communicate and contest senses of injustice of different kinds, also contribute to a productive questioning of the centrality that the dominant normative language also holds, then it also offers to call into question the social relations that work to sustain that privileged position. Thus, whilst certainly not automatically providing a discursive space that is fully evacuated of the potential for injustice of this kind, the principle of participatory parity is at least more capable of bringing its own (potentially) exclusionary composition into the terms of dispute, rather than silently reinforcing the positional superiority of Western thought.

To be clear, then, the argument in support of the principle of participatory parity I put forward here is a qualified one: it is sympathetic towards, but does not simply accept, its claim to normative universality. Rather, the position I am arguing for seeks precisely to harness (in the process of putting it to work as an effective normative resource for abnormal disputes) that principle's capacity to expose and work on the contingent aspects of all such claims to universality. I suggest, therefore, that we should not prematurely yield entirely to the normative force of participatory parity, nor overstretch our understanding of its emancipatory potential without good reason – but that we should nevertheless embrace it as a promising starting point. In doing so, it might be possible to construct discursive spaces that are more adept at accommodating abnormal bodies of dispute whilst not falsely inferring to represent a *fully* neutral ground or a ground devoid of intrinsic political consequences. Instead, in allowing for the continual problematisation of that ground whilst also maintaining a resolute effectiveness to give shape to, and intervene in, ongoing experiences of injustice of all kinds, the principle of participatory parity offers a good *beginning* to a suitable response to abnormal disputes in internal colonial contexts; it does not – or at least does not *necessarily* – mark the culmination of such a response. Projected from within a position of contested dominance onto an abnormal field of dispute, one of the principle of participatory parity's most valuable properties is, in fact, its capacity to potentially open up that position of dominance to contestation and transformation without prematurely

sacrificing the capacity for effective and meaningful action to combat injustice in the present.

6.3 In response to the 'who' of justice

Whilst the normative standard of participatory parity promises (with qualification) to establish a discursive space that is more accommodating of an irregularity of views around the appropriate substance of justice, it does not directly confront the issue of how the public occupying that space is itself constituted. Yet, in abnormal contexts, in addition to encountering contestation surrounding what it is that justice should be taken to measure, we also meet with conflicting ideas about which voices, interests, and needs ought to count in such considerations, and, thus, what the correct shape of the justice-community in question should be. Whereas under the former grip of the Westphalian paradigm it was generally assumed that the community of subjects relevant to any consideration of justice coincided more or less exactly with the citizenry of the territorial state, contemporary disputes are marked by a range of different views as to the correct bounding of subjects. Often, disputants seek not simply (or at least not only) to redraw Westphalian-esque borders around territorially constituted communities of subjects, but also sometimes to invoke altogether different, 'trans-territorial' and 'post-territorial' conceptions of community. A suitable mode of theorising for abnormal times must, accordingly, Fraser contends, be capable of also responding to this absorption of the frame into the terms of dispute and offer a way of dealing with an absence of agreement concerning who should count as fellow subjects of justice.

Fraser's recommendation for dealing with this further dimension of abnormality is to reckon with both its positive and negative sides, prescribing an approach that is at once "reflexive and determinative" (2008, p.407). She argues that if we are to be sufficiently open and attentive to the idea that injustices of *misframing* are, in principle, possible, then we must be prepared to investigate the means by which any justice-frame currently possessing political traction is constituted, and consider novel ideas and claims as to alternative configurations. The mode of reflexivity we are to pursue in this respect rests on the view that justice-frames are always actually contingent (rather than natural, essential, or fixed) and that all are, therefore, in principle capable of embodying a form of injustice through the particular borders of inclusion and exclusion that they impose. Thus, importantly, whilst it is certainly the case that the Westphalian-territorial frame marks the primary focus of contestation in this regard in the present era, and

appears as the most pressing problem of the frame for the bulk of contemporary disputants, our reflexive attention to the contingency of frames should not begin and end here. Rather, the critical orientation we hold must be more consistent, and "whatever configuration of frames emerges as provisionally justified must itself be open to future revision, as new claims of exclusion emerge to challenge that configuration" (2010, p.44). This is vital if we are to avoid simply foreclosing claims of injustice connected to the framing of disputes under any future, alternative political arrangements.

Reflexivity is, however, by itself, not enough. Openness to potential injustices of misframing is one thing, but without a means of determining when such injustices occur in practice, reflexivity is unproductive. Along with valorising contestation of frames, therefore, a suitable mode of theorising for abnormal times must also offer a genuine potential for effective guidance and action in the terms of public disputes. Given the negative side of abnormality and the potential for the uncertainty it brings to become manifest as impotence, there is need for a determinative principle through which competing positions as to the correct framing of justice might be clarified, their respective merits evaluated, and a provisional picture drawn as to the 'just' shape of the frame in any particular instance.

The principle that Fraser suggests for this role is the *all-subjected principle*. This she sets out in distinction from three competing approaches that currently hold sway in public sphere theory, namely: (1) the *membership principle*, which proposes to resolve disputes over framing through appeal to "criteria of belonging" and tends to assume that "what turns a collection of individuals into fellow subjects of justice is shared citizenship or shared nationality" (2008, p.410); (2) the *humanism principle*, which proposes to resolve disputes over the 'who' by "appealing to criteria of personhood" and the notion that fellow subjects of justice should be determined according to "common possession of defining features of humanity" (2009, p.290); and (3) the *all-affected principle*, which proposes to collectivise individuals into justice-publics on the basis of their "co-imbrication in a web of causal relationships" (2008, p.411). For somewhat different reasons, and despite each holding certain merits, Fraser finds that none of these approaches is fitting of abnormal disputes.

For Fraser, the membership principle, whilst offering to provide resolutions that are solidly grounded in present horizons of intelligibility and practicability, too readily shields existing borders of inclusion/exclusion from critical scrutiny and is therefore

insufficiently open to the possibility of misframing. Effectively equating binding obligations of justice with shared membership in a polity, this approach "maintains that any defensible account of the 'who' of justice must rest on real connections among those comprising it" (Fraser 2009, p.289), but limits the scope of such connections to co-belonging within a bounded political community (whether defined through citizenship or nationality). Consequently, despite resonating favourably with the institutional realities and (some) widely held collective identifications of the present era, in practice the membership principle serves to protect established frames and is at a loss to accommodate framing problems associated with 'trans-territorial' and 'post-territorial' issues of justice. In short, Fraser finds the membership principle to be a little light on reflexivity and a little heavy on determinism for it to be able to offer a suitable avenue for theorising in abnormal times.

The humanist principle, on the other hand, operates from the opposite direction. Inherently driven to explode any arbitrary bounding of subjects based on notions of political membership, this principle resists simply conforming to ideas about the proper 'who' of justice that are rooted in present hegemonic norms. Nevertheless, for Fraser, the humanist principle must also be considered ill-fitting of abnormal contexts because is neither genuinely reflexive nor capable of providing the determinative capacities required by actual contexts of dispute. Fraser contends that the appeal to shared humanity "operates at such a high level of abstraction that it can discern nothing of moral significance in any particular configuration" of social relations, and, thus, "[a]dopting a one-size-fits-all frame of global humanity, it forecloses the possibility that different issues require different frames or scales of justice" (2009, p.290). Consequently, the question of the frame is always decided in advance, being referred back to an a priori universal frame, and "the capacity for reflexive questioning of frames is thereby surrendered" (Fraser 2009, p.290). Again, the correct balance between reflexivity and determinism is not struck.

The all-affected principle, finally, offers a different tack to the previous two principles. Whereas both membership and humanism effectively attempt to settle the question of the frame in advance (albeit in contrasting ways), and are therefore insufficiently reflexive to abnormal contestation, this approach centres on an appeal to social relations of causal interdependence as constituting fellow subjects of justice. Thus, on this view, "[w]hoever is causally affected by a given action nexus has standing as a subject of justice in relation to it" (Fraser 2009, p.291), and the appropriate preliminary shape of any 'who' of justice ought to be understood in these terms. However, whilst

resistant to any fixation on political membership and also responsive to the importance of active social relations, the all-affected principle nevertheless also proves unsuited to abnormal contexts. Principally, the appeal to affectedness stumbles because an account of *morally relevant* causal relations cannot be objectively ascertained. The question as to which kinds and degrees of affectedness ought to warrant moral concern requires, Fraser contends, a "complex combination of normative reflection, historical interpretation and social theorizing", and this is a process that is always "inherently dialogical and political" (2009, p.292). Consequently, Fraser fears that the all-affected principle is prone to descending into the "reductio ad absurdum" situation wherein it can be empirically adduced that just about everyone is affected by just about everything in some sense, and it becomes impossible to arrive at any stable and workable frames of justice whatsoever as a result (2008, p.411). The descent back into a one-size-fits-all globalism again seems an all too realistic possibility, and although we may have reached something more in line with the levels of reflexivity we require through this approach, a reliable property of determinism still eludes us.

In weighing the respective merits and deficiencies of these competing approaches, Fraser is led to suggest the alternative *all-subjected principle* as a more fitting option for abnormal times. In Fraser's words:

> On this view, what turns a collection of people into fellow subjects of justice is neither shared citizenship or nationality, nor common possession of abstract personhood, nor the sheer fact of causal interdependence, but rather their joint subjection to a structure of governance, which sets the ground rules that govern their interaction. For any such governance structure, the all-subjected principle matches the scope of moral concern to that of subjection.
>
> (2008, p.411)

In agreement with membership and all-affectedness, the emphasis is again here placed on the importance of active social relations as determining fellow subjects of justice. Yet, the view of precisely *which* social relationships have moral relevance treads a middle-ground between the two. Simple causal interdependence is rejected as insufficiently robust to be able to infer binding obligations of justice (i.e. against the all-affected principle), and the relevant domain of social relations must instead, for Fraser, be decidedly more 'political' in nature. Such political relationships, however, should not be equated simply with a shared belonging to a nation or a state (i.e. against the membership principle). Rather, such relationships exist wherever actors are jointly

subject to a structure or institution that sets rules governing their interactions, whether or not those actors are considered to be formal members under that structure of governance or fall within its explicit jurisdiction. Here, then, the rigidity of the membership principle is more equitably pitted against the indeterminacy of the all-affected principle, and the resultant is presented as a usable critical standard for provisionally assessing the question of who should be considered fellow moral subjects of justice, and who should therefore count in terms of any particular dispute.

What are we to make of this argument for the all-subjected principle in light of the particular kinds of challenge arising in internal colonial bodies of dispute? Whilst, overall, there does not seem to be any obvious reason as to why the all-subjected principle might be unsuited to these contexts, there is, I think, a particular issue that requires clarification. It needs to be properly emphasised from the outset that any recourse to the all-subjected principle is (as Fraser repeatedly notes) only a *provisional* method of determining who ought to count in respect of a given dispute of justice. All-subjectedness does not unequivocally settle disagreement or eliminate conflicting perspectives on the proper frame of justice, but does provide a normatively rich means of determining when some actors that have good moral claims to be included within a body of dispute and formally contesting social arrangements are unfairly prevented from doing so. The power of the all-subjected principle, then, lies primarily in its capacity to give a preliminary determinative indication of whether any unjust *exclusion* from a justice-community is apparent. However, this is importantly distinct from determining whether a frame is itself resolutely 'just'. The principle merely offers to tell us whether there is likely to be any *in*justice noticeable in the way that the relevant community of subjects engaged in a dispute is drawn. Attending to internal colonial disputes will help to firm up the distinction I am trying to make here.

As we have witnessed, one of the definitive points of contention for Indigenous disputants in Australia and Canada is their coerced subjection to governance structures arising from, or imposed through, European colonialism and state-building processes. Whilst, over the course of the past 150 years or so, Indigenous peoples have had to engage in difficult struggles to overcome exclusion from the communities of subjects able to participate fully in disputes of justice within these structural contexts – as is evidenced, for instance, by long struggles for recognition of full citizenship rights and enfranchisement, amongst others – they have also continually resisted all attempts to recast their political statuses as anything like 'cultural' or 'internal' minorities of the state. The thrust behind this resistance to simple incorporation has, in large part, been

to bring a constant challenge to bear against the central position that imposed governance structures play in the webs of social relations that are relevant to contemporary Indigenous being. In this sense, whilst there has historically been considerable injustice perpetuated through the *exclusion* of Indigenous peoples from justice-communities in which they ought to be (according to the all-subjected principle) included, actually realising a condition of *inclusion* within the justice-communities associated with relevant governance structures has not, for most Indigenous disputants, come close to resolving discontents associated with framing. On the contrary, the crux of much ongoing contestation continues to lie precisely with the very fact that those governance structures *are* in a position to command a justice-community around them that ought, normatively speaking, to include Indigenous peoples. The historical emergence of those structures of governance has been the result of grossly inequitable social arrangements, and their contemporary centrality is owed to complex histories of violence and coercion, wherein the authority and power of Indigenous governance structures has been consistently undermined or suppressed.

To suppose, then, that redrawing boundaries around the governance structures that now dominate the political landscape so as to include Indigenous peoples that have been coercively rendered subject to their rules in fact marks a 'just' frame would be a hugely contentious leap. It does not account for why it is that justice-communities must constellate around Settler governance structures rather than Indigenous governance structures for instance, nor does it respond to the senses of injustice accompanying this fact. Moreover, especially when drawing boundaries around communities of subjects in this way seems prone to situate Indigenous interests as de facto minority interests in respect of *all* those subject to that governance structure (which must, of course, include all present members of Settler societies *and* all others subject to the rules of its governance structures), then this seems perilously close to simply replicating the very political dynamics that have, to-date, proven so resistant to the most fundamental aspects of Indigenous contestation, and potentially even situates them as even more marginal concerns within the expanded community of subjects that is developed. Any notion that the resulting frame is perfectly just, even though its boundaries of inclusion and exclusion have been justly drawn, therefore stands on rather tenuous ground.

What the case of internal colonial contexts then brings into view in particular clarity, I think, is that the work that the all-subjected principle is actually doing is more modest than could easily be inferred if due care deserts us. As a normative principle, all-subjectedness provides us with a good indication of the proper community of moral

subjects *in relation to a given governance structure*, and helps us to see if there are moments of exclusion occurring which require remedial attention and an accompanying expansion of ideas about the relevant community of subjects. What it does not give us, however, is a way of inferring whether a frame is itself resolutely just, even in a preliminary sense.

In the case of Indigenous disputants in internal colonial contexts, it is, of course, effectively ridiculous to suggest that they should *not* have rights to be included in justice-publics associated with the structures of governance to which they are presently subject, even where (and if) the very presence of those structures (and not just their functioning) is considered unjust. We can say, therefore, that any justice public constituted about those structures of governance ought rightly to include Indigenous peoples as full moral subjects. But this is a far cry from saying that simply because Indigenous peoples are included the frame itself must be considered just. Rather, the historical contingency of which structures of governance enjoy community-demanding roles should also be borne in mind, as should the limitations of the all-subjected principle in attending to this feature of contestation around issues of framing.

I do not suppose that there is necessarily anything in Fraser's appeal to the all-subjected principle that conflicts with the distinction I have suggested here – indeed, the principle is one that I hope to lend support to. The intention of highlighting this issue has been only to encourage resistance to any creeping assumption that the all-subjected principle is likely to produce frames of an uncontentious kind. The point I hope to make is simply that we should proceed with caution in how we receive Fraser's assertion that "[a]n issue is justly framed if and only if everyone subjected to the governance structure(s) that regulate the relevant swath(s) of social interaction is accorded equal consideration" (2008, p.412). The conditions of being 'justly framed' and of representing a 'just frame' should not be too readily conflated. Though, perhaps, in principle, this connection is possible, it is surely something that can only itself be determined through a process of broader dialogue and is not a task that that the all-subjected principle is equipped to fulfil automatically or independently. Bearing this limitation in mind is an important part of remembering the commitment to reflexivity that a mode of theorising for abnormal times requires, and helps us to resist any impulse towards becoming overly, and perhaps damagingly, deterministic. The argument is not, then, 'against' the all-subjected principle, but, again, an attempt to qualify its potential role in a mode of theorising suited, particularly, to the abnormalities of internal colonial contexts.

6.4 In response to the 'how' of justice

The all-subjected principle represents a promising normative resource for determining whether a dispute arising around a particular governance structure has been justly framed, and specifically as to whether any actors that have a moral claim for inclusion are currently being denied it. As soon as we reach this point, however, the question immediately begs itself as to precisely *how* that principle ought to be applied in practice. For, on what basis, and by whom, is the meaning of 'subjectedness' to be determined? Through what sort of procedural route could different claims to subjectedness be upheld or rejected and the proper shape of the relevant justice-community drawn, at least in a preliminary sense? Without also offering a satisfying answer to the 'how' of justice, the previous responses to the 'what' and the 'who' ring somewhat hollow.

The now familiar refrain of reckoning with both the positive and negative sides of abnormality again underpins Fraser's response here. She contends that in order to be sufficiently open to different and nonstandard views about how the all-subjected principle ought to be applied, a suitable mode of theorising for abnormal times needs to guard against two normal pitfalls.

First, it must refuse the "hegemonic presumption" that the appropriate grammar of the 'how' can simply be determined by powerful states or private elites (Fraser 2008, p.413). The increased contestation of the Westphalian frame within and through contemporary disputes stands as a simultaneous, if often inadvertent, demand for "the creation of new, non-hegemonic procedures for handling disputes about the framing of justice in abnormal times" (Fraser 2008, p.414). That is, since the frame is itself, here, so frequently enveloped within the question of justice, any fair process for resolving contestation around who counts cannot simply be referred back to forms of authority and guidance attached to the existing hegemonic frame. This would, of course, merely serve to re-inscribe a fundamental aspect of that which is under dispute.

Second, and for similar reasons, any recourse to what Fraser terms the "scientistic presumption" – i.e. that normal social science is in possession of uncontroversial facts that can be used to determine the 'correct' shape of subjection – must also be rejected (2008, p.414). The contestation surrounding frames cannot be reduced to "simple questions of empirical fact, as the historical interpretations, social theories, and normative assumptions that necessarily underlie factual claims are themselves in dispute" (Fraser 2008, p.414). The danger is, then, that what hopes to present itself as a disinterested mode of assessment and reasoning is actually unavoidably guided by

contingent and contestable assumptions, and the result is again to reinforce an unjustifiable closure around the reach of political contestation.

Though operating along markedly different trajectories, Fraser finds that what unites the hegemonic and the scientistic presumptive positions is a shared premise that disputes over the issue of subjectedness can be settled "monologically, by appeal to an authority (in one case power, in the other science) that is not accountable to the discursive give-and-take of political debate" (2008, p.414). Each proposes to deal with uncertainty around the 'who' of justice by applying the all-subjected principle from the vantage of a specific privileged position. Effectively answering the question of 'how' in a way independent of the field of contestation in which it arises, such strategies are a poor match for the mode of theorising required by abnormal times because they lack the levels of reflexivity it demands. The only fitting response, Fraser argues, is to validate contestation by engaging all disputes of 'how' as political conflicts that can only be legitimately tackled through processes of fair and inclusive dialogue between competing positions.

Simply citing the need for a dialogical response, however, is insufficient. For, although a culture of dialogical exchange situated within the formations of civil society is surely of fundamental importance to such disputes, in isolation it is not enough. Absent a stable structure by which the representativeness and openness of discursive processes can be checked, and without a means by which binding (if provisional) political outcomes can emerge, we are left with a deeply unsatisfactory situation, and one that holds little promise of facilitating effective action to address injustice.

Consequently, Fraser cites a need for a formal institutional track to stand in complementary partnership with the civil society track. Dynamically receptive and accountable to debates within civil society, the institutional track must nevertheless be structured more solidly around principles of democratic legitimacy in its procedures and in its representative form. It must, furthermore, be global in composition and reach if it is to be capable of adjudicating over the full range of possible framing disputes that might arise.

Fraser does not press on any further in prescribing the details of this institutional track, citing the fact that the overall conceptual structure is the more important consideration for the context of her present argument, and acknowledging that there will obviously be considerably more work to be done to give form to such an institutional track in

practice. The key idea that Fraser wants us to take away, though, is that any suitable response to abnormality about the 'how' of justice must be at once *dialogical* and *institutional* if it is to be in a position to validate contestation *and* produce binding outcomes – neither of which can be neglected under conditions of abnormal justice.

Fraser's recommendations in this vein certainly appear consistent with the underlying commitments of the reflexive approach and its reconstructive development in respect of participatory parity and all-subjectedness. Given the context of abnormality as it appears at the conceptual level, and as it manifests in bodies of dispute such as those witnessed in the Australian and Canadian internal colonial contexts, accommodating the fact and possibility of contestation whilst also maintaining the capacity to intervene in disputes and deliver binding outcomes is absolutely vital. Any failure in the first part of this equation will inevitably embody an unbearable hostility towards the expression of meta-injustices; any failure in the second is sure to leave experiences of injustice of all kinds inadequately addressed in many instances. As such, beating a path between the two is the only suitable option, as difficult as that path may sometimes seem. In this sense, establishing some sort of formal institutional context that is open to inhabitation by broader processes of abnormal dialogue occurring within civil society – and thereby allowing meaningful action against injustice to continue despite the irresolution of uncertainty within the public realm – is vitally important.

There might, however, be reason to question the way in which Fraser envisions this institutional track given the structure of the contemporary political world, and particularly given the architecture of ongoing disputes in internal colonial contexts. Specifically, we might wonder whether fixing the institutional gaze at the global level in the way Fraser suggests is actually the most beneficial strategy, and whether looking towards alternative, more 'local' institutional possibilities might also be a worthwhile, or even a *necessary*, endeavour.

In order to think about this more carefully, let us first be clear on Fraser's reason for citing the global level as the appropriate one for the dialogical institutions she has in mind. This is an entirely natural progression according to the inclusionary logic that underpins her position since, insofar as it conceptually includes *all* actors and interests, the 'global' is the only frame that is immune to contests of misframing. Leaving no space for exclusion, the global frame is invulnerable to the kinds of charges to which all other frames are (or should be) inherently susceptible – specifically, that they exclude some actors who have moral claims for inclusion – and this builds a sense of stability and

legitimacy into the vantage point that it represents. Thus, always unimplicated in the kinds of injustice to which it seeks to respond, but also situated so as to rightfully respond to all contests since all are subject to its governance, the global represents the natural location for any institution capable of playing an adjudicating role in contests over subjectedness pertaining to localised or at least 'other-than-global' frames.

The potential difficulty with this approach, however, becomes evident when we turn our attentions towards matters of implementation. This is because, logically, an all-encompassing global institution of the kind Fraser prescribes cannot emerge 'from above', through the will of some external, general, or 'global' authority, since it is precisely *this* authority that the institution seeks to constitute. If this were to be the case, we would be confronted with something of a paradox of founding: the global institutional track (as the ultimate source of legitimate authority in respect of framing disputes) would need to be constituted by virtue of its own authority, and we would require the pre-existence of that which is to be established. This leads towards the inescapable realisation that if it is ever to exist in practice, any global institution of the kind that Fraser has in mind must be founded through a more organic form of creation – necessarily emanating from the judgements and commitments of prior and 'less-than-global' sources of power and authority.

This is an important issue for consideration because it implies that for anything resembling the picture Fraser sketches to be realised, the conditions for it must be laid down in advance from *within* the bounds of existing frames and their associated institutional structures. Any viable institutional form at the global level will, at least in its initial design and implementation, have to depend upon the resources and active support of the governance structures over which it is intended to eventually assume some sort of authority. Importantly, this is not just an issue of practical complexity. For, even supposing that a global dialogical institution could be designed and set up through some sort of independent means in terms of intellectual labour and economic resources, what reason is there to actually suppose that existing institutional governance structures and frames would be responsive to its decisions? If we can assume that brute coercion is neither a feasible nor normatively desirable way of ensuring such responsiveness, it would seem that the only compelling reason for an existing non-global governance structure to yield to external demands that its boundaries of inclusion be altered would be if it had already *internalised* to some considerable extent the possibility of its own arbitrariness. By this I mean not only that a majority of individuals within that frame (including those seeking to endorse it) are cogently aware

of the possibility that it is unjustly shaped, but also that the institutional frameworks supporting their social relations are structured in light of it. Without this core receptiveness to at least the possibility of arbitrariness, there would seem to be no motivation to create, endorse, or yield to the decisions of any global institution geared towards addressing framing disputes.

The upshot is that, if we concur, as I think we should, with Fraser that an appropriate response to contestation over the 'how' of justice must be both dialogical and institutional in character, perhaps the most efficacious direction for efforts of this kind, at least initially, is towards reimagining the institutional structures of *existing* frames. Only by increasing the receptiveness and accountability to abnormal dialogue within these existing dominant institutional frameworks can the process of loosening the grip of hegemonic frames begin. And it is only when this grip has been loosened enough for it to be generally accepted that that current justice-community formations represent contingent, contestable, and potentially unjust boundings of interests and identities that the need for higher-level institutions to adjudicate over disputes will be agreed and pursued.

If this is an accurate (or at least a plausible) account, then there is reason to think that we might have an additional institutional target. Although a global body such as that Fraser has in mind may continue to represent the broader and, in some sense, the primary objective, pursuing forms of institution structured in mind of accommodating abnormal dialogical exchanges *at local levels* might also represent a valuable strategy. Of course, such institutions will necessarily fail to satisfy the framing problem that guides Fraser's thinking insomuch as they cannot provide a position that is itself immune to contests of misframing, and they should not be mistaken as an adequate substitute for the kind of global level institution that she argues for. Nevertheless, insofar as the establishment of any global body is likely to be dependent upon incremental changes in receptiveness at less-than-global levels, it may be that more localised abnormal dialogical institutions are in fact a necessary *pre-condition* for any such emergence at the global level.

Of course, there is a sense in which this move could be seen to simply re-invoke the problem it addresses. If, as would appear to be the case, the governance structures of existing hegemonic frames are generally *not* sufficiently receptive or responsive to possibilities of misframing, what would compel the establishment of abnormal-dialogical institutions 'internally', at the 'local' level, in the first place? Would sensitivity

to the possibility of self-arbitrariness not have already had to be internalised in this case too? And if so, why should the local level even matter when the ideational grounds for the global institutional track have already been cleared?

These questions are probably accurate and challenging enough to warrant a rejection of the idea that the construction of institutions specifically created with the intention of destabilising frames is a realistic possibility (especially in the immediate future and within the bound of existing hegemonic frames). They do not, however, eclipse the possibility that grounds for institutionalised forms of reflexive dialogue might be found or cultivated within existing frames and governance structures. Rather, in pointing out the re-inscription of the same problem at the global and non-global levels in respect of commitments to actually *create* formal institutional arenas, the inference that might be garnered is that, if we hope to be in a position to ever establish explicitly reflexive-dialogical institutions at *any* level, we must be prepared to again shift our initial institutional focus. If the resources and commitments necessary for a future that is more institutionally structured around reflexivity must, in any event, be agitated 'outwards' from within the grip of present hegemonic contexts, a beneficial approach is to consider the potential for social transformation towards reflexivity that exists around the norms, values, principles, and self-understandings that currently hold most sway in those frames. It is in explicitly locating and utilising resources that hold a meaningful degree of consonance with the reflexive position and the forms of dialogue it demands that the most realistic opportunity for its realisation on a wider institutional scale might be found.

It is important to be clear that – in a similar vein to the recommendations in respect of 'what' and 'who' – my intention here is not to dispute Fraser's point that a global institution of the sort outlined makes the most sense in terms of working through disputes of the 'how' of justice. Rather, by highlighting the issue of implementation, the idea has been to add a temporal element to that picture, drawing attentions back from the future point that Fraser envisions and refocusing instead on what is required in order to generate or steer social momentum in that direction from the present. This should not, then, be confused with any claim that the goals of the reflexive perspective in this respect can be adequately synthesised 'within' hegemonic contexts; it is, rather, a claim that any future of a more generally reflexive kind is bound to emerge out of the present and the features of political life that constitute it. Pragmatism thus demands that we attend to the route by which any such journey can or will occur. Accordingly, thinking about other sorts of institutional opportunities that presently exist, or can

realistically be constructed, within contemporary political contexts is also of fundamental importance, and should rightly rest alongside grander critical commitments.

6.5 Conclusion

Each of Fraser's recommendations as to how we might respond constructively to an encounter with abnormal justice deserves to be understood in more careful terms when considered, particularly, in light of internal colonial bodies of dispute. Though we need not, I have argued, withhold support for the principles that Fraser sets out for contending with abnormality around the 'what' and the 'who' of justice – respectively, through the *principle of participatory parity* and the *all-subjected principle* – we ought to exercise more caution in the way that we understand them. Particularly, I suggest, we must resist falling into any kind of premature overconfidence about their emancipatory power and universal normative validity, since each possesses important limitations and contestable elements. Openly acknowledging these contestable features is vital if we are to take a commitment to reflexivity seriously, and are to try to abide by its demands consistently. The contemporary struggles of Indigenous peoples in internal colonial contexts provide a way of bringing these limitations into view in particularly germane fashion.

Further, in respect of Fraser's recommendations for contending with disagreement around the 'how' of justice, I have sought to refocus attentions away from the 'end-point' of a satisfactorily reflexive-dialogical institutional future, and push them instead towards thinking about what making strides in that direction necessarily entails in the present. Arguing that any progress must come from 'within' the bounds of a non-reflexive present, I have suggested that a valuable – perhaps even essential – endeavour is to look for features of present political contexts that lend themselves to, or can be appropriated for, the accommodation of more reflexive dialogue about justice. Whilst it should be acknowledged that such arenas will allow only an imperfect replication of the kind of reflexive dialogue deemed necessary in order to better deal with abnormal contexts of dispute, they might nevertheless prove an invaluable tool in helping to cultivate the grounds for more satisfactory institutional futures.

Arguably, the most resounding feature of the overall approach that Fraser sets out in response to scenes of abnormality in public sphere disputes is the desire to work on meta-order disagreements through a process of deeper and more equitable dialogical engagement, rather than settle them simply through appeal to a new and more

sophisticated 'theory' of justice. For Fraser, it is precisely through the dialogues of social actors possessing divergent, even conflicting, ideas about justice that ways of better dealing with experiences of meta- *and* first-order injustice – and thereby reckoning with both the positive and negative sides of abnormality – can be found.

This gives the approach that Fraser offers a distinctly, and deeply, democratic feel. In the next chapter, I seek to explore this more explicit detail. Developing an account of what I shall refer to as *reflexive democracy* – that is, the characteristic form of democratic politics that emerges from Fraser's reflexive perspective – I seek to demonstrate the potential value it holds in terms of internal colonial contexts, and, specifically, how it can begin to alter the grounds of ongoing public dispute along more equitable lines.

7

Moving towards reflexive democracy

7.1 Introduction

As we have seen, the principal motivation behind Fraser's reconstructive approach is to bring disagreements about the fundamental meaning, shape, and application of justice into a more responsive and equitable process of public dialogue. Each of the individual recommendations that she sets out focuses in on a particular aspect of what is required in order to construct the basic grounds of such a dialogue, and to thereby ensure that all persuasions or proclivities towards normality are prevented from unduly stifling possibilities for public contestation.

It is in this sense that Fraser's reconstructive approach deserves to be understood as a deeply democratic one. The reflexive perspective she sketches understands the basic features of justice to be everywhere contingent and of political composition, and therefore ought everywhere to be drawn into a form of consistent democratic exploration. The principles of participatory parity and all-subjectedness stand as important normative guides in this endeavour, providing stable evaluative standards that can operate across a diversity of claims as to the appropriate substance and framing of justice, but which nevertheless remain structurally open to their own meaning and application being contested and modified in the process. It is through this conflictual but constructive interplay of deterministic and reflexive forces that, for Fraser, we stand to discover ways of better processing meta-order disputes whilst not sacrificing the capacity to act with meaning and conviction in order to address experiences of injustice

in real contexts. The character of democratic politics that emerges thus explicitly understands responsibilities of democratic responsiveness to pertain equally, and simultaneously, to the meta- and first-order planes of contestation, and sees any failure in either domain as damaging and contrary to the requirements of justice.

In this final chapter, my aim is to explore the democratic implications of the reflexive perspective in greater depth and to present a case as to its value for internal colonial bodies of dispute in the Australian and Canadian contexts. Showing that the mode of democratic politics that the reflexive perspective leads us towards carries an irrepressible drive towards *radical openness* (through which the contingency of all foundations or 'normalities' is exposed and rendered vulnerable to democratic demands) whilst remaining always also wedded to an insistence on performing moments of *provisional closure* (which make decisive and lasting real-world action possible), I argue that a reflexive democracy can provide for a controlled – though, in principle, unbounded – exploration, destabilisation, and potential transformation of abnormally contested public spheres. It thus offers to establish a ground that is more receptive and sympathetic to the complex multi-order bodies of dispute that presently pervade internal colonial contexts. Whilst not providing immediate or assured relief from scenes of contestation and disagreement about justice – nor, indeed, from continuing experiences of *in*justice – reflexive democracy nevertheless works to reconfigure, in important and productive ways, the politico-discursive terrain on which such disputes take place. Leaving the substantive future of social relationships and political ordering open to the authorship of actors inhabiting internal colonial spaces, reflexive democracy sets its sights on the processes by which that authorship takes place. The contribution that it offers to make is, as such, both limited yet far-reaching – being always orientated towards the *journey* rather than the *destination* of justice.

7.2 Clarifying reflexive democracy

The reflexive position, as we have seen, entails a strong aversion to any notion of resolving the tension between normality and abnormality. Driven simultaneously by world-disclosing and action-coordinating motivations, the reflexive position suggests an open-ended view of democratic politics – one in which the need to generate conditions whereby all social norms, assumptions, and apparent consensuses can be opened-up to further public examination (and potentially transformation) is aligned with a need to also utilise those contestable foundations in order to act convincingly to address instances of harm, suffering, and injustice.

On initial reflection, this reflexive view of democratic politics (and of the social world more generally) may seem to be a rather difficult one to endorse for some contemporary perspectives. The implication that all forms of social agreement – extending from very local kinds of institutional arrangements down to the values and norms that play a much more fundamental role in the ordering of contemporary social relations and identities – ought to be prevented from attaining absolute stability, and that all should receive exposure to potentially destabilising forces, seems to carry rather profound, and perhaps even rather troubling, connotations.

Some observers, for instance, might worry that this view of the social world, in which stability is permanently pitted against instability, is of a very particular cultural character. Accordingly, this might raise concerns that the worldview necessary in order to endorse a reflexive democratic politics is derived most directly from an intellectual tradition that is certainly not of universal composition, yet which imposes itself in a kind of universalistic manner by inferring that all genuinely 'justice-seeking' and 'democratic' subjects ought to conform to its demands. In addition to such concerns of cultural bias, the reflexive perspective may also trouble those approaching from a number of explicitly democratic directions. Particularly, some democrats are likely to be concerned that pursuing a politics of the kind suggested by the reflexive position actually risks undermining the very values and principles that make concepts like democracy and justice so meaningful and influential in contemporary social contexts – that it might, as it were, unwittingly render democratic institutions and communities vulnerable to the enemies of democracy – with potentially catastrophic consequences. In yet a further direction, it might plausibly be objected that basing a form of democratic politics on a view of the social world in which no absolute stability is possible (let alone desirable) inevitably ends up descending into incoherence. Here, it might be argued, even the basic justification for pursuing a form of democratic politics risks becoming lost if we do not ring fence at least this ground from the reach of legitimate contestation, and, insofar as it fails to do so, the theory must eventually collapse in on itself having hollowed out the normative ground beneath it.

Each of these potential sources of doubt represents an important challenge to reflexive democracy, and each taps into a matter that ought to be taken seriously. Though obviously stemming from different sets of concerns and motivations, however, these reservations can all be dealt with by pursuing a further clarification of reflexive democracy's character. One way that we can do this is by engaging in a closer conversation with veins of thought generally grouped together under the banner of

agonistic democracy. Agonistic thought has found growing influence in democratic theory of late, being drawn from a range of different sources and applied in a variety of different ways, and has been central to some of the discipline's most interesting recent debates. What makes a conversation with this burgeoning body of work on agonistic democracy so important and useful for our present purposes is that there is a close family resemblance between agonistic and reflexive democratic perspectives. Most vividly, like the reflexive position, agonistic perspectives insist on the idea that social and political life is not directed towards any kind of final resolution or telos, either in real or in ideal terms, but is instead an open-ended form of struggle and contest to which all social beings are inescapably fated. Accordingly, for agonists, democratic politics ought to be understood and arranged along these lines. Accompanying such important moments of consonance, however, there are also some important dissonances between the reflexive and agonist positions. Attending both to these similarities and differences can provide us with the clarification needed to respond to the potential reservations noted above and, crucially, to also help us to develop a clearer understanding of the value that a reflexive mode of democratic politics can hold for abnormal contexts in general, and internal colonial contexts in particular.

A necessary beginning to this conversation is to take a closer look at the way in which the outlooks of the reflexive and (what I hesitantly refer to as) 'typical' agonist perspectives are constructed. For, whilst ostensibly similar, on closer inspection it becomes evident that these positions are in fact derived from subtly different sets of commitments, and carry different implications for democratic politics as a result.

Let us take direction from the agonistic democratic position. For most contemporary proponents in this ilk, politics possesses an essentially tragic quality that stems in some way or another from an understanding of an ineliminable pluralism to the social world. This agonistic notion of pluralism is, however, critically different from that usually associated with a range of other contemporary pluralists. This is because, for the agonistic perspective, pluralism cannot be regarded merely as a 'fact' of the social world (as Rawls (1993), for instance, would have it), even an inevitable one. Rather, on the agonistic way of thinking, pluralism must instead stand as something more like an "axiological principle" (Mouffe 2005, p.19). That is to say, from this direction, pluralism cannot properly be conceived *just* as an (inevitable) empirical feature of the social world, but must also be understood as ontologically constitutive of it. The difference here is an important one, since agonists often claim that the result of failing to acknowledge the constitutive nature of pluralism results in an embedded hostility to

"genuine pluralism" (Honig 1993, p.130), with a discreet but destructive violence towards important forms of difference coming as a likely consequence.

Clearly, this claim requires careful clarification, particularly since, in the hands of its most capable and committed proponents at least – and here we ought to look to Rawls and Habermas for example – what can be cited as 'empiricist' or 'non-constitutive' conceptions of pluralism have served to generate theories of justice and democracy that are expressly structured around a political mediation across difference and disagreement, rather than any obvious or direct hostility to it. Yet, for agonists, even these most sensitive of accounts inevitably fails to eradicate violence towards difference to the extent that it hopes (or claims). Principally, this is because, in concentrating most of all on the encountered *presence* of pluralism, these approaches fail to properly appreciate its *origins*. For agonists, in contrast, it is precisely the origins of pluralism that ought to bear most heavily on our political thoughts; it is also through attending to origins that we stand to find the most advantageous ways of dealing democratically with our empirical encounters with plurality and disagreement in the real world.

The usual basis for this agonistic view is the idea that pluralism flows inevitably from the political association of actors who share an impulse to make meaning of a world that does not (and cannot) itself objectively provide it (Wingenbach 2011). Often drawing quite extensively on Wittgensteinian and Derridean philosophical insights, supporters of this conception of pluralism generally take as their starting point the idea that the meaning of any concept (and, by extension, identity) is borne out only in relations of difference with other concepts (and identities). As such, a subject derives its sense of individuality and distinctiveness through continual measures of sameness and difference with constellations of other subjectivities, each of which is also engaged in its own process of perpetual (re)constitution. Since no social concept and no social identity resides external to this field of constant relational determination, none can be seen to possess an ultimate essence that could anchor the system as a whole and thereby provide it with a form of absolute rigidity, however minimal or localised. There is, as a consequence, what is generally referred to as an 'impossibility of closure' around all meaning and identity: because novel interpretation, misunderstanding, and miscommunication always stand as features of the possible, there can be no finality to the emergence of potential subjective positions.

It is important to also underline that this "protean character of life" (Connolly 2008, p.319) holds meaning not only in an *inter*subjective sense (i.e. in a plurality of subjects),

but also in an *intra*subjective sense (i.e. the *pluralisation* of the self) (Connolly 1995). As contests of (mis)communication and (re)interpretation of meanings and concepts take place, the identities, values, and interests of actors connected to them are prone to consistent reconstitution through life. As a result, a definitive representational capturing of the self is always out of reach. As Connolly puts it, individuals are themselves never simply *being* but always also *becoming*, and we are therefore driven to realise that plurality can never be constrained even by the number of subjects to whom it pertains. The agonistic view, then, understands pluralism to be always immanent to the political, ineradicable and irreducible (Mouffe 2005).

The consequence of approaching the question of pluralism from a direction concerned primarily with the moment of presence (as empiricists do) rather than the moment of origin (as agonists do) is that it tends too easily towards a political ideal of 'non-pluralism'. That is to say, there is a natural inclination from this direction to conceive of politics as a means for eliminating disagreement (if not, perhaps, difference *per se*) from social life. Whilst this way of thinking may be imbued with an immediate intuitive appeal, from the constitutive view of pluralism it appears fundamentally misguided because it requires us to accept, even if only as a very distant or weak ideal, the notion that there could be social life *without* pluralism. The result of accepting this basic ideal, agonistic critics claim, is that our real-world political endeavours also become directed towards a non-pluralistic future in some fashion, even if that future is infinitely deferred in practical terms. The effect is a channelling of the energies of political life towards forms of closure that must always embody a kind of violence towards pluralism: since pluralism is irreducible and ineradicable in social life – being, in fact, fundamentally constitutive of it – any illusion of its absence must be the result of some kind of force, coercion, or concealment. For agonists, accordingly, democratic politics should be oriented primarily towards troubling moments of closure rather than towards attempting to realise them. It is from this sensitivity to the ontopolitical nature of pluralism that the agonistic sense of tragedy in social life crystallises.

Clearly, there are some important threads of consonance between this agonistic account of pluralism and the approach to democratic politics drawn from a reflexive perspective on justice. But, what is of greater instructive value in terms of clarifying the character of reflexive democracy is a subtle yet important dissonance between them. The reflexive position, both as Fraser presents it and as I have sought to develop it across the preceding chapters, is not structured around a strong ontological claim to constitutive pluralism; rather, it is a perspective that is centred more on what we might call a

pragmatic assumption of the interminability of pluralism. It would be wrong to contend that this assumption does not arise from some kind of ontological commitment, but, crucially, the place from which it does arise sits on a slightly different plane to that of constitutive pluralism. It relates, instead, to a recognition of the ineliminable exclusionary *potential* of 'normality'. Fundamentally, the reflexive position entails a rejection of the idea that normality, in the form of stable agreement or a determinant set of norms, rules, or principles, can ever be assumed absolved of the requirement for further democratic *justification*. This is an importantly distinct – and arguably slightly weaker – ontological claim than that usually made by proponents of constitutive pluralism (though it is also basically compatible with such approaches). The point is, however, that whilst the interminable compulsion for further democratic politics that emerges from the reflexive perspective holds considerable affinity with the agonistic view derived from an understanding of constitutive pluralism, it does not involve any essential demand that we endorse that perspective. Rather, it asks only (if I can say 'only' here) that we find within our own perspective reason to doubt that any kind of settlement that would purport (or seem) to 'resolve' any domain of political life be trusted absolutely, and still less that it be rendered in any way immune to further dialogical examination.

It does not follow from this, it is important to note, that all moments of stability or agreement in public life ought to be automatically presumed the product of damaging and unjust exclusion – in short, that *because* contingency, *then* injustice – only that there is an insoluble reason for (re)absorbing these moments of normality always back into the justificatory process. Through this justificatory process, those features of the social world may be disturbed, transformed, or rejected entirely, or they might be affirmed anew. The overriding point is that the reflexive perspective seeks to keep this possibility of dialogical inquiry forever open and active in political life.

This shift in focus is a valuable one in responding to reservations about the possible cultural biases of a reflexive democratic politics. Once we realise that the tragic composition of political life projected from the reflexive direction actually boils down to the claim that social relationships of all kinds must be forever open to the possibility of transformation (or renewed justification for continuity) by the parties actually within those relationships, the radically open-ended character of democratic politics it puts forward becomes considerably more palatable and carries with it a broader normative appeal. This makes the reflexive democratic position potentially more open to inhabitation by a range of different conceptions of pluralism, both as they pertain to

other strands of democratic thought in the Western tradition and as they are constructed in alternative or 'non-Western' intellectual traditions and social orders. Consequently, the shift to (i) a *pragmatic assumption of interminable pluralism* based on (ii) an ontological commitment to the *ineliminable exclusionary potential of closure* is a base for democratic politics that is sympathetic to, and accommodating of, constitutive views of pluralism whilst not being entirely coterminous with them. It thus provides an ethical base for a real-world democratic politics that is less demanding and more broadly accessible to a range of positions with an interest in contesting or defending the social relationships to which they are privy.

The conversation with agonistic democratic thought can also be extended to deal with reservations concerning the possibility that a reflexive democratic politics might fail to provide grounds from which to address injustice, harm, and suffering – and might actually in fact even have the opposite effect. This reservation was connected to the idea that encouraging conflict and contestation in public life such that it potentially extends to encompass even the most fundamental ideas, values, and norms of contemporary societies, risks undermining the normative power that ideas like democracy and justice presently possess. Without some means of protecting at least these crucial foundations, the concern goes, we may simply be letting the enemies of democracy and justice in through the back door, so to speak.

This is an argument, broadly speaking, that advocates of agonistic democratic thought have also had to contend with. Here, the matter has perhaps arisen most prominently in a register of 'conflict' wherein the question has been asked of agonists as to whether, in stressing the value of disagreement and contestation in public life, they must ultimately sacrifice the ability to coherently exclude any form of conflict whatsoever from democratic politics. As such, the need to more precisely qualify the character and form of 'valuable conflict' on the agonistic perspective, and to reaffirm the necessity of particular forms of exclusion in an agonistic democracy, has proven to be a recurring challenge.

Amongst the most explicit of contemporary agonists in addressing this matter has been Chantal Mouffe (2005). Influenced by a Schmittian conception of 'the political', Mouffe contends that human social relations are, indeed, characterised at a fundamental level by an ever-present potential for the eruption of conflict and disagreement. According to Mouffe, however, this potential for conflict can become manifest in two contrasting forms. It can arise, first, in *antagonistic* form, understood as a type of conflict that "takes

place between enemies, that is, persons who have no common symbolic space" (2005, p.14). Antagonistic relations signal, however, a resoundingly destructive form of conflict, carrying the threat of physical violence and mutual annihilation and thus the catastrophic rupture of present and future social relations. As such, for Mouffe, the purpose of democratic politics must always be precisely to guard against the eruption (or continuation) of antagonistic relations by instead creating the grounds for a second type of conflict – *agonistic* conflict. Rather than being destructive in form, this type of conflict is *constructive* because it occurs not between enemies but between adversaries or "friendly enemies" as Mouffe herself puts it, "persons who are friends because they share a common symbolic space but also enemies because they want to organize this common symbolic space in a different way" (2005, p.14). It is through this type of agonistic conflictual politics that adversaries stand to work out (and on) not only their differences but also their similarities. Moreover, it is through this engagement that the pluralistic differences and similarities that comprise a community are constituted and reconstituted, and the terms of the association of its members worked out politically (though never in any finality).

It is worth pointing out that some agonists (as well as many critics of agonism) are somewhat uneasy with the emphasis that Mouffe in particular places on the issue of conflict. Nevertheless, the distinction she is concerned to draw between destructive and constructive forms of conflict is undoubtedly a useful one, and the sentiment running through it is one that is shared in some manner by all contemporary agonistic democrats. Certainly, agonistic perspectives emphasise that conflict and disagreement are valuable to political life – signalling its health rather than its sickness – and this sets them apart from many other veins of democratic thought which orientate themselves around ideals of consensus and agreement. Nevertheless, this endorsement of conflict stretches only insofar as it serves to *fuel* democratic politics; it does not include forms of conflict that threaten to impede the potential for subjects to come together as 'friendly enemies'.

This is similarly the case with the reflexive democratic position. The need to resist any lapse into complacency about the existence of a 'non-exclusionary normal' compels the reflexive position to posit the importance of harbouring conflict and disagreement in democratic politics. This is required in order to constantly disturb all proclivities towards certainty and absolute stability, and to bring the contingent political bases of social norms always back into the processes of democratic justification. Nevertheless, this reflexive endorsement of conflict, like that of agonists, is not unqualified. The

reflexive democratic position must also distinguish between destructive and constructive forms of conflict because it must limit the scope of valuable forms of conflict to those that are broadly conducive with the continuation of the overall democratic process. Any manifestation of conflictual relations that seriously threatens to remove or impede the free-play of democratic contestation for one or more actors has the basic effect of denying them adequate opportunities to test the forms of hegemonic normality to which they are exposed. Accordingly, such forms of conflict fundamentally contravene the reflexive position's basic rationale (seeing as they would end rather than fuel further processes of dialogical justification) and are beyond what it can endorse as a result. In this way, though there are no effective limits on the domains to which contestation can extend on the reflexive democratic view, there are constraints on the legitimate expression and mode of contestation.

In addition to this qualification of 'valuable conflict', it is important to also underline the fact that the reflexive democratic view is structured in light of observance of the essential *benefits* as well as the dangers of stability and social agreement. It recognises that the existence of stability formed through moments of 'non-conflict' or 'temporary closure' are not *simply* suspicious, regrettable, and yet-to-be-politicised aspects of social life, but that they also provide invaluable platforms from which to mount interventions designed to address encountered forms of harm, suffering, and injustice. Without this capacity to act with some modicum of assurance, efficacy, and with a reasonable degree of immediacy, our ability to respond to instances of injustice of any kind would be catastrophically impeded, and the process of challenging and transforming normality would become impossible.

We can draw analogy here with the classic thought experiment of *Theseus' Ship* in order to clarify this point. For, although reflexive democracy contends that every plank of our political vessel ought to be considered potentially replaceable, it does not demand that we replace all of the planks at the same time – a move which would obviously result only in the catastrophic failure of the ship. Rather, so long as enough of the planks are held in place at any one time, then in principle any individual plank – even ones bearing a high load or situated below the waterline, to extend the metaphor – can be inspected, modified, or replaced without the ship simply falling apart and succumbing to the depths. As such, it is precisely the stability provided by a matrix of contingent and replaceable *though in that moment undisturbed* planks that makes the whole process of transformation possible to begin with. That the ship may, in time, as a critical number of the planks are replaced, become something entirely other than itself through this

process, or whether it might retain a certain irremovable essence throughout – which is, of course, the puzzle that Plutarch wants us to consider in relation to Theseus' ship – remains an open (and always contestable) question. The more pertinent point for our concerns here, however, is that the ship remains as a stable and functioning artefact throughout this process of (potentially) radical alteration. We are compelled to realise, then, that although stability and transformation are no doubt quite differently oriented forces, they are nevertheless not diametrically opposed – indeed, on the reflexive view, they are inescapably *and productively* entangled with one another.

In this light, we can see that a reflexive democratic politics does not strive (or allow) for the *simultaneous* contestation of all norms, even as it ensures that none are capable of moving beyond the reach of contestation absolutely. The impermanent forms of stability offered by the matrix of social norms that are left undisturbed at any particular moment (even as they remain open to contestation) affords the reflexive position sufficient traction to make decisive action in the real world possible, whilst also opening up in principle *any* region of the social ground to processes of dialogical justification and transformation. The radical openness of the reflexive democratic position in this respect does not, therefore, involve any kind of sacrifice of the ability to construct normative judgments that would serve to ensure the continuance of the overall democratic process, nor does it fall into self-contradiction or incoherence on a theoretical level.

The mode of democratic politics stemming from the reflexive perspective possesses, then, some important consonances and some important dissonances with agonistic veins of democratic thought, and the conversation between them is one that provides valuable clarification on the form, commitments, and implications of reflexive democracy. With this more detailed picture of reflexive democracy in hand, we are now better situated to bring it into direct conversation with internal colonial bodies of dispute and to begin to consider the precise value that it holds in respect of them, and how, in particular, it might provide for a more constructive response to the contemporary struggles of Indigenous peoples in the Australian and Canadian contexts.

7.3 Reflexive democracy in internal colonial contexts

The internal colonial contexts of Australia and Canada represent highly complex bodies of dispute. This we have witnessed through the analytical framework introduced and applied in Part 1 of this thesis, which, by attending to five different faces of struggle – *presence, control, voice, recovery*, and *equality* – offered insight into the often difficult ways in which the senses of injury and discontent held by Indigenous peoples act to

trouble normal assumptions and expectations about justice in contemporary Settler societies, even as they continue to ostensibly align with them in some important respects. The result is a deep abnormalisation of the public discursive sphere in these contexts. This abnormalisation is not, it is important to underline, characterised by any approximation of equality amongst the relevant 'meta-disputants' – that is, visualisable as composed of an 'empty centre' over which none has disproportionate influence. Rather, it is a form of abnormality in which the expressions of injustice and aspirations of justice that Indigenous actors possess are continually marginalised and suppressed, drowned out by the constant repetitive sound of a dominant normal understanding of justice that is exclusionary in its composition and functioning. As such, the contingent basis of the dominant normal assumptions about the meaning, shape, and application of justice, as well as the potential violence that accompanies their unflinching imposition at the centre of public discourse, is generally under-appreciated – or even entirely unrealised – by the majority of disputants in contemporary internal colonial contexts.

Precisely what service, then, can a reflexive democratic approach provide in respect of these bodies of dispute? In what ways might it represent a constructive and beneficial response to the contemporary struggles of Indigenous peoples in Australia and Canada?

There are a number of specific factors that must be engaged in answering these questions, but let me begin on a slightly more general level by setting out what I take to be the most compelling and fundamental contribution that the reflexive democratic approach promises to make, and why, therefore, it represents an attractive and worthwhile project to pursue here. It is, in short, I want to claim, the potential that reflexive democracy holds to allow us to begin to address forms of unjust exclusion and domination within the basic political architecture of *ongoing* bodies of dispute – whilst not claiming to prescribe or embody any kind of resolution to them or to the senses of injustice held within them – that makes it so valuable to internal colonial contexts.

Of course, on the face of it, this might seem to be a rather counterintuitive feature to herald as the principal value of reflexive democracy. It is far more common for analyses of justice and injustice in internal colonial contexts (and, indeed, elsewhere) to direct themselves towards fashioning a set of substantive recommendations as to the achievement of a 'just' endpoint of social, legal, and political relationships, wherein the various moral injuries that are presently encountered – whatever they are taken to be, precisely – are promised (or imagined) to have been minimised or even eliminated entirely. Given the general preference for this kind of thinking amongst many recent

commentators, the apparent failure of reflexive democracy to provide a body of substantive prescriptions associated with such an end seems more like a troubling weakness than a strength – signalling a basic inability to offer clear guidance for *resolving* the injustices of internal colonialism.

However, this is, I contend, both to misunderstand the fundamental character of the problem of justice in contemporary internal colonial contexts to which reflexive democracy is oriented, and also to underestimate the normative force that it holds even in refusing to provide such a substantive picture of a 'just' future.

Most directly, our exploration of abnormal justice in internal colonial contexts has indicated that it is important disparities of what Laden (2001; 2007; 2012) and others (e.g. MacKinnon 1989) refer to as 'constructive social power' – understood as the mechanism by which the contingent determinations of meaning, reason, identity, and value held by some actors come, through political processes, to gain dominance at the public level, thereby shaping important aspects of the social world for *all* actors – that marks the most pressing and otherwise neglected issue of justice. In lacking constructive power in respect of the norms and grammars that dominate the public sphere, at present, Indigenous disputants are compelled to enter into public discussions of justice and injustice on terms that are disproportionately determined by the state and dominant society – or even dictated by them more or less entirely – and which, as a result, tend to poorly reflect many of the experiences and aspirations held by Indigenous actors.

The meta-order discontents of Indigenous disputants pertain precisely to (or at the very least give important insight into) this form of exclusion from roles of authorship in respect of the norms, grammars, and possibilities that compose public sphere discourse around justice and injustice. In doing so, they work to highlight the existence and relevance of a fundamental plane of social relations underpinning the public sphere wherein much of the political work in constructing ideas about substantively 'just' futures takes place, but to which processes of democratic inquiry and justification do not conventionally stretch. The common undercurrent to these forms of meta-order contestation is, in this sense, to problematise enduring imbalances in the way that the ideational and discursive contours of the public sphere are formed, and to highlight the exclusions and injuries that lie with them. Accordingly, the more general hope that seems to accompany this process of disturbance is for Indigenous peoples to be able to obtain greater levels of influence over the authorship of the parameters of

justice\injustice that are available to *everyone* in the public sphere – and thus through which the whole series of visions as to possible substantive futures are constructed – such that they may begin to better reflect the needs and aspirations of Indigenous peoples *as expressed on their own terms*.

In this light, whilst it certainly seems a fine thing to imagine a future wherein Indigenous disputants *are not* compelled to engage in public arenas whereby their own expressions of justice\injustice are (or are at risk of becoming) marginalised in this way – that is, to piece together a mosaic of a supposedly fully just future social arrangement that leaves no room for discontent – this cannot escape the fact that the actual journey towards any such imagined future (supposing it were even possible) would have to be realised precisely through processes of further political engagement in which threats of exclusion always lurk. Moreover, this kind of approach also cannot escape the fact that the process of 'imagining' has, itself, inherently political components, found both in terms of *creative provenance* (relating to the raw ideational resources available to us as thinking, imaginative beings) and in the *architecture of motivation* (relating to the forces behind the compulsion *to imagine* and to what ultimate effect). As Raymond Geuss puts it:

> My relation to my own future, and our relation to our future, is always "open" and to some extent "ungrounded." I don't have conclusive reasons for the projects I have – they are neither fully explicable nor fully "justifiable" by my antecedent beliefs and desires – nor are any of my projects fully under my own power, but rather they are always at the mercy of external circumstances and events over which I have little control.
>
> (2010, p.ix)

The act and result of imagining is, in this sense, always interlaced with threads of politicality, and without a means by which actors can tug on those threads and interrogate them on terms that each finds to be meaningfully their own, the success of any supposedly 'just' picture in actually capturing the condition it claims remains intensely uncertain.

Consequently, on both counts, the more pressing and fundamental need is not for us to provide a new and improved picture of justice from the standpoint of theory, but instead a means of testing and potentially transforming the discursive opportunities and practices that are immanent to contemporary internal colonial contexts – those which must also lie behind every act of 'picture-making' pertaining to those contexts. The

emphasis therefore ought to fall on addressing the exclusionary arrangements of public disputation that currently serve to leave Indigenous actors generally unable to effectively name and challenge injustices on their own terms. Only by finding ways to better expose and challenge the imbalances and disparities that constitute existing public discursive practices can the marginalisation of Indigenous actors from positions of effective authorship in public understandings of justice\injustice – as well as from the terms by which those understandings are criticised and modified – be addressed, and the process of working out progressive future possibilities start to be conducted on more equitable terms.

It is at precisely this level that reflexive democracy takes its aim. In setting in motion processes of democratic justification that are capable of extending in all directions, and without limit, reflexive democracy provides a means of countering the forces that leave the determinations of possibilities for the future – as well as understandings of the past and of the present – disproportionately out of the hands of Indigenous actors. The true value of reflexive democracy to internal colonial contexts, then, lies not in pretending to realise a condition of justice for Indigenous peoples, but in offering a means for beginning to address the forms of exclusion that prevent Indigenous actors from bringing their own visions of justice and injustice to bear on the public sphere in an equitable manner. This is also, of course, it is worth remembering, a function of reflexive democracy that pertains equally to members of social or other groups that also find themselves subject to forms of additional marginalisation *within* the context of Indigenous struggles, and who seek to similarly challenge the forms of hegemonic normality to which they are exposed. In all cases, rather than dictating the terms of a resolution of injustice in internal colonial contexts, reflexive democracy offers to improve the grounds on which struggles to understand and overcome the injustices of internal colonialism take place. Its focus, then, is on further democratising the contestation of justice\injustice in the public spaces of contemporary internal colonial contexts, not ending it: the authorship of the future remains the property, and the project, of political actors inhabiting those contexts.

This general democratising service that reflexive democracy offers to provide to internal colonial disputes also gives insight into its more specific value. For, as we have also established, the democratising impulse that the reflexive position carries extends to all social norms and foundations – even those supporting the reflexive position itself – and brings all, without exception, into the realm of democratic justification. On the reflexive view, there are no aspects of political life and social ordering in internal colonial

contexts (or, indeed, beyond them) that are immune from being drawn into processes of public dialogue and criticism and, in principle, being rejected or transformed, or affirmed anew, as a result of this exploration.

This radical vulnerability to justificatory demands serves to establish a preliminary openness to meta-order areas of struggle and contestation in internal colonial contexts that has so far been markedly absent. In doing so, it provides a channel through which the struggles of Indigenous peoples in particular can be directed, and through which they can potentially realise further progress in areas of discontent that have conventionally been excluded from, or obscured within, the normal bounds of justice at the public level.

However, what is arguably more important about the reflexive democratic approach in this respect is that it does not simply seek to establish a general but rather weightless compulsion to dialogical justification; it also suggests a means of navigating such processes in practice. The principle of participatory parity holds a central role in this regard, operating as a kind of 'meta-grammar' for justificatory demands and responses that is capable of facilitating effective communication – and establishing plausibility in at least a provisional sense – across an abnormality of discourses and views of justice\injustice. It is the deep connection that participatory parity seems to hold with the basic *concept* of justice, as opposed to any particular *conception* of it, that allows it to perform this function. In providing a way of articulating divergent experiences of injustice in a political register that draws on and exposes an element of affinity between them – specifically, as each relating to an imbalance of social relations of one kind or another – participatory parity marks a way of compelling justificatory processes across an abnormality of subject positions. Under reflexive democratic conditions, all claims as to the possibility of meaningful disparity in *any* dimension of social relations must, first, be greeted with a presumption of basic intelligibility, and, second, trigger the preliminary stages of a processes of justificatory dialogue. Through these initial processes, either (i) mutual justification must be found that, in fact, no meaningful social disparity lies behind the experience (and that it is therefore not precisely an issue of justice, even if some form of remedial action might still be possible or desirable); or (ii) mutual justification must be found that the disparity is necessary or beneficial to all concerned (and in which case we also need to obtain (ii.a) mutual justification as to precisely *why* and to *what extent* the disparity is beneficial to those on the losing end of it, so to speak). If neither of these conditions can be met, the claim does indeed seem to relate to an active form of injustice that requires concerted effort in order to investigate

it further, and to address and overcome it – a process that will itself, of course, also be replete with similar kinds of justificatory processes.

It must be underlined that, in all cases here, 'mutual justification' must be regarded as something more than mere 'mutual reason-giving'. After all, in particular, deliberative democrats such as Gutmann and Thompson (2002; 2004), Mansbridge (2009; see also Mansbridge et al. 2010), and others have been keen to point out that, even in situations where it would seem that some sets of reasons might well meet with general acceptance in public dialogue, the forces actually compelling acceptance of a reason may be drastically different for differently situated actors. Indeed, acceptance of a reason can occur as much due to factors of material need, fear, obligation, or even ignorance as it can due to genuinely free endorsement under conditions of full disclosure and equality. Accordingly, mutual justification must mean something normatively richer than mere reason, and perhaps, as Mansbridge (2009, p.2n) suggests, it simply stands as the "antonym for coercive power" in relation to processes of practical decision-making and agreement. In any regard, for reflexive democracy, mutual justification is an always open-ended political process and is prone to being consistently turned back in on itself in order to further dialogically interrogate the political forces lying behind any offering or acceptance of justification.

The particular value that this move to participatory parity holds for internal colonial bodies of dispute, and especially for Indigenous actors engaged within them, is that it establishes a functioning communicative bridge across an abnormality of conceptions of justice\injustice – a bridge that has very solid foundations *within* the dominant normal view of justice but which does not hold any necessary allegiance to it. In this sense, participatory parity offers a means for Indigenous disputants to raise discontents in a political language that carries a direct moral urgency within the dominant normal, and which therefore holds more potential to provoke significant democratic responses within it, but which nevertheless also offers scope to trouble and contest it in important and far-reaching ways.

Importantly, participatory parity provides this communicative function without needing to supplant the normative languages of Indigenous peoples. That is to say, participatory parity need not become the exclusive language of justice and injustice for *all* actors in *all* domains *all* of the time in order for it to fulfil its communicative purpose. Rather, the motivations to engage with it *publicly* can certainly be based more in the sphere of pragmatic or strategic needs, wherein participatory parity offers a means of

communicating in terms that are mutually intelligible but which nevertheless do not necessarily mark the comprehensive capturing of all views and experiences of injustice held by actors employing it. Since the point of participatory parity, at least in an initial sense, is simply to open up a communicative bridge by establishing a basic plausibility of injustice felt by some actors that is otherwise ignored or dismissed in public discourse, it functions to provoke and expand discussions of justice but does not necessarily dictate exactly or exhaustively what ought to fill those new discursive spaces. Indeed, as I sought to show in the previous chapter, participatory parity can in fact be understood to carry an inherent self-problematising force that inevitably operates to disturb its occupation of the centre even as it operates effectively within it, thereby continually bringing into the realm of dialogical justification the dominance of particular normative traditions. The communicative bridge that participatory parity provides is, in this way, itself structurally open to transformation under the weight of traffic across it. Accordingly, participatory parity resists simply descending into assimilatory demands or effects – which is obviously a matter of immense importance in internal colonial contexts given the histories and the present threats to which Indigenous peoples are subject – even as it maintains a genuine effectiveness to communicate experiences of injustice and aspirations of justice that reside outside of the dominant normal in a moral register that resonates expressly *within* that dominant normal.

It is worth also considering that a further benefit that this centralisation of participatory parity might provide comes with its potential to offer a way of pursuing disputes of framing in internal colonial contexts from a slightly different angle. One of the main reservations I raised in the previous chapter with Fraser's reconstructive recommendations centred on the question of 'implementation' and, more specifically, how it would be possible to move towards the kind of global-scale arbitratory body in respect of framing disputes that she envisions. There, I argued that for such a global authority to actually emerge – since it cannot simply be imposed 'from above', for this would paradoxically presuppose the presence of the global authority that is to be created – it depends upon relevant ideational and ethical grounds arising from within the contexts of *existing* frames, particularly those in which power is currently most acutely concentrated. But, were the institutions and actors of existing frames not already basically accepting of at least the *potentiality* that their present form is of arbitrary and unjust composition, it is difficult to imagine how a successful global body able to adjudicate over framing disputes, and able to actually compel transformations of existing contexts of framing in order to address them, could ever emerge. Without a

prior awareness and sensitivity to the existence of injustices of framing – at least in principle – that is, a move to create and submit to a higher adjudicating power in order to process injustices of misframing seems implausible.

Obviously, this is of great significance to internal colonial disputes, wherein the framing of justice predominantly according to (and within) the governance structures and boundaries of the Settler state is such a central point of contestation. The further role that participatory parity can play here is that it can provide a way of articulating something important about the senses of injustice that Indigenous peoples experience connected to the frame that has particular beneficial implications. For, couched (in a basic and initial sense) as relating to a form of *disparity* in opportunities to determine the appropriate frame of justice – a power which, in terms of a social relation, presently lies predominantly with non-Indigenous actors and society – discontents that Indigenous actors raise with the 'who' of justice can be communicated in a form that, again, carries a moral urgency that resonates across an abnormality of subject positions. That is to say, as, now, a question of *participatory parity* surrounding the social construction of frames, claims relating to a 'disparity of framing power' ought to similarly compel processes of dialogical justification akin to those sketched above. What is perhaps most important about this move is that it compels a process of public justification of the frame and of its construction that it is not necessarily guided by a 'preset' or already internalised openness to the inherent contingency and contestability of dominant framing norms, but, instead, by the assumption of basic plausibility and intelligibility that is extended to all claimed experiences of *disparity of participation,* whatever the specific form of such disparity. In other words, the move to seek out public justification for norms of framing is driven by the centrality of participatory parity in the normative composition of the public discursive sphere, rather than by the existence of a general realisation or belief that those norms necessarily *are* arbitrary or potentially unjust.

The benefit of this is that, given the impossibility of obtaining a full and satisfactory justification of dominant framing norms whilst simultaneously depending solely on that contested frame in order to structure disputes – this, a realisation which must eventually dawn on all committed parties to such contests – it becomes more likely that participants will determine a need to consult with or through a 'higher' or 'external' adjudicating body in order to find a more reliable form of mutual justification. That this may be precisely the kind of motivation needed to kickstart the process of creating the kind of global institutional body that Fraser has in mind – and to thereby overcome the

problem of implementation noted in the previous chapter – is a real, if perhaps still quite distant, possibility. At the very least, however, there emerges a prominent collective and general motivation amongst actors within a contested frame to engage in justificatory processes that are somewhat less constrained to or by the framing norms that are the focus of dispute. This might plausibly, in the case of internal colonial bodies of dispute, open up greater opportunities for dialogue in international arenas where the presumptive primacy of the state is more subdued or mitigated against, and engagements with Indigenous actors can occur on more equitable terms.

Of course, such eventualities are, by any reckoning, neither an easy nor assured outcome. The point is, however, that reflexive democracy, in centralising the principle of participatory parity and explicitly connecting it with a need for dialogical justification in this way possesses a structural form that potentially offers Indigenous disputants a viable means of progressing an array of difficult areas of contestation that are otherwise too easily excluded or overlooked. It need not, in this sense, represent the ideal of justice for Indigenous actors, nor, indeed, need it be the *only* channel through which struggles for justice are directed. Rather, reflexive democracy simply gives an option for conducting meta-disputes in different and more effective ways, and for addressing the fundamental imbalances that presently constitute the public discursive field of justice\injustice in internal colonial contexts and make this an often hostile ground for Indigenous struggles.

Just as important as the potential to better promote this exploration and processing of meta-order disputes, however, is reflexive democracy's refusal to sacrifice, at any time, the capacity to act against urgent forms of harm and suffering. This is of fundamental importance given the realities of life for many Indigenous individuals and communities in contemporary Australia and Canada. Presently, Indigenous peoples within these contexts are disproportionately exposed to a range of social and health inequalities and pathologies that bring profound physical, psychological, and spiritual suffering to many. Whilst there can be no doubt that these sources of suffering are intimately entwined with meta-order forms of injustice in most or even all cases (even if they can rarely be fully reduced to them), they can neither be tackled effectively by simply rejecting the repositories of power and resources that presently dominate internal colonial contexts, nor can addressing them be 'put on hold' until meta-order problems have been progressed to a more substantial degree. Rather, the stability and efficacy of power to meaningfully address forms of urgent harm and suffering remains intensely important even as it is contested, and the effective potential to act which it presently more or less

monopolises cannot, in the interests of justice, be jeopardised in moves to address meta-order forms of dispute.

Furthermore, the history of justice struggles in both the Australian and Canadian contexts, and also in the broader international sphere, has led to the establishment of specific bodies of rights that remain of great importance to Indigenous peoples, not only symbolically but also practically. Current sets of rights pertaining to land, self-government, cultural recognitions, and distinctive political statuses amongst others (as well as the continuing relevance of treaty rights in Canada), have each been hard won through the perseverance and ingenuity of Indigenous actors, and stand as important ways of securing against some of the more acute violences of colonialism as well as, arguably, offering scope to begin to address some of its ongoing expressions and consequences. Nevertheless, in most cases, these rights presently remain secured against and through the coercive power of the state in one manner or another. This is, without doubt, a source of great ambivalence for many Indigenous actors in internal colonial contexts today because, at the same time that the enduring centrality of state power seems to subject Indigenous peoples to a condition of unjust and intolerable domination, it also provides vital opportunities and means for mitigating and agitating against that condition of domination, both in specific and in more general ways. Accordingly, any move that would act to recklessly jeopardise the power structures against which such rights are secured and enforced – even if professing to do so in the name of justice – threatens to bring negative, and potentially even disastrous, consequences for many individuals and communities despite its emancipatory objectives.

The specific value of reflexive democracy here is that it expressly protects against the radical excavation of *some kind of* stable and effective power structure at the centre of public life, even as it opens up that centre to deeper and more consistent democratic interrogation. That is to say, reflexive democracy works to ensure a constant stability *of* power at the public centre, whilst rendering the specific 'ownership' of that power and the means of its expression and deployment open to justificatory demands and, accordingly, potential transformation. This retention of capacity to action is required not only to ensure that the potential to intervene in urgent forms of harm and suffering is never lost, but also to actually translate the outcomes of ongoing justificatory processes into real-world changes to social, political, and economic ordering. For reflexive democracy, then, power is not only deployable in self-identical or self-reinforcing ways – that is, hopelessly locked into a completely circular system of self-

repetition – but can, instead, be deployed in ways that work to modify or reconfigure its original form, and even to create new locations of power around it. As such, the potential that reflexive democracy holds for Indigenous actors to realise greater progress in areas of meta-dispute does not threaten to also bring the removal or undue weakening of the protections and resources already possessed in internal colonial contexts, and nor does it threaten to create a vacuum in terms of power to respond to ongoing and emerging instances of suffering and trauma. A reflexive democratic politics offers, instead, a controlled and responsible (yet always respons*ive*) disturbance of the central power structures within a social context. In this sense, it displays inherent sensitivity to the difficult tensions that characterise many contemporary Indigenous struggles, setting in motion a democratic process that offers to address meta-injustices whilst always maintaining the capacity for action in the process – both as necessary to maintain an efficacy to tackle ongoing harm and suffering, and as necessary to maintain a power to transform the more fundamental structures of the political world.

For these reasons, I contend, reflexive democracy stands as a promising constructive response to the complexities presently encountered in internal colonial bodies of dispute. Offering not to *resolve* these disputes but, rather, to provide a means of actively addressing the deep and otherwise generally inaccessible imbalances that presently pervade them, and to thereby work to reduce the inequalities of constructive social power faced by Indigenous actors in attempting to raise and pursue disputes of justice\injustice on their own terms, reflexive democracy works to better democratise the public contestation of justice in (and around) internal colonial contexts. It sets out normative standards that carry the potential to open up and develop areas of meta-dispute that are currently too readily stifled, and allows these to be conducted on dialogical and moral terms that resonate across (as they also better reveal) an abnormality of subject positions. Leaving no part of the social world immune to these justificatory processes, or to transformation as a result of them, reflexive democracy offers a channel for the continuation of Indigenous struggles that has real potential to realise progress on some of the more challenging and profound dimensions that comprise them. This responsiveness to the meta-order of disputes is, of course, however, never realised at the expense of efficacy to action in order to intervene in and address urgent forms of harm, suffering, and need. Under reflexive democracy, there is no zero-sum trade off between stability and instability. Rather, the destabilisation of the hegemonic normal – including its most deep rooted ideas, assumptions, and values – takes place against a stability of power at the centre of public life, even whilst the

identity of that power is subject to constant democratic interrogation and redefinition. In this way, reflexive democracy stands to sensitively realise the tensions and ambivalences that pervade internal colonial contexts at present – which are experienced by Indigenous actors most acutely – and offers a way of generating progress, simultaneously, across both the meta-order and first-order planes of justice, always working to ensure that progress in one domain does not result in losses in another.

7.4 Moving in a reflexive direction

It remains, finally, for us to think about how a reflexive democratic politics could actually be brought to bear on the existing institutional arrangements of internal colonial contexts. On what basis, that is, could the present institutional landscapes of Australia and Canada start to be held accountable on reflexive democratic grounds, and movement towards a deeper democratisation of the public discursive sphere of justice thereby begin to be made in practice?

One promising way of answering this challenge is for us to begin to look at institutional arrangements with an eye to the levels of openness and responsiveness that they display to different and, indeed, 'abnormal' forms of *claim-making*.

The central thrust of a reflexive democratic politics is, as we have seen, the hope of better democratising the terrain of public disputes around justice\injustice such that all actors are able to participate more equitably not only 'within' that terrain as it is encountered in its extant form, but also to participate equitably in the processes of (re)constructing its fundamental shape. It is only in taking up more influential roles in the authorship of the norms and understandings that structure the public discursive sphere that actors who find their experiences of injustice and their aspirations for justice conventionally excluded or overlooked can begin to generate greater public attention for them. Arguably, then, what matters most as an initial consideration from an institutional perspective is the level of hospitality that is extended to actors seeking to raise nonstandard or otherwise unusual claims of justice and injustice. For, insofar as institutional contexts remain tied simply to dominant 'normal' ways of speaking about and describing senses of justice and injustice, and are willing and able to hear claims only according to the limits of those conventions, actors possessing perspectives and experiences ill-suited to those norms of speaking and listening are placed at an immediate disadvantage.

Iris Marion Young (2000) has raised this point in critique of the tendency amongst theorists of deliberative democracy to over privilege rational argumentation as a standard for political communication. Young theorises that three additional modes of communication – *greeting, rhetoric,* and *narrative* – which are often overlooked or scorned in the quest to identify a form of communication stripped of coercive content, ought to be understood as (both descriptively and normatively) intrinsic to public communication. This is especially important, Young contends, where participants in public contexts do not hold the kinds of shared premises that are necessary in order to fashion and present convincing arguments to one another. In such instances, moments of story-telling or emotional plea might be absolutely vital in order for actors who are unable to find sufficient voice in the dominant grammars to communicate *something* of the harms and discontents they feel, and to thereby begin to express the particularity of an experience that the dominant bounds of discourse work to occlude.

This general sentiment of Young's is also echoed by Norval (2007; 2009) who notes that even though a nonstandard claim may be unable to find full or even sufficient expression within the dominant discourse – and the extent of the felt wrong behind it is therefore not yet understandable within or through the dominant bounds of voice – the *expression* of the wrong via the act of claim-making nevertheless has a significant impact upon the dominant position. Whilst the full meaning of the sense of wrong may not yet be accessible in the wider public domain, the fact that there *is* a sense of wrong is now more widely visible. As Norval puts it: "The *sense* of wrong must be acknowledged. At the very least, one will have to restate the terms and reasons for the denial of the claim" (2007, p.182: my emphasis). The consequence, then, of even what might seem to be more or less unintelligible moments of claim-making (when viewed from within the parameters of the dominant discourse), is a compulsion towards the "re-examination and reiteration of the dominant position" and hence an *engagement* with those claims (Norval 2007, p.182). For Norval: "At worst, this will result in a reassertion of the dominant position, at best, it may lead to a rearticulation of it. However, even in the worst case, the prevailing order cannot simply be reasserted: it will be marked by the engagement" (2007, p.182). The 'marking' apparent here comes in the form of a world-disclosing (or what we might also call, following the Wittgensteinian language that Norval employs, an *aspect dawning*) moment, whereby the non-universal nature of the dominant contours of the public discursive sphere at least start to become more visible to actors within them – particularly amongst those that had formerly taken them for granted – even though they may not yet be seriously destabilised. As a result, the status

of *all* public utterances, even those projected from the dominant position, precisely as *claims* of one form or another thus starts to become more generally appreciable.

There is good reason to believe, then, that the more open an institutional arrangement is to abnormal (as well as normal) forms of claim-making – that is, the more space it allows for actors to make claims on whatever terms *they themselves* consider appropriate to their needs, experiences, and aspirations – the more fertile ground it provides for the growth of reflexive dialogical engagements. Whilst acts of nonstandard (or abnormal) claim-making do not, in this sense, assure the arrival of a truly reflexive form of dialogue and justificatory process, they would seem to be at least a necessary starting point for progress in the right direction to be made. As such, institutional arrangements *potentially* suited to reflexive democracy must at least work to place the power to initiate justificatory processes thoroughly, and equally, in the hands of *all* (and any) actors engaging them, and must, therefore, not only provide a basic platform for the staging of claims, but also ensure that there are no unjustified constraints imposed on what is able to occupy that stage. Moreover, all stagings of claims, whatever their precise form, ought to provoke the same inclination towards engagement in justificatory processes. In short: if institutions are to be capable of supporting reflexive dialogue, they must, for a start, display a radical willingness to listen and respond, equally, to standard and nonstandard forms of claim-making.

This basic criterion of *radical openness and radical responsiveness to diverse forms of claim-making* provides a useful way of beginning to hold institutional arrangements accountable on reflexive grounds, at least in a preliminary sense. It allows us to gauge with greater certainty which institutional arrangements are likely to be receptive to, or even encourage, the emergence of deeper and more sustained forms of reflexive justificatory dialogue, which are less so, and, moreover, suggests how we might work to begin to cultivate greater receptiveness in places where it is currently found wanting. Where we encounter undue constraints on the objects and expressions of the claims that actors are welcome to raise within institutions, we also encounter an imposed form of normality that threatens to deny some actors the opportunity for equitable participation, and the likelihood that reflexive dialogue can emerge is lessened as a result.

At present, the institutional landscapes of Australia and Canada generally lack this kind of openness and responsiveness. This comes as no surprise, of course, given the analysis undertaken in Part 1 of this thesis, which was to a large extent oriented towards

showing how Indigenous actors are conventionally impeded from bringing claims of justice and injustice to bear on public contexts on their own terms. This is not to say that non-standard forms of claim-making are entirely stifled by this present lack of institutional hospitality, nor that when nonstandard forms of claim are made they are without important effect on public perceptions and discourse. One need only look towards the Aboriginal Tent Embassy for example of how the staging of claims – in that case a performative expression of Indigenous sovereignty – can be conducted outside of established institutions (here, quite literally, given the Embassy's setting on the lawns of Old Parliament House in Canberra) yet remain highly influential in the public discursive domain (see Muldoon and Schaap 2012; 2013). Notwithstanding this, however, it remains apparent that if a form of reflexive democratic politics is to stand a serious chance of taking hold in internal colonial contexts on a general and broad scale, strong institutional hospitality for non-standard forms of claim-making is essential. Although such openness remains poorly realised at present in both Australia and Canada, there are in fact some encouraging signs in this regard already to be found, as well as some others potentially beginning to emerge.

One noteworthy example in this vein comes with the fact that, in the past two decades or so in particular, there has been a growing appreciation within the dominant societies of Canada and Australia concerning the distinctive cultural character of the institutions of common law that preside over many aspects of contemporary disputes. The privileging of written over oral sources of evidence, for example, has, along with the strong emphasis placed on ideals of formalised neutrality, impartiality, and objectivity, become more visible as pertaining to a particular cultural heritage – that associated most directly with European traditions – rather than to any kind of natural or essential way of organising a system of law (Manley-Casimir 2012; Webber 2009; also Borrows 2002; 2010; Eades 2007). Alongside greater recognition of the validity and importance of the oral traditions of many Indigenous peoples, this has started to open up what were formerly very restrictive legal arenas to a greater diversity of claim-making. There is now more space for Indigenous actors to bring offerings of narrative and storytelling to proceedings and for these to have a bearing on the deliberations and judgements of the courts on issues of land rights, self-government, and a range of other matters (Corntassel et al. 2009; Manley-Casimir 2012).

Whilst it is important not to overstate the advancements so far witnessed in this regard (especially since these forms of claim-making are certainly still afforded only at best a peripheral and subordinate role in the courts), the fact that such formerly closed

institutional arrangements *can* evidently begin to open themselves up in this way to a greater diversity of claim-making, and the positive opportunities this might provide for actors to provoke deeper justificatory processes, is at least minimally encouraging and should not simply be ignored. Indeed, some commentators, such as Kirsten Manley-Casimir (2012) for example, argue that pursuing greater openness in the courts to practices of Indigenous storytelling might have a central role to play in provoking far wider public engagements on matters of colonial injustice and establishing the grounds for forms of institutionalised 'genuine listening' between differently situated actors. The potential to realise progress in this regard may be given further weight, Manley-Casimir also suggests, by a willingness on the part of the court to explicitly acknowledge its own complicity in the senses of injustice that Indigenous actors bring before it, and to foreground this in the speaking and listening exercises that it plays host to. Whilst this obviously would not simply dissolve the senses of injustice surrounding the court's sovereign assumptions and assertions that Indigenous actors presently tend to hold, nor would it resolve the contradictions encountered by the court in attempting to pass judgement on claims that deny its sovereignty, it would at least seem to provide a more fruitful ground for progressive (and more reflexive) dialogue to emerge.

Recent years have also seen important developments in the direction of new and innovative democratic institutions in both Canada and Australia. The Citizens' Assemblies on electoral reform in British Columbia (2004-5) and Ontario (2006-7), for example, mark highly significant moves towards more communicative and participative forms of democratic practice, whereby ordinary citizens are able to exert greater influence in and over processes of political decision-making and are encouraged to engage in formal deliberation with one another on issues of mutual concern (Smith 2009; Warren and Pearse 2008). This general trend in democratic innovation is also echoed in the Australian context, where there has even been a specific effort to employ such institutional forms in addressing matters of colonial injustice and reconciliation. In 2001, a deliberative poll (see Fishkin et al. 2000; G. Smith 2005) was established with the title *'Australia Deliberates: Reconciliation – Where From Here?'*. Forming part of the broader Reconciliation Australia project, the deliberative poll included a phase wherein nearly 400 individuals of Indigenous and non-Indigenous identification were brought together to deliberate face-to-face on issues relating to the past, present, and future of Indigenous-Settler relations in Australia. This particular experiment produced some encouraging evidence to suggest that attitudes amongst non-Indigenous participants towards some of the key discontents and aspirations of Indigenous participants –

especially those relating to the need for 'symbolic' components to reconciliation, such as constitutional recognition and formal apology for the violences of colonialism, which were at that time under attack from the Howard-led government (see chapter 4) – changed favourably as a result of direct dialogical engagements (Jimenez 2009).

What is most encouraging about such developments in institutional experimentation from a reflexive democratic point of view is their potential to make space for actors of all kinds to raise – and to be exposed to in turn – a greater diversity of claims and modes of expression, and for this to occur in very direct and personal ways. As Young (2000) points out, institutions can be designed in ways that either impede or facilitate such listening and connectedness between individuals. Insofar as current trends in democratic innovation explicitly aim to increase opportunities for these types of communicative engagement, they promise to create institutional spaces that are at least potentially supportive of more reflexive dialogue. As such, whilst these types of democratic institution design no doubt remain in their infancy, both at a general level and especially where matters of colonial history and injustice are concerned, there is scope for them to be mobilised in support of a more reflexive democratic politics in internal colonial societies. The role that such new institutional locations for democratic engagement might then play in a broader shift towards reflexive futures – whether or not colonial justice is the sole, primary, or even an intended focus in all cases – is considerable.

Formal legal arenas and innovative participative-communicative democratic institutions obviously do not exhaust the scope of institutional contexts in which dialogical engagements on issues of justice and injustice can (and will) occur in internal colonial contexts. Nor, indeed, are institutions the only important sites of such engagement. Encouraging and facilitating greater reflexive engagement throughout civil society must also represent a key objective. Yet these recent institutional developments at least provide some grounds for encouragement in the contemporary Australian and Canadian contexts, and, just importantly, give a clear and viable location for the focusing of progressive energies. Endeavouring to hold institutional arrangements ever more accountable according to criteria of *openness and responsiveness to diverse forms of claim-making* represents a method of pushing towards more reflexive futures in internal colonial contexts that draws upon momentum already gathering within them. Whilst achieving institutional openness to diverse claim-making does not provide an immediate or assured route to reflexive dialogue, it does offer greater scope for Indigenous actors to present themselves, their experiences, and their aspirations on the

terms that they choose for themselves, and for these engagements to leave an important mark on the institutional arrangements, and the publics, of the Australian and Canadian contexts. With this process of marking, the emergence of a reflexive democratic politics is brought further into the realm of the possible as actors of all kinds become more accustomed to the particularity of their own experiences and aspirations, and of those with whom they engage politically. Members of internal colonial publics might, accordingly, begin the difficult process of finding more mutually convincing justifications for sustaining or transforming the webs of social and political relationships of which they are all a part.

7.5 Conclusion

This chapter has aimed to develop and clarify an account of the form of democratic politics that emerges from Fraser's reconstructive recommendations to abnormal justice, and to offer this 'reflexive democracy' as a way of responding to the complex contestation of justice in the contemporary internal colonial contexts of Australia and Canada. Through conversation with agonistic veins of democratic thought, I have sought to elucidate the distinctive character of reflexive democracy and to show how it can serve to positively alter the discursive terrain on which ongoing disputes of justice\injustice relating to colonial pasts and presents take place, whilst not requiring us to sacrifice the capacity for effective action in order to address urgent forms of harm and suffering. By offering scope to address the exclusionary forces that presently operate to deny Indigenous actors the opportunity to take up equitable roles in the authorship of public understandings of justice and injustice, reflexive democracy, I have argued, stands as a way of altering the underlying discursive architecture of ongoing struggle and disagreement in internal colonial contexts. In this sense, whilst it does not offer (or claim) any kind of substantive *resolution* to the injustices of colonialism that are currently (and historically) felt by Indigenous actors, reflexive democracy nevertheless works to address the exclusions that those actors commonly experience when entering the public sphere.

I have argued that a reflexive democratic politics can provide Indigenous actors with greater opportunity to pursue struggles for justice in public contexts on their own terms, and for the possibilities for futures of social, cultural, economic, and political ordering envisioned by *all* actors within those contexts to thereby start to better reflect Indigenous experiences and aspirations as a result. On these terms, reflexive democracy stands as a progressive approach to the continuing contestation of justice and injustice

in internal colonial contexts, but leaves the actual substantive outcomes of these processes up to the imaginative engagements of the actors participating within them.

8

Concluding remarks

By any reckoning, contemporary public disputes centring on practices and experiences of colonialism in Australia and Canada give rise to a range of complex problems of justice. The scenes of profound social suffering and disadvantage that presently blight many Indigenous lives within these contexts are, in virtually all cases, underscored by a plethora of more fundamental discontents and senses of injustice associated with the historical and ongoing violences of colonial domination. These do not represent separate or independent domains of injustice that may conceivably be addressed in isolation from one another. Rather, they are deeply and inextricably entwined, both in the experiences of individuals, communities, and peoples presently subject to them, and in terms of the historical forces of their creation and propagation. As such, efforts to address social suffering that neglect the more fundamental issues associated with colonial domination risk not only having little effect on many of the problems that they seek to address, but also actually exacerbating important aspects of the experiences that lay behind and fuel that suffering. Equally, and conversely, efforts towards tackling the deeper discontents associated with colonial domination that lose focus on the pressing social needs of individuals and communities risk inadvertently compounding the suffering that they hope ultimately to overcome. Consequently, finding ways to work simultaneously and complementarily on each of these entangled domains of justice, and to realise forms of progress in each that do not come with counterpart regresses in the other, therefore appears as one of the central problems of the present age in the internal colonial contexts of Australia and Canada, and for Indigenous actors in particular.

Taken together, the preceding chapters stand as an attempt to bring a new theoretical perspective to bear on these bodies of dispute. The intention in doing so has been both to throw into new relief the complexities that are faced in raising and pursuing struggles for justice within these internal colonial contexts, and, moreover, to suggest a way of responding to them in more sensitive and successful ways. Our principal guide in this endeavour has been Nancy Fraser's recent theoretical work surrounding the concept of 'abnormal justice' (2008; 2009; 2010), and its development into what I have termed the *reflexive perspective* on justice. Fraser's close attentiveness to the *contestation* of justice within contemporary public spheres (as opposed to a direct concern with a substantive *condition* of justice) provides, I have argued, forms of insight that can play a valuable role in our understanding of internal colonial bodies of dispute.

Developed and put to work in Part 1 of this thesis for its diagnostic potential, the reflexive perspective helped us to see with greater clarity, and in closer detail, the intricate blends of first-order and meta-order discontent that internal colonial bodies of dispute in Australia and Canada presently contain, and to capture something important about the difficulties that are faced, particularly, by Indigenous actors pursuing struggles for justice within them. From the angle it provides, we can see how, in raising claims within the public sphere, Indigenous actors in these Settler societies are frequently constrained by dominant or 'normal' assumptive and discursive frameworks that are either ill-equipped to carry the full meaning of the experiences or aspirations that lie behind those claims, or that even actively reinforce critical aspects of the senses of injustice that provoke them. In giving us more scope to realise the presence and the implications of this type of exclusion experienced by Indigenous actors engaging the public sphere, whilst, crucially, also keeping in view the constant imbrication of these sources of 'meta-order' discontent with 'first-order' issues of justice connected to urgent forms of suffering and disadvantage, the reflexive perspective enables us to produce a quite sophisticated picture of these bodies of dispute, one that is closely attuned to revealing their 'abnormal' characteristics and helps us to appreciate the tensions faced by actors operating within them.

In addition to this diagnostic function, the reflexive perspective also, as I sought to demonstrate in Part 2 of the thesis, holds considerable reconstructive potential in respect of internal colonial contexts. Fraser's specific recommendations as to how we ought to attempt to process disputes in the absence of certainty and agreement about the most fundamental parameters of justice each essentially revolve around the idea that it is in pursuing a deeper democratisation of the discursive terrain of justice

disputes that we stand to realise a defensible way forward in dealing with them. It is only by permanently opening up the basic meaning, shape, and application of justice to the realm of democratic demands, and thereby extending actors the opportunity to actively contest these meta-order questions of justice in the process of working on first-order problems, that, for Fraser, we stand to find a way of dealing responsibly and effectively with the diverse experiences of injustice that constitute contemporary public sphere disputes.

Across Chapters 5 and 6, I attempted to develop this side of Fraser's work, both in a general sense and also in the specific light of the Australian and Canadian internal colonial contexts. Bringing the democratic implications of Fraser's theorising into direct conversation both with some of the more distinctive and difficult concerns of justice raised by Indigenous actors (Chapter 5) and with other veins of democratic thought in the Western tradition (Chapter 6), I sought to demonstrate what would be involved in moving towards a reflexive mode of democratic politics and how this move might help us to realise progress in dealing with disputes of justice relating to historical and ongoing experiences of colonialism.

Foremost amongst its benefits in this regard, I argued, is the reflexive democratic position's structural proclivity towards a kind of 'self-democratisation'. The link that reflexive democracy insists upon between the principle of *participatory parity* and open-ended processes of *mutual justification* establishes a dynamic system wherein the meaning of 'parity' and the scope of social relationships to which it applies are not simply pre-given or settled facts, but remain, instead, always themselves also vulnerable and responsive to further democratic demands. Consequently, even as reflexive democracy centres itself in the sphere of contemporary public disputes of justice, it remains structurally open to rearticulation and transformation through the course of those disputes.

When we acknowledge the fact that, as it presently stands, reflexive democracy stems from a rather monological normative position – one that is also most directly aligned with precisely the traditions of philosophical thought that have been (and, indeed, still are) implicated in forms of injustice that Indigenous actors raise – the importance of this self-problematising potential becomes clear. In logically rendering its own form open to the kinds of justificatory processes that it also demands, reflexive democracy gives scope for publics to interrogate this exclusionary composition and to transform it as necessary in order to satisfy a wider array of normative traditions, and for them to do so

in the process of also working on a range of other first-order and meta-order disputes of justice.

Pursuing a reflexive democratic politics in the internal colonial contexts of Australia and Canada stands to give disputants of justice within them the opportunity to work productively so as to better publicise and problematise the forms of meta-order injury to which they find themselves exposed, whilst also working to expose and address urgent forms of suffering and harm. It therefore provides greater scope to challenge the forms of exclusion currently encountered by Indigenous actors in bringing their experiences and aspirations to public prominence, and reduces the risk that doing so will bring damaging consequences or regresses in other critically important domains.

Of course, the overriding implication of this is that these complex public contests of justice and injustice will not simply evaporate once (or, more accurately, *if*) a reflexive atmosphere takes hold. The position that I have developed and argued for over the course of this thesis does not claim to provide any kind of assured resolution to justice disputes in the internal colonial contexts of Australia and Canada. Rather, its focus is merely on altering the terrain on which those disputes continue to take place (indefinitely) into the future. The intuition that has guided my development and application of the reflexive perspective – and which is also congruent with Fraser's intentions in offering it – is that it is only once Indigenous actors are able to participate on more equitable terms in the processes by which understandings of possible 'just' futures are constructed at the public level that any real progress towards overcoming the injustices of historical forms of colonialism, and towards resolving the ongoing contradictions and violences of present internal colonial relationships, will be made. It is, as such, in the hope of contributing towards an understanding of how this equalisation of the public sphere of justice might begin to occur that this thesis has been directed.

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To the best of my knowledge, this thesis marks the first genuine effort to bring Nancy Fraser's work on abnormal justice into direct discussion with internal colonial bodies of dispute, and is, indeed, amongst the first attempts to seriously develop Fraser's 'reflexive perspective' in any context. As an initiating study in this regard, much of the work undertaken herein has necessarily involved drawing out and elucidating the more fundamental aspects of Fraser's thought, and transposing these into a format more suited to the analysis of internal colonial contexts. Whilst this has, I think, enabled a

form of discussion that brings new and valuable expression to the intricacies of justice disputes occurring within these contexts, and also helps us to construct a promising way of responding to them in theory and in practice, there are many stones that have necessarily been left unturned here.

There is, for instance, much more to be done in order to comprehensively trace the reflexive perspective back through the full body of Fraser's theoretical work on justice, and to more accurately situate it amongst a wider body of Western political thought. A concerted effort in this regard would likely help us to further clarify the particular influences and commitments that underpin Fraser's theorising, and thereby enable us to explore their implications in greater depth. Particularly, there seems to me to be considerable value to be found with a more extended dialogue between the reflexive perspective and other strands of thought in contemporary democratic theory. Whilst this conversation has already been started here in respect of agonistic democratic thought, pursuing this to a greater extent and also bringing in more on the work of radical democrats, deliberative democrats, and others working in some proximity to these schools of thought would make for an extremely interesting study, and one that has the potential to make very significant contribution to the broader spectrum of contemporary thought on democracy and justice, not only in so-called 'divided' societies but also on a more general level.

There is also a great deal more work to be done in applying the reflexive perspective to internal colonial bodies of dispute. The limiting of attentions within this study to only the Canadian and Australian contexts means that there is scope (and probably need) to apply the reflexive perspective to a greater range of internal colonial bodies of dispute in order to develop it further. The depth of analysis that the reflexive perspective encourages us to undertake when building 'diagnostic' accounts means that this is likely to be a rather laborious task in certain respects, since it seems probable that any individual study will need to limit itself, as here, to a select number of cases rather than pursue a broader survey of internal colonial contexts – at least until a critical mass of detailed case study work has been completed. Nevertheless, it is clear that establishing the veritable normality of abnormally contested public spheres in (at least) internal colonial contexts is likely to prove to be a necessary step in any hope of gaining wider attention for the reconstructive side of the reflexive perspective. Such lines of study would also be considerably enhanced by casting the net a little wider, as it were, and attempting to uncover and catalogue forms of abnormal contestation arising amongst a wider range of actors in contemporary public spheres, relating not only to colonial-

based forms of injustice but also to a far more diverse body of experiences and aspirations. For progress towards a deeper democratisation of the public sphere to be realised in practice, it is likely that the benefit it holds for political actors more generally – rather than simply being a matter of benefit to Indigenous actors alone – will need to be established. Accordingly, studies that add more specific, localised, and quantifiable support for Fraser's *zeitdiagnose*, and over a broader range of social relations, are likely to be key in any advancement in a reflexive direction on the ground.

In sum, then, the study undertaken here has opened up a range of possibilities for further research, both of a theoretical and of a more empirical nature. As a beginning to the development and application of Fraser's ideas in respect of internal colonial bodies of dispute, this thesis has undertaken important tasks of basic clarification and initial exploration that should prove of service to any future studies in this vein. Whilst a great deal more work certainly still remains to be done, the grounds for it are at least now a little better prepared.

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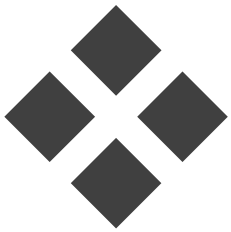
Addressing the injustices of colonialism cannot occur simply on the terms – or simply within the horizons of meaning and possibility – of the coloniser. This is not to say that those horizons of meaning and possibility have nothing positive to contribute towards such a process. It is only to say that if progress is to occur they must be better recognised, *and better situated,* as one set of horizons amongst many possible and existing such horizons. Insofar as Indigenous actors in contemporary internal colonial contexts find means of equitable participation in this regard denied to them, and are thus constrained to engage a public sphere that serves only to reinforce and re-inflict key aspects of the violences that they struggle against, work to truly begin the arduous task of 'decolonising' relationships is seriously, and perhaps catastrophically, impeded.

This thesis has been oriented towards providing a new iteration of this problem and, moreover, towards offering a means for beginning to challenge and overcome it. A public sphere structured around the insights and democratic commitments of the reflexive perspective promises to provide Indigenous actors with resources to better confront the exclusions faced in bringing experiences of injustice and aspirations for justice to wider attention, and for the terrain of public dispute available to *all* participants to begin to be (re)constructed on more equitable terms as a result.



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