

Can Liberalism be PC?: Duncan Ivison's *Postcolonial Liberalism**

ALEXANDER REILLY**

Duncan Ivison's *Postcolonial Liberalism*¹ marries two terms that for many are in irreconcilable conflict. The project of the book is to make a case for a liberal politics that answers its post-colonial critics, but remains true to the tenets of liberalism. The book is structured as a defence of a 'postcolonial liberalism'. It explains how a liberal political theory can be formulated to respond to the postcolonial challenge, focusing in particular on the political relationship between Indigenous and non-Indigenous peoples within the State. Ivison defends liberalism against the charge that its basic values do not adequately account for cultural and political relations in a postcolonial world. Second, Ivison explains what it is about his brand of liberalism that makes it 'postcolonial'. A great strength of the book is the way Ivison rigorously locates his version of liberal political theory within the body of established literature. If nothing else, the book is noteworthy for its detailed and well-considered coverage of this literature. The reader is left in no doubt about the definition, project and significance of *Postcolonial Liberalism*.

In this review, I attempt to engage critically with two issues raised in the book: first, the theoretical limits of a public reason based on disagreement; and second, the potential extent of Indigenous self-determination within Ivison's model of the State. The discussion of these two issues leads me to conclude that the conjunction of postcolonialism and liberalism cannot be sustained theoretically, though the conjunction serves as a useful polemic for teasing out the limits and the potential of liberal political theory.

* A review essay on Duncan Ivison, *Postcolonial Liberalism* (2002).

** Senior Lecturer, Division of Law, Macquarie University. I would like to thank the anonymous referee for the helpful comments.

¹ Duncan Ivison, *Postcolonial Liberalism* (2002) 7-8.

An Outline of Postcolonial Liberalism

Iverson's theory uses the liberal values of equality, freedom and promotion of well-being to condition relations in a society that is acknowledged to be marked by a considerable degree of social, cultural and political diversity. The range of diversity in this post-colonial society includes disagreement over what constitutes a good life and how it can be justly pursued. The theory is 'liberal' because of its faith that liberal values can successfully account for relations in this society. It is 'postcolonial' because it puts disagreement about what justice requires at the centre of political discourse and emphasises the importance of the participation of a plurality of discourses to determine public reason.

In the introduction, Iverson describes two liberal accounts of being at home in the world. In the stronger account, which he associates with Hegel in particular, social and political institutions contribute to a person's sense of being at home. In the weaker account, which he associates with Rawls, a person is at home in the world as long as the person is not alienated from the institutions and practices of society. In contrast to these positions associated with liberalism, postcolonial writers testify to an experience of living in society in which there is no concrete sense of feeling at home. This is the experience of those who have suffered under the impact of colonialism.² In *Postcolonial Liberalism*, Iverson presents a version of liberalism which emphasises the role of participation in the political institutions of society to a sense of being at home. His challenge to liberals is to reconceive of public reason so that it can accommodate complex cultural and political differences, and so that the key liberal values can work for people who have not experienced the benefits of the liberal justificatory ideal. His challenge to non-liberals (Indigenous people, postcolonial theorists, and others who might be sceptical about the role of the State and its institutions) is to trust in the possibility of feeling at home through participation in the political institutions of society despite previous experiences of alienation.

Chapter 1 explains how liberals justify the State and State institutions, and how the impact of colonialism on Indigenous peoples has required a reassessment of this justification. At the end of the chapter, Iverson outlines three arguments for Indigenous rights based on equality, historical injustice and difference. He concludes that in isolation each of these arguments is flawed in some way. However 'each provides a partial justification for relations between Indigenous and non-Indigenous peoples which, taken together, makes a case for postcolonial liberalism'.³ Iverson outlines two aspects of postcolonial liberalism that make it better equipped

² Ibid 7-8.

³ Ibid 28.

than other version of liberal political theory to respond to Indigenous claims against the State. First, the public reason of postcolonial liberalism seeks agreements out of partial, contestable and incomplete claims. Second, when determining the reasonableness of the exercise of political power, what is reasonable is not determined on moral grounds alone, but on cultural and historical ones as well.

In Chapters 2 and 3, Ivison sets out the postcolonial challenge to liberalism. He describes postcolonialism as a state of existence imbued with relations of power that have their origin in western domination. In the postcolonial world, there are no objective foundations and there is a great deal of diversity. Postcolonialism is suspicious of universal values, which are associated with justifications for colonialism. He confronts directly the question of whether the liberal focus on the individual as the fundamental moral unit (moral individualism) and its approach of identifying norms or principles that can transcend particular social, cultural and political contexts (abstract rationalism) are able to accommodate the diversity of individual and group interests in the postcolonial State. He offers both a defence of these characteristics of liberalism and a reformulation of them to account for postcolonial criticisms of their failings.

In Chapters 4, 5 and 6, Ivison sets out his new approach to public reason and to the role of the State. In Chapter 4 he discusses five aspects of public reason – power, procedure, practice, *modus vivendi* and affect. He uses these concepts to loosely structure a discussion of the foundations of public reason. Under power, he responds to critiques of Stanley Fish and Elizabeth Povinelli that liberal norms of public reason are reducible to power.⁴ The critique argues that power determines the premises upon which public reason is founded, and so any claim to justice based on reason is reducible to the self-interest of the powerful. In response, Ivison acknowledges the role of power, but notes that the very structure of the critique assumes that there is a characterisation of democracy that ought to strive to avoid the influence of power, and therefore that the critique itself contains ‘a theory of public reason that involves more than simply the exchange of threats’.⁵

Under procedure, he discusses two modes of public justification: the distributive mode and the consensual mode. The distributive mode argues that pursuing mutual self-interest leads to the development of public institutions and outcomes that are mutually beneficial to those who participate. The major problem with this explanation for the formation of

⁴ See Stanley Fish, ‘Mutual Respect as a Device for Exclusion’ in Stephen Macedo (ed), *Deliberative Politics: Essays on Democracy and Disagreement* (1999); Elizabeth Povinelli, ‘Settler Modernity and the Quest for an Indigenous Tradition’ (1999) 11 *Public Culture* 1.

⁵ Ivison, above n 1, 75.

public reason is that if there is a considerable power differential between the parties, then the self-interest of one is promoted at the expense of the self-interest of the other. There needs to be something more than self-interest to constrain the exercise of power. David Gauthier, a proponent of the distributive mode of justification, adds a presupposition of respect for the identity and aims of others and a willingness to accord them an equal place in the pursuit of common affairs. This attitude, which he calls 'civic friendship' is the baseline from which members of society engage in strategic interaction.⁶ Ivison takes from the distributive explanation of public reason its emphasis on the development of principles and conventions through the strategic interaction of the parties. This conforms with his emphasis on what he calls a 'discursive *modus vivendi*' which is discussed below. However, Ivison is not satisfied with Gauthier's explanation of 'civic friendship' as an explanation for how just outcomes might be achieved.

The consensual model of public justification is associated particularly with John Rawls. It begins from the proposition that society is characterised by the existence of free and equal citizens who operate under the constraint (or alternatively the motivation) of 'principles and ideals acceptable to their common human reason'.⁷ Rawls presupposes a political conception of justice upon which public reason can be developed. As a result, according to Ivison, Rawls imposes a pre-determined limit on the degree of pluralism that can occur in political deliberation. For Ivison this is unacceptable. '[We can not] prejudge the kinds of authoritative reasons citizens might accept on the basis of a pre-loaded overlapping consensus on basic constitutional principles.'⁸ Ivison acknowledges, instead, that there is disagreement not only over conceptions of the good (such as how to live a moral life) but also over what are the underlying principles of justice (such as what freedom and equality mean).

For Ivison public reason does not have any 'a priori' values. It does, however, rely on concepts of equality, freedom and well-being. These concepts *condition*, rather than *determine*, the framework of public reason and are themselves open to negotiation. The source of his public reason emerges from a particular *modus vivendi*, rather than from an a priori concept of justice agreed upon by free and equal citizens. Whereas for Rawls the *modus vivendi* is static 'in the sense that the underlying interests of the parties are assumed to stay the same', for Ivison the *modus vivendi* is dynamic and discursive, allowing scope (according to Ivison) for a public reason to develop through the interaction of citizens who enter dialogue

⁶ Ibid 77-8.

⁷ John Rawls, *Political Liberalism* (1993) 137. See Ivison's discussion of Rawls' basic premise at 78-9.

⁸ Ivison, above n 1, 80.

from very different starting points. The multiplicity of world views that emerges from dialogue between citizens ‘occupying a range of different vantage points given their identity-related differences’ is not to be filtered out but recognised as the foundation of public reason. It is from the disagreements that emerge from these different world views that a public reason and the grounds for a political community are forged. In Part 1 of the review, I examine the limits of a public reason derived from disagreement using Ivison’s primary example of historical injustice.

In Chapter 6, Ivison discusses the ‘postcolonial State’. He establishes an ideal of ‘complex mutual co-existence’ and examines what are the basic forms of regulation to ensure the minimum requirements of citizenship are met. A postcolonial liberal order, he suggests, ‘should aim to secure those capabilities required to participate effectively in collective practices of public reason that affect one’s fundamental interests.’⁹ Using an equality framework, he considers a number of models focussing on the distribution of rights, liberties and resources. He elaborates on the work of Amartya Sen and Martha Nussbaum, in particular, which uses the concept of ‘capabilities’ to capture the range of opportunities and resources the individual requires of the State to ensure a minimum level of equality, freedom and well-being.¹⁰ According to Ivison, the advantage of the concept of ‘capabilities’ is that it focuses not only on the minimum resources individuals require to participate in the State, but also on the physical and mental capacities they require to make use of those resources. The concept of ‘capabilities’ is also sufficiently open-textured to cater for differences between people on ‘what constitutes the “good life” in the first place’.¹¹ Finally in Chapter 7, Ivison uses the example of Indigenous land rights in Australia to put the theory of postcolonial liberalism to work. In Part 2 of the review, I examine the extent to which the ideal of ‘complex mutual coexistence’ is capable of accommodating claims to a more radical form of separation, using Ivison’s example of Indigenous land rights in Australia.

The Limits of a Public Reason Based on Disagreement

A focus on living with disagreement is attractive to a postcolonial political theory because it allows for an oppositional Indigenous voice to not only exist, but to be crucial to the formation of the principles for a just society. Also, it removes the need for an eventual move to consensus and

⁹ Ibid 133.

¹⁰ See Martha Nussbaum, *Women and Human Development* (2000); Amartya Sen, *Inequality Reexamined* (1992).

¹¹ Ibid 124.

reconciliation of the different groups in society. It allows, and in fact it requires, the expression of a range of perspectives on the fundamental question of justice.

The first difficulty with basing public reason on disagreement is explaining what it is that motivates people to find mutually acceptable terms of cooperation and negotiation?¹² In particular, why would the powerful or those benefiting from the status quo, bother to enter dialogue and form agreements if there is no substantive notion of justice that requires them to do so? Ivison rejects many explanations for political engagement in the State, including: mutual self-interest,¹³ scepticism over our own conception of the good and of imposing it on others,¹⁴ a normative content in the concept of 'equal respect',¹⁵ or in the concept of 'civic friendship',¹⁶ and an ethic of 'responsiveness and generosity' deriving from the post-structural belief in the impossibility of knowing the other. With these options eliminated, where does the motivation to engage with others come from in Ivison's postcolonial liberal society? This question has particular urgency in a postcolonial State in which cultures are dynamic, citizens have different levels of empowerment and make difficult demands of each other, and where disagreement is central to the formation of justice.

Ivison's answer is to replace an a priori sense of what justice requires with an a priori attitude and approach to disagreement within the community. First, membership in a political community means that people have 'certain special obligations towards [the community] in virtue of that membership'.¹⁷ If people are to remain in the community, they must take these obligations seriously. This requires that they develop an idea of public reason that is capable of recognising the fact of historical injustice. 'The aim must be to generate norms of cooperation that are acceptable to all the parties. This calls for a form of 'impartiality' in the public sphere, but one conjoined with an acute historical awareness of how public values have been invoked in the past to discriminate against Indigenous peoples'.¹⁸

The reliance on the attitude of 'impartiality' in the public sphere may be difficult to sustain. First, is impartiality possible? For example, can an impartial mind be brought to the past? Does not any interpretation of the past rely on our own prejudices and therefore undermine any attempt at impartiality.¹⁹ Second, does not the citizen require an innate sense of the

¹² Ibid 87-8.

¹³ Ibid 78.

¹⁴ Ibid 87.

¹⁵ Ibid 87.

¹⁶ Ibid 85.

¹⁷ Ibid 105.

¹⁸ Ibid 106-7.

¹⁹ See, eg, Hans-Georg Gadamer, *Truth and Method* (2nd rev ed, 1993) 297.

value of the political community and a pre-conception of public reason to bring an attitude of 'impartiality' to an issue of public concern? If so, the requirement of 'impartiality' in public reason has a substantive concept of justice underpinning it and there might not be much to distinguish it from Rawls' presupposed conception of justice or Gauthier's reliance on 'civic friendship'. If Ivison wishes to keep the motivation underlying the attitude of impartiality unconnected from any such normative pre-conditions, it would seem to be as difficult to achieve (and therefore as unhelpful theoretically) as the post-structural concept of 'unconditional hospitality' which Ivison describes dismissively as 'beyond any political experience we know of, so as almost to enter the realm of the theological'.²⁰ A further difficulty in relying on a pre-condition of impartiality is that it is required not only of the ruling class, of academics, or even of the middle classes, but also as Ivison puts it, of 'the families struggling on average weekly earnings, or the unemployed suburban fringe-dwellers coping with poor housing, lousy public infrastructure and "work for the dole"'.²¹

In fact, Ivison accepts that postcolonial liberalism retains conditioning (though not necessarily determining) values that help distinguish between claims within the State. 'The postcolonial State is one committed to treating its citizens with equal respect; with minimising domination and promoting freedom; and to providing the conditions in which people can construct and pursue meaningful lives'.²² Throughout the book, Ivison emphasises that these concepts are capable of incorporating many versions of equality and freedom and of what is a meaningful life. 'Thickening' the concepts in this way does not take away their prescriptive quality. Although agreements are to be reached through dialogue and the 'discursive *modus vivendi*', there must be some limits to what the concepts of equality and freedom would allow of agreements for those concepts to mean anything at all. Ivison makes it clear his project is not to define the limits of equality and freedom. Even within liberal political theory, they have a wide range of meanings. However, since he is putting the case for postcolonial liberalism from the 'non-Indigenous side of the table',²³ it seems important that the book at least provide some idea of the limits of these normative conditions, and why it is these and not other normative conditions, such as dignity²⁴, virtue²⁵ or loyalty²⁶ that underpin the

²⁰ Ivison, above n 1, 90.

²¹ Ibid 114.

²² Ibid 113.

²³ Ibid 2.

²⁴ See, for a discussion of dignity as a moral and an aesthetic concept, Aurel Kolnai, 'Dignity' in Robin Dillon (ed), *Dignity, Character and Self-Respect* (1995).

²⁵ Alisdair McIntyre, *After Virtue* (1984); Hayden Ramsay, *Beyond Virtue: Integrity and Morality* (1997).

postcolonial State. Ivison comes closest to giving freedom and equality a normative content in his discussion of the role of the State in promoting the 'capabilities' of its members. This discussion therefore assumes great importance in the overall thesis. For only when we know the limits of the State, is it possible to know when other alternatives to Indigenous claims outside the State need to be considered. I say more on this below.

Ivison explores the limits of reason in the postcolonial State using the example of the ethical response to Indigenous claims against the State based on historical injustice. He acknowledges historical injustice as a partial justification for Aboriginal claims on the State (in combination with arguments based on equality and difference).²⁷ The claim to historical injustice contains a number of ethical questions upon which people might differ. Ivison mentions two in particular: the relationship between the past and the present and the nature and location of responsibility for past acts in the present. He begins his analysis by setting out Jeremy Waldron's case for why there are no grounds for reparation based on historical injustice. Waldron argues that the need to do justice arises only on the basis of present conditions whether or not they have an origin in a past injustice.²⁸ In the present, new factors are present which must be considered in the reckoning of what justice requires. In relation to rights to land, there are people with new interests on the land. Any move to return land or make reparations may result in harm to these new interests. The issue of historical injustice is, therefore, superseded.²⁹ In response, Ivison argues that Waldron does not fully appreciate the nature of the wrong. If historical injustice were only about reparation for the violation of particular rights, such as a right to property, his position might hold. But Ivison says that past actions, such as the expropriation of Aboriginal lands, are not just about property rights, but about 'a violation or denial of just terms of association'.³⁰ If the violation of just terms of association means that in the present the society does not acknowledge alternative conceptions of property, then the injustice 'persists to the present'.³¹ This response seems, if anything, to reinforce Waldron's point. That is, what makes the injustice of present concern is the fact that it continues to manifest in the present.

The more pertinent response of the postcolonial liberal to Waldron's argument is that it presupposes 'that there is a conception of justice shared between Indigenous and non-Indigenous people that provides a framework for the institutions within which judgments about the relevance of the past

²⁶ George Fletcher, *Loyalty* (1993).

²⁷ Ivison, above n 1, 26.

²⁸ *Ibid* 100.

²⁹ *Ibid* 100.

³⁰ *Ibid* 100.

³¹ *Ibid* 100.

are made.³² According to postcolonial liberalism, public reason does not rely on any such common ground. However, postcolonial liberalism does require that those who maintain that there is no legitimate claim to be made on the basis of historical injustice are willing to engage in political dialogue on the issue. It is interesting the lengths to which Ivison goes to make out the claim that in the absence of a substantive conception of justice, the issue of historical injustice must be part of political discourse. He establishes a relationship to community in which one could not but feel shame for past injustices. Shame, he posits, is a 'moral emotion'. Past injustices invoke a sense of shame which triggers self reflection. By analogy, acknowledging and confronting past injustice is central to membership in the community, and to identity and well-being. 'We as a political community are responsible for the past just in so far as it affects the moral character of our society ... Historic injustice, in other words, is not merely regretful, but demands a response'.³³ He constructs an argument for how responsibility can extend beyond what one has done personally (hence the feeling of shame). He then argues that political membership is constituted of rights and obligations and 'a certain affective dimension to do with being 'at home' amongst a society's practices and institutions'.³⁴ Finally, he calls for a 'form of impartiality in the public sphere' that is conjoined with 'an acute historical awareness of how values have been invoked in the past to discriminate against Indigenous peoples, as much as to emancipate them'.³⁵

Although Ivison's defence of historic injustice is extremely forceful, it seems to have a tenuous connection with postcolonial liberalism as he establishes it. Historical justifications exist within a non-Indigenous discourse and Indigenous peoples are, on the whole, suspicious of them. Ivison's own argument is a very sophisticated moral argument constructed on the basis of the insights of a number of non-Indigenous moral philosophers (including George Sher, Bernard Williams and Charles Taylor) and not on positions articulated by Indigenous people. History has played a particularly significant and controversial role in Indigenous claims against the State in Australia. *Mabo* established a particular view of history upon which Indigenous claims to land rights could be mounted. The language of *Mabo* itself alluded to the power of 'the tide of history' to erase these rights. History's power of erasure was confirmed in *Yorta Yorta*. In this guise, history perpetuates colonialism.

Ivison accepts the possibility of a 'shared history', if not 'a shared view about the normative consequences of that history'.³⁶ The assertion of a

³² Ibid 101.

³³ Ibid 104-5.

³⁴ Ibid 103.

³⁵ Ibid 107.

³⁶ Ibid 101.

shared history means that the requirement of impartiality for effective public reason is not complicated by the question of what the postcolonial liberal is being called upon to be impartial about. It is also important for the achievement of common ground on historic injustice. Only if we know what happened in the past is it possible to disagree over what are the correct normative responses to it. If this 'common ground' on the past is unattainable, and any version of the past is just one of many possible competing historiographies, the factual foundation for normative disagreement is weakened.

The assertion of a shared history assumes that an account of the past (about which one can then feel shame or guilt) is ascertainable. Among historians there is an on-going debate about the 'truth' of history, or whether a definite past can be ascertained. At one extreme, the postmodern critique of history argues that events in the past are irrevocably changed when recalled through language. There is the problem of interpretation of the event, its translation in to language and the interpretation of the written account.³⁷ Others are more hopeful of the possibility of recounting events with reasonable accuracy, but argue that historical accounts necessarily reflect the perspective of their author.³⁸ Others maintain the possibility of truth and objectivity in history.³⁹ This is not the place to analyse this debate, and in any case, what is important is not whether there is an ascertainable past, but the motivation for trying to access it.

Postcolonial theorists are likely to be suspicious of 'shared histories'. History is the tool of the coloniser. Invasion is re-written as settlement. Traditional cultures are reified. Settling on a shared history is a way of ending claims to a different historical perspective, or to downplay oral accounts of the past that are not supported by historical documents. Once a wrong is pinned down to a particular location and a particular magnitude, whether or not the perspective is favourable, it is given definite dimensions and the field of disagreement is narrowed. Therefore, it seems to me that the claim for rights based on historical injustice is unequivocally a liberal rather than a postcolonial claim.

³⁷ See, eg, David Harlan, 'Intellectual History and the Return of Literature' (1989) 94 *American Historical Review* 581-609; Hayden White, *The Content of the Form: Narrative, Discourse and Historical Representation* (1987).

³⁸ See, eg, Peter Novick, *That Noble Dream: The 'Objectivity Question' and the American Historical Profession* (1988); Eric Hobsbawn, *On History* (1998).

³⁹ See, eg, Keith Windshuttle, *The Killing of History. How a Discipline is being Murdered by Literary Critics and Social Theorists* (1994); Joyce Appleby, Lynn Hunt, Margaret Jacob, *Telling the Truth About History* (1994).

Mabo presented a version of history that was sympathetic to Indigenous perspectives. As such, it became the focus of Indigenous claims for land rights against the State. To some extent, this focus was at the expense of a range of more radical claims.⁴⁰ Importantly, the version of colonial history which highlighted the injustice to Indigenous peoples was used both to support and deny claims to land rights. Official versions of a shared history are open to contestation. The recent debate among Australian historians over the impact of colonisation on Aboriginal people in Tasmania indicates clearly the divergence of accounts on Australia's colonial past, and on the dangers of relying on this past as the basis of Indigenous claims against the State.⁴¹

Complex Mutual Coexistence and Separation from the State

A central question for postcolonial liberalism is under what terms and conditions people can live together justly despite disagreeing profoundly on what constitutes a good life. How is it possible for people to share a 'home in the world' when they differ profoundly on what this means? 'Complex mutual existence' appears throughout the book as an explanation both for the condition of the relationship between citizens in the State (the fact of reasonable pluralism),⁴² and as an ideal form of this relationship.⁴³ The description of complex mutual coexistence as an ideal seemed to give the concept a normative force which did not sit comfortably with the requirement that the moral underpinnings of the community be determined as part of the liberal project. Furthermore, as an ideal, it precludes claims for a more radical separation in the form of secession. Questions of Indigenous sovereignty and secession might be thought to lie outside the liberal project of determining the conditions of relationships within the State, and indeed might be considered the failure of the liberal State. I want to argue here, though, that it ought not to be outside the consideration of postcolonial liberalism. Taking seriously claims to more radical forms of separation brings into sharper focus the limits of mutual coexistence. A discussion of the conditions in which secession might be contemplated as a response to disagreement adds a new level of complexity to the possible shape of any mutual coexistence within the State apparatus.

⁴⁰ See, eg, Murray Goot and Tim Rowse (ed), *Make a Better Offer: The Politics of Mabo* (1994).

⁴¹ See, eg, Keith Windschuttle, *The Fabrication of Aboriginal History: Volume One, Van Diemen's Land 1803-1847* (2002); and Henry Reynolds, *Fate of Free People* (1995); and Lyndall Ryan, *The Aboriginal Tasmanians* (1996).

⁴² Ivison, above n 1, 16.

⁴³ *Ibid* 2, 4.

Iverson acknowledges that one of the problems of establishing a public reason through disagreement is that insights into justice arise after the process of engagement and not before. There is a danger that articulating positions in opposition to each other might clarify just how far apart those positions are. Mutual deliberation does not necessarily move politics towards agreement, it might in fact lead parties to develop and harden their oppositional stances.⁴⁴ Surprisingly, Iverson responds cursorily to his own criticism. His main response is particularly weak. 'Why assume', he states, 'that the underlying interests remain static when confronted with each other? Cannot politics, and the arguing and bargaining which it entails, alter those interests and move the parties to a different, and more acceptable and equitable equilibrium point?'⁴⁵ Iverson answers this rhetorical question in the affirmative. But it can be answered just as forcefully in the negative. His second point is that if particular issues are to be withheld from politics this requires some alternative justification. This may be so, but if postcolonial liberals are to accept that all disagreements ought to be within the public domain, then they must be open to the possibility that positions will harden on core issues of justice, and that no acceptable compromise between the positions can be reached. If this is the case, it seems important that postcolonial liberalism develop a strategy for dealing with a breakdown in public reason.

One way Iverson manages to avoid the full implications of this breakdown is to emphasise the hybrid over the fixed characteristics of culture.⁴⁶ Engagement in a discursive *modus vivendi* is constitutive of cultural affiliations as well as expressive of existing affiliations. A difference that seems irreconcilable can become less so as opponents are transformed through the process of dialogue. The fluidity of affiliations and identity therefore provides greater scope for finding common ground on points of disagreement. There is a danger that this view of culture underestimates the importance of cultural integrity to many Indigenous communities. Is it not open for a group to prioritise some affiliations in order to preserve them, and to resist others? Is it not open to an Indigenous community to assume the posture of a particular identity or of a particular interpretation of their past? In this case, might it not be necessary, institutionally, to account for Indigenous claims against the State in terms of a stronger concept of self-determination?

Iverson's emphasis on the hybridity of culture⁴⁷ leaves little room for Indigenous claims to cultural specificity, and for preserving or re-finding

⁴⁴ Ibid 93.

⁴⁵ Ibid.

⁴⁶ Ibid 34-8.

⁴⁷ Ibid 35-9.

(as opposed to re-defining) their tradition.⁴⁸ The idea of cultural transformation is consistent with liberalism's emphasis on reason. Cultural bonds are only as strong as the arguments for maintaining them.⁴⁹ A different sense of cultural identity understands membership of a group as the basis for political rights in itself, 'not because [a person's] identity necessarily reflects their ideological position on issues, but because the presence and participation as a person of a particular identity has value in itself'.⁵⁰ Such an understanding of culture has led to stronger claims to self-determination, including claims for group representation in State institutions,⁵¹ claims for self-government in semi-autonomous regions within States⁵², or claims to secession. For if cultures do not easily change in the face of serious conflict, the State itself may need to be transformed. On the issue of separation from the State and what it might require, the discussion might have benefited from a more thorough and direct engagement with the body of Indigenous literature on self-determination and sovereignty.⁵³

Focussing more on the fixed aspects of culture and identity raises a tension between the possibility of accommodation and the alternative of separation from the State. A greater focus on the territorial aspects of culture challenges the adequacy of the single, multi-nation State. In fact elsewhere, such as in his discussion of the dynamics of disagreement in public reason, Ivison tends to present the Indigenous voice as representing a unified voice in opposition to the State.⁵⁴ As an undifferentiated whole, the Indigenous other is capable of voicing disagreement, which is the minimum requirement for engaging in any form of public reason within the State. This allows the theory to more easily account for the relationships of power

⁴⁸ Mick Dodson, 'The Wentworth Lecture – The End in the Beginning: Re(de)finding Aboriginality' (1994) 1 *Australian Aboriginal Studies* 2-13.

⁴⁹ For an argument on the constructed nature of culture, see Mitchell Rolls, 'The Meaninglessness of Aboriginal Cultures' (2001) 2:1 *Balayi* 7-20.

⁵⁰ Anne Phillips, *Politics of Presence* (1995) 53.

⁵¹ See, eg, Iris Young, *Justice and the Politics of Difference* (1990).

⁵² Such as the Nunavut region in Canada.

⁵³ In Australia, see eg, Kevin Gilbert, 'Sovereignty Aborigine Treaty '88 Campaign' in *Voices of Aboriginal Australia: Past, Present and Future* (1995); Michael Mansell, 'Towards Aboriginal Sovereignty: Aboriginal Provisional Government' (1994) 13(1) *Social Alternatives* 16; Paul Coe, 'The Struggle for Aboriginal Sovereignty' (1994) 13(1) *Social Alternatives* 19; Patrick Dodson, 'Treaty ... the way forward', Wentworth Lecture (2000: AIATSIS, Canberra). For a non-Indigenous discussion of Indigenous sovereignty, see Christine Fletcher (ed), *Aboriginal Self-Determination in Australia* (1994).

⁵⁴ See esp, Ivison, above n 1, 26-7.

which critics of the liberal justificatory ideal such as Povinelli and Fish rely on to undermine public reason.⁵⁵

Iverson disapproves of a proposition that minorities are either 'in or out' of the State but does not discuss in any detail how the question of being 'in or out' can be avoided altogether.⁵⁶ Instead he pins his hopes on the possibility of dialogue between different groups. People's well-being, he argues, 'inheres in a form of social and political conversation'.⁵⁷ Individual and group differences over what constitutes the good life lie at the centre of this conversation. Iverson does not countenance a complete break down in this conversation. Instead, living with disagreement is presented as an imperative. He disagrees with Chatterjee that the limits of liberal-rationalist theory are necessarily reached when a particular group demands the right 'not to offer a reason for being different'.⁵⁸ Iverson argues that this can still be consistent with a conception of public reason and that what might actually be occurring is not a break down in public reason, but 'a contestation of the deliberative idioms and forums within which their claims are heard and evaluated'.⁵⁹

What is particularly compelling about Iverson's discussion is the possibilities he offers before separation needs to be considered. However, I believe there comes a point when it must be considered. If Chatterjee has not captured the limits of reasonable dialogue in the liberal State in the demand not to offer reasons for dissent, they will still be reached. Perhaps the limits are reached in the demand to walk away from discussion, or in the demand to establish jurisdiction over a territory and control access onto it. The risk for Iverson in moving conflict and disagreement to the centre of thinking about justice is that although it might lead to new solutions for mutual coexistence, it might also lead to a break down in the possibility of coexistence. This must be taken seriously, and one way to do so is to think about the limits of co-existence from the other side. That is, think through the impossibility, as well as the possibility, of co-existence and think through the terms of communication from outside as well as inside the State structure.

One of the major claims of Indigenous peoples in colonial societies is that, being a minority and being historically disadvantaged, co-existence with non-Indigenous peoples within the State leaves them too vulnerable and unable to pursue their own forms of government. For this reason, they seek more comprehensive protection of their ways of life, whether inside or outside of the State. Given the orientation of postcolonialism towards

⁵⁵ Ibid 74-5.

⁵⁶ Ibid 55-8.

⁵⁷ Ibid 22-3.

⁵⁸ Ibid 72.

⁵⁹ Ibid 73.

liberating peoples subject to the impact of colonisation, it is open to, and in fact demands, this extent of State transformation. Liberalism, on the other hand, is a theory for good government *within* the State. If it can make postcolonial claims at all, they are highly constrained.

For these reasons, I believe the theory of postcolonial liberalism would benefit from closer attention to the questions of sovereignty, secession and self-determination in its attempt to understand what is lost when Indigenous peoples and others are encouraged to enter dialogue and consider compromise. Within the structure of the State, the extent of pluralism is only ever what John Griffiths describes as ‘weak’ legal pluralism.⁶⁰ Within the single State, there is a single constitution for all national and cultural groups (which for Ivison is based on negotiable concepts of equality, freedom and well-being). Political autonomy from the State frees people from the need to disagree and from suffering the coercive responses which might follow such disagreement.

In the final chapter of the book, Ivison uses the example of Indigenous land and governmental rights in Australia to ‘put postcolonial liberalism to work’.⁶¹ The analysis of *Mabo* reveals the limits of the ‘postcolonial’ aspect of Ivison’s version of liberalism. After establishing three models of the State drawing primarily on the work of Jacob Levy,⁶² the discussion briefly analyses the *Mabo* judgment, and the legislative and public responses to it. It describes how the aftermath of *Mabo* led to the development of new Indigenous political and administrative institutions, and concludes that ‘overall, these developments symbolise an evolving new set of political and governmental relationships’.⁶³ Its main point is the importance of the recognition in *Mabo* that Indigenous people possess a ‘governmental relationship to land’ in the maintenance of their rights. The assertion of this relationship has meant that Indigenous claimants have maintained a degree of positive outcome from the native title process (predominantly through entering Indigenous Land Use Agreements) despite being faced with a government hostile to their rights.

Although the discussion is critical of many developments since *Mabo*, it does not analyse the role of State institutions in the difficult process of resolving competing interests in land. This seems surprising. One might expect postcolonial liberalism to comment on the appropriateness of a non-Indigenous institution, (and an unelected one at that) declaring in definitive terms the limits of Indigenous claims against the State. What do

⁶⁰ John Griffiths, ‘What is Legal Pluralism?’ (1986) 24 *Journal of Legal Pluralism and Unofficial Law* 1- 39.

⁶¹ Ivison, above n 1, 12.

⁶² Jacob Levy, ‘Three Modes of Incorporating Indigenous Law’ in Kymlicka and Norman (eds), *Citizenship in Diverse Societies* (2000) 297-325.

⁶³ Ivison, above n 1, 150.

the principles of postcolonial liberalism suggest were possible ways to respond to claims for Indigenous land rights immediately after *Mabo*? Was the response of the government of the day to create legislation for the facilitation of native title claims consistent with the postcolonial aim to free Indigenous peoples from the impact of colonialism? Was it part of a discursive *modus vivendi*? Ought a parliament (with no Indigenous representation at the time) be making decisions about the correct response to *Mabo* at all?⁶⁴ Having used native title rights in Australia as an example for ‘fleshing out’ the theory of postcolonial liberalism, and having made both descriptive and prescriptive claims about the shape and operation of political institutions,⁶⁵ it seems fair to expect postcolonial liberalism to respond to these questions.⁶⁶ Whereas questions of institutional design were of central importance to the postcolonial liberal State in earlier discussions, the role of the institutions in the creation of native title was taken as given.

After an initial clamour of outrage, the principles in *Mabo* came to sit comfortably within the existing framework of Australian property law. As such, rather than seeing *Mabo* as an example of the development of public reason through a discursive *modus vivendi*, it seems to highlight the institutional and, more directly, the colonial, barriers to such a process.⁶⁷ In fact, the disagreement over Indigenous land rights before and after *Mabo* might be more important sites for the development of a public reason than the decision itself.⁶⁸

The postcolonial liberal should be particularly concerned about the power relations that inhere in the process of recognition, and the possibilities which exist for rejecting it. As Ivison argues, the aim is not to reach a final consensus on these questions, but to reach provisional agreements that are incompletely theorised.⁶⁹ Ivison’s postcolonial liberalism provides many of the tools for engaging with these questions. However, in my opinion, it requires a greater consciousness of the limits of mutual co-existence and the implications of these limits to be truly ‘postcolonial’ in orientation.

⁶⁴ See, eg, Goot and Rowse (ed), above n 40.

⁶⁵ Ivison, above n 1, 151-2.

⁶⁶ Ibid 146.

⁶⁷ See, eg, Stewart Motha, ‘Mabo: Encountering the Epistemic limit of the Recognition of Difference’ (1998) 7 *Griffith Law Review* 79.

⁶⁸ Ivison, above n 1, 73-4.

⁶⁹ Ibid 74.

Conclusion: The Uneasy Association of Liberal Political Theory and Postcolonialism

The conjunction of postcolonialism and liberalism defies the normal relation between these terms. It encourages the reader to think through how these terms might work together - is it by analogy, distinction, combination or opposition? Ivison pre-supposes the conjunction by presenting 'Postcolonial Liberalism' as the name for his version of liberal political theory. At the same time, it is open to interrogation because the basic tenets of postcolonialism and liberalism are not self-evidently reconcilable and because liberal political philosophy has played a role in the justification of the violent practices of colonialism.

Ivison seems to rely on two understandings of postcolonialism in developing his thesis. First, postcolonialism describes a number of philosophical and political themes which 'critique liberalism's relationship to colonialism'.⁷⁰ Postcolonialism is not a state of existence that succeeds colonialism, but a state of existence imbued with relations of power with their origin in western domination. In the postcolonial world, there are no firm foundations. There is a great deal of diversity. There are no universal values, which are associated with justifications for colonialism.⁷¹

Second, postcolonialism prescribes the form of Ivison's new liberalism. Ivison picks and chooses among the themes emerging from the postcolonial critique to justify the designation of his liberalism as postcolonial. He embraces the diversity of relations in the postcolonial State. He accepts that his postcolonial liberalism must be ever conscious of its colonial origins. However, he cannot fully accept the anti-foundationalism of postcolonial theory. For if the theory is too vague about the moral presuppositions upon which the State is built it faces the criticism from liberals of indeterminacy and even nihilism. If, as Ivison argues, the very notions of what constitutes well-being, freedom and equality are contingent and contextual, and dependent on a particular form of negotiation and dialogue, how can the State legitimately resolve disputes between groups with different notions of these concepts? On the other hand, if the criteria upon which the State is built are over-developed, there is a risk that versions of these concepts are being imposed on people. The postcolonial liberal must straddle these two extremes, constantly reassessing the terms of political engagement.

To be liberal, *Postcolonial Liberalism* needs to commit itself to its underlying liberal values. To be postcolonial, *Postcolonial Liberalism* must acknowledge the possibility of a degree of difference that cannot be

⁷⁰ Ibid 39.

⁷¹ Ibid 40.

accommodated in the formation of public reason. This perpetual tension is an appealing aspect of Ivison's book. The difficulty in establishing the theory mirrors its central tenet - that it is out of contingent claims, and out of disagreement, that just relations emerge. Paradoxically, Ivison ultimately confirms the irreconcilable nature of liberalism and postcolonialism in his spirited defence of their conjunction.