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Reconciliation and the Problem of Internal Colonialism

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The prevalence of 'scientific' racism and social Darwinism in white colonial nations in the late nineteenth century ensured that indigenous peoples were regarded as an alien 'other' to national identities based on racism and progress. This outlook gradually changed over time with the aid of socio-historical understanding developed by indigenous and non-indigenous revisionist historians, academics and activists, which sought to explain past and present indigenous/settler relations by placing white colonial nation-states within a critical account of colonialism and racial discrimination. As white settler nations gradually began to accommodate a plurality of ethnic cultures and in that sense become more multicultural, politicians sought to construct national identities based on the imagery of 'harmonious multiculturalism'. In settler societies, such as Canada and Australia, a significant political obstacle to this was the continued disquiet of indigenous populations. The emerging post-colonial challenge for politicians in such societies was to find a way to include indigenous people in the cultural fabric of the nation which would seem fair and appropriate and therefore serve a legitimising function for the settler state. Recently the now popular peacemaking language of 'reconciliation' has been the preferred rhetorical device for this endeavour in Canada and most notably in Australia.[1] The aim of this paper is to outline why two dominant understandings of reconciliation as an outcome that have emerged from post-conflict reconciliation processes would be inappropriate goals for a process concerned with genuinely legitimising an internal colonial situation.[2] It begins with a general introduction to the concept of reconciliation, discusses the context-specific problems with the dominant understandings and concludes by suggesting an approach to reconciliation which would genuinely decolonise an internal colonial situation.

Keywords: Colonialism; Indigenous Peoples; Rights; Reconciliation and Treaties

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Introduction: The Concept of Reconciliation

The twentieth century was marked by horrendous mass atrocities and human rights violations. The Holocaust, the 'killing fields' of Cambodia, the government repression, mass tortures and murder in Chile and Uganda, the USA's invasion of Vietnam, Indonesia's invasion of East Timor, the Rwandan genocide, Argentina's 'Dirty War' against 'subversion' and South Africa's apartheid and its sustaining violence. Whilst unique and incomparable, these events involve appalling human behaviour that is nothing new, perhaps more unusual than the facts of genocide and regimes of torture marking this era, is the invention of new and distinctive forms of response (Minow 1998: 1). Charting the development over the last two decades of innovative forms of response to protracted conflict, Lederach (1999: 24) highlights a paradigm shift in the professional communities of international relations and conflict resolution. There was a noticeable departure, he suggests, from traditional state diplomacy and *realpolitik* toward a more innovative response that attempts to respond to the real nature of specific conflicts in order to restore and rebuild relationships (Lederach 1999: 25). The point at which this new innovation meets traditional realism is the contemporary idea of '*reconciliation*' (ibid.). In its early stages the underlying goal of reconciliation was prevention through understanding. The rationale was thus: if societies are to prevent recurrences of past atrocities and to cleanse themselves of the corrosive effects of gross human rights violations against individuals and whole groups, societies must understand, at the deepest possible levels, what occurred and why (Roteberg 2000: 3). In order to come fully to terms with their brutal pasts, they must uncover, in precise detail, who did what to whom and why and under whose orders (ibid.). The preferred institutional method for the task was an investigative tribunal usually called a Truth Commission. There have been at least 21 official Truth Commissions established around the world since 1974, though they have gone under different names (Hayner 2002: 14). The early commissions made little attempt to go beyond the bare facts, while the later commissions had much broader mandates that sought to respond not just to victims desires for 'truth' but also 'justice'.

By focusing on restoring and rebuilding relationships reconciliation initiatives sought to provide an alternative to traditional state diplomacy and *realpolitik* (Lederach 1999). Their primary concern has been to develop mechanisms that foster state legitimacy, forgiveness and social stability by attempting to acknowledge and atone for past injustices in novel and context sensitive ways. Lederach (1999), who has developed one of the few theoretical conceptualisations of reconciliation, suggests that as a peacemaking paradigm reconciliation involves the creation of a 'social space' where truth, justice, mercy and forgiveness are validated and joined together, rather than being forced into a confrontation where one must win out over the other.

While more traditional prosecutions of perpetrators and beneficiaries were pursued by societies such as Argentina and Rwanda, democratic or less repressive regimes have emerged in El Salvador, Brazil, Chile and South Africa, with the aid of

Truth Commissions and other innovative reconciliatory initiatives. The new standard setting model of the practice, South Africa's Truth and Reconciliation Commission, undoubtedly had the most broad ranging mandate, designed as it was to combine an investigation into what happened with a forum for victims' truth-telling, a tribunal to decide on reparations, and a mechanism for granting perpetrator amnesty in return for truthful, often incriminating, testimony. Under the rubric of reconciliation such actions are frequently coupled with other measures including remembrance memorials in the forms of public monuments, sculptures, museums, days of memory and education programmes. These less aggressive, non-prosecution responses involve not only the government, but also civil society and institutions outside the law.

The reconciliation paradigm, fuelled by examples set by working processes such as South Africa's TRC, has moved away from prosecutions and embraced an ideal of *restorative justice* (see Minow 1998: 91). Restorative justice seeks to *repair* the injustice and to effect corrective changes in the record, in relationships and in future behaviour. South Africa's TRC stated that it was 'concerned not so much with punishment as with correcting imbalances, restoring broken relationships—with healing, harmony and reconciliation' (TRC Final Report: chapter 1: 36, 5: 70). The TRC in turn recommended legislation to establish monetary payments, medical treatment, counselling, information about murdered relatives, and the naming of parks and schools. The official aim of such reparations was to 'empower individuals and communities to take control of their own lives' (ibid.). Other reparation efforts after mass atrocities stress restoring particular stolen properties, paying monetary damages or securing public apologies from governmental authorities (Minow 1998: 93).

Truth and Reconciliation Commissions typically operate in certain historical contexts, that of transitions from authoritarian or totalitarian regimes to a more democratic dispensation (Du Toit 2000: 122). Such commissions function in circumstances of, what is now termed, 'transitional justice', where a democratic political culture of rights and accountability needs to be established in the aftermath of gross human rights violations. Societies engaged in such reconciliatory initiatives are thus concerned to establish a legitimate political order from the ashes of an illegitimate prior regime.

In 1991 the Australian parliament unanimously passed the *Council for Aboriginal Reconciliation Act* which heralded the start of a 10-year official process of reconciliation between indigenous and non-indigenous society. Unlike other reconciliation processes, Australia was not engaged in a political 'transition', as it is an established liberal democracy. The enabling legislation founded the need for reconciliation on the injustice of colonial dispossession and its legacy, which it suggested would be 'addressed progressively'. In essence the *illegitimacy* to be addressed in Australian reconciliation was not a lack of liberal democracy but rather the foundation of it: the act of 'settlement'[3] and colonial dispossession. I have discussed the specific problems with Australian reconciliation in this regard elsewhere (see Short 2003a, 2003b). In the balance of this paper, however, I am concerned to

establish why, what Crocker (2000: 108) has termed, 'thick' conceptions of reconciliation cannot provide a genuine legitimating function for a 'settler' state concerned to address the injustice of colonial dispossession and its legacy.

Reconciliation and Indigenous Peoples

The reconciliation paradigm, as a vehicle for social stability, suggests that the source or multiple sources of the 'conflict' need to be adequately identified and appropriately addressed (see Lederach 1999; Minow 1998; Roteberg and Thomson 2001). This usually means the original and subsequent 'wrongs' need to be acknowledged and accompanied by appropriate redress. In the context of indigenous peoples' 'claims' against a colonising state, Australian reconciliation identified the act of colonisation as the source of the 'conflict', albeit using the euphemism 'settlement' (see CARA 1991: preamble). In other words, the original 'wrong' was the forcible dispossession of Aboriginal peoples by the British which first began in 1788. Where the concept of reconciliation is concerned with the 'original sin' (Poole 2000: 10) of colonisation without consent and its legacy, as it was in Australian reconciliation, we need to be clear on the appropriateness of the desired outcome. The point is best made with reference to three broad meanings of reconciliation *as an outcome* identified by Crocker (2000: 108) that range from 'thinner' to 'thicker' conceptions.

First, there is the most minimal understanding, where reconciliation is little more than 'simple coexistence'. It would merely involve a cessation of hostilities and peaceful coexistence based on acknowledgement of harm and appropriate redress measures. The second conception, based on liberal democratic theory, promotes a citizenship-based result and is often termed 'liberal social solidarity' or 'democratic reciprocity'. Going further than an end to hostilities, this conception refers to a situation where citizens respect each other and seek to create space to hear each other out, enter into a give-and-take on public policy and build on areas of common concern. Finally there is 'a shared comprehensive vision of mutual healing, restoration and mutual forgiveness', which is a more robust conception that is often attributed to the South African and Chilean processes (Crocker 2000: 108). In what follows I aim to establish why the second and third, 'thicker', conceptions of reconciliation would be deeply problematic for a process concerned to address indigenous peoples' aspirations and an internal colonial situation. Finally, I develop an approach in line with the first conception, which advocates a treaty-based coexistence initiative which would not incorporate or subordinate indigenous peoples.

Conception ii: Liberal Remedies and the Indigenous Sovereignty Challenge

Within liberal democratic settler states such as Australia, Canada and the USA, indigenous peoples' aspirations have tended to be discussed within the discourse of 'multiculturalism' and the 'politics of recognition'. Indigenous peoples' 'claims'

against settler states are more often than not characterised as 'minority' complaints simply needing greater 'recognition' within the dominant liberal state. The lack of academic debate on Australian reconciliation, *as a reconciliation process*, is perhaps, at least in part, a product of this tendency. Unlike the situation in apartheid South Africa, indigenous peoples' 'claims' are not seen as requiring a radical restructuring of the framework of the state itself, since the state is seen as democratic, and therefore legitimate, all that is required is greater 'recognition' within it.

The origins of this viewpoint can be traced to liberal theory and its traditional individualism. Liberal theory has focused primarily on the relation between the *individual* and the state. From Hobbes (1982) and Locke (1970) to John Rawls (1999), liberal theorists have been concerned to explore the individual–state relationship and its inherent problems. Arguably, the most fundamental premises of liberal thinking are first, that the *individual* is regarded as the most fundamental moral agent and second, that all individuals are morally *equal*. Indeed, equality of individual rights and the rule of the majority have supplied the theoretical foundation for liberal democratic nation-states. However, the notion of majority rule implies the existence of *subordinate minorities*, which liberal-democratic theory deals with as sets of 'outvoted individuals' (Freeman 1995: 25). The legitimation of their situation is based on the guarantee of their individual rights, which provide them with the opportunity to become a member of the majority on occasion. On the face of it, this system of majority rule does not obviously lead to a minority problem. However, it is arguable that the creation of modern nation-states has been partly achieved with the mastery and attempted assimilation[4] of native or minority communities that has resulted in the formation of permanent minorities whose interests are persistently neglected or '*mis*recognised' (Taylor 1995: 225) by the majority. The state apparatus and the dominant majority may be, in effect, a permanent bar to the recognition of certain minority interests.

The explicit irregularity within liberal theory is the collectives which are persistently unrepresented or at best, as Charles Taylor (ibid.) puts it, '*mis*recognised' by their liberal-democratic states. Yet, there now appears to be some agreement among liberal rights theorists that an individual is likely to suffer if her culture or ethnic group is neglected, disparaged, discriminated against or misrecognised by wider society (see Taylor 1995: 236; Freeman 1995: 25; Kymlicka 1995). As Taylor (1995) observes, social recognition is central to an individual's identity and well-being and misrecognition can seriously damage both. The case for recognising and protecting a minority via collective rights stems from the failure of the prevailing liberal doctrine to deal with the problem of persistently disadvantaged individuals as members of a *collective*. In overlooking sources of discrimination like gender or ethnic grouping, the dominant liberal approach is found wanting. Indeed, Kymlicka (1995) argues that for anti-discrimination policies to be effective, they require the appreciation that individuals are often discriminated against by the wider society not merely as individuals but as *members of a cultural group*. Moreover, the well-being of their members may require that their culture be protected to a certain extent *from* the

wider society, as it may be hostile to the traditional values and practices of their communities.

Yet when we turn the 'recognition' debate toward indigenous peoples and the desire to address colonial dispossession, there is a more fundamental problem than liberalism's traditional individualism. Recognition via collective rights may offer indigenous peoples a greater degree of equality in fact, and a degree of cultural protection unattainable through pure individualism, but beneath the veneer of such substantive liberal equality lie problematic colonial assumptions. There is a forceful argument, put forward by many indigenous writers and post-colonial theorists like Bhikhu Parekh, which asserts that modern liberalism is founded on an arrogant assertion of cultural superiority, for whilst Western value systems are far from perfect they are nonetheless afforded normative priority.

As Parekh (1998) observes, liberal notions of justice and fairness are understood via the assertion of universalised values, like liberal individualism, in contrast to the supposedly backward, primitive societies that were 'enlightened' by colonialism. Even those liberal and communitarian writers who might be considered champions of minorities, like Taylor and Kymlicka, skip over the 'first step in questioning the sovereignty of the authoritative traditions and institutions they serve to legitimate' (Tully 1995: 53). Such writers, whilst recognising the importance of culture to indigenous peoples, talk in terms of participation *within* liberal institutions, and their solutions to collective disadvantage are framed in a liberal discourse of rights that has been forced on indigenous peoples by colonialism. Kymlicka, for example, concedes that indigenous peoples' special relationship to land is significant enough to justify recognition via the notion of 'group rights' and 'differentiated citizenship', but he exposes the colonial underpinnings of such liberalism by denying indigenous peoples full political autonomy. Cultural protection should be only available to indigenous nations '*if, and in so far as, they are themselves governed by liberal principles*' (Kymlicka 1995: 153, my emphasis). By presuming the legitimacy of the liberal settler state's jurisdiction over indigenous nations, such an approach presupposes exactly what is in question (see Tully 2000: 55).

Indigenous peoples at the national and international level ardently oppose classification as 'minorities'. They emphasise their uniqueness both culturally and via the issue of 'consent', which is perhaps the most distinctive aspect of indigenous/settler state relations. While voluntary immigrant minorities have chosen to become citizens of the settler nation, many indigenous peoples have never willingly ceded their lands or political autonomy. Indigenous peoples hold distinct moral claims as *dispossessed first nations*, whose 'forbears will usually have been massacred or enslaved by settlers, or at the very least cheated out of their land, to which they will often retain a . . . spiritual attachment' (Robertson 1999: 183, my emphasis). It is here that the politics of 'recognition' fails to accord indigenous peoples the equal recognition it espouses. The distinct moral claims of indigenous peoples (as peoples) are frequently trivialised by recognition theorists (see Taylor 1995; Kymlicka 1991, 1995, 2000; Waldron 1992; Kukathas 1992) when they combine discussion of indigenous peoples

with other minorities and largely focus on internal citizenship-based 'solutions' to 'indigenous problems'.[5]

Citizenship is often associated with nation building and state legitimacy and as such is an acutely problematical concept to those 'citizens' who challenge the legitimacy of an imposed nation-state. Human rights on the other hand are extra-governmental and have been traditionally used to counteract the repressive capacity of states (Turner 1993). Thus many indigenous peoples have accepted the 1994 United Nations Draft Declaration on the Rights of Indigenous Peoples (hereafter the Draft Declaration) as an articulation of their rights, rather than citizenship rights imposed on them by settler states.[6]

The Draft Declaration's rights to self-determination (Articles 3 and 31) and land (Article 26) are perhaps the most important to indigenous peoples, because of the centrality of land to indigenous culture (see Daes 1999) and because self-determination is seen as a remedial political right of distinct dispossessed 'peoples' and 'nations'.[7] In this context the broad interpretation of self-determination refers to the right to political autonomy, the freedom to determine political status and to freely pursue economic, social and cultural development. Consequently the right is viewed as central to a 'just' response to colonial dispossession and the resultant political and social subordination of indigenous peoples. As James Anaya states:

> Self-determination precepts comprise a world order standard with which colonialism was at odds . . . the substantive content of the principle of self-determination, therefore, inheres in the precepts by which the international community has held colonialism illegitimate . . . (2000: 80)

Self-determination imposes requirements of *participation and consent* such that the end result in the political order reflects the *collective will of the peoples governed* and as such does not imply, but neither does it rule out, separate statehood as a remedy to colonisation (Anaya 2000: 80). Indigenous calls for self-determination derive from the fact that they were self-governing political entities or 'sovereign nations',[8] and in spite of colonisation many indigenous groups still claim such status.[9] Such observations are crucial to evaluating an indigenous/settler state reconciliation process, initiated to address colonial dispossession and its legacy, as they elucidate a benchmark by which to ascertain the authenticity of such a process.

In short, where a reconciliation process is between indigenous peoples and the settler state, the continued existence of sovereign nations problematises the 'liberal social solidarity' or 'democratic reciprocity' conceptions of reconciliation identified by Crocker (2000) as they merely promote a settler state citizenship-based result which fails the indigenous sovereignty challenge. As we have seen, citizenship rights fail to do justice to the unique indigenous status, as, in the eyes of many indigenous peoples, such rights emanate from an illegitimate settler state that has subordinated indigenous laws, autonomy and forms of government. From an indigenous perspective they are regarded as little more than acts of absorption.

Conception iii: 'A Shared Comprehensive Vision'

Mohawk scholar Taiaiake Alfred (1999: 63) suggests that demands for conformity to a single language and way of knowing can only act as a bar to reconciliation between indigenous people and the colonisers. Indeed, the third conception of reconciliation identified by Crocker (2000), which aims to achieve a 'shared comprehensive vision . . . and mutual forgiveness' is challenged by the existence of indigenous nations that have never shared a comprehensive vision with the colonisers nor wish to. As Alfred (ibid.) has highlighted:

> the imperial demand for uniformity is obsolete and unachievable in the (ethnically, linguistically, racially) diverse social and political communities characteristic of modern states. Justice, demands recognition—intellectual, legal, and political—of the diversity of languages and knowledge that exists among people, indigenous peoples' ideas about relationships and power commanding the same respect as those that used to constitute the singular reality of the state. Creating a legitimate post-colonial relationship means abandoning notions of European cultural superiority and adopting a mutually respectful stance.

Yet, in a fashion not dissimilar to South Africa's TRC, the dominant emphasis of the first indigenous/settler reconciliation process was nation building. Indeed, the '*united Australia*' theme was foundational to Official Reconciliation rhetoric. A pervasive nation building schema was in evidence in many Council documents.[10] For example, the Council's social justice agenda, articulated in its annual report for 1994, stated:

> indigenous peoples are central and *integral* to the cultural fabric of *this nation* and that the government should acknowledge the true place of indigenous peoples *within the nation*. (CAR 1995: 5, my emphasis)

This approach ignores the fact that at the time of invasion indigenous peoples were self-governing political entities or 'sovereign nations' (see Reynolds 1996),[11] and in spite of 200 years of colonialism many indigenous groups still consider themselves thus. As Reynolds (1996: 178) states, Australia 'has never been *one* nation, popular rhetoric notwithstanding. We share a country, a continent and a state, but not a nation.' Nevertheless, the incorporation of Aboriginality was asserted in the language of positive rights. The Reconciliation Council suggested that 'indigenous peoples are central and integral to the cultural fabric of this nation. Their place is one of right, not privilege or patronage' (CAR, Annual Report 1994–1995). Indigenous peoples had a right to be incorporated into the Australian nation but not a right to *refuse*.

I would argue that the counterfactual construction of a singularity of nationhood is inimical to a reconciliation process concerned to genuinely address colonial injustice and its legacy. Tying justice for indigenous peoples to a national building framework effectively places a (colonial) ceiling on indigenous aspirations and incorporating Aboriginality into the cultural fabric of a settler nation inherently weakens indigenous claims based on their traditional '*separateness*' from settler culture (see Moran 1999). In principle if a reconciliation process is concerned to address colonial

injustice and its legacy it should proceed without the assumption that settler and indigenous communities comprise *one* nation or that indigenous peoples wish to share in the settler state's vision of the good life. Thus, the third conception of reconciliation identified by Crocker (2000) should be rejected in the context of a settler state/indigenous reconciliation process. In the final section I attempt to establish some broad normative principles that could guide a reconciliation process concerned with genuinely addressing indigenous aspirations and an internal colonial situation.

Reconciliation as Simple Coexistence and Equal Respect

If the notion of reconciliation is used in an attempt to legitimise an internal colonial relationship, address the harms that flow from colonisation and move a 'settler' state into a truly post-colonial position it cannot ignore indigenous nationhood and sovereignty. Within academic debates on the politics of recognition the broad observations of Nancy Frazer (2002) are perhaps best placed to accommodate the indigenous sovereignty challenge that so escapes many liberal theorists. While Frazer (2002: 21) was not concerned with the specific problems for recognition politics posed by indigenous peoples, her basic assertion that meaningful recognition can only be achieved through 'redistribution' is pertinent to their plight, especially since in her formulation 'redistribution' is not just concerned with 'a more just allocation of resources and goods' (ibid.). She persuasively argues that 'struggles for recognition occur in a world of exacerbated material inequality' (Frazer 1995: 68) and that 'economic disadvantage and cultural disrespect are currently entwined with and support one another' (ibid.: 69). Thus, she contends that meaningful recognition for groups who are disadvantaged, both socio-economically and culturally, requires 'economic *and* political restructuring' in addition to 'cultural or symbolic change' (ibid.: 73, my emphasis). Parekh (2000: 343, my emphasis) concurs with this analysis and argues that 'misrecognition . . . can only be countered by both undertaking a rigorous critique of the dominant culture and radically restructuring the prevailing inequalities of economic *and political power*'.

Applying Frazer's general observation to the case of indigenous peoples produces the following position: genuine 'recognition' of indigenous peoples (colonised without consent) must involve a redistribution of both political power and resources, which terminates not only their economic and social subordination but also the colonial relationship itself. Indeed, as Gilbert, Alfred and Tully have suggested, to truly address colonial injustice recognition debates over political and economic restructuring must not assume the legitimacy of settler state sovereignty over indigenous peoples. Without a fundamental questioning of the assumptions underpinning the state's approach to power, the counterfactual assumptions of colonialism will continue to structure the relationship between the state and indigenous peoples (Alfred 1999: 57). Within this framework, any progress made towards justice will be

marginal; in fact, it will be tolerated by the state only to the extent that it serves, or at least does not oppose, the interests of the state itself (ibid.).

To meet the indigenous sovereignty challenge and decolonise the relationship, indigenous peoples must be recognised as distinct political entities with sovereign political rights to the lands they have occupied prior to colonisation and treated as nations *equal in status* to the settler state (see Tully 2000: 53). Such recognition of equal status must go beyond settler state granted rights grounded in the politics of difference. Recent sociological investigations have shown that when settler states legislate to 'protect' indigenous peoples, via the pseudo-liberal notion of 'group' rights, the usual outcome is a prioritisation of commercial interests at the expense of indigenous interests (see Short 2003b; Samson 2001). Invariably the result is legalisation that severely *limits* indigenous rights behind a veneer of agrarian reform. The lesson of such sociological analysis is that the institutionalisation of rights is a social process, involving power, and should be analysed as such and not assumed to be beneficial (Freeman 2002: 85). Indeed, the institutionalisation of rights may lead, not to their more secure protection but to their protection in a form that is less threatening to the existing system of power (ibid.).

Taiaiake Alfred and Kevin Gilbert[12] have highlighted the continuation of a colonial relationship within their respective liberal 'multicultural' states despite the institutionalisation of indigenous rights to land and other recognition and reconciliation initiatives. For Gilbert (1993) land rights, while a move in the right direction for the victims of a colonial system, fail to question the legitimacy of settler state sovereignty over indigenous peoples. Accordingly, he emphasised the necessity of negotiating a 'sovereign treaty' in Australia to grant political rights, return available land and provide freedom from the colonial reality. The sovereignty challenge is particularly strong in Australia as the 'settlement' of the continent was achieved by pure assertion and brute force: there is no negotiated agreement for the settlers to invoke when their sovereignty is challenged. According to Gilbert (1993: 67) the Australian state will never be legitimate until it gains the consent of indigenous peoples by way of an internationally recognised legally binding sovereign treaty.

Concerned with the same general observation, Alfred (1999: 48) draws attention to the pertinence of Foucault's understanding that state power necessarily requires self-perpetuating domination.

> A critique of state power that sees oppression as an inevitable function of the state, even when constrained by a constitutionally defined social–political contract, should have special resonance for indigenous people, since their nations were never party to any contract and yet have been forced to operate within a framework that presupposes the legitimacy of state sovereignty over them. Arguing for rights within that framework only reinforces the state's anti-historic claim to sovereignty by contract.

Alfred (1999: 58, my emphasis) further suggests that settler state granted 'rights' should be viewed as *part of* colonialism *and not a remedy to it* since such rights are

invariably controlled and regulated by the state. Furthermore, he questions their remedial quality:

> given Canada's shameful history, defining Aboriginal rights in terms of, for example, a right to fish for food and traditional purposes is better than nothing. But to what extent does that state-regulated 'right' to food-fish represent justice for people who have been fishing on their rivers and seas since time began? (ibid.)

To frame the struggle to achieve justice in terms of indigenous 'claims' against the state is implicitly to accept the fiction of state sovereignty and the colonial reality (ibid.). For Alfred (1999: 59) acceptance of 'indigenous rights' in the context of state sovereignty represents the culmination of white society's efforts to assimilate indigenous peoples.

The now common grounding of settler state granted indigenous rights, in the politics of difference, may have ushered in a somewhat higher degree of internal autonomy for indigenous peoples within colonial systems, but it denies indigenous peoples the right to appeal to 'universal' principles of freedom and equality[13] in struggling against injustice, precisely the appeal that would call into question the basis of internal colonisation (Tully 2000: 47). As Asch (1999: 436) observes, the underlying premise of such indigenous rights is that they are

> not to be defined on the basis of the philosophical precepts of the liberal enlightenment, are not general and 'universal' and thus categorically exclude any fundamental political right, such as a right to self-determination that could be derived from such abstract principles.

I would argue that the pressing issue for a reconciliation process concerned with an internal colonial situation is not how can we deal with indigenous 'claims' against the state, but rather how can the colonisers legitimately settle and establish *their* own sovereignty (Tully 2000: 52, my emphasis). Tully (2000: 53) suggests that for the settler state to gain legitimacy in this regard it is necessary to hold negotiations with indigenous peoples on a 'nation' to 'nation' basis. Indigenous peoples would be treated as nations equal in status to the settler state and consequently the ensuing treaties would be 'international treaties'. If the colonial state insists that the treaty negotiations are held under its overriding jurisdiction, then it fails to recognise the status of indigenous peoples, incorporating and subordinating them without justification, which would thus render the negotiation illegitimate (ibid.). Under this model the indigenous nation in question has the right to appeal not only to domestic courts for redress of infringement, but, if this fails, to international law, like any other nation (ibid.). Tully (ibid.) argues that such negotiations have the potential to resolve the problem of internal colonisation provided they adhere to three important provisions. First, indigenous peoples must continue to exercise, without interference, their own stateless, popular sovereignty on the territories they reserve for themselves. Second, in return for non-interference on indigenous territories, the settlers can establish their own governments and jurisdictions on unoccupied

territories given to them by indigenous peoples. Third, indigenous peoples agree to share jurisdiction with the settlers over the remaining overlapping territories, treating each other as equal, self-governing, and coexisting entities and setting up negotiating procedures to work out consensual and mutually binding relations of autonomy and interdependence . . . subject to review and renegotiation where necessary, as circumstances change and differences arise. Tully (ibid.) describes this approach as a form of *treaty federalism*.

This method responds to the fact that indigenous peoples have not legitimately surrendered their pre-colonial status as 'independent political entities'. It also challenges the erroneous assumption that jurisdiction cannot be shared, advocating two indigenous principles: free and equal peoples on the same continent can mutually recognise the autonomy or sovereignty of each other in certain spheres and share jurisdictions in others without incorporation or subordination (Tully 2000: 53). In essence, Tully's formula recognises 'prior and existing sovereignty not as state sovereignty, but, rather, a stateless, self governing and autonomous people, equal in status, but not in form, to the (settler) state, with a willingness to negotiate shared jurisdiction of land and resources' (ibid.).

It is often suggested by politicians, media commentators and some liberal academics, that since genuine de-colonising treaty negations are currently off the political radar in countries like Australia, Canada and the USA, indigenous peoples should be pragmatic and accept the (colonial) 'reality' before them and limit their aspirations to purely *internal* solutions. Yet, as Maori lawyer Moana Jackson observes:

> The colonial mind is always inventive, and its final resort is always a political reality which either permits or denies the right to self-determination. But reality, like law, is a changing human construct . . . (Lam 2000: 62)

The work of the international indigenous peoples' movement and the broad indigenous support for a Draft Declaration which does not limit the right to self-determination to *internal* self-determination, suggests that indigenous peoples do not accept the colonial reality. On the contrary, they are mobilising to change it (see Morgan 2004).[14]

Conclusion

Lederach has suggested that reconciliation, to be successful, requires 'innovation' (1999: 24). If a reconciliation process is concerned with the problem of internal colonisation, I would suggest that such innovation involve rejecting the assumption of legitimate settler state sovereignty in favour of affording indigenous peoples equal recognition and respect by instigating legitimising nation-to-nation negotiations. As we have seen, such an approach is rarely considered by liberal academics, yet, as Asch (1999) has suggested, the philosophical precepts of the liberal enlightenment, such as the freedom and equality of peoples, the sovereignty of long-standing, self-governing nations and the like, provide the justificatory means to extend universal fundamental

political rights to indigenous peoples. Dealing with indigenous nations on an equal footing would involve government ministers and mining executives entering into indigenous language, world-views, cosmologies and institutions, as opposed to affording normative priority to Western modes of dispute resolution (see Samson 1999). On the international stage nation-state sovereignty is now shared with organisations such as the United Nations and the European Union. There is no conceptual obstacle to the application of such pan-national political power sharing between states and stateless nations. It is only the limits of *realpolitik* that constrain such solutions. Yet, as ethno-cultural conflict has gradually become the main source of political violence worldwide, reconciliation initiatives based upon such arrangements may in this context have a *preventative* role helping to guarantee peace and security as opposed to its usual role of responding to protracted violent conflict.

Notes

[1] See the Canadian government's 'Statement of Reconciliation' at http://www.ainc-inac.gc.ca/gs/chg_e.html#reconciliation and The National Day of Healing and Reconciliation (NDHR) which is 'an initiative meant to effect healing and reconciliation among all races, creeds, and denominations now residing in Canada' at http://www.ayn.ca/ViewNews.aspx?id = 214. An enormous amount of material on Australian reconciliation is available from the Council for Aboriginal Reconciliation's archive at http://www.austlii.edu.au/au/other/IndigLRes/car/

[2] Political scientist James Tully (2000: 39) defines internal colonialism as 'the situation where the colonising society is built on the territories of the formerly free, and now colonised, people. The colonising or imperial society exercises jurisdiction over them and their territories and the indigenous peoples, although they comply and adapt, refuse to surrender their freedom of self-determination over their territories and continue to resist within the system as a whole as best they can.'

[3] The term 'settlement' is a rather gentle colonial euphemism for what was essentially an invasion. Indeed, Australian revisionist historians have documented the violent nature of 'settlement'. Between 1788 and 1884 the indigenous death toll in the conflict is estimated to be around 20,000 (see Reynolds 1981; Broome 1994; Rowley 1970).

[4] 'Assimilation' is a term used to describe the process by which an outsider, immigrant or subordinate group (e.g. the Australian Aborigines) becomes indistinguishably integrated into the dominant host or settler society.

[5] A prime example of such can be found in Kymlicka (1991), where he equates 'the special status' of aboriginal peoples with that of French-Canadians (156) and when he states that: 'the issue of minority rights is raised in many countries by the presence of aboriginal peoples . . . the rights of Canada's aboriginal peoples are, therefore, representative of a major class of minority rights questions' (157). In a more recent piece (2000: 216) he provides solid macro reasons for discussing the similarities (2000: 222), and acknowledges the existence of differences, but in contrast to indigenous peoples themselves he does not attach much weight to such differences. Moreover, although Kymlicka acknowledges the need for indigenous autonomy, a crucial limit is evidenced when we consider the possibility of such autonomy leading to 'illiberal' practices such as clitoridectomies. He expresses the limits of his liberal toleration in *Multicultural Citizenship* (1995: 153) when he states that cultural protection should be only available to indigenous nations 'if, and in so far as, they are themselves governed by liberal principles'. Elizabeth Povinelli (1998) has highlighted that this can only constitute a degree of autonomy 'within' the colonial structures and not full autonomy—

Samson (1999) also concurs with this analysis. For other 'liberal' approaches see also Waldron (1992), Kukathas (1992) and Mulgan (1998).

[6] For an overview and discussion of these rights see Pritchard (1998).

[7] It is for this reason that indigenous peoples have attempted to enshrine the term 'peoples' in all UN documents affecting their interests. Yet, it was only very recently that the term was adopted without qualification in the Political Declaration of the World Summit on Sustainable Development. It reads: 'We reaffirm the vital role of indigenous peoples in sustainable development' (paragraph 22bis), which is in stark contrast to last year's UN World Conference against Racism, held in Durban, South Africa, where the term peoples was qualified as still being 'under negotiations' (paragraph 24 of the Durban Declaration). 'We think the UN has made a vital step towards respecting Indigenous Peoples equal to other peoples of the world', stated Vicky Tauli-Corpus, 'This is a significant step in defining the rights of Indigenous Peoples', see CPSU (2002). See also Niezen (2003).

[8] For a discussion on Aboriginal 'nationhood' and the misconception that Aboriginal groups were not 'distinct political entities' at the time of conquest, see Reynolds (1996).

[9] For example, but for the imposition of settler jurisdiction, the Yolnu people of Arnhem Land, Australia would be able to govern themselves according to traditional laws that have survived to this day, see Trudgen (2000).

[10] This has subsequently been wholeheartedly embraced by the new replacement foundation, 'Reconciliation Australia'.

[11] For a discussion on Aboriginal 'nationhood' and the misconception that Aboriginal groups were not 'distinct political entities' at the time of conquest, see Reynolds (1996).

[12] While these are but two indigenous scholars that have contributed to the development of an 'indigenous perspective', I have been greatly influenced by their socio-political approach in a field dominated by legal scholars (e.g. Anaya 2003; Lam 2000). Moreover, although other indigenous writers may differ on the best solution to indigenous problems there is broad consensus on the type of problems faced (poor health, youth suicides, lack of autonomy, cultural erosion and the like) and on the root causal factors (dispossession of land, political and social subordination). For other similar indigenous perspectives see Mudrooroo (1995), Vizenor (1984), Vizenor and Lee (1999) and Deloria (1988).

[13] The rights are not grounded in universal principles, such as the freedom and equality of peoples, the sovereignty of long-standing, self-governing nations, or the jurisdiction of a people over the territory they have occupied and used to the exclusion and recognition of other peoples since time immemorial (see Tully 2000: 46).

[14] Considering the Australian case, we should also not lose sight of the fact that in the late 1980s a campaign for a treaty gathered such momentum that it led the Prime Minister, Bob Hawke, to promise that a treaty would be negotiated during his tenure (see Tickner 2001). While the promise was eventually diluted into the Australian reconciliation process, following the end of Official Reconciliation political debates turned full-circle and returned once again to the idea of a treaty (see Short 2003b). There is no reason to suggest that given time, under a more sympathetic government, such a treaty campaign would not be more successful than the last.

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