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## Pluralising political legitimacy

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### ABSTRACT

Does the Australian state exercise legitimate power over the indigenous peoples within its borders? To say that the state's political decisions are legitimate is to say that it has the right to impose those decisions on indigenous peoples and that they have a (at least a *prima facie*) duty to obey. In this paper, I consider the general normative frameworks within which these questions are often grasped in contemporary political theory. Two dominant modes of dealing with political legitimacy are through the politics of 'recognition' and 'justification'. I argue that in order to address the fundamental challenges posed by indigenous peoples to liberal settler states today we need to pluralise our conceptions of political legitimacy.

### KEYWORDS

Legitimacy; indigenous peoples; liberalism; colonialism; pluralism

### Introduction

Australia lacks any explicit recognition of Aboriginal peoples' rights or sovereignty in its constitution. Initiatives are underway to consider how best to address this political lacuna. But what would it mean for the constitution to 'recognise' Aboriginal peoples and their 'inherent sovereignty'? The debate over constitutional recognition presupposes that we have the conceptual and institutional resources to address these challenges. But the debate also has the feel of a genuine *aporia* – an irresolvable contradiction at the heart of liberal political orders. For some, the legacy of colonialism, and liberalism's deep complicity with it, make the *aporia* self-evident. Liberalism is not only tainted by historical injustice – its conceptual scheme helps to hold these injustices in place in the present.

One immediate question is what do we mean by 'liberalism'? For my purposes, liberalism is a complex, shifting and historically contingent cluster of concepts, conceptions and theories.<sup>1</sup> Here I will focus on liberal egalitarian theories, as opposed to 'really existing' liberal states (though there are interdependencies between the two). The jury is still out as to whether or not a postcolonial political order can be constructed from liberal conceptual materials. But because liberalism is a highly contested and multifaceted tradition, it remains an open question as to whether it can.<sup>2</sup>

A key development in recent years has been a deep critique of the 'liberal politics of recognition' as a framework for understanding many of these issues, including the constitutional recognition of indigenous peoples. I believe this critique is persuasive and that we ought to shift from a focus on 'recognition' to 'justification', and to the problem of political

legitimacy. The challenge of constitutional recognition, therefore, is better grasped as one of political legitimacy. The question then becomes: does the Australian state exercise legitimate power over the indigenous peoples? To say that the state's political decisions are legitimate is to say it has the right to impose political decisions on its citizens, which they then have a *prima facie* duty to obey.

One of the challenges a liberal principle of legitimacy faces in these contexts is a plurality of perspectives about what the basis of legitimacy is. This plurality is not simply a fact about the nature of modern societies, but also stems from the respect for individual and collective freedom at the heart of a liberal principle of legitimacy. How can political authority be legitimate where there is deep disagreement about normative facts and what John Rawls referred to as 'reasonable pluralism' about the right and the good?<sup>3</sup> Moreover, how can individuals and groups who suffer from historical injustice affirm their membership of a political community in such a way that political authority can be considered legitimate?

Audra Simpson (in this volume) suggests that a better alternative to the politics of recognition is one of *refusal* – to refuse to play the game of recognition altogether. Others explore a middle-ground, where indigenous people in settler and non-settler states attempt to reconcile complex and sometimes competing impulses for and against recognition. By contrast, I will attempt to establish the conditions under which cross-cultural normative frameworks within which to justify, legitimate and transform the exercise of political power in settler colonial states might emerge. However, insofar as 'refusal' shifts the burden of justification from indigenous peoples to the state (and the international system within which states reside), it shares a similar starting point.

### The challenge of historical injustice

Recognition and justification are two of the most influential 'language games' in liberal political theory. But the challenges posed by indigenous peoples for these approaches are significant: how can the legitimacy and justice of liberal political orders be established given the historical injustices that characterise relations between settler states and indigenous peoples? By 'historical injustice' I mean not only acts of injustice that occurred in the distant past, but also how consequences of these injustices persist.<sup>4</sup> These are enduring injustices – ones that continue to shape the conceptual, legal, political and institutional frameworks within which states and their citizens act. In the indigenous case, a clear example of an enduring injustice is the ongoing entrenchment of their territorial dispossession and denial of property rights. It is not merely that territory was unjustly taken in the past, but that the consequences of those takings continues through existing constitutional, legal and political frameworks, as well as in the attitudes, beliefs and practices of citizens that are shaped through these institutional arrangements.

Consider two responses to this challenge of historical injustice and liberalism's approach to it. The first, especially from indigenous political theorists, as well as critics of liberalism, is that achieving liberal justice is not only elusive, but misguided. The second response, from many liberal egalitarians, is to argue there isn't a special kind of problem here for liberalism, but rather a failure of the state and its agencies to uphold otherwise valid liberal principles. A failure to live up to one's principles is not, in itself, reason to abandon them.

I want to try and conceptualise political legitimacy in a way that is responsive to the challenge of enduring injustices and thus offers an alternative to these two responses. Before doing so, I want to identify certain crucial features of ‘recognition’ and ‘justification’ and how they bear on debates over the legacy of colonialism for liberalism today.

### The critique of liberal recognition

The broad outline of the ‘politics of recognition’<sup>5</sup> has been well outlined in the introduction to this special issue.<sup>6</sup> At the heart of it is the idea that to become a self-conscious and self-determining agent, we need the recognition of other, similarly constituted beings. Thus the demand for recognition is a demand for mutual respect. *Mis*-recognition is a form of disrespect; an absence of mutual esteem. Depending on the theorist, *mis*recognition either undermines an individual’s (or group’s) capacity for self-development and freedom, because they internalise perceptions of inferior social worth and inequality;<sup>7</sup> or it reinforces existing structural and material inequalities that impede their equal participation in democratic institutions (whatever their subjective mental states).<sup>8</sup> The first offers a psychological account of the role of recognition in political struggles. The second focuses on the way demands for recognition reflect deeper, more fundamental, structural inequalities.

There are two lines of critique of these different aspects of the ‘politics of recognition’. The first is how a focus on recognition often misconstrues the motives and aims of social and political actors engaged in political struggles. Recognition is certainly an important element of what is at stake in these contexts, but not the main driver.<sup>9</sup> In the most psychologically focused accounts, struggles over recognition become dominated by the quality of the individual’s (or group’s) sense of self-respect *vis-a-vis* their recognition by others. But this overemphasises the need for mutual recognition as a condition for effective political agency. At the very least, history suggest that individuals and groups form a sense of their own identity and self-worth both prior to and in the midst of often deeply unequal struggles for justice. After all, Hegel’s slave ultimately gains his freedom only after turning *away* from his master and focusing on his own work. The sense of who I am (or we are) depends neither morally nor practically upon recognition by others, or at least not primarily so. And nor should the aim of such struggles be seen as a desire for mutual *moral* esteem – the conditions for which are demanding – but rather to be respected as political equals.

The second line of critique is more specific. Who is recognising whom, and on what basis? The concern here is that casting the claims of indigenous peoples as claims for recognition by the *state*, or the broader political community, is something of a trap.

Indigenous political theorists (including Audra Simpson) have developed powerful versions of this critique. The basic claim is that the history of colonialism makes mutual recognition impossible. Franz Fanon made a devastating case for this early on: the colonial master is not dependent on the slave, as Hegel thought, for securing his own self-consciousness, but rather needs their work (and crucially, their territory).<sup>10</sup> The colonial subject, in turn, subjects himself to a regime of recognition in which he internalises the gaze of the coloniser and thus the conceptual schemes and discipline imposed on his desires. As Simpson puts it, this means that the production of anthropological and political knowledge about indigenous people ends up being wed ‘elegantly, effortlessly and very

cleanly' to the imperatives of the colonial project and the desire for territory.<sup>11</sup> This can result in divisive, overlapping and enduring injustices within indigenous communities as well. Take, for example, the situation facing Aboriginal women in Canada (and elsewhere). The effects of a racist and patriarchal Canadian *Indian Act*, combined with diminished territory and constrained rights of self-government, ends up generating yet more grounds for legislative intervention in Aboriginal communities – which, in turn, generates new conflicts and divisions therein. As Glen Coulthard well summarises it, what results is the absurd paradox of the injustices of colonialism generating the grounds for yet more colonialist interventions.<sup>12</sup>

What these critiques expose is the 'sting in the tail of recognition':<sup>13</sup> to seek recognition is to seek to be valued by others, which invites a critical evaluation of the beliefs and practices of the person (or peoples) making the claim. The 'recogniser' thus exercises power over the 'recognisee' in having the capacity to grant recognition. In fact, it's difficult to make sense of recognition being something that one can *demand* in the first place – as if it were a right that triggered a necessary obligation.<sup>14</sup>

This challenge becomes acute if mutual recognition requires mediation through the state, as noted above. If the legitimacy of the state is under serious question, then the conditions for genuine mutuality and respect are absent. Thus the legacy and continuing reality of historical injustices render the politics of recognition problematic, both in terms of its explanatory power and as an appropriate normative framework for constitutional and political reform.

This critique has led indigenous and other political theorists to turn away from recognition and towards a self-conscious reconstitution of indigenous ways of life away from the liberal settler state, despite inevitably remaining in the midst of it. As I mentioned above, this can take the form of a refusal to accept the terms of the recognition game through a counter-assertion of indigenous sovereignty.<sup>15</sup> But are there other frameworks available for thinking about the nature of justice and legitimacy in settler states like Australia?

## Power and justification

What critics of the liberal recognition game are really focusing on is power. In refusing to play the recognition game, indigenous peoples are disrupting the legitimacy of the liberal settler state. Despite the focus on the justification and legitimacy in recent political theory, it is still not clear that liberal political theorists really do put power at the heart of their analysis. If they did, it would shift the onus of justification from resting mainly with indigenous communities, to one owed by the state.

It is important to capture the nature of power as it is being used here. A frequent complaint about liberalism is that it lacks the resources to both analyse and attend to the nature of structural domination in politics.<sup>16</sup> It is not just that the state and its agencies could (and do) interfere arbitrarily in the lives of indigenous peoples, but that domination is exercised through the background conditions of the settler political order – and thus even through the apparently 'free' actions of those subject to it. Can a different approach to liberal justification address these concerns?

One powerful recent attempt to respond to this challenge has been developed by Rainer Forst. I won't summarise all of his arguments here, but rather focus on his distinctive

account of the ‘right to justification’ as a way of thinking about the legitimacy (and ultimately justice) of liberal political orders.

According to Forst, people should be conceived not as ‘recipients’ but ‘agents’ of justice: that is, as ‘autonomous agents who codetermine the structure of production and distribution that determine their lives’.<sup>17</sup> The shift is thus from a focus on recognition to power and to ‘relations of justification’: the conditions in which people are able to demand justification of the power exercised over them. And indeed Forst makes explicit that the first question of justice is one of power – ‘the justifiability of social relations and the distribution of the “power of justification” within a political context’.<sup>18</sup> A just order is one in which all the rules and institutions of social life are entirely ‘free of all forms of arbitrary rule or domination’.<sup>19</sup>

Forst is appealing here to a familiar conception of respect for the autonomy of persons, but on the basis of what he calls their moral ‘right to justification’. That is, to the recursive, general principle that every norm appealed to in order to legitimise the use of force must be reciprocally and generally valid and, therefore, justified by reciprocally and generally non-rejectable reasons. What does this mean? When justifying the allocation of rights and resources, I cannot claim rights or resources that are denied to others and I can’t simply impose my reasons on others in making those claims. Moreover, the reasons I offer in justifying the imposition of norms on others must be in principle shareable among all those affected, not just the dominant parties.<sup>20</sup> The underlying normative appeal here is to respect each other’s moral and political autonomy as reason-giving and ‘reason-receiving’ agents. In political terms, this translates into a general right to justification, on terms no one can reasonably reject, of those exercises of power that affect our most vital interests.

Forst embraces a broad conception of power, including forms of structural domination. Power can be exercised for good or ill, depending on the context. And power can be exercised both in the physical sense (I prevent you from leaving the room) as well as in the ‘space of reasons’: that is, the power to shape the framework within which the legitimacy of social and political institutions are justified, including what counts as a legitimate move in those language games.

There are complex debates about the nature of justification that I cannot explore here. But at the heart of Forst’s underlying conception of normativity is that the validity (and bindingness) of norms is grounded in a form of *practical deliberation* among equals. A norm is valid to the extent that it withstands a certain kind of justificatory procedure. There are, of course, elaborate and sophisticated accounts of the kind of justificatory procedure required to meet the appropriate threshold – of which Forst’s is a prominent example. These neo-Kantian approaches seek to establish the validity of a procedure that avoids both moral particularism, on the one hand, and dogmatism on the other. For Forst, we can’t appeal to a particular conception of the good to justify the exercise of political power on the assumption that it is already accepted, nor to a set of pre-established common interests. Instead, we need to construct the appropriate terms of our moral and political relations collectively, respecting the fundamental freedom and equality of everyone in the process.

There are two significant challenges, however, for this approach. The first is the limit to what justification can do. The source of normativity of the justificatory procedure *itself* is, more often than not, presumed. For example, Forst, following Kant, accepts that there are

limits to our being able to justify the normatively of justification. Like a good Kantian, he argues it is implicit in the way we grasp the nature of practical reason itself.<sup>21</sup> In other words, and very roughly, it is tied to what it means to see oneself as a competent moral agent in the first place, sharing a world with other similar moral agents and to whom I owe appropriate justifications.<sup>22</sup> Forst argues this is an ‘autonomous’ insight of practical reason: we grasp the other in light of the capacity to reason that each of us shares. Of course, this invites the charges of circularity and arbitrariness that the neo-Kantian tradition has long sought to avoid. I leave this critique aside here. The key point, for our purposes, is that, ultimately, the ground of normativity is modelled on practices and conceptions of practical reason. But these are very much *our* practices of practical reason. Practical reasoning is a social practice, as much as it is a practice of reasoning.<sup>23</sup> It has a history. And that means that there is always the possibility that those practices have been – and continue to be – shaped by various relations of power that evade our extant conceptual and justificatory schemes. And this returns us to the question of power, as well as to the legacies of historical injustices. It’s not that the project of reconstructing the ground of normativity is impossible. Rather, it’s that we need to address the challenge of redeeming this mode of normativity in ways that stay true to its own aspirations and in light of the complex histories of our political communities.

### A constellation of normative orders

A key insight from the critique of recognition is that our political communities are not only a plurality of cultures and peoples, but also of ‘normative orders’. We need to pay attention to the historical and political contexts in which these normative orders come into being and the interactions between them over time.

What do I mean by a ‘normative order’? And why do I refer to it in the plural? There is both a functionalist and prescriptive sense to the term as I intend it here. In the first instance, drawing on classic sociological theory, a normative order is any set of rules and shared expectations governing a particular social situation. But in the second much richer sense, a normative order is a cluster of values, beliefs and legitimation ‘narratives’ (religious, cultural, moral, political and legal) that people appeal to in order to justify (and contest) the practices and institutions they are both subject to and help constitute. These normative orders are plural, because they are historically constituted; and dynamic because they are undergoing change and modification through the actions of those subject to them.

What are the consequences of this picture of a plurality of normative orders for liberalism? First of all, instead of a liberal nation state (even a multicultural one) being the political form within which indigenous political communities are to be subsumed, the alternative is to conceive a liberal political order as a constellation of normative orders that overlap and intersect in complex ways above and below the state.

But this raises the challenge of having a plurality of normative authority. How is it possible to pluralise authority and still be a community? In fact, this is an important insight that we learn from the indigenous case. Liberalism, historically, emerged from the challenge of grappling with normative diversity of societies in a particular way. This began with religious diversity, but grew to include a wider array of normative ‘sources’. And by normative diversity I mean the different sets of values, principles and practices that

people hold and which orient them in moral and political space. These conceptions of the good and right are also sources of normative authority. So the problem is not so much an *absence* of normative authority as a plurality of it. On what basis can a liberal political order be considered legitimate given this plurality?

Notice the particular features of the indigenous case.<sup>24</sup> There is no clear fact of the matter to be discovered or appealed to in order to settle the question of authority. Should we appeal to history? Which history? Should we appeal to the facts on the ground? That would seem to imply that power justifies itself. But legitimacy can't mean successful domination. Is there a morally correct principle or value that provides the normative authority for the exercise of power in this case? Human rights, distributive justice and equality are all candidates for grounding postcolonial legitimacy, but none are conclusive, given the complexity and diversity of considerations involved. There are also other important elements at play. There is deep, underlying distrust between indigenous communities and the state, given the history of their relations. And relatedly, there are deep asymmetries of power, at multiple levels, between indigenous peoples and various agencies of the state.

So how can the exercise of political power in settler political societies become legitimate? In virtue of *what* will political decisions have the property of being legitimate? What is the 'source of normativity' for postcolonial political legitimacy?

First of all, it is important to distinguish legitimacy from justice. These concepts are closely related – perhaps even interdependent – but not equivalent. Some (like Forst) argue that legitimacy is tightly aligned with justice, such that if the conditions required for citizens to exercise suitable 'justificatory power' are in place, just outcomes will follow (and vice-versa). The idea, roughly speaking, is that it doesn't only matter what benefits or outcomes citizens enjoy, but also their role in shaping and controlling how those outcomes come about. For others, like Rawls, we need an independent theory of justice, in addition to a liberal principle of legitimacy, in order to deliver just outcomes.

I don't propose to resolve this debate here. However, note two important aspects of legitimacy that we need to keep clear. The first has to do with the quality of political relations between members of a political community. The second has to do with the social outcomes they enjoy. We might summarise these as the 'political equality' condition and the 'social justice' condition.

Starting with the second, legitimacy is often linked to the outcomes and benefits individuals and groups enjoy as a result of the political process. The basic idea is that the better the social outcomes for the larger number of citizens, the greater the legitimacy of the regime. However, it's clear that benefits are not a sufficient condition for legitimacy, since they can be delivered through deeply problematic political processes. Consider, for example, the case of the 'Northern Territory National Emergency Response' in Australia in 2007. This package of changes to welfare policy, land tenure and law enforcement was justified on the basis of an alarming report that highlighted serious cases of child sexual abuse and social dysfunction in various Northern Territory Aboriginal communities. Part of its implementation involved sending more than 600 Australian Defence Force personnel into these communities. Even if, for argument's sake, sending in the Australian army did, in fact, end up reducing domestic violence and providing better security for members of these communities, there remain deep questions about the legitimacy of such a policy. Was there adequate consultation with those most adversely affected? Did the members of those communities have the opportunity to respond to the



recommendations of the original report? What was missing from this entire episode was sufficient ‘democratic control’<sup>25</sup> exercised by those subject to those policies. It failed the political equality condition of legitimacy.

So legitimacy and justice can come apart. Social and economic goods can be distributed in illegitimate ways, including those that involve domination over the people to whom they are distributed. But equally, legitimate decision-making processes, and the institutions upon which they rest, can become de-legitimated over time, especially if they result in deeply unjust outcomes. Thus legitimacy and justice are not synonymous, but normatively interdependent in complex ways.

We need to attend to both the social and political dimensions of political community. This has been a significant failing of many recent discussions of indigenous peoples by egalitarian liberals. One reason why repeated attempts at ‘solving’ entrenched indigenous disadvantage fail (measured almost exclusively in social welfare terms) is because of the lack of political (and moral) attention accorded to indigenous normative orders in the determination of law and policy. In other words, there has been insufficient attention paid to the structural nature of the injustice underlying relations between settler states and indigenous peoples. To lack adequate control over the laws, institutions and procedures to which you are subject (and which are unavoidable), is to lack freedom from domination.

### Legitimacy and disagreement

If liberal settler states are constellations of normative orders, then how can a plurality of normative authority be reconciled within a single political entity? How can these normative orders not only co-exist in non-dominating ways, but also form the basis for a genuine political community? Could any state (and the international order that surrounds it) be legitimate in these circumstances?

Deep disagreement is a condition of politics, or what Jeremy Waldron calls the ‘circumstance of politics’.<sup>26</sup> There are different ways of expressing this idea. For Rawls, ‘reasonable disagreement’ is a kind of normative fact about our democratic public culture that a liberal principle of legitimacy has to accommodate.<sup>27</sup> This is not simply a form of political realism (*pace* Raymond Geuss<sup>28</sup>), but an ‘elemental’ feature of politics and one of the consequences of people exercising their basic freedom. Nevertheless, we need to arrive at common decisions regarding our collective affairs. A liberal political order needs to solve what Bernard Williams called the ‘first’ question in politics – the legitimacy question – in a distinctive way: not by securing order and the conditions for cooperation by any means necessary, but rather on terms that are acceptable to all those subject to it.<sup>29</sup> The crucial question then becomes: what counts as ‘acceptable’?

The challenge for a distinctly liberal account of political legitimacy is thus to acknowledge the ‘circumstances of politics’ without giving up on the prospect for establishing legitimate political authority. Political decisions are complex and involve a large number of normative and empirical considerations. And this makes it difficult – even when there are normative facts that point in a particular direction – to construct a sufficiently justified collective belief about what is the correct action.

Consider two recent approaches to political legitimacy that focus on different dimensions of the legitimacy problem. In the first case, the focus is on trying to reconcile the

competing ‘wills’ of members of a political community (the ‘will-based approach’). In the second, the focus is on identifying the correct ‘beliefs’ that should guide the exercise of political authority (the ‘belief-based approach’).

According to the first dimension of the legitimacy problem, taking people as ‘self-authenticating sources of valid claims’<sup>30</sup> (as Rawls put it), how do we accommodate the plurality and often conflicting claims about what ought to be done? How do we make political decisions on behalf of people with conflicting wills? Legitimate political decisions, on this view, adjudicate between the wills of citizens *in the right way*: for Rawls, this means deciding in accordance with a constitution ‘the essentials of which all citizens as free and equal may reasonably be expected to endorse’.<sup>31</sup> For Philip Pettit, on the other hand, citizens need to have ‘equal control’ over political decisions, which means essentially two things: they must be capable of influencing and directing the political power being exercised over them. In the first case, they must have equal access to a ‘system of popular influence over government’ and enabled to ‘share equally in operating that system’.<sup>32</sup> And second, that this ‘system of popular influence’ must actually impose a direction on government that all (who are subject to it) have equal reason to welcome.

Thus for both Rawls and Pettit, albeit for different reasons, each citizen must be able to endorse, in some reasonable way, the exercise of power that they are both subject to and help constitute. The challenge they both face is how to justify this given the diversity of wills and thus beliefs about both the ‘good’ and the ‘right’ (including about the nature of the relevant ‘constitutional essentials’). Of course, there is also the problem of whether our existing electoral systems and institutions are capable of delivering genuine ‘democratic control’ in the first place.<sup>33</sup>

According to the second dimension, political legitimacy ought to track judgement-independent normative facts about what should be done. Political decisions, in other words, need to be responsive to valid claims about what ought be done.<sup>34</sup> The problem of political legitimacy is thus not (or perhaps, not only) to adjudicate between conflicting wills, but to identify the correct judgement about what ought be done. Political decisions that recommend genocide or the violation of human rights, for example, are not illegitimate because they result in actions that fail to treat individuals as ‘self-originating sources of valid claims’. Rather, they are illegitimate because they are wrong, independently of what people might will (or not will). Validity does not stem from a process of adjudication between wills, but rather from the correct normative authority.

There is another aspect of the belief-based approach to political legitimacy that raises a further challenge. As Fabienne Peter has argued, according to this approach, the force of normative facts must somehow ‘reach through’ to our will formation:<sup>35</sup> it should help form our judgements about the validity and legitimacy of political decisions taken in our name. The more successful the normative orientation that normative facts provide, the more significant the normative authority for determining the legitimacy of political decisions.

But of course we are also always acting from within existing institutions and practices – within history. This is particularly important for thinking about the nature of political legitimacy. Again, recall the context of this special issue. The history of the relations between indigenous peoples and the state is a critical feature of the conditions required for effective normative authority to be established. The challenge for any conception of legitimacy – belief-based, will-based or ‘realist’ – is how to ensure that the acceptance

of a justification for the exercise of power is not itself produced by the coercive power that is being justified. Does the colonial past and present of liberal settler states make political legitimacy impossible in this sense? Are the institutions and practices of contemporary settler states so saturated by the legacy of colonialism that any claim to legitimacy – either now or in the future – is hopeless? The politics of ‘refusal’ of the liberal ‘politics of recognition’ articulated by Simpson and others trades on this powerful claim.

### The politics of political legitimacy

However, one danger of abandoning a belief-based conception of political legitimacy completely is that we risk having nothing to say about political legitimacy at all. If there is no available normative authority, then either collective decision-making is impossible, or all political decisions are illegitimate. The first is moot given the need for collective decisions about our public affairs. So the second looms as the greatest challenge. Belief-based accounts of political legitimacy tend to lack a sufficient response to the problem of the plurality of normative authority.

So this leaves us with two options. Either we opt for a hybrid of the belief-based and will-based accounts of political legitimacy, and accept that there are agreement-independent normative standards for collective decision-making, but no straight-forward way of enforcing them given the ‘circumstances of politics’. Or, we embrace the will-based account and thus the challenge of justifying the process (and institutions) through which we adjudicate between a plethora of conflicting wills.

However, this way of characterising the problem is perhaps too stark. The push and pull between the adjudication of wills and the attempt to establish normative authority just is the ‘politics’ of political legitimacy. Tying justification to legitimacy means that political decisions must be justified *to* citizens: the reasons upon which legitimate political decision-making are based, in other words, are unavoidably agreement-dependent. This is so even if we believe there are agreement-independent normative facts that should guide political decision-making (i.e. that there are genuinely objective public reasons).<sup>36</sup> The emphasis on *justification-to* shifts the onus from the state to the citizen and the normative contexts within which they are situated.

The promise of this public justification approach, only sketchily outlined here, is that it creates the conditions for the emergence of new forms of ‘multi-personal’ reasons that serve as the basis for the now more complex grounds of political legitimacy. Multi-personal reasons are reasons that can be endorsed from a range of different perspectives and that emerge from the bottom-up – through ongoing, historically situated, multi-perspectival public reasoning – as opposed to ‘top-down’ state-based reasoning.

For this to occur, however, our modes of public reasoning and political institutions must remain open to counter-assertions and contestations of our existing normative orders and authorities. Recall the challenge noted above when the very processes most in need of legitimation are rendered immune from contestation. What recent indigenous political theory (and activism) has made clear is the extent to which we are often blind to these ‘structures of domination’. And this can mean that the forms of mutual justification envisaged by liberal egalitarian theorists (such as Rawls or Forst) become practically impossible from the perspective of indigenous peoples.<sup>37</sup> Thus, political legitimacy needs to be pluralised to reveal the shifting multiplicity of normative orders within an

existing state – especially the settler state. However, and at the same time, we then need to develop the terms of mediation, engagement and adjudication between these different orders that could form the basis of new claims to legitimacy.

A deep, underlying question raised by the challenge of political legitimacy is whether a political community can be forged in ways that do not entail a desire for mastery and domination – of human beings over each other and over nature. The history of settler colonialism demonstrates how indigenous peoples have experienced the promise of liberal legitimacy as perpetually deferred, if not a matter of colossal bad faith. The self-proclaimed desire of contemporary neo-Kantians (and neo-Hegelians) to acknowledge the limits of practical reason in justifying liberal institutions has been seen, instead, as justifying existing conceptions of sovereignty and self-determination that need to be challenged from an indigenous perspective.

But after this critique of settler colonialism, what kind of politics are we left with? The global structures of sovereignty and capital might appear so entrenched, and yet based on such flagrant violations of liberal egalitarian principles, that we are at a kind of dead end for liberalism. And so it seems to call for the enactment of forms of indigenous sovereignty and normativity located outside of liberal democratic practices altogether. However, that too is problematic, if only given the aspirations of many indigenous peoples themselves. And so, perhaps, a more promising question emerges: how do we create new resonances between these now multiple normativities in our communities, and thus new modes of solidarity required to identify and then address domestic and global injustices? This should be the focus of a resolutely anti-colonial and egalitarian political theory.

## Notes

1. See Duncan Bell, 'What is Liberalism' in *Reordering the World: Essays on Liberalism and Empire*, Duncan Bell (ed), Princeton, NJ: Princeton University Press, 2016, pp 62–90.
2. See Duncan Ivison, *Postcolonial Liberalism*, Cambridge: Cambridge University Press, 2002.
3. John Rawls, *Political Liberalism*, New York: Columbia University Press, 1993.
4. For further discussion see, for example, Jeff Spinner-Halev, *Enduring Injustice*, Cambridge: Cambridge University Press, 2012; for an overview see Duncan Ivison, 'Historical Injustice', in *The Oxford Handbook of Political Theory*, John S. Dryzek, Bonnie Honig, and Anne Phillips (eds.), Oxford: Oxford University Press, 2008, pp 507–525.
5. Charles Taylor, 'The Politics of Recognition' in *Multiculturalism and the Politics of Recognition*, Amy Gutmann (ed.), Princeton, NJ: Princeton University Press, 1992; Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, Joel Anderson (trans), Cambridge MA: MIT Press, 1995. This section draws on arguments and material from Duncan Ivison, 'Justification, Not Recognition', *Indigenous Law Bulletin* 8(24), 2016, pp 12–18.
6. See Sam Balaton-Chrimes and Victoria Stead, 'Recognition, Power and Coloniality', in this issue.
7. Taylor, 'The Politics of Recognition'; Honneth, *The Struggle for Recognition*.
8. Nancy Fraser and Axel Honneth, *Redistribution or Recognition? A Political-Philosophical Exchange*, London: Verso, 2003.
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11. Audra Simpson, *Mohawk Interruptus; Political Life Across the Borders of Settler States*, London: Duke University Press, 2014, p 71.
  12. Coulthard, *Red Skin, White Masks*, p 100.
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  21. Forst, *The Right to Justification*, chp 2 passim.
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  23. Anthony Laden, *Reasoning: A Social Picture*, Oxford: Oxford University Press, 2012.
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  25. The phrase is from Philip Pettit, to be discussed further below.
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  27. Rawls, *Political Liberalism*.
  28. Raymond Geuss, *Philosophy and Real Politics*, Princeton, NJ: Princeton University Press, 2008.
  29. Bernard Williams, *In the Beginning was the Deed: Realism and Moralism in Political Argument*, Princeton, NJ: Princeton University Press, 2007, pp 3–4.
  30. Rawls, *Political Liberalism*, p 32.
  31. Rawls, *Political Liberalism*, p 137.
  32. Philip Pettit, *Just Freedom: A Moral Compass for a Complex World*, New York, NY: W.W. Norton, 2014, pp 120–123.
  33. Pettit recognises these challenges: see *Just Freedom*, pp 124–147.
  34. I am indebted in this section to discussions with Fabienne Peter and her paper ‘The Grounds of Political Legitimacy’, which she delivered at the ‘Legitimacy and the State’ conference at the University of Sydney in October 2016.
  35. I have borrowed this phrase from Peter, ‘The Grounds of Political Legitimacy’.
  36. This is very well captured in Peter’s ‘hybrid’ account of political legitimacy.
  37. See the contribution by Audra Simpson in this issue.

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