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Deliberative Democracy and the Politics of Reconciliation

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The problem of historical injustice presents a deep challenge to the aspirations of deliberative democrats, especially to those “deliberative activists” who seek to advance deliberation in deeply unjust circumstances (Fung 2005, 399). But the debate over historical injustice can itself benefit from taking a “democratic turn.” Much of the literature is dominated by arguments over historical entitlement theories of justice or by a legalistic focus on the possibilities for compensation and reparation.¹ That much of it is deeply skeptical as well is no surprise given that focus. But what is striking about actual debates over historical injustice in the world today is their intensely political character, and this character needs to be theorized much more explicitly when thinking about the nature and consequences of historical injustice. One crucial aspect of political disagreement, as opposed to moral disagreement, is that it is not just the force of good reasons that is at issue but also the application of force itself, especially by the state. The conclusion of a political deliberation does not necessarily indicate that the other side is wrong, only that it has lost (Williams 2005, 13, 77-79).

Many countries are struggling with the legacies of past injustice at the same time as they are undergoing democratization. This aspect has been well discussed in a number of places, including in the literature on “transitional justice,” in which countries emerging from authoritarian rule and/or civil war struggle with the legacy of gross injustice as they design new institutions and try to forge new social and political norms (Hayner 2001; Elster 2004; Kutz 2004). But the problem of historical injustice also haunts well-established liberal democratic societies, as in the case of the legacy of slavery in the United States or the situation of indigenous peoples in North and South America and Australasia. Do the resources of deliberative democratic theory offer a distinctive approach to these challenges? What does the problem of historical injustice reveal about the nature of deliberative democracy?

I want to look at these questions by considering the history of a reconciliation process that took place in Australia between 1991 and 2001. This process was a response to important political and legal developments in relation to indigenous peoples' land rights, among other issues. It was officially inaugurated by a specific act of Parliament, but its roots lie in social and political activism that preceded it, and it spilled over into much wider discourses and activities in the broader civil society. Although the official legislative process finished inconclusively, the language of reconciliation remains a way to articulate aspirations for relations between indigenous communities and the state as well as between indigenous and non-indigenous peoples more generally. After the election of a new government in 2008, Prime Minister Kevin Rudd's first parliamentary speech was to make an "Apology to Australia's Indigenous Peoples" and appeal to the idea of reconciliation as a "core value of our nation" (Rudd 2008, 2). Similar steps have been taken in Canada.²

Reconciliation is often linked to the idea of forgiveness, to the idea of a "cancellation of enmity" or estrangement by the perpetrators and beneficiaries of past injustice who acknowledge their collective responsibility for wrongdoing (Bhargava 2000, 60). It is also linked to the idea of restoring social harmony through forgiveness. However, I do not think that forgiveness is an appropriate or achievable goal for a state to seek from the victims of historical injustice or their descendants. And, whatever the vision of social harmony, it cannot be premised on the acceptance of a comprehensive moral ideal. Democratic pluralism entails deep disagreement over what an appropriate moral conception of social harmony would entail. Instead, *democratic* reconciliation should aim at promoting the conditions in which the legacy of historical injustice is not allowed to distort the capacities of present and future generations to lead decent lives.

Much has been written recently about truth and reconciliation commissions and their role in promoting a peaceful transition to democratic self-government (e.g., Hayner 2001; Rotberg and Thompson 2000). But the Australian case is different since it is not a case of transitional justice per se. It allows us to test some of the claims that deliberative democrats often make with regard to how we should address deep structural injustices. It offers a glimpse of a "mature" liberal democracy struggling to make sense of a past and what, if anything, justice demands in light of it. As Judith Shklar (1990) points out, it is often more fruitful to start with injustice as opposed to ideal justice when trying to make sense of what liberal justice actually entails. In this chapter, I begin with historical injustice as a way of thinking about what deliberative democracy might actually entail.

In much of the recent work on responsibility for past injustice, emphasis is placed on the importance of what Thomas McCarthy calls the "politics of memory" (2002). Given the difficulties of establishing liability for past

injustices in the present, the idea is to shift to more collective and diffuse conceptions of responsibility and especially to the language of civic or political responsibility. In fact, many argue that the language of liability in general, and a focus on reparations in particular, is misplaced. The worry is that it is too difficult and divisive to establish meaningful responsibility for past injustices and too reactive and backward looking (Elster 2004; Waldron 2002b). Part of the problem is the difficulty of undoing the kinds of harms that are at issue; how do you undo the effects of slavery, colonialism, racism, or genocide? Although there have been impressive attempts to justify reparations, and indeed extensive schemes of reparation have been established in various countries (see Posner and Vermeule 2003), many political and legal theorists remain skeptical. But alongside and intertwined in these debates are the discourses of restorative justice and reconciliation. Here the idea is that addressing historical injustice is less a matter of retribution or reparation and more a matter of promoting other valuable ends – such as non-humiliation, autonomy, freedom as “non-domination,” civic harmony, or democracy. Without taking a position on the ultimate justifiability of reparations, I focus here on the idea of political reconciliation as a form of the politics of memory and on its relation to deliberative democracy.

Democracy and Justice

Liberals should seek distributive outcomes that are just, which entails (very generally) an equal distribution of resources or capabilities such that individuals are able to live decent lives and effectively contest those relations of power that act on their most important interests.

But liberals should also be concerned with the context within which patterns of distribution operate, that is, with the deeper structural features and relations of power – social, economic, cultural, historical, political – that shape and suffuse those patterns. Social and political relations can never be free of relations of power but should aim to be non-dominating.³

One way of bringing these two concerns together is to argue for *democratic justice*: that justice and democracy, although distinct, are mutually implicating. There are differences between legitimacy, a procedural concept, and justice, a substantive concept, but they are porous. The notion of democratic legitimacy must then be spelled out. There are obviously thicker and thinner ways of doing so. I will offer only the most basic account here: an outcome or distribution is legitimate if and only if it can receive the informed assent of (or be justifiable to) all those whose basic interests are significantly affected by the law, rule, or institution in question. Or, to put it in a slightly different way, that all those affected by the law or policy have had a chance to *contest* the proposal: to ensure that “their politically avowable, perceived interests are not just ignored and flouted” but treated equally in the course of collective decision making (Pettit 1999, 178-79). But this ideal raises still more

questions. What constitutes “informed assent,” “justifiability,” or an appropriate level of contestation? Where should we look for such assent or contestation (in legislatures, courts, civil society)? It also raises the spectre of circularity and a variation on Rousseau’s (1968) paradox: for a democracy to promote justice, it must already be just. Deliberative democracy is often thought to provide a way of making sense of this paradox.

I will assume that there is *some* connection between justice and democracy. They aren’t equivalent, but they are closely related (Dowding, Goodin, and Pateman 2005). Democratic societies can be deeply unjust, and the presence of democratic arrangements is not sufficient for just outcomes. Game theorists studying legislatures have taught us that collective decision making in public institutions often generates perverse and arbitrary results. “Empirical” theorists of democracy, in general, have sowed deep skepticism about its capacity to promote the outcomes sought by liberals committed to social justice.⁴ But equally, it would be wrong to infer that democracy and justice are therefore fundamentally contradictory. Democratic intuitions play an important role in most contemporary theories of justice as well as in our everyday intuitions about justice.

Democratic commitments are refigured in our convictions about liberal justice in a number of ways. First, a commitment to equality – to the equal worth of persons or to the Kantian idea of treating someone always as an end and never as a means – lends support (albeit inconclusively) to the justification of democratic institutions. To deny people the right to participate in the shaping of those laws and rules that affect their most important interests would be to treat them unequally, no matter how benign the non-democratic authority exercised over them.

Second, a commitment to the equal distribution of basic liberties supports democratic arrangements insofar as, on just about any account of being free (whether “negative,” “positive,” “republican,” or otherwise), the absence of the opportunity to influence or shape the laws and policies that affect your most important interests would constitute a dire threat to your freedom.⁵

Third, even if we were confident about what justice is, it doesn’t follow that it should be imposed. For one thing, we could be wrong. Moreover, it might well be hard to show conclusively to others that they were wrong about their conception of justice given something like “reasonable disagreement” about the good and the right (Rawls 1996). Theorists of justice appeal to democratic arguments here because they need a story about the legitimacy of the institutional arrangements that follow from their arguments. In fact, it is precisely because the nature of justice is unsettled that democracy is inexorably tied to our thinking about it in various ways. Since disagreement, not consensus, is an inescapable feature of arriving at the just ordering of any domain of human interaction, democratic considerations are crucial to

our thinking about justice (Shapiro and Hacker-Cordon 1999; Williams 2002; Young 2002). The indeterminacy of justice, in other words, pushes us in democratic directions. Appealing to local meanings alone about various practices and goods to discern rules of justice risks entrenching what are for some, at least, relations of domination (see Walzer 1983). On the other hand, attempting to specify the abstract conditions under which uncoerced agreement can be achieved on principles of justice risks delivering either too little or too much. Too little is gained if the conditions remain so abstract that realizing them in anything approaching real-world conditions is hopeless. Too much is gained if the conditions are so strong that any form of democratic discussion about them is rendered moot.

Historical Injustice and Democratic Deliberation

There is a range of arguments purporting to show in what sense we can be held responsible for the past (see Ivison 2002; Thompson 2002; and Waldron 2002b). When we turn to claims made by indigenous peoples for various kinds of collective rights, for example, historical injustice arguments loom large. They aren't the only way of justifying these rights, but they are an important element of any such justification. One general argument goes something like this:

- 1 liberal legitimacy depends on being subject to authority for which adequate reasons can be provided;
- 2 indigenous societies were previously self-governing;
- 3 indigenous peoples were denied the right to self-government for bad (i.e., unjustifiable) reasons;
- 4 many of the disadvantages that indigenous peoples currently suffer from are related to dispossession and lack of self-government;
- 5 therefore, indigenous peoples have a justifiable claim to the return of (some of) their territories and to exercise their rights to self-government, consistent with the equal rights of others.

I am not going to assess the ultimate validity of these arguments but will consider a related problem: even if we agree that historical injustices can and should be addressed in some way (almost no one thinks that the past simply doesn't matter), what is the most *democratic* way of handling disagreements over historical injustice? Theorists committed to democratic justice will say something like this: the more inclusive the democratic process, the more likely its outcomes will be legitimate, and hopefully the more likely they will be just. Is this plausible in the case of disagreements over the causes and consequences of historical injustice? At the heart of many civil wars and social conflicts today lie deep disagreements about the past, especially grievances about perceived past injustices.

It may be true that, strictly speaking, the past is causally out of our reach. But in another sense, the past's grip on the present can persist and shape beliefs and actions. How should the past be represented in public deliberations about justice? Deliberative democrats have sought to decentre deliberation in thinking about how spatially dispersed individuals can engage in mutual deliberation. Something similar may be required in relation to subjects who are, in a sense, temporally dispersed (see Bohman 1998, 2006).

As a way into this problem, consider two general approaches to the problem of reconciling the claims of cultural or national groups with liberal justice. Call the first the "*a priori*" approach. Here the idea is that we identify certain basic liberal rights and procedures in advance of any deliberations, and independent of any possible special relations that we may have as members of a shared practice or co-operative scheme, and then work our way out toward accommodating the claims of non-liberal groups. So Aboriginal self-government may be permissible but only insofar as it is compatible with the prior commitment to a basic core of liberal rights.

A second approach is the "democratic deliberative" approach. Here the idea is that, whatever is to count as our "core" commitments in terms of basic rights, or the most appropriate distribution of burdens and benefits in our society, must emerge from the actual – but still *considered* – deliberations of the members of that society. These rights or principles can't be stated in advance, deduced from ideal speech situations or thought experiments, or intuited (and then imposed) from between the lines of our most revered texts.⁶ Thus, public decisions ought to be responsive to the diverse views on the right and the good held by citizens, and citizens ought to be able – both directly and indirectly – to enter into public discussions and have their views taken seriously over decisions on matters that affect their most important interests. Citizens, moreover, are assumed to be motivated (at least in part) to seek public agreement and to be willing to offer reasons that others could accept or at least not reasonably reject. Some deliberative democrats go further and suggest that a central purpose of deliberative democracy is, in fact, to *resolve* moral disagreement, or at least to "economize" it, since "mere toleration" locks into place moral divisions and makes moral progress difficult (Gutmann and Thompson 1996, 62-63).

Both of these approaches are committed to the discipline of public reason. The *a priori* approach relies on pre-commitment to structure the nature of public reason. So, for example, in his liberal counterblast against multiculturalism, Brian Barry argues that to appeal to cultural identity in arguments over distributive justice is, in many cases, to "[cease] to engage in moral discourse" and therefore isn't a legitimate move in the language game of public reason (2001, 253). A deliberative approach, on the other hand, eschews pre-commitment and allows for more room and thus less constraint for deliberation to work. In fact, the background constraint consists of the

value of democracy, which is meant to generate a more open and inclusive view of public reason.

There are two arguments here, one epistemic, the other normative. First, we should see inclusive public reason as a *resource* for democratic deliberation, not as a hindrance, because it contributes to the epistemic conditions required for collective decision making in complex, multicultural societies (Young 2002, 81-120). Public discussion that is more inclusive of broader forms of social experience has a better chance of getting the “right” answer to complex social problems. Second, the interpretation of basic political norms is fair game for contestation because of a commitment to everyone being given equal standing and having their particular reasons taken seriously. If substantive principles of justice have to be worked out deliberatively, then the norms governing deliberation itself have to be worked out deliberatively as well. Thus, Barry’s charge that claims about identity are illegitimate modes of public reason depends on an assumption that there are no plausible arguments available to link identity-related differences to interests that might be relevant to a liberal theory of justice. But how can we know this until we actually engage with the claims being made and the interests being appealed to? The claims aren’t self-justifying, to be sure, nor are they presumptively false. A commitment to deliberative democracy should cut against the idea that we can determine *a priori* which kinds of reasons count as genuinely public reasons in advance of actual deliberations.⁷

One way to summarize these different emphases is this: first, public decisions ought to respond only to *reasonable* views about public action, where a view is considered reasonable in light of its substantive content; second, public decisions ought to respond to *reasoned* or deliberated views, where those views are said to emerge from a well-ordered deliberative process. Deliberative democrats often assume that these two approaches converge (Ferejohn 2000, 77-78), that a specific set of substantively reasonable views will emerge from well-ordered deliberative procedures. For example, Amy Gutmann and Dennis Thompson (1996), despite defending what they call “deliberative democracy,” in fact impose very stringent *ex ante* constraints of “reciprocity,” “publicity,” and “accountability” on public deliberation – so much so that they are able to provide detailed and substantive answers to hard questions of public policy that are currently being debated in American politics. (In my schema, this looks like an *a priori* argument masquerading as a deliberative one.)

Designing Institutions to Deliberate about the Past

A society struggling to confront the legacy of historical injustice presents a serious challenge to the defenders of deliberative democracy. It combines the presence of asymmetrical relations of power with the lack of an effective framework for genuinely democratic decision making. One set of challenges

involves the kinds of preconditions and precommitments that deliberative democracy requires and whether or not historical injustice creates any special problems in establishing these conditions. Another set of challenges concerns how deliberative democracy can be institutionalized, given how the legacy of historical injustice shapes existing institutions. I will use a case study from Australia to discuss some aspects of these complicated issues. Before doing so, let me say a bit more about deliberative democracy and historical injustice.

Why would deliberative democracy be an attractive ideal in these contexts as opposed to what I call the *a priori* approach? Consider two general arguments.

First, deliberative democracy provides a more consistent approach to the problem of legitimacy, at least from the perspective of a minority group scarred by historical injustice. If the basic norms and institutions of society have to be justified to everyone according to a wide conception of public reason, then the fact of historical injustice can be made to feature in those deliberations and be given an opportunity to shape their outcome and introduce new kinds of reasons into that space. It is not clear that defining what constitutes the appropriate object and/or idiom of public reason in advance of the actual deliberations would allow this to happen if, for example, identity-related differences or the legitimacy of basic institutions were off the table. Also, the more aggregative and majoritarian the democratic procedures, the less likely that minority groups will have their concerns taken seriously and that public attitudes and beliefs about their concerns might be changed through ongoing public deliberation. At the least, deliberative democracy encourages the achievement of a modicum of mutual intelligibility between citizens by encouraging them to present their best reasons for proposing or contesting the norm, practice, or rule at issue. Of course, intelligibility should not be confused with sociability; understanding a claim doesn't mean that you are more likely to accept it. But it is a necessary (not sufficient) step along the way to mutual acceptability.

Now, for some deliberative democrats, this means that we should allow citizens to appeal to their deeply held beliefs and comprehensive (and not-so-comprehensive) views – to the *complex* reality of their concrete, lived existence, as it were – in the process of attempting to find common ground with others. This can be a valuable exercise for a group that has been oppressed or dominated or whose way of life has been suppressed or denied as a result of majority decision making. The idea here is that the parties to a disagreement have to be clear at least about the *points* of the preferences or beliefs that each holds if any meaningful and effective terms of mutual accommodation are to be found (Weinstock 2001). Thus, deliberative democracy is proposed as offering a more satisfactory solution to the problems

faced by minorities in liberal democracies and establishing the legitimacy of liberal institutions in contexts of deep moral pluralism and disagreement.

Second, it might be that a deliberative approach provides a greater opportunity for a cultural group that has been the victim of historical injustice to adapt to contemporary circumstances and institutions in their own way. Simply imposing liberal norms in these contexts might compound the injustices that they claim to suffer. At the same time, if we value democratic deliberation *between* groups and the state, then we must also care about it happening *within* groups. So are we justified in imposing democratic norms on such a group? The democratic approach would, at the least, force elders or elites within groups to pay attention to the views of others and hopefully provide more vulnerable members with tools for making themselves heard (and, if necessary, various kinds of exit points if disadvantage became entrenched). The democratic approach would, hopefully, emphasize the importance of ongoing dialogue, negotiation, and compromise both within and between groups. But depending on what we mean by ‘democracy,’ it might not entail a wholesale rejection of various social and cultural norms that are at odds with principles of liberal equality.

Thus, the more “democratic” a deliberative democrat you are, the more accommodating you will be (in principle, at least) of these differences and departures from liberal equality, albeit always subject to the test of the ability of those affected to contest the validity of those norms. The more liberal and less democratic, the less comfortable you are in tolerating these imperfect accommodations (except for purely prudential reasons).

Deliberative democrats are often unclear about how deliberative democracy can be institutionalized, yet their arguments often depend on “institutional experimentation and redesign” (e.g., Benhabib 2002, 184-85). However, one institutional innovation that has emerged in relation to historical injustice is establishing a formal method for engaging with that legacy, for example by establishing a truth commission or reconciliation process. There are two general arguments for doing so.

First, establishing such a process allows for conflicting views about the past to be aired and debated, and thus at least to be acknowledged and faced up to, even if ultimate resolution seems remote. Second, in divided societies, such a process helps to promote conditions in which various kinds of “deep compromises” (Richardson 2002b, 146) can be established, compromises required to underwrite effective democratic deliberation. If nothing else, these processes can provide an institutional mechanism for managing dissensus – for institutionalizing contestation over the past. Deliberative democrats have been interested in these ideas. Gutmann and Thompson (2000), for example, have applied the arguments from *Democracy and Disagreement* (their 1996 book) to the issues surrounding establishment of the South

African Truth and Reconciliation Commission (TRC). I want to look briefly at their arguments before turning to my example from Australia.

For Gutmann and Thompson, the moral justification of the TRC rests on democratic grounds: namely, that it can contribute to the democratization of society by promoting an “economy of moral disagreement” about the past – that is, justifying political positions by seeking a rationale that minimizes rejection of the positions that you oppose (1996, 57; 2000, 38). Doing so encourages finding common ground where it exists and mutual respect where it does not.⁸ The TRC can do this as long as it is guided by the principle of “reciprocity,” the idea that citizens should try to justify their political views to each other on grounds that others could accept and treat with respect those who make good-faith efforts to engage in this process of mutual justification even when disagreement persists. Reciprocity also presupposes that socioeconomic conditions exist such that adult citizens can genuinely engage with one another on equal terms. In fact, where these conditions are absent, Gutmann and Thompson suggest that it is reasonable to use non-deliberative means to bring them about (1996, 57, 134-36; 2000, 36).

Thus, the justification of the TRC has to be a moral justification, not merely a prudential or instrumental one, to meet the legitimate concerns of those victims of apartheid who reject any trade-off between criminal justice and the end of reconciliation. The reasons offered have to be inclusive and thus can't depend on a comprehensive moral vision of the good. Nor should the aim of the TRC be justified in terms of producing a conclusive judgment about the ultimate meaning or truth of the past. And finally, the principle of reciprocity should be embodied in the procedures of the commission itself. For example, appointments should be open to public scrutiny, hearings should be held in public (where possible), the arguments and viewpoints of all who appear before it should be taken seriously, and disagreement over its procedures and findings should be openly admitted rather than papered over.

Now, the Australian reconciliation process is significantly different from the South African one in many ways. First, it doesn't involve the establishment of a truth commission, although there were “truth-seeking” aspects to its remit. Second, the Australian context is not, strictly speaking, a case of transitional justice, especially in the sense that South Africa was. Although it may well have been founded unjustly (most states fall into that category), Australia has embedded in its public life a set of broadly legitimate rules of basic procedural justice and fairness enforceable by the state, its agencies, and the legal system as a whole. It also has a relatively well-developed and robust civil society. However, from the perspective of its indigenous peoples, at least as I understand their arguments, many of these background rules and norms have been shaped and distorted by historical injustice. At various times, they have been used to deny them equal treatment or coercively to assimilate them into mainstream society and deny them their political rights.

And although formal discrimination gradually waned in the second half of the twentieth century, other forms of discrimination persist, along with disagreements over land claims, self-government, and continuing social and economic disadvantage.

So deliberative democracy (and, more precisely, democratic deliberation) is valuable here to the extent that it embraces a wide conception of public reason that is sensitive to historical circumstances and to the way in which arguments are conceived of as reasonable or not in relation to the marginal status of the group making them (Williams 2000). Thus, it may provide an attractive way to justify the moral and political benefits of a truth commission or reconciliation process, as a way to institutionalize more democratically deliberative forms of politics. But it also faces a number of problems.

The first problem is the persistence of “post-deliberative” disagreement. The second problem, especially in contexts concerning indigenous peoples, is the persistence of what I call *the legitimacy problem*: that is, the contested legitimacy of the institutions and practices used to enforce deliberative norms and to aggregate post-deliberative collective decisions. This problem is exacerbated in contexts where perceptions about historical injustice shape attitudes and beliefs about the basic structure of society, in the Rawlsian sense of the term.

Case Study: Reconciliation in Australia

I turn now to my case study.⁹ One of the distinctive features of the settlement of Australia, compared with that of Canada, the United States, or New Zealand, is that there were almost no treaties struck between indigenous peoples and the Crown. However, Australia shares the common-law background against which the jurisprudence of Aboriginal rights has emerged in Canada and elsewhere in the common-law world. Hence, the lack of treaties is not significant in terms of the *kinds* of rights that Aboriginal people might be said to possess. The real difference lies in the way that these “inherent rights” have (or have not) been recognized and institutionalized. And here the absence of treaties or constitutional recognition, and of ongoing processes of “nation-to-nation” negotiations in general, is significant. Let me say a bit more about this Australian background.

In the nineteenth century, as settlements expanded and the colonies became increasingly self-governing (Australia was federated in 1901) – and thus the scale of dispossession increased – indigenous people were increasingly marked out both legally and socially for discriminatory treatment. From the 1840s until well into the 1960s, legislation excluded Aboriginal people from a whole range of social and citizenship rights, including, of course, from their land but also from the franchise (extended fully only in the mid-1960s) as well as from access to a wide range of basic welfare benefits (e.g., equal pay). Assumptions about the cultural inferiority of indigenous

social orders and their apparent imminent demise also led to state-sponsored programs that removed “half-caste” and other indigenous children from their families in order to “save” them from their apparently marginal position within Aboriginal society and to assimilate them into white society. Although the protection of children’s well-being may have warranted removal in particular cases, the scale and rationale of the removals indicate that they were mainly informed by an intention to hasten the demise of what was seen to be – in light of the racially infused conception of British Australian national identity – a culturally distinct and inferior indigenous population.

Beginning in the 1950s and 1960s, many of the most egregious exclusionary provisions began to be removed (although not all: child-removal policies persisted into the 1970s) as the result of an unstable combination of civil rights activism and more explicitly assimilationist government policies. “Equal citizenship rights” thus had a double-edged connotation in Australia for indigenous peoples. On the one hand, they led to the removal of the worst forms of overt racial discrimination from the statute books; on the other, they were intended as part of a broader policy of cultural and political assimilation. Moreover, having citizenship rights didn’t necessarily mean benefiting from them given deep-seated racial attitudes and behaviours in the wider society. And even gaining access to welfare rights had painful consequences as the transition to a cash economy introduced new forms of dependency on Commonwealth benefits that disrupted the traditional subsistence economies of many remote communities – often with devastating results (see Pearson 2001).

Also lacking in the Australian context, unlike elsewhere, were any constitutional rules or norms that provided leverage for indigenous peoples in their negotiations with the state. An important by-product of the activism of the 1960s was a referendum (in 1967) amending two exclusionary references to Aboriginal people in the Commonwealth Constitution (1901). The actual amendments were relatively minor (the first to clarify federal powers to legislate in the interests of Aborigines, the second to include them in the census), but the campaign around the referendum – which was passed overwhelmingly – and the subsequent (rather mythical) social meaning of the 1967 vote brought Aboriginal issues into the mainstream of Australian political debate. It also brought an expectation of progressive change, led by the Commonwealth government.

The momentum of the 1960s carried over into the next two decades in the form of increasing demands for land rights and improving the social and economic circumstances of indigenous peoples (see Attwood and Markus 1999). Important petitions demanding comprehensive land rights were presented in 1963 (the *Yirrkala Petition*) and again in 1988 (the *Barunga Statement*). The first major land rights case of the modern era was in 1971 (*Milirrpum and Others v. Nabalco and the Commonwealth of Australia*), and,

although it denied that Aboriginal people had any common-law Native title, the outcry surrounding that decision generated enormous political pressure for change. The Labour Party's election in 1972, led by Gough Whitlam, brought with it an explicit policy of "self-determination" for Aboriginal and Torres Strait Islander affairs and set the stage for a new era of policy making. A royal commission resulted in the landmark Aboriginal Land Rights (Northern Territory) Act of 1976, implemented even after the Whitlam government was dismissed and lost the subsequent election. A new government department was created, and many Aboriginal welfare services, until then handled (unevenly) by the states, were centralized under Commonwealth control. When the Labour Party came to power again in the early 1980s, it promised national land rights legislation, but this never eventuated. Labour did create the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1990, which was meant to take over the administrative functions of the Department of Aboriginal Affairs, guided by elected representatives from indigenous communities. However, ATSIC never gained real traction with its intended constituencies or the government and was ultimately abolished by John Howard's government in the late 1990s.

There were various attempts to launch a campaign for a treaty during this era, including the establishment of an Aboriginal Tent Embassy in 1972 (which has continued in various forms until today), the establishment of an "Aboriginal Provisional Government," a campaign by the National Aboriginal Conference in 1979, and the important *Barunga Statement* in 1988.¹⁰ A parliamentary committee was charged to look at the whole issue in 1981, but its final report in 1983 – *Two Hundred Years Later* – identified changing societal attitudes as more important than pursuing a treaty. Out of the ashes of these campaigns came the establishment of a Council for Aboriginal Reconciliation (CAR) in 1991 and a ten-year plan to create a bipartisan approach to Aboriginal affairs.¹¹ The twenty-five members of the council were to be split evenly between indigenous and non-indigenous members, and its work was to focus on reconciliation and nation building, with recommendations toward that end to be made in time for the celebration of the centenary of federation in 2001.¹²

This process was given an enormous charge by the High Court's *Mabo* decision in 1992, which explicitly acknowledged, for the first time in Australian history, the common-law rights of indigenous people to their land. There could be no escaping dealing with these issues now. In late 1993, the Keating Labour government passed the Native Title Act (NTA), which recognized common-law Native title, set up a Native Title Tribunal to mediate future claims, established a land fund to help purchase lands for those unable to make claims (due to the restrictive criteria set out in *Mabo* and then in the NTA) and foreshadowed a broad "social justice" package (which never emerged). In 1995, the Keating government also established a "National

Inquiry” into the policy of removing indigenous children from their families, with a view to (among other things) “examine the principles relevant to determining the justification for compensation for persons of communities affected by such separation” (Terms of Reference [c]). The final report, entitled *Bringing Them Home*, was tabled in 1997 and recommended, among other things, that an apology was due for Aboriginal children forcibly removed from their families.

But with the election of John Howard and his Liberal government in 1996, following a highly divisive and often racialized campaign, the momentum in indigenous policy shifted in another direction. The new government began amending the Native Title Act in order to constrain severely Native title and especially the right and duty to negotiate over land claims. This change was encouraged by another important land rights case in 1996 (*Wik People v. Queensland*), which Howard and others suggested had swung the pendulum too far in favour of indigenous peoples’ land claims. He also sought explicitly to distance the reconciliation process from land rights and self-determination, and he cut the budget of the CAR by almost 25 percent. At the Australian Reconciliation Convention in 1997, meant to be one of the key public consultation events in the reconciliation program, Howard claimed that reconciliation would not work if one of its central purposes became the establishment of different systems of accountability and lawful conduct among the Australians on the basis of their race or any other factor (Grattan 2000). Moreover, the reconciliation process must focus on the future, he argued, and it must *presuppose* an overriding and unifying commitment to Australian institutions. So, instead of a focus on past injustices, it should be on “practical reconciliation,” not the “politics of symbolism,” and on measures that will improve the daily lives of indigenous people, wherever they live (Grattan 2000).

The atmosphere was further charged when the National Inquiry into the child-removal policies – *Bringing Them Home* – was published in 1997 and Howard explicitly refused to offer a national apology on behalf of the Australian government for those policies or consider any form of compensation. The push for an apology then became tied to the final stages of the work of the CAR. In its Declaration toward Reconciliation, the council included a form of apology, but once again Howard rejected it. In August 1999, he sponsored a parliamentary motion of “sincere regret,” but it generated even more acrimony due to the perception that it avoided most of the main issues at stake. At the ceremony (or *corroboree*) to mark the end of the official reconciliation period in May 2000, Howard was heckled during his speech, and many in the audience stood and turned their backs on him. The final recommendations of the council included calling for a new constitutional preamble that acknowledged indigenous peoples as “first peoples” and calling for

Commonwealth legislation that would begin a process leading to an “agreement or treaty, through which unresolved issues of reconciliation can be resolved” (Council for Aboriginal Reconciliation 2000).¹³ Howard pointedly disagreed with this recommendation, again arguing that “practical” reconciliation was more important than the symbolism of treaties and apologies. This wasn’t surprising, as he had earlier stated (in 1988, while opposition leader) that it was an “absurd proposition” that a nation should make a treaty with its own citizens. Howard’s government was easily re-elected in 2001.

Although indigenous Australians appeared generally to support *some* kind of formal reconciliation process, there were disagreements about the details. Some suggested that it needed to be made clear with *whom* any treaty or agreement would be made (national groups, local groups, regional groups?) and whether it suited the interests of urban indigenous people or those in different parts of the country. Many suggested that the focus on reconciliation was distraction from hard questions about restitution and sovereignty – a way for whites to assuage their guilt without really having to do anything. Others suggested that the focus on reconciliation was entirely misplaced given the terrible social and economic circumstances of most indigenous people. Noel Pearson, a prominent Aboriginal lawyer and leader from Cape York, called the demand for treaties and reconciliation a confused “quasi-radicalism” in the face of social and economic dysfunction. For Pearson, the real issues were the consequences of passive welfare and drug and alcohol abuse, which had led to staggering rates of violence and ill health in indigenous communities all over Australia. As he put it, “an apology at this stage of our national indigenous policy failure would only hide the present lack of insight and ideas among the Australian progressivist and liberalist middle class ... It would be like a coat of seventies purple plastic paint on a house full of white ants” (2001). Colonialism may have predisposed indigenous people to these afflictions, but it cannot explain why they continue to get worse.

So, at the end of the ten-year reconciliation process, the results were deeply mixed. No “deep compromise” emerged, nor did a clear plan for one. A half-hearted attempt at introducing a new constitutional preamble recognizing the special place of indigenous peoples in Australia was bungled and never campaigned for by the government.

However, perhaps the deepest and most long-lasting consequences were the many local reconciliation committees and support groups that sprang up through the process and that helped to generate a sense of commitment toward reconciliation outside the mainstream political parties. Groups such as Australians for Reconciliation and Native Title emerged, along with a host of other local, state, and regional networks, which helped to keep the discourse of reconciliation alive in the background of the public culture. These

groups fed, in part, off the hugely successful “bridge walks” in support of reconciliation held in the winter of 2000, which brought hundreds of thousands of people to the streets in the major capital cities of Australia. A quasi-public body formed in the aftermath of the official reconciliation process – Reconciliation Australia – has also worked to support these local initiatives.

Nevertheless, indigenous people continue to suffer from appalling social and economic disadvantage, a fact that many commentators have seized on as proof of the failure of the language of “self-determination” and “Aboriginal rights.” Others have drawn precisely the opposite conclusion: just because genuine self-determination and respect for Aboriginal rights has never been adequately provided for, it can hardly be said to have failed (Behrendt 2003). However, even some Aboriginal leaders – especially Pearson – have increasingly questioned the self-determination agenda, worrying that it has come at the expense of rebuilding social and personal responsibility and of reconstructing Aboriginal social orders destroyed by passive welfare and drug and alcohol abuse. Pearson’s critique of passive welfare and the so-called rights agenda, however, has also included unstinting support for Native title property rights.

Debate over reconciliation became paralyzed by disputes over the “practical” versus the “symbolic” forms that it might take. The Howard government insisted that apologies and symbolic gestures of reconciliation mattered less than addressing social and economic disadvantage on the ground. Despite this focus on the practical, things on the ground continued to get worse.

However, in a remarkable development, the Howard government launched, in June 2007, an extensive “emergency intervention” in indigenous communities in the Northern Territory. Once again, child protection was the justification and the need to address the rampant violence, sexual abuse, and devastating drug and alcohol addiction that were ravaging many communities.¹⁴ The “intervention,” as it came to be known, set off an intense debate among indigenous and non-indigenous commentators and, although heavily criticized, received strong support, including from many indigenous leaders. At the same time, Howard announced that, if re-elected, he would press for an amendment to the preamble of the Australian Constitution – what he called a “new Statement of Reconciliation” – that would “formally recognize the special status of Aboriginal and Torres Strait Islanders as the first peoples of our nation” (2007). He admitted that he had been slow to appreciate the importance of such gestures, although he made it clear that he continued to reject the call for any collective national apology for past injustice and that “individual rights and national sovereignty prevail over group rights” (2007). It was clear that Howard was attempting, on the eve of an election campaign, to address a broader public culture that had become

increasingly receptive to these ideas, despite his consistent repudiation of them. The reconciliation process in both its formal and its informal aspects had clearly contributed to these developments. The opposition leader at the time, Kevin Rudd, had promised to work with indigenous communities to come up with an appropriate form of apology and had pledged to address the shocking gap in health and well-being between indigenous and non-indigenous communities.

Rudd and Labour were elected, and in his first speech to the new sitting of Parliament in February 2008 Rudd moved a special motion of apology to the “stolen generations,” which included this statement:

To the Stolen Generations, I say the following: as Prime Minister of Australia, I am sorry. On behalf of the Government of Australia, I am sorry. On behalf of the Parliament of Australia, I am sorry. And I offer you this apology without qualification. We apologise for the hurt, the pain and suffering we, the parliament, have caused you by the laws that previous parliaments have enacted. We apologise for the indignity, the degradation and the humiliation these laws embodied. We offer this apology to the mothers, the fathers, the brothers, the sisters, the families and the communities whose lives were ripped apart by the actions of successive governments under successive parliaments. In making this apology, I would also like to speak personally to the members of the Stolen Generation and their families: to those here today, so many of you; to those listening across the nation – from Yuendumu, in the central west of the Northern Territory, to Yabara, in North Queensland, and to Pitjantjatjara in South Australia.

Rudd also offered to establish a bipartisan “war cabinet” on indigenous policy, chaired by himself and the leader of the opposition, as a means of overcoming entrenched disadvantage and perceived policy stasis. However, the debate over the continuation of the “intervention” quickly stalled the spirit of bipartisanship, as the Opposition made it a price of their participation that the intervention be retained in the form in which they had introduced it while in government.

Many aspects of the intervention are alarming, even if some of the concerns that motivate it are widely shared and equally alarming. Some urgent measures were clearly needed to protect children from increasing sexual predation and violence (more police, urgent medical screening, restrictions on alcohol, etc.). But other measures seemed less relevant to addressing those particular issues and hinted at broader reform of Aboriginal public policy. The statute authorizing the intervention suspended the application of the Racial Discrimination Act to its measures, which included (in addition to those mentioned above) the compulsory acquisition of Aboriginal lands for the purpose of granting leases; suspending the permit system that controls

access to Aboriginal lands; quarantining social security payments; and abolishing community welfare programs that were often the only source of employment in remote communities. The invocation of the language of “emergency” in relation to the situation of indigenous peoples is striking; most of the problems outlined in the justification of the legislation have been amply documented over many years. Declaring an emergency suspends the normal operation of the rule of law and grants enormous discretionary power to the executive. Although it has been justified on the grounds of restoring (somewhat paradoxically) the rule of law to these communities – or at least some semblance of social order – what it also does is short-circuit the need for consultation and any genuine attempt to justify the relevant measures to the persons most affected by them.

Conclusion

What can we learn from this case study? What are the advantages and disadvantages of deliberative democracy for thinking about how best to manage and potentially resolve disagreements about historical injustice? It seems clear that formal, non-electoral processes of acknowledging and investigating the legacy of historical injustice can contribute to establishing more just and legitimate relations between indigenous peoples and the state. Formal processes promote an exchange of views about the past and a process for evaluating the consequences of those views. They create an alternative deliberative space within which disagreements about the past can be worked out. Yet a robust and active civil sphere provides an important domain for these kinds of discussions too. We need both. So a formal reconciliation process can contribute to the conditions in which the inclusive promise of deliberative democracy can begin to be realized in deeply imperfect circumstances. This also contributes to the process of rebuilding trust between different groups in a society shaped by historical injustice.

However, my case study also points to limitations and challenges. Even when good deliberative norms are in place, they won’t automatically produce good outcomes. Moreover, the legitimacy of the reconciliation process depends on the parties accepting the terms of reference and the institutions on which that process depends. Thus, the origins of the formal rules governing the institution matter; the informal norms shaping deliberation matter (i.e., those that govern how people actually behave in deliberating, deciding, interpreting, and criticizing each other within these institutions); and the overall distribution of social and economic power matters.

To be more specific, I’d like to suggest four tentative hypotheses that emerge from my example.

- 1 *The legitimacy problem infects any search for “reconciliation.”* If the self-governing powers of indigenous peoples are inherent and coexist with,

as opposed to deriving from, the sovereignty of the state, then the terms on which reconciliation is to be pursued, and indeed what constitutes “reconciliation,” matter crucially. Another way to frame this hypothesis is that *political disagreement matters as much as moral disagreement*, and the former is not reducible to the latter. Sometimes this manifests itself as a clash about ends but just as often about means. Indigenous peoples and the state may share similar ends, but the legitimacy of the institutions or processes meant to bring them about may be deeply contested. And legitimacy is a moral and political idea shaped by strategic interaction. Formal reconciliation processes can run afoul of this kind of disagreement. For example, by the end of the official reconciliation process in Australia, there were at least two distinct views about the aims of “reconciliation.” According to the first, the differences between indigenous and other Australians should be removed since the relevant aspects of those differences – such as discrimination and persistent social and economic disadvantage – undermine equal citizenship and the sense of a common destiny. According to the second, reconciliation should involve removing disadvantage but in part through the enactment of difference, both as a way of recognizing the distinctive place of indigenous peoples in the diverse public culture of Australia, and as a means of realizing equality. Reconciliation processes can help to create deliberative forums that bring to the surface and vent these disagreements, and that can be a valuable function, but it won’t necessarily resolve them, and the emotions that they generate can persist and complicate democratic processes. To put it another way, political reconciliation is best conceived of as a specific form of structured national conversation or argument, not a defined terminus. Disagreement about the whole point of “reconciliation” has been a consistent feature of the Australian experience.

But there are also costs in conceiving of reconciliation in this way. Open-ended processes for dealing with historical injustice can sap cooperative energies and engender resentment when they come to seem for some like so much wallowing in the past rather than addressing its consequences. This perception in turn can erode the conditions required for citizens to be willing to engage in the kinds of reflection and deliberation that a reconciliation process requires.

- 2 *Relations of power suffuse deliberation.* This is a familiar point but well worth reiterating. Deliberative norms that promote moral as opposed to instrumental or strategic deliberation do not thereby insulate those deliberations from relations of power (broadly construed). Reason and force are not mutually exclusive. This fact doesn’t undermine the role of deliberation in politics, but it means that there is no easy distinction between “moral” argument and “political” argument, if the distinction

is meant to imply that the giving of reasons is to be distinguished from the exercise of power.

- 3 *Procedural preconditions should be contestable.* Deliberation should aim to provide room for the parties to arrive at suitable democratic norms to govern deliberations in light of the historical and practical circumstances that they face. Given the ambiguous legacy of indigenous peoples' relationship to the state and to liberal citizenship rights, an openness to negotiation over these norms is crucial to establishing trust in processes meant to address historical injustice. Imposing strong *ex ante* conditions to do with reciprocity, accountability, and publicity, for example, risks undermining that openness. A more overtly political and negotiated approach to deliberative norms is required. Expanding the scope of democratic contestation creates opportunities for different voices to be heard – including, importantly, within minority cultural groups themselves – while at the same time making agreement more difficult and therefore bargaining and compromise more likely.

There are risks, as always. The more unstructured deliberation is, the greater the possibility that more powerful parties can take advantage of it. Imperfect proceduralism is preferable to pure or perfect proceduralism, but contestability still matters. This challenge raises a deep issue about just how *democratic* deliberative democracy really is or ever could be.

- 4 *Post-deliberative pluralism reintroduces the problem of aggregation and non-consensual decision making back into deliberative contexts.* The reconciliation process generated a series of “post-deliberative” preferences, but they were heterogeneous. So compromise and bargaining remain at the centre of deliberative politics (Bohman 1998; Ferejohn 2000). Various solutions to this problem have been proposed. Habermas, and those inspired by him, have suggested two-track solutions whereby aggregation is supplemented by extra-parliamentary networks of “subpublics” and “counterpublics” that help to bring about wider cultural and ideational transformations that feed through to the more formal (“stronger”) publics.¹⁵ The hope is that the proliferation of “decentred” public conversations helps people to develop more reasoned views (e.g., more inclusive, better justified, better informed, etc.) to which legislators will be moved to respond. Ethical transformation begets legislative (perhaps even constitutional) change. Coming from the other direction, another suggestion is that representative institutions should be redesigned so that more explicit and openly argumentative practices are encouraged in full public view, which might generate the formation of more inclusive modes of public reasoning. Electoral reform that enables the expression of a greater range of alternatives and preferences, and thus encourages more negotiation and co-operation across party lines (e.g., proportional representation), is therefore required. If most people, most of the time,

cannot participate extensively in democratic deliberation, then we need to find ways of representing diversity within legislative deliberation that also helps people outside legislatures to form more reasoned views.

The Australian case study is interesting in this regard. It was among the purposes of the reconciliation process that it promote education and awareness about Australia's colonial legacy. It also served as a focal point for political mobilization by indigenous people (although often for competing purposes). Both of these elements contribute to the deliberative capacities of individual citizens thinking about these issues for themselves. But this has yet to be translated into broad support for the specific ends that indigenous peoples have been pushing forward. In many ways, the debate over "Aboriginal rights" remains as divided as ever. The hope is that post-deliberative disagreement is different and more productive than it would be if less deliberation had taken place. Time will tell.

At the institutional level, note that the Australian Senate is elected according to a form of proportional representation (unlike the House of Representatives), and this means that it sometimes includes representatives from minor parties as well as independents. As a result, the government of the day often has to negotiate with these groups in order to pass its legislation. These negotiations and debates can (though not always) broaden the range of views about the interests at stake and hamper government attempts to radically alter policies affecting indigenous peoples for dubious political ends.

So creative institutional design, such as a truth and reconciliation commission, combined with a mixed electoral system, can contribute to a deliberative approach to historical injustice. However, the Australian case demonstrates how quickly the limits of such an approach can be reached, especially in relation to the problems outlined in (4) above. Moreover, it is not clear how the informal norms that help deliberation to go well within these institutions can be sustained over time, especially when the trust that underpins them is severely strained. Rebuilding trust is crucial to addressing the legacy of historical injustice. Yet that very legacy is often one of the key factors undermining the sustainability of trust between minority groups and the state.

Notes

- 1 For a survey, see Ivison (2006).
- 2 In June 2008, the Government of Canada issued its own "Statement of Apology" to former students of Indian residential schools. It has also established an Indian Residential Schools Truth and Reconciliation Commission, to run for five years, which forms part of the negotiated Indian Residential Schools Settlement Agreement (IRSSA) reached in September 2007 between the Government of Canada, churches, the Assembly of First Nations, and other Aboriginal organizations.
- 3 See Foucault (1983); Pettit (1999); Shapiro and Hacker-Cordon (1999); and Young (2002). By domination I mean, roughly, a set of conditions in which people, individually or

collectively, are prevented from acting in such a way as to modify the actions that act on them. Relations of domination exist when relations of power become fixed or stable such that, whether directly or indirectly, some are able to control – arbitrarily and with relative certainty and without reciprocation – the conduct of others.

- 4 See the essays in Shapiro and Hacker-Cordon (1999), especially the chapters by Przeworski and Roemer.
- 5 What if citizens' effective freedom also depends on having an equal distribution of primary goods or capabilities (as it surely must)? Do our commitments to justice and democracy match up? Skeptics such as Roemer suggest that democracy often *fails* to promote the right kind of "equality of condition" that liberal theorists of justice prize and not merely for contingent reasons. See Roemer (1999, 62-68).
- 6 The two approaches are not mutually exclusive. A pre-commitment to basic rights, including rights of free speech, association, and religion, ensures that there will be debate and deliberation over the interpretation and meaning of those rights. Effective deliberation also has preconditions since deliberative democrats are not simple majoritarians. Thus, both Habermas (1996) and Rawls (1996) recognize the interdependency, to differing extents, between rights and democracy.
- 7 Barry actually defends deliberative democracy in earlier work (1995), but that argument sits uneasily with many of the claims that he makes in his 2001 book.
- 8 Here respect is defined as a "civic acknowledgement ... [It is] the recognition that others are our fellow citizens and that we are willing to treat them as such as long as they demonstrate a willingness to reciprocate" (Gutmann and Thompson 2000, 39).
- 9 What follows is a rough sketch in need of much greater historical detail and contextualization than is possible here.
- 10 This petition was presented to Prime Minister Hawke at the annual Barunga indigenous cultural and sporting festival. He promised to conclude a treaty by 1990, but this never happened.
- 11 In fact, the original name of the council was to be the Council for Aboriginal Reconciliation and Justice, but the reference to justice was thought by Hawke's advisers to be a bit much and was dropped in the final version.
- 12 It might be useful to have a sense of some of the official terms of reference of CAR:
 - (a) to undertake initiatives for the purpose of promoting reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community, focusing in particular on the local community level;
 - (b) to promote, by leadership, education and discussion, a deeper understanding by all Australians of the history, cultures, past dispossession and continuing disadvantage of Aborigines and Torres Strait Islanders and of the need to redress that disadvantage;
 - (c) to foster an ongoing national commitment to cooperate to address Aboriginal and Torres Strait Islander disadvantage;
 - (d) to provide a forum for discussion by all Australians of issues relating to reconciliation with Aborigines and Torres Strait Islanders and of policies to be adopted by the Commonwealth, State, Territory and local governments to promote reconciliation;
 - (e) to advise the Minister on policies to promote reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community ... [;]
 - (g) to consult Aborigines and Torres Strait Islanders and the wider Australian community on whether reconciliation would be advanced by a formal document or formal documents of reconciliation;
 - (h) after that consultation, to report to the Minister on the views of the Aboriginal and Torres Strait Islanders and of the wider Australian community as to whether such a document or documents would benefit the Australian community as a whole, and if the Council considers there would be such a benefit, to make recommendations to the Minister on the nature and content of, and manner of giving effect to, such a document or documents. (Government of Australia 1991)

- 13 Note that Howard also proposed a new constitutional preamble (drafted by the Australian poet Les Murray, although he later disavowed any responsibility for the final version), which included reference to Aboriginal and Torres Strait Islander people: "Since time immemorial our land has been inhabited by Aborigines and Torres Strait Islanders, who are honoured for their ancient and continuing cultures" (Behrendt 2003, 142). The proposed preamble was criticized by just about everyone on all sides of the debate. It was included in the referendum on the Australian republic held in November 1999, but the government did not really campaign for it. Both initiatives failed.
- 14 See (Government of Australia 2007).
- 15 Issues Deliberation Australia, in collaboration with a number of Australian universities as well as James Fishkin's Centre for Deliberative Polling, held a deliberative poll on reconciliation in Canberra in February 2001. Their research showed that support for things such as the significance of reconciliation as a public issue, a formal apology, Native land rights, compensation for the "stolen generations," a treaty, special parliamentary seats, and so on varied across both pre- and post-deliberative polling. In many cases (but not all), support for these measures increased after the highly structured and informed deliberation had occurred, although there were variations in the levels of support across different variables; see Issues Deliberation Australia (2001). However, it remains an open question what this kind of "ersatz deliberation" really shows, as useful as it is to compare with what normally passes for "public opinion" (see Goodin 2003, 174). The basic premise behind the approach is that we substitute deliberation within a subset of the population – and deliberation carried out in highly structured conditions – for deliberation across the whole. But it is not clear that, as people change their views within these smaller deliberative forums, they remain representative of what would happen in the larger group. The possible variations between different groups of different sizes are enormous, even deliberating over similar issues, just given the range of contextual circumstances that shapes such deliberations (Goodin 2003, 175-76; cf. Dryzek and List 2003).