From Sovereignty in Australia to Australian Sovereignty

Raia Prokhovnik

Open University, UK

The article argues that sovereignty in Australia is as yet incomplete, but that full sovereignty could be achieved through engagement with the indigenous Aboriginal 'first nations'. First, the inter-constitution of the concepts of sovereignty and politics is outlined. Then the unfinished character of sovereignty since white settlement is examined, indicating the default nature of the sovereignty settlement. The challenge arising from complex indigenous claims to sovereignty is then explored through two elements of a *differend*, or power differential, which has excluded indigenous peoples from meaningful recognition as political actors. The meaning of sovereignty in the broad field of indigenous claims is then analysed. Finally, a proposal for constitutional amendment is outlined, building both upon Aboriginal selfunderstandings as belonging to specific nations and groups and upon the logic of the history of white settlement. Constitutional revision which takes account of these histories provides an opportunity to extend the scope of the parties who are federated. Such a process could stimulate debate that generates a meaningful Australian sovereignty settlement identity for both indigenous and non-indigenous communities.

Keywords: sovereignty; Australia; *differend*; indigenous peoples

This article argues that the development of sovereignty in Australia is still in process, not just in the sense of the conditionality of the sovereignty settlement that is distinctive in all polities due to their openness to contingent change, but in a more radical sense. The article contends that indigenous challenges framed in the language of sovereignty provide an opportunity for Australia's sovereignty to be confronted and re-imagined, and the character, values and limits of its politics rethought. This shift is summed up in the idea of the move from sovereignty in Australia to Australian sovereignty.

After outlining the conceptual interconnection between sovereignty and politics, the article examines how the origins of the sovereignty settlement in white Australia (that is, in Anglo-Celtic settler white Australia) led to a default arrangement rather than an extensively deliberated one, and highlights the distinctive character of that settlement which remains largely intact in Australian political culture today. The article then explores the uses to which the concept of sovereignty is being put in contemporary challenges, specifically and notably in indigenous claims[1] by Aboriginal voices[2] and advocates on their behalf, and argues that recognising indigenous people as political actors offers a way forward for Australian sovereignty for both indigenous and non-indigenous communities. The final part proposes a design for constitutional amendment built upon both Aboriginal self-understandings and the white settler constitutional history.

Sovereignty

The conventional discourse on sovereignty (Bull, 1977; De Jouvenal, 1957; Hinsley, 1986; Waltz, 1979) holds as central the abstract principle of the condition of supreme agency and authority in a constitutionally indivisible, autonomous and territorially exclusive political unit.[3] This conception defines the exemplary form of modern state sovereignty operating in a system of states under conditions of anarchy. It incorporates ideas from the liberal tradition about ruling through authority and the rule of law deriving from the development of the *Rechtsstaat* tradition in modern Europe.

Critics of the conventional discourse on sovereignty have pointed to the false universalism of its abstract character, arguing that its rootedness in specifically European thought and practice problematises the politics of its global applicability (Beaulac, 2004).Analysis of the genealogy of the modern state (Skinner, 2009), and work drawing attention to multiple forms of polity (Tully, 2008), challenge the naturalised hegemony of the modern state form. Critics also highlight the depoliticised character of the discourse, deriving from a narrow definition of politics (reducing politics to matters of government, and governance as the application of the rule of law, but not taking sufficient account of contestation) and the reification of the authority concept (sovereignty as about the authority relationship rather than about power), making it ripe for critiques of the way authority can mask oppressive power relationships. The conventional conception has also been challenged very effectively by those teasing out the anomalies in the conception of state sovereignty thrown up by recent work in the field of migration, refugees and asylum seekers, for instance in relation to the European Union (Huysmans, 2006; Squire, 2011).

It follows from the depoliticised character of the conventional modern conception that it also overlooks the significance of other functions that we ask sovereignty to perform for us. As well as identifying the supreme locus of agency and authority, sovereignty is a regulative ideal establishing political order and stability, consolidating the meaning and boundaries of political practices, and enabling the formation of a political identity of the whole. In this way, sovereignty is crucial in negotiating the symbolic value of the collective self-definition of the political unit, the reflective self-identity of the polity seen as a distinctive whole and as the focus of a sense of belonging. On this point, James Tully (2008, p. 266) refers to the 'language of political self-understanding and self-reflection' which serves to legitimate some practices and deligitimate others, from which political authority, citizenship and community meaningfully flow.

The meaning of sovereignty as an organising principle in this sense, where sovereignty and politics are understood as inter-constituted, is richer than allowed in the conventional discourse. In that standard discourse the link between sovereignty and politics is obscured, in part because a robustly dynamic and agonistic politics is seemingly avoided by the (however unrealistic) ideal of reasonable agreement among free and equal persons. In consequence sovereignty is reduced to only a formal, constitutional category, and the work that the inter-constitution of sovereignty and politics does remains unaccounted for. Karena Shaw notes (2008, p. 1) that the political is about 'the conditions under which and the practices through which authority is constituted and legitimated, and what these constitutions and legitimations enable and disable'. To acknowledge a situation as political is to recognise it as complex and contestatory, limiting as well as enabling the conditions of possibility and becoming, and not simply reducible to evaluation by moral principle. One of the key 'conditions under which' the specific meaning of the political is established in a particular polity is the sovereignty settlement established there. Shaw (2008, p. 9, p. 12) shows 'how discourses and practices of sovereignty "work" to construct the space of the political', and demonstrates the role of sovereignty in order 'to create and legitimate forms of collective authority'.

Other evidence for the close relationship between sovereignty and politics comes from a range of sources. Studies have demonstrated the plurality of conceptions of sovereignty over time and place, and indicated the crucial link in the concept of sovereignty in any particular polity between the general theoretical organising principle and specific political practices (Bartelson, 2006; Prokhovnik, 2008). Neil Walker (2003, p. 28) underlines the link between sovereignty and politics when he draws attention to two facets of the 'irreducible core, the non-negotiable given of any sovereign order'. The first is that a 'sovereign order must assume its own continuing or self-amending sovereignty within its sphere of authority (rules of recognition and change)'. The second is that a sovereign order must also 'retain interpretive autonomy (rules of adjudication), deciding the boundaries of that sphere of

authority'. Martii Koskenniemi (1990) makes a strong case for the inseparability of law and politics and the necessarily political dimension of all law and the rule of law. Walker (2005, pp. 591–2) describes the interconnection of legal and political aspects of sovereignty when he defines a legal order as 'a hierarchical structure of norms organised around a point of legally self-validating sovereignty assumed or claimed to be grounded in social or political authority'. Carl Schmitt recognised that sovereignty is a political as well as a legal concept (Schmitt, 1985). In Michel Troper's words (2010, p. 139), the 'principle of imputation', the 'quality of a being in the name of which sovereignty ... is exercised', is necessarily political.

The inter-constitution of sovereignty and politics means that sovereignty takes into account how the norms of sovereign statehood are embedded in the particular way politics is conducted in a specific country through its character, values and parameters, expressive of its socially, culturally and historically specific context of assumptions, including presumptions about who counts as a political actor, and reflected in the character of its political discourse in mediating relations between rulers and ruled. Every sovereignty settlement – the distinctive statement of the legitimacy of the political order of a polity – contains within it a politics of possibilities and limits and, being negotiated, is never a final and absolute statement. The ongoing political process of shifting compromises between different perspectives, ideologies and values in a particular historical context renders every sovereignty settlement conditional (ultimately provisional) as well as (for the here and now the embedded given of the current content and limits of politics, necessarily) unconditional.

The conditional and unconditional character of any sovereignty settlement demonstrates the deeply political character of sovereignty (Kumm, 2007; Loughlin, 2003; Mansfield, 2008; Prokhovnik, 2007;Walker, 2010).As Jens Bartelson (2006, p. 474) notes, the concept of 'sovereignty thus contains the seeds of its own essential contestability'. Clifford Geertz (1973, pp. 311–2) makes the case that 'a country's politics reflects the design of its culture'. Culture, he argues, 'is not cults and customs, but the structures of meaning through which men give shape to their experience', while 'politics is not coups and constitutions, but one of the principal arenas in which such structures publicly unfold'. Extending Geertz's point, this article is underpinned by the understanding that a country's sovereignty reflects the design and practice of its politics, and *vice versa*. This dialectical, more comprehensive understanding of sovereignty discloses a more dynamic and interactive perspective which then informs constitutional provisions and formal state politics.

The Default Sovereignty Settlement

The mainstream discourse of Australian politics has a clearly discernible character: demotic and parochial, pragmatic and unreflective, with recognisable themes and tropes. Rodney Smith (2001, pp. 44–5) argues that 'Australia is not one of Almond and Verba's civic cultures', for Australians exhibit a 'stunted and sporadic political participation' and are 'democrats of a limited sort'. Stuart Ward quotes Neville Meaney saying that 'since Federation, Australia's national behaviour "has been based not on a distinctive culture or ideology but rather on an instinctive sense of shared interests and experience" ' (Ward, 2001, p. 8). Ian McAllister (1997, p. 17) reports that surveys reveal a 'widespread ignorance about the workings of government, and about constitutional, citizenship and civic issues'.

The symbolic aspects of political processes are neglected while the rhetoric of politics in Australia centres on pragmatic interest claims and the trading of insults. Without a reflective debate about the meaning of sovereignty in the setting of Australian politics, the pragmatic drive of its practices is not enough to sustain it when faced with new or newly articulated issues and problems. As a result, it is a distinctive feature of Australian political culture that the mainstream discourse inhibits engagement in public debate about Australia's own identity. The national identity that is wrought in the histories of other countries, often

through a struggle for independence has, in the Australian case, not happened. This is because, it is suggested below, of the attachment to 'Britishness' and in particular the persistence of the colonialism that term implies. What remains to be completed, then, is a fully reflective self-identity in relation to politics, in terms of a renewed process of historical reasoning. Such a process would underpin a political language through which to engage with what Australia's independence means. It could also help shape how this self-identity is expressed in what counts as political and how politics is conducted in Australia. There is an unfinished debate about the boundaries as well as the content of politics. This is by no means to disparage the Australian case, but only to identify a key dimension of sovereignty which continues to be unconstituted.

Is it the case, however, that this default discourse *is* now the identity of Australian politics? Has an unacknowledged transition from a *de facto* to *de jure* situation eliminated the need to pursue the question? The answer to this has to be no, for two reasons. First, we necessarily invest in the notion of sovereignty such that every sovereignty settlement can then operate in practice as though politics has an uncontested foundation and so is unconditional. At the same time, historical reflection discloses the conditionality of every sovereignty settlement (Prokhovnik, 2007), since who wields power is never fixed once and for all, and the values and norms shaping politics change over time. But the mainstream political discourse in the Australian case takes its sovereignty as though it really were an uncontested foundation, and cannot acknowledge its conditionality. Second, Australia remains in an important sense held within its colonial past (Short, 2010), still with a dominant perception as a 'white settler nation' (Galligan, 1995, p. 251), and has yet to address fully the challenge of a post-colonial identity (Gunew, 2004).

The term 'white settler' in relation to Australia is not simply a neutral description of land settlement but contains two highly charged forms of 'othering'. The 'white settler' discourse refers in the specifically Australian case to the identity of white settlers who were selfconsciously not convicts. Second, the 'white settler' discourse carries with it a colonialist definition of Australian nationhood, that is, one that not only claimed 'perfect territorial jurisdiction' (Ford, 2010) and erased the significance of indigenous 'first nations', but which was also constituted through the 'dispossession of the Indigenous people' (Stokes, 2004, p. 19) and accompanied by a 'logic of elimination' (Wolfe, 2006, p. 387). John Kane (1997, p. 119) shows that 'the political ideals of Australians at Federation were inseparably linked to deep racialist beliefs, and that both found expression in the policy of White Australia'. Ward notes that for much of the twentieth century 'Australian policy was influenced by a particular view of Australia's place in the British world ... deeply inscribed [by] assumptions about Anglo-Australian community of identity'. Ward also quotes Donald Horne's highly significant assessment that, for Australians, it 'was easier to feel self important as an imperialist than as a nationalist'. Ward argues that Australia's earlier 'British race patriotism' and its more recent formulation of an Australian national sentiment are both 'expressions of a fundamental "ethnocentrism" ' (Ward, 2001, pp. 6–8).The 'core assumption' of both, that '[b]eyond the more narrow, immediate, but quite legitimate national interests of the individual members of the British Empire, there reigned the supreme principle of the inviolable unity of the British peoples'(Ward, 2001, pp. 9–10), indicates the enduring racial and imperial perspective of Australian political culture. Despite the change in the 'meaning of Australian nationhood' in the 1960s, the 'imperial imagination in Australian political culture' (Ward, 2001, p. 12) was eclipsed at the level of overt UK–Australian relations but not at the level of core assumptions and key precepts.

Meaney (2001, p. 76) recounts the persistence and tenacity of white Australians' sense of Britishness as a counterweight to the mistaken and teleological idea that Australians were 'engaged from early in their history in an inexorable struggle for national independence'. He argues that 'as Britishness ... lost its appeal as a central defining idea' in the 1970s, a 'radical nationalist myth' around Gallipoli and the bushman failed to fill the void and has

been 'shortlived'. He notes a 'lack of enthusiasm for this nationalist' opportunity, and contends that what 'holds the post-nationalist society together remains obscure' (Meaney, 2001, p. 89). John Rickard (2001, p. 129) makes a case for the continuing centrality of 'colonial Britishness' to Australian values. Australia may have reluctantly given up its identity as British, but it has been even more reluctant to give up on the colonialism. Certainly Australia has not developed or entered a meaningful post-colonial mentality. This is the nub of the 'unresolved ambivalence about the whole project of Australian settlement' (Connors, 2001, p. 134), and of the problematic impasse in rethinking the place of indigenous peoples in Australia. That 'unresolved ambivalence' will not be resolved until white Australian public opinion understands the force of the colonial imaginary still underpinning its attitude to Australia's indigenous peoples. The continuing lack of 'systematic' public debate and reflection (Ward, 2001, pp. 2–3), despite the more recent assertion of a home-grown nationalist myth (Ward, 2001, pp. 4–7), means that Australia's political identity as an independent, autonomous, *sovereign* polity untethered from its colonial allegiance, though not from its colonial legacy, has yet to be registered, summoned and enacted. The resulting 'unresolved ambivalence' helps to explain the continuing myopia and unacknowledged racism towards its indigenous peoples that still characterises Australian politics.

As a result, Australian politics does not operate as though its sovereignty had the 'capacity to legitimise itself without recourse to anything over and above the people thus constituted' (Bartelson, 2006, p. 468), but instead still operates, by default, as though that capacity rests elsewhere, as though it were still dependent on the British imperial brand, or as though such a capacity were not even required. The meaning of sovereignty has yet to be fully established in Australian politics. The first part of the title of this article, 'Sovereignty in Australia', precisely reflects the view that sovereignty is not yet fully owned in Australian politics and remains merely 'in' Australia.

These observations about Australian political culture are also reflected in its constitutional history. The scope and character of sovereignty in Australia can be explored through an analysis of (but by no means an exhaustive treatment of) how key sources of the sovereignty settlement in white Australia led to a default agreement rather than an extensively deliberated one. It sees as significant the complex colonial history preceding Australia becoming an independent state and the legacy of that particular colonial past, and the specific constitutional provisions of enacting contemporary Australian sovereignty. These are key factors in shaping the style and rhetoric of how politics is conducted in Australia.

It is salutary to highlight the ambiguity about the date when Australia gained official sovereignty and took on the status of an independent country. The focus on the constitutional legislative process of outcomes reflects very clearly formal intentions and motivations as well as expressing political practice. The skeleton of key dates demonstrates in sharp relief the ambiguity involved. What emerges is that the acquisition of sovereignty has been a process, and is ongoing, rather than definable as a particular moment or event. Separation transpired through a process of being granted and bestowed rather than through a fully articulated claim having been made – a passive rather than active process where the initiative has, in an important sense, been taken by the UK. Four of the attempts to register the establishment of sovereignty in Australia occurred in 1847, 1900, 1931 and 1986.

1847 marked the end of transportation to the colony of New South Wales, the largest and most advanced colony, though the convict system persisted in Tasmania until 1852 and until 1868 in Western Australia. This change was also associated with the introduction of direct elections to the New South Wales Legislative Council in 1856. In this way the Legislative Council became the governing body, but by default, not explicitly sought. J.D.B. Miller and Brian Jinks (1971, p. 29) argue that '[p]olitics began in Australia as a struggle between squatters and Governors' in the mid-1800s, squatters being 'men of some substance who had taken their sheep beyond the boundaries fixed by the Governors', and who benefited

from cheap convict labour. By the mid-1800s there were six effectively self-governing settlements (New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania), though with the UK determining policy in defence and foreign affairs. The 1865 Colonial Laws Validity Act confirmed this arrangement.

The second major step took place in 1900 with two linked but separate developments: the constitutional integration of the six separate colonies (plus the Australian Capital Territory [ACT]) into the Federation of Australia and accompanying change in status from colonies to states; and the grant, by an Act of the Parliament of the UK, of the Commonwealth of Australia, coming into force on 1 January 1901. Much more attention has been paid to the second of these developments, and its bearing on Australia's external sovereignty, than to the first. But the significance of the two developments together amounting to a step towards formal *internal* as well as external sovereignty has been under-explored.

The impetus for federation of the separate colonies, which had been talked about since the mid-1800s, came largely from Britain and was regarded without enthusiasm by many in Australia, due to fears about domination by the larger colonies, rivalry between the most powerful states, New South Wales and Victoria, and the negative example of the American Civil War. The 1885 Federal Council of Australasia, set up in response to insecurity about French and German designs on Australian territory, had weak powers and comprised Western Australia, Fiji, Queensland, Tasmania and Victoria, and it was thought that New Zealand might join, but it did not include New South Wales (or South Australia or the Northern Territory). In the end, the practical economic argument for the attraction of ending tariff barriers between the colonies proved decisive.

Thus Australian 'independence' was established by a grant from the UK, not at its own request, and occurred after a series of unsuccessful constitutional conventions in Australia. The 1900 Act established the identity of Australia as a whole for the first time, but reserved two crucial powers to the UK, concerning foreign affairs policy making and the power to make laws for Australia. Indeed, the constitutional position of the Commonwealth of Australia did not alter significantly from that found previously in the separate colonies. Thus, after 1900 the governor-general was a British rather than Australian appointment; any Australian law could be rejected within one year by the UK; and Australia was not independently represented at international conferences but remained under the umbrella of the British Empire, now as a self-governing dominion. The 1900 Act established a Westminster-style form of dual-chamber responsible government in Canberra, but also gave the new High Court the safeguard of the right to appeal to the UK Judicial Committee of the Privy Council if the Commonwealth or states appeared to seek by new legislation the limitation of the High Court's power. In light of these reservations, there is a strong argument that the designation of 1900 as the key marker of sovereignty in Australia overstates the case.

The third major step occurred with further UK legislation in the form of the Statute of Westminster 1931, which removed the status of Australia as a colony, subject to British imperial laws, and recognised Australia as an independent dominion along with Canada and New Zealand. The governor-general was now appointed by a British high commissioner rather than by the UK government. However, this 1931 statute applied only to the Commonwealth of Australia, and meant that the different states of Australia remained in a dependent position in relation to the UK. In addition, the UK could still make laws for Australia if specifically requested to do so. The 1931 Act was mirrored in the 1942 Australian Statute of Westminster Adoption Act, which changed *de facto* into *de jure* independence and is considered by many to mark Australia's national independence. It was only in 1948 though, through Commonwealth legislation, that the legal entity of Australian citizen was created.

As a fourth step, the UK parliament's Australia Act of 1986 removed the power of the UK parliament to change the constitution through exemptions to the Statute of Westminster (including appeal to the Privy Council). From then on, amending the constitution only involved the mechanism of a national vote on a referendum question proposed by the Australian federal parliament. This move eliminated the final remaining constitutional dependence of federal Australia on the UK. However, the constitution set out the 'reserve powers' of the governor-general, including the power to dismiss ministers or dissolve parliament, acting only on the prime minister's advice, and determined by convention. The dismissal of Prime Minister Gough Whitlam by Governor-General John Kerr in 1975, acting on his own initiative, remains an unresolved and ambiguous event in Australian politics.

Campbell Sharman (1997, p. 44) reminds us that in contemporary Australia, 'most of the time, politics is [s]tate politics', in that when 'something needs attention in your neighbourhood, the chances are that an agency of the [s]tate government will be expected to look after the problem'. The 'high politics of economic management, foreign affairs, international trade and defence, is the preserve of the national government'. The structural persistence of the importance of the state governments and state politics derives directly from the separate and diverse colonial penal colonies. This situation is also crucially important because it has meant that the white settler mentality has remained predominant and undisrupted in Australia's relationship with its indigenous communities. This is so in part because of the lack of questioning of the racist derivation of the white settler mindset.

Brian Galligan (1997,p.28) notes that Aborigines were 'systematically denied basic human rights and entitlements by both the [s]tates and the Commonwealth until the 1960s', and traces this back to the 1900 Constitution. While the absence of a statement of citizenship rights and core values in the Constitution was in part due to not wanting to reduce the variety of states' practice to a federal norm, a 'less honourable reason ... was to allow deliberate discrimination against Aboriginal peoples and racial groups such as the Chinese', and not to infringe upon the 'constraints upon the [s]tates' right to discriminate against Aboriginal people'. As a result, while Aborigines were granted the formal shell of citizenship through the 1948 federal Nationality and Citizenship Act, they were presented in practice with a maze of 'nine different citizenships' to negotiate, each with 'its own set of qualifications and disqualifications ... enshrined in discrete pieces of legislation' (Chesterman and Galligan, 1997,p. 8). Sarah Maddison (2009,p.52) observes that civil rights have never simply been handed to Aboriginal people 'by a benevolent state. Rather, citizenship rights have been wrested from governments over decades of activism' since the 1920s.She notes that the 1948 Act granted Aborigines formal citizenship but that this was not meaningful while restrictions, discriminatory practices and laws, and systematic exclusion remained firmly in place. Ian McAllister (1997, p. 13) sees the historical exclusion of Aborigines, whereby they were awarded the vote only in 1962, and 'did not have the same electoral responsibilities as other Australians until 1984', as part of the 'cult of disremembering'.

Having surveyed the four primary steps towards sovereignty in Australia so far, it is clear that the process is both unfinished and ambiguous. When did Australia gain sovereignty? The answer is that sovereignty remains to be fully claimed, and it is only when it is fully owned that claims can be made on its behalf and challenges to sovereignty fully understood. Who is the bearer of sovereignty in contemporary Australia? This remains undetermined.

Contemporary Challenges to Sovereignty

A discourse around the term sovereignty is a distinctive feature of indigenous politics contesting the given relationship of Aborigines to the state. Challenges to state and federal governments by Aboriginal leaders, activists and campaigners, and advocates on their behalf,

for acknowledgement of '[d]eep cultural diversity and difference' (Ivison *et al.*, 2000, p. 20) come in several forms. These include the redress of exclusion from meaningful citizenship rights and welfare entitlements; demands for protection of identity through culture, language and attachment to place; the reconciliation process triggered by the *Mabo* decision of 1992; calls for the symbolic recognition of multiple and diverse 'first nations'; legal challenges concerning land rights; calls for a treaty; and (non-legal action) claims to sovereignty.4 While all are important it is the last that is the focus of this article. Only the last three claims go beyond the liberal understanding of recognition as 'participation within liberal institutions', to recognition of the claims of indigenous people as 'dispossessed first nations', to use Damien Short's (2007, p. 870) term, subject to the ongoing processes of what Tully (2008, pp. 258–65) calls 'internal colonisation', and Gillian Cowlishaw (1993, p. 183) describes as 'the forms of colonial power that saturate Aboriginal social life'. Only the last three claims fully address the historical significance of the culture in which the systematic massacres of Aborigines and 'the rape and abuse of Aboriginal women' were 'common across Australian frontier society' (Smith, 2001, p. 142).

The first and second of these challenges by indigenous peoples are about the mechanics of delivering entitlements, the third and fourth about a symbolic process and the fifth and six about legal redress through legislation and the courts. But the seventh is the one that centrally addresses the fundamental question about how politics has been done and could be done by engaging with indigenous people and peoples as meaningful political actors. The white settlement for politics in Australia in relation to indigenous peoples is still largely structured along assumptions persisting from a British liberal colonial past. Because those assumptions remain unreflective, there is not just an incommensurability but a Lyotardian *differend* at work (Lyotard, 1988, p. 5), where difference is suppressed by the power of the dominant discourse or 'phrase regimen', structuring obstacles to engaging with indigenous people and peoples as political actors and rendering them invisible, resulting in a hiatus in how politics is conducted between the white settler state and indigenous groups. In this situation indigenous peoples are excluded from being able to express a standpoint that is heard, or in Jean-François Lyotard's words (1988, p. 9),'divested of the means to argue'.

The overall effect of the *differend* at work is, as Tully puts it (2008, p. 258), that the languages of politics used by white settler and indigenous societies are 'massively unequal' in terms of their 'effective discursive power'. Duncan Ivison *et al.*'s (2000, pp. 5–11) outline of the three major responses of liberal political theory to indigenous claims illustrates this *differend* at work: liberal political theory advocates extending liberal individual freedoms to indigenous peoples; granting group rights so long as they respect individual freedoms and autonomy; or reshaping liberal democratic norms and institutions to recognise difference. Ivison *et al.* identify the key problem with the first response as the failure to address the distinctive nature of indigenous claims. Criticisms of the second response are that only basically liberal cultures can satisfy the individual autonomy condition, and that a form of internal colonisation is created. One version of the third response, labelled the 'historical sovereignty approach', is seen as problematic in not clarifying what sovereignty means, while another version is seen as beset by cultural relativism. Australian government policy where it has sought to go beyond paternalism, forced assimilation or 'extinguishment' (Tully, 2008) is recognisably aligned to the first of these three responses.

The first element of the *differend* refers to the power imbalance whereby the white settler state misrecognises Aboriginal politics, which results in Aboriginal challenges to Australian sovereignty not being accepted as political. The white political settlement, with its clear sense of entitlement, cannot fully comprehend the distinctiveness of Aboriginal politics – its dispersed and diverse character, with no collective identity as 'Australian Aborigines' – and the situated and embodied sources of allegiance felt by Aborigines. The wide and diverse range of Aboriginal activist and campaigning groups are in a Western sense relatively

un-mobilised, and do not agree about the aims of political organisation and action, the most effective form of representation, or political strategy.

The *differend* here results in a context of reception that faces Aboriginal politics. One feature of the context of reception is the perpetuation of colonial racist 'legitimating presumptions' (Tully, 2008, pp. 257–8) through white naturalised constructions of Aboriginality, positioned as 'privileged codifiers of nativist identity' (Thomas, 1994, p. 177). Another feature concerns essentialist stereotypes of homogeneous identity which privilege bush over city Aborigines and cannot recognise plurality (Gunew, 2004, p. 21; Thomas, 1994, p. 189, p. 194). These features are underpinned by a widespread undervaluing by non-Aboriginal Australians of Aboriginal socio-economic disadvantage. Smith (2001, pp. 163–4) notes that while 'many non-Aboriginal Australians perceive both Aboriginal disadvantage and the need for more government intervention, such a view is not the majority one'. He notes that it 'is undercut by the widespread beliefs that Aboriginal Australians do not suffer disadvantage, that government expenditure is high enough or too high and that special measures for Aboriginal Australians are unnecessary or unfair'.

The second element of the *differend* is that the liberal white political settlement operates with a discourse about democracy as a principle rather than with a discourse about politics. As Smith (2001, p. 143) argues, indigenous and non-indigenous Australians 'do not make commensurable assumptions about what is at stake in political contests and what would constitute legitimate political processes and settlements'. In consequence, as Aileen Moreton-Robinson (2007b, p. 6) notes, successive Australian governments have held that 'Indigenous peoples' rights are already realised' through the 'democratic process by advocating that citizenship rights are the means through which Indigenous rights should be contained and exercised'. We return to this second element later in the article.

The first element of the *differend* is demonstrated in the repeated reorientations of government policy towards the Aborigines over the three decades between 1977 and 2007, 'from self-determination to mainstreaming, and from reconciliation to intervention' (Maddison, 2009, p. xxv). The lack of a viable strategy leads Maddison to note that '[c]onditions in many remote Aboriginal communities are the same as, or worse than, they were thirty years ago; indeed, Aboriginal people are arguably more disadvantaged and communities are more dysfunctional than they were then' (Maddison, 2009, p. xxvi). Pat O'Malley (1998, p. 161) argues that the situation is compounded by 'a sense that government and administration were objective relations necessary to self-determination but were being "impeded" by Aboriginality'. It is also discernible in Moreton-Robinson's (2007b, p. 4) assessment of what 'Indigenous people have been given, by way of white benevolence' in recent years, namely 'a white-constructed form of "Indigenous" proprietary rights [which is] not ... grounded in Indigenous conceptions of sovereignty'. The first element of the *differend* indicates not just paternalism and a politics of domination, but also the white settler state's failure of imagination to credit indigenous peoples also with a politics as a 'principal arena' in which to 'publicly unfold' the 'structures of meaning' through which they 'give shape to their experience', such that meaning can be accessed through the 'conceptual structures individuals use to construe experience' (Geertz, 1973, pp. 312–3).

To explore these themes, the article focuses on a key debate in Aboriginal politics about the most effective strategy for engaging with the Australian state, which leads to a tension between those advocating claims for sovereignty and those supporting claims to citizenship rights. While, conceptually speaking, claims to sovereignty and citizenship are not necessarily opposed, in indigenous politics sovereignty is figured as either proudly radical and symbolic and having important legal and property consequences, or as too radical and merely symbolic. Citizenship is figured as addressing urgent felt material needs, or as taking the master's shilling and buying into a given Western meaning of citizenship, thus scaling up from a primary identity with an Aboriginal nation to an alien universalised

notion of 'national' and 'Australian' identity which overrides it. Sovereignty claims are viewed in Aboriginal politics as based upon indisputable right and primarily aimed at recognition. Citizenship claims are seen as aimed at negotiated inclusion, at their most radical in terms of a civil rights movement, and attractive to some because they seem less confrontational.

Underlying the debate over sovereignty or citizenship is the question of how best to emerge from a racist, colonial subjecthood, bearing in mind Sneja Gunew's (2004, p. 20) assessment that white Australian politics is 'embracing a politics of biculturalism' which entrenches the role of Aborigines as 'other' and ignores the existence of many other ethnicities in contemporary Australia, uneasily assimilated to white Australia. The ending of the white Australia policy in 1973 and the incomplete shift from assimilationism to multiculturalism and cultural pluralism have not ended the 'politics of biculturalism'.

There are at least eleven primary meanings associated with sovereignty in the phrase 'Aboriginal sovereignty'. Sovereignty refers to the idea of a sovereign people or peoples who never surrendered to the British 220 years ago; to illegal occupation; to prior, inherent and continuing rights dating back thousands of years; to belonging first of all to a specific Aboriginal community; to recognition as a people or peoples; to a first nation; to having dual citizenship, of one of a multiplicity of Aboriginal nations first and of the Australian state second; to a particular legal or moral claim for inclusion which the white Australian government and the democratic political system need to respect in order to accommodate the rights and aspirations of indigenous people; to recognition of indigenous peoples as traditional owners of land; to Aboriginal culture, ceremonies and rituals; and to treaty rights or land rights of particular indigenous nations. Maddison notes that, while the language of sovereignty 'remains an important component of Indigenous political culture' (Maddison, 2009, p. 49), within different Aboriginal communities the term 'sovereignty' has 'many different meanings' and has a 'continuing ambiguity'. However, the variety of meanings is limited by indigenous claims being overwhelmingly focused on questions of identity and participation in self-rule within a territory, rather than being about self-determination in terms of secession or separate jurisdiction in the context of international law (Maddison, 2009, pp. 46–7).

Moreton-Robinson (2007b, p. 2) demonstrates another aspect of indigenous sovereignty when she identifies that, for Aborigines, sovereignty 'is carried by the body ... grounded within complex relations derived from the intersubstantiation of ancestral beings, humans and land', or in Wendy Brady's words (2007, p. 142), the 'sovereign Indigenous nation is formed through the ancestral and communal relationship'. Philip Morrissey (2007, p. 73) refines the idea of embodied Aboriginal sovereignty further when he aligns sovereignty with resistance, as does Steve Larkin (2007, p. 168) when he argues for Aboriginal sovereignty as a 'decentralised, grass-roots concept, providing the capacity to exercise autonomy at both the individual and collective levels ... as a conduit through which to change the structural relationship between Indigenous and non-Indigenous Australians'. Morrissey (2007, p. 73) also differentiates between sovereignty 'as a political strategy' (for instance in a treaty, UN framework of indigenous rights or a conception inspired by indigenous communities) and sovereignty 'manifested as a corporeal fact – that is, as embodied by Aboriginals in a non-verbalised concordant manner'. Tracey Bunda (2007, p. 75) adds to this conception with her view that '[o]ur sovereignty is embodied and is tied to particular tracts of country, thus our bodies signify ownership and we perform sovereign acts in our everyday life'. Wendy Brady (2007, p. 140, p. 151) notes that 'sovereignty does not loom large in ... mainstream, non-Aboriginal Australia', whereas Aborigines have the everyday lived experience of 'a functioning sovereign Indigenous being', living within the authority and identity of a particular Aboriginal nation. 'It is the land', she argues, 'that is embedded in the fabric of our being and spirituality and that forms our identity'.

Advocates seeking effective citizenship rights for Aborigines operate in the context, as John Chesterman and Brian Galligan (1997) describe, of a history of exclusion from meaningful citizenship. But even for such advocates these claims are associated with a raft of detrimental consequences. These include a fundamental redefinition of Aboriginality which is destructive of traditional notions; the renunciation of claims to sovereignty and so to recognition of cultural identity and distinctiveness; succumbing to an assimilationist policy; underwriting a status quo and so 'often understood as reproducing existing inequalities in Indigenous–state relations'; being based on a forfeit of fundamental indigenous rights and an acceptance of the status of 'just another category of needy citizens' (Maddison, 2009, p. 53); co-option into a discourse on 'disadvantaged citizens' rather than on 'structural and systemic barriers' (Maddison, 2009, p. 55); dependence on the rights 'granted by the parliaments or recognised by white law', and the accompanying forfeit of claims to inherent rights (Maddison, 2009, p. 56); and a 'ticket of entry into the political system' (Maddison, 2009, p. 53) at the expense of one's special and different identity. Recent government instruments of 'new arrangements' in indigenous governance, continued under the Gillard government, which many Aborigines have been reluctant to accept, seem to realise these fears. The government instruments include Shared Responsibility Agreements and 99-year leases over Aboriginal land (Maddison, 2009, p. 56), in which the provision of health care and other basic services is dependent on fulfilment of certain obligations and lease agreements.

The debate in Aboriginal politics about whether claims should centre on sovereignty or citizenship also takes place in a context of media coverage of Aboriginal issues which tends to reduce all such questions to policy matters. In particular, media coverage is predisposed to represent ' "welfare dependency" as an explanation of all Aboriginal disadvantage' (Maddison, 2009, p. ixxx).This mirrors the approach of successive Australian governments, for whom 'Aboriginal people in Australia have rarely been seen as anything other than a "problem to be solved" '. Maddison assesses that '[r]ather than engaging with Aboriginal people and working in meaningful partnership with them, successive Australian governments have looked for a solution to "the Aboriginal problem" ' (Maddison, 2009, p. 1). In this way, Aboriginal political actors who seek in particular to come to an accommodation with the white Australian state and so overcome the *differend* are led into a discourse of welfare, citizenship rights and social policy solutions. This was aggravated by the Howard led coalition's 'neo-liberal project that sought to privilege the individual over the group and considered that the free market should be a fundamental feature of good government' (Stratton, 2007, p. viii).

Constitutional Design

The proposal here is for a constitutional amendment to extend the scope of the parties who are federated.5 A starting point for a framework of negotiations could be an arrangement of shared sovereignty (Prokhovnik, 2007, ch. 5) between indigenous groups and each of the states. The design builds upon Aboriginal self-understandings of politics, in terms of belonging to different 'first nations' and without a pan-Australia identity as 'Australian Aborigines'. It also builds upon the logic of the history of white settlement, and the particular history of federal–state relations in Australia. It mirrors and extends the interaction already present within the federal structure, and ensures that priority is given to the commitment to *political* engagement between indigenous and non-indigenous political actors recognised as equals. Federation in 1901 did not abolish or replace the strong continuity from the different colonies to the states of Australia. The creation of a national federal structure in the Commonwealth of Australia and the Australian federal constitution was superimposed at Federation in 1901 upon, but in crucial respects without qualifying, the tradition of responsible government first granted to the colonies in the 1850s. The contemporary reality is, as Galligan *et al*. (1997, p. xv) note, a 'federal system of multiple governments with concurrent jurisdiction in major areas' and a conception of parliament

and practice as 'not one unified and coherent political institution but rather a series of overlapping institutions'.

Shared sovereignty can take many forms, but the proposal here builds upon the complex interaction, cooperation and multi-level governance already found in the federal system, in which supreme authority is not pooled, divided or used jointly. The proposal is very much in line with what Galligan (1997, p. 38) calls the 'ongoing dynamic of intergovernmental relations' in the Australian federal constitutional system, of 'shared arrangements for handling complex policy areas in which both the Commonwealth and the [S]tates have policy interests'. Wouter Werner and Jaap De Wilde (2001, p. 303) describe how sovereignty can be shared without fear of its loss, distinguishing between the 'claimed status' of sovereignty, which is indivisible and 'cannot be partly handed over or pooled', and the 'rights and powers linked to that status', which can be transferred or shared with 'other States' or interests.

Shared sovereignty can also be defended on the grounds of 'normative pluralism', an ethic of 'mutual recognition and respect' between groups as sites of authority (Walker, 2001, p. 570).However, it is important to emphasise that the focus of the proposal here is on the role that could be played, in the move from sovereignty in Australia to Australian sovereignty as a whole, of recognising indigenous people as political actors. The shared sovereignty arrangement is the technical means to achieve this outcome, rather than the basis of a sharing out or disaggregation of sovereignty between indigenous and non-indigenous Australians.

Constitutional revision which takes account of these histories, and lays the basis for commitment to *political* engagement between political actors recognised as equals, does not presume solutions to all the issues at stake and does not assume prior knowledge of Aborigines' self-understandings or foist solutions on them from any 'superior' perspective. However, such a process could generate debate and reflection which could result in the formation of a meaningful Australian sovereignty settlement now based on a reflective complex national identity that includes both indigenous and non-indigenous communities. Such a process could overcome the first element of the *differend* which has excluded indigenous peoples from meaningful recognition as political actors. It also addresses the second element of the *differend*, because the idea of the inter-constitution of sovereignty and politics means that a re-conceptualisation of Australian sovereignty, which recognises its first nations, redefines politics in Australia to engage with the content and scope of politics as voiced by Aborigines.

Potential for the move now from sovereignty in Australia to Australian sovereignty in the light of indigenous challenges follows from the two 1900 developments. On the one hand, Galligan's case about the federal structure of Australian politics holds transformative potential because it has the capacity to recognise as valid indigenous claims to sovereignty in terms of identity and participation in self-rule within a territory. Galligan argues that the Australian Constitution of 1901 has latterly been misunderstood. Instead of being a Westminster system which places sovereignty in the hands of parliament, Australia has a federal system in which sovereignty is vested in the Constitution by the constituent people (Galligan, 1995, p. 250; 1997, pp. 23–6), and through which political power is shared between the different parts of the federal system. Federalism can entail, he notes, 'a plurality of levels and centres of government' (Galligan, 1995, p. 241). Galligan's understanding provides a valuable way forward for rethinking Australian sovereignty and its indigenous people. First, the perception of a young 'white-settler nation rather than a constitutional state' is not only exclusionary towards indigenous peoples and 'increasingly lacks ... legitimacy' (Galligan 1995, p. 251), but is also a false perception in need of revision. Second, the existing federal system is well designed to accommodate another party into the system, for Aboriginal voices and ways of doing politics.

On the other hand, as R. D. Lumb (1978, p. 163) notes, 'the States continued their separate constitutional relations with the Imperial Crown and Parliament' after Federation. Galligan (1997, pp. 27–8) pinpoints the lack of an 'adequate safeguard of rights' for Aborigines as due in part to the 'respect' for the states in the establishment of the federal system in 1900, 'which were left with jurisdiction over key areas of citizenship and rights, including police and criminal law as well as many of the human services and their own electoral and political systems'. However, the continuity in politics at the state level provides a platform for political engagement with specific local indigenous claims to sovereignty.

Lumb offers a perspective that supports the constitutional amendment at federal and state levels. He argues that the fundamental law of responsible government by the different states in Australia, established in the 1850s, was 'overlaid' by the fundamental law of the federal government in 1901. As Galligan (1997, p. 28) notes, for example, the States' 'established laws and practices regarding citizenship would continue after federation'. Lumb (1978, p. 150) maintains that, '[a]s in the United States, the Federal Constitution was superimposed on the Constitutions of the individual States and did not replace them'. He identifies fluidity in the 'interaction between the doctrines of responsible government and federalism' such that their interaction 'is by no means clear-cut and defined for all times' (Lumb, 1978, p. 151). The value of this constitutional elasticity lies in the potential for revising the federal structure to incorporate Aboriginal claims, in a manner that goes beyond the 'either/or' zero-sum exclusivity whereby granting Aboriginal sovereignty involves a loss of sovereignty by the white Australian state. Instead, a relational win/win structure produces gains on both sides rather than losses, and aligns with Roderic Pitty's (2011, p. 556) argument that acknowledging Aboriginal claims under the 2007 UN Declaration on the Rights of Indigenous Peoples could enhance rather than diminish Australia's sovereignty.

Thus at the federal level indigenous 'first nations' could be recognised as political actors in the federal structure alongside the states, while at the same time at state level 'first nations' and states could be acknowledged as sharing sovereignty over particular pieces of land and aspects of rule within them. Paul Patton (2001, p. 30) finds a historical warrant for this kind of idea in the section 105(A) amendment of 1929, to 'give the Commonwealth the ability to enter into a range of agreements with the indigenous peoples of Australia, rather than simply to enter into a single compact with "representatives of the Aboriginal people" ', which would then 'underwrite a series of regional agreements'. Galligan (1997, p. 41) argues that the federal system is well fitted to accommodate 'arrangements tailor-made for particular Aboriginal peoples in particular parts of Australia'. The contribution of the argument of this article is the articulation of the inter-constitution between sovereignty and politics and recognition of the role played by the *differend*, to underpin the mechanics of constitutional reform, signalling a distinctively Australian sovereignty by placing at centre stage the question of how to conduct politics, its content and limits, and who counts as a political actor.

This proposal is strengthened by Tully's (2008, pp. 276–7) argument that the options of either the settler state or indigenous peoples exercising exclusive jurisdiction over the nation state's territory is a false dichotomy. Resources already exist within the Western tradition for federal arrangements of shared sovereignty. Tully (2008, pp. 279–80) provides a model of 'treaty federalism' for negotiating 'coexisting sovereignty' between the settler state and indigenous peoples recognised as equal parties.[6] However, constitutional amendment is preferred here to treaty making to instantiate this change, since treaties are primarily legal and symbolic instruments which do not show the way forward for engagement in politics as clearly as constitutional amendment would. Short's proposal for an alternative kind of reconciliation process, one that is more than an 'empty vessel' and includes a 'restitutive atonement' component (Short, 2003, p. 504), is also useful, but again looks to international treaty to resolve the question of sovereignty, and equates sovereignty with territoriality as defined by the narrow modern state sovereignty conception. The emphasis

here is on the connection between sovereignty and how politics is done, rather than on land claims to protect cultural property.

Amending the Commonwealth and state constitutions in this way would signal an unequivocal claim to a distinctive Australian sovereignty which moves away from the shadow of the 'superior status' by which 'the Imperial Parliament had ultimate legal authority over the Australian federal system' for decades after 1901 (Lumb, 1978, p. 154), a shadow that has transmuted into an even more shadowy Australian norm governing constitutional amendment which is 'not an express norm ... [but] a matter of implication to be drawn' (Lumb, 1978, p. 157). It is also an important feature of this proposal that it addresses both state and federal levels. The 'problem' of the Aborigines has predominantly been seen as within the remit of the federal Commonwealth government to solve. However, historically the 'internal colonisation' and dispossession to which the indigenous peoples were subject took place in the separate colonies of Australia, now the states.

Conclusion

The article has highlighted the disjunction between the mainstream Australian political domain and the assumptions and values underlying it, and the diverse understandings of politics, resistance and claim making in Aboriginal politics. It has used the idea of the *differend* to highlight the radicalness of acknowledging Aborigines as political actors, and to point to three key aspects of the current situation: the depth and scope of the misrecognition involved; the need for a way forward that goes beyond the application of abstract principles of inclusion, rights or recognition; and the case for a politics which does not think it knows in advance what solutions there might be or what claims indigenous groups might bring to be negotiated.

The white state misunderstands the indigenous conception of politics, which occurs primarily in and between a plurality of tribes, and shuns an abstract 'national' 'Australian' conception of politics. The general argument about sovereignty in Australia leads to the conclusion that the political aspects of sovereignty – such as how it regulates and defines the content and boundaries of the political field (including political identity), the conditionality of the political settlement and the crucial link between the explication of sovereignty as a theoretical organising principle and specific political practices – have been overshadowed by attention to pragmatic interest-driven political aspects and the retreat into status quo legal justification.

More specifically, the current default sovereignty settlement is dysfunctional because it assumes a single and unconditional meaning and so cannot embrace a debate where different interpretations can be valued. The current settlement is also ineffective because it cannot provide a political language or acknowledge the agonistic interplay of different positions at work, through which to debate and negotiate the advancement of Aboriginal claims as part of a broader discursive claim about sovereignty as a legitimate conditional settlement of political order. The current settlement, and the colonial imaginary that underpins it, cannot recognise indigenous people as political actors. The dead hand of the current default settlement prevents the emergence of a sense of 'becoming' in Australian politics. The political reconfiguration of sovereignty in Australia is overdue, in a national context that includes a range of Aboriginal voices, on the basis of a reassessment of Australia's colonial legacy.

Examination of claims in Aboriginal politics framed in the language of sovereignty indicates that engagement with indigenous claims, through the recognition and practical inclusion of Aborigines as political actors, has the capacity to complete the constitution of

Australian sovereignty. Moreton-Robinson (2007a, p. xi) notes that '[p]ublic attitudes towards Indigenous sovereignty have changed very little since 1788', and Maddison comments that 'Australia has "little appetite" for a renewed dialogue on issues of how we, as a nation, may accommodate Indigenous political aspirations' (Maddison, 2009, p. 59).

However, engaging with the aspirations to sovereignty of the indigenous peoples is an opportunity for the white settler political culture to have an encounter with its colonial past within an ongoing process of decolonisation, and to enrich sovereignty by embracing how Aboriginal peoples conduct politics. Engagement with Aborigines as political actors could complete the move to Australian sovereignty by stabilising an extended way of doing politics, with reconstructed content and limits, by redressing Moreton-Robinson's (2007c, p. 101) observation that 'Indigenous sovereignty is never positioned as central to shaping the terms and conditions of the very making of the nation'.

Australia's *external* sovereignty identity, in terms of the perception of itself as a whole which it presents to the world (primarily at Commonwealth level but also with effects for state politics) could move on from its dependence on racist colonial values and assumptions. Australia's *internal* sovereignty, in terms of capacity to govern (primarily through the states but also recognised by the Commonwealth), could embrace in the political field the claims of the range of Aboriginal leaders, activists and campaigners. Those claims are not primarily about having a voice in white Australian democratic politics on state and federal stages, but about being listened to and coming to terms with 'unfinished business' by being enabled to operate as 'fundamentally autonomous political communities' (Maddison, 2009, p. 45). Sovereignty is as yet incomplete in Australia, but could be re-imagined in a more productive manner. Indigenous challenges framed in the language of sovereignty provide an opportunity for sovereignty in Australia to be confronted and reconstituted, and the character, values and limits of its politics rethought. Constitutional amendment could provide a political platform for the negotiation of the terms of engagement with Aboriginal claims. This shift is summed up in the idea of the move from sovereignty in Australia to Australian sovereignty.

About the Author

Raia Prokhovnik is Reader in Politics at the Open University, UK. Her research interests are in political theory, the concept of sovereignty, feminist political theory, embodiment, early modern political thought, and citizenship. Recent publications include *Sovereignties: Contemporary Theory and Practice* (Palgrave, 2007), *Sovereignty: History and Theory* (Imprint Academic, 2008), *International Political Theory after Hobbes* (edited with Gabriella Slomp, Palgrave, 2011) and *Dialogues with Contemporary Political Theorists* (edited with Gary Browning and Maria Dimova-Cookson, Palgrave, 2012). Raia Prokhovnik, Faculty of Social Sciences, The Open University, Walton Hall, Milton Keynes MK7 6AA, UK; email: *r.prokhovnik@open.ac.uk*

Notes

I would like to thank the editor of *Political Studies* and two anonymous referees for their valuable comments on an earlier draft. Their points have helped to strengthen the article.

1 While this article cannot do justice to the complexity and diversity of Aboriginal politics, or to the positive attempts by white Australians working towards reconciliation and equality, it is clear that there is a broad disjunction and power differential between the white Australian political domain and the assumptions and values underlying it, and the understanding of politics, resistance and claim making in Aboriginal politics.

2 That is, Aboriginal and Torres Strait Islander peoples.

3 This section draws upon arguments developed in Prokhovnik, 2007; 2008; 2011.

4 Aileen Moreton-Robinson's (2005) reminder that in discussions about self-determination the gendered dimension of racialised power relations is neglected can, for reasons of space, only be noted here.

5 At a technical level the constitutional proposal advanced here does not require a radical rethinking of Australia's legal sovereignty provisions, except in taking on board the interpretations of Galligan and Lumb. However, it does require radical reflection and political debate in Australia on the *differend* which continues to represent an obstacle to the political will to implement such a constitutional proposal.

6 New Zealand's engagement with sovereignty through the 'tino rangatiratanga' central to Maori understandings of the Treaty of Waitangi, which greatly affects the way sovereignty has been conceptualised and 'played out', is in marked contrast with the Australian case.

References

Bartelson, J. (2006) 'The Concept of Sovereignty Revisited', *European Journal of International Law*, 17 (2), 463–74.

Beaulac, S. (2004) *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Myth ofWestphalia*. Nijhoff: Leiden.

Brady, W. (2007) 'That Sovereign Being: History Matters', in A. Moreton-Robinson (ed.), *Sovereign Subjects: Indigenous Sovereignty Matters*. Sydney: Allen & Unwin, pp. 140–51.

Bull, H. (1977) *The Anarchical Society*. London: Macmillan.

Bunda, T. (2007) 'The Sovereign Aboriginal Woman', in A. Moreton-Robinson (ed.), *Sovereign Subjects: Indigenous Sovereignty Matters*. Sydney: Allen & Unwin, pp. 75–85.

Chesterman, J. and Galligan, B. (1997) *Citizens without Rights: Aborigines and Australian Citizenship*. Cambridge: Cambridge University Press.

Connors, J. (2001) 'Identity and History', *Australian Historical Journal*, 32, 132–6.

Cowlishaw, G. (1993) 'Introduction: Representing Racial Issues', *Oceania*, 63 (3), 183–94.

De Jouvenal, B. (1957) *Sovereignty: An Inquiry into the Political Good*. Cambridge: Cambridge University Press.

Ford, L. (2010) *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia 1788–1836*.Cambridge MA: Harvard University Press.

Galligan, B. (1995) *A Federal Republic: Australia's Constitutional System of Government*. Cambridge: Cambridge University Press.

Galligan, B. (1997) 'The Constitutional System', in B. Galligan, I. McAllister and J. Ravenhill (eds), *New Developments in Australian Politics*. Melbourne: Macmillan Education Australia, pp. 22–43.

Galligan, B., McAllister, I. and Ravenhill, J. (1997) 'Introduction', in B. Galligan, I. McAllister and J. Ravenhill (eds), *New Developments in Australian Politics*. Melbourne: Macmillan Education Australia, pp. xiii–xx.

Geertz, C. (1973) *The Interpretation of Cultures*. New York: Basic Books.

Gunew, S. (2004) *Haunted Nations: The Colonial Dimensions of Multiculturalisms*. London: Routledge.

Hinsley, F. H. (1986) *Sovereignty*. Cambridge: Cambridge University Press.

Huysmans, J. (2006) *The Politics of Insecurity: Fear, Migration and Asylum in the EU*. London: Routledge.

Ivison, D., Patton, P. and Sanders,W. (2000) 'Introduction', in D. Ivison, P. Patton and W. Sanders (eds), *Political Theory and the Rights of Indigenous Peoples*. Cambridge: Cambridge University Press, pp. 1–21.

Kane, J. (1997) 'Racialism and Democracy: The Legacy of White Australia', in G. Stokes (ed.), *The Politics of Identity in Australia*. Cambridge: Cambridge University Press, pp. 117–31.

Koskenniemi, M. (1990) 'The Politics of International Law', *European Journal of International Law*, 1, 4–32.

Kumm, M. (2007) 'Sovereignty as an Argument'. Paper presented at the conference 'Transforming Sovereignties: The Concept of Sovereignty in the Field of Tension Between Power and Law', Tartu, September.

Larkin, S. (2007) 'Locating Indigenous Sovereignty: Race and Research in Indigenous Health Policy-Making', in A. Moreton-Robinson (ed.), *Sovereign Subjects: Indigenous Sovereignty Matters*. Sydney: Allen & Unwin, pp. 168–78.

Loughlin, M. (2003) 'Ten Tenets of Sovereignty', in N. Walker (ed.), *Sovereignty in Transition*. Oxford: Hart, pp. 55–86.

Lumb, R. D. (1978) 'Fundamental Law and the Processes of Constitutional Change in Australia', *Federal Law Review*, 9, 148–84.

Lyotard, J.-F. (1988) *The Differend: Phrases in Dispute*, trans. G. Van Den Abbeele. Manchester: Manchester University Press.

McAllister, I. (1997) 'Political Culture and National Identity', in B. Galligan, I. McAllister and J. Ravenhill (eds), *New Developments in Australian Politics*. Melbourne: Macmillan Education Australia, pp. 3–21.

Maddison, S. (2009) *Black Politics: Inside the Complexity of Aboriginal Political Culture*. Sydney: Allen & Unwin.

Mansfield, N. (2008) 'Sovereignty as Its Own Question: Derrida's *Rogues*', *Contemporary Political Theory*, 7 (4), 361–75.

Meaney, N. (2001) 'Britishness and Australian Identity', *Australian Historical Studies*, 32 (116), 76–90.

Miller, J. D. B. and Jinks, B. (1971) *Australian Government and Politics*. London: Duckworth.

Moreton-Robinson, A. (2005) 'Patriarchal Whiteness, Self-Determination and Indigenous Women: The Invisibility of Structural Privilege and the Visibility of Oppression', in B. Hocking (ed.), *Unfinished Constitutional Business? Rethinking Indigenous Self-Determination*. Canberra: Aboriginal Studies Press, pp. 61–73.

Moreton-Robinson, A. (2007a) 'Acknowledgements', in A. Moreton-Robinson (ed.), *Sovereign Subjects: Indigenous Sovereignty Matters*. Sydney: Allen & Unwin, pp. x–xi.

Moreton-Robinson, A. (2007b) 'Introduction', in A. Moreton-Robinson (ed.), *Sovereign Subjects: Indigenous Sovereignty Matters*. Sydney: Allen & Unwin, pp. 1–11.

Moreton-Robinson, A. (2007c) 'Writing Off Indigenous Sovereignty: The Discourse of Security and Patriarchal White Sovereignty', in A. Moreton-Robinson (ed.), *Sovereign Subjects: Indigenous Sovereignty Matters*. Sydney: Allen & Unwin, pp. 86–102.

Morrissey, P. (2007) 'Dancing with Shadows: Erasing Aboriginal Self and Sovereignty', in A. Moreton-Robinson (ed.), *Sovereign Subjects: Indigenous Sovereignty Matters*. Sydney: Allen & Unwin, pp. 65–74.

O'Malley, P. (1998) 'Indigenous Governance', in M. Dean and B. Hindess (eds), *Governing Australia: Studies in Contemporary Rationalities of Government*. Cambridge: Cambridge University Press, pp. 156–72.

Patton, P. (2001) 'Reconciliation, Aboriginal Rights and Constitutional Paradox in Australia', *Australian Feminist Law Journal*, 15, 25–40.

Pitty, R. (2011) 'Variable Sovereignty: A Response to Moore', *Australian Journal of Political Science*, 46 (3), 555–7.

Prokhovnik, R. (2007) *Sovereignties: Contemporary Theory and Practice*. Basingstoke: Palgrave.

Prokhovnik, R. (2008) *Sovereignty: History and Theory*. Exeter: Imprint Academic.

Prokhovnik, R. (2011) 'Hobbes, Sovereignty, and Politics: Rethinking International Political Space', in R. Prokhovnik and G. Slomp (eds), *International Political Theory after Hobbes*. Basingstoke: Palgrave, pp. 189–212.

Rickard, J. (2001) 'Imagining the Unimaginable?', *Australian Historical Studies*, 32 (116), 128–31.

Schmitt, C. (1985) *Political Theology: Four Chapters on the Concept of Sovereignty*. Cambridge MA: MIT Press.

Sharman, C. (1997) 'Politics in the States', in B. Galligan, I. McAllister and J. Ravenhill (eds), *New Developments in Australian Politics*. Melbourne: Macmillan Education Australia, pp. 44–67.

Shaw, K. (2008) *Indigeneity and Political Theory: Sovereignty and the Limits of the Political*. London: Routledge.

Short, D. (2003) 'Reconciliation, Assimilation, and the Indigenous Peoples of Australia', *International Political Science Review*, 24 (4), 491–513.

Short, D. (2007) 'The Social Construction of Indigenous "Native Title" Land Rights in Australia', *Current Sociology*, 55 (6), 857–76.

Short, D. (2010) 'Australia: A Continuing Genocide?', *Journal of Genocide Research*, 12 (1–2), 45–68.

Skinner, Q. (2009) 'A Genealogy of the Modern State', *Proceedings of the British Academy*, 162, 325–70.

Smith, R. (2001) *Australian Political Culture*. Sydney: Longman.

Squire, V. (ed.) (2011) *The Contested Politics of Mobility: Borderzones and Irregularity*. London: Routledge.

Stokes, G. (2004) 'The "Australian Settlement" and Australian Political Thought', *Australian Journal of Political Science*, 39 (1), 5–22.

Stratton, J. (2007) 'Foreword', in A. Moreton-Robinson (ed.), *Sovereign Subjects: Indigenous Sovereignty Matters*. Sydney: Allen & Unwin, pp. vii–ix.

Thomas, N. (1994) *Colonialism's Culture*. Princeton NJ: Princeton University Press.

Troper, M. (2010) 'The Survival of Sovereignty', in H. Kalmo and Q. Skinner (eds), *Sovereignty in Fragments*. Cambridge: Cambridge University Press, pp. 132–50.

Tully, J. (2008) *Public Philosophy in a New Key. Volume 1: Democracy and Civil Freedom*. Cambridge: Cambridge University Press.

Walker, N. (2001) 'All Dressed Up', *Oxford Journal of Legal Studies*, 21 (3), 563–82.

Walker, N. (2003) 'Late Sovereignty in the European Union', in N. Walker (ed.), *Sovereignty in Transition*. Oxford: Hart, pp. 3–32.

Walker, N. (2005) 'Legal Theory and the European Union', *Oxford Journal of Legal Studies*, 25 (4), 581–601.

Walker, R. B. J. (2010) *After the Globe, Before the World*. London: Routledge.

Waltz, K. (1979) *Theory of International Politics*. Reading MA: Addison-Wesley.

Ward, S. (2001) *Australia and the British Embrace*. Melbourne: Melbourne University Press.

Werner, W. G. and De Wilde, J. H. (2001) 'The Endurance of Sovereignty', *European Journal of International Relations*, 7 (3), 283–313.

Wolfe, P. (2006) 'Settler Colonialism and the Elimination of the Native', *Journal of Genocide Research*, 8 (4), 387–409.