Responsibility for past injustice: how to shift the burden

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abstract
This article considers the question of the responsibility of present generations for injustices committed by previous ones. It asks whether the descendants of victims of past injustice have claims against the descendants of the perpetrators of injustice. Two modes of argument are examined: the individual responsibility approach, according to which descendants cannot have claims against other descendants, and the collective responsibility approach, according to which descendants do have strong claims. Both approaches are criticized, but for different failings. An alternative view, building on the individualist approach, is defended. This view argues that some people may have to bear responsibility for past injustice if lines of responsibility can clearly be drawn. This is most likely when certain kinds of corporate agents persist over generations, even after original members of such corporations have ceased to exist.

keywords
responsibility, justice, injustice, aborigines, history

Responsibility, n. A detachable burden easily shifted to the shoulders of God, Fate, Fortune, Luck or one’s neighbor. In the days of astrology it was customary to unload it upon a star.

Ambrose Bierce

There is no doubt that responsibility matters: that each of us owes a duty of care to others. Where there is disagreement, however, is over the standard of care and the scope of the duty: how much do we owe, and to whom? This is, in part, an ethical question; but it is a purely ethical question only when the ethical context is settled. In the absence of any such settlement, it is not an ethical question, but
a political one; for before the ethical question can be broached it must be clear what is the framework within which claims about responsibility may be addressed. It is only then that we can argue about how particular burdens may be shifted. Indeed, because the standard of responsibility accepted does so much depend on the settlement of more fundamental political questions it can plausibly be argued that all issues of responsibility are, ultimately, political issues.1

In this article, I wish to address a particularly vexatious issue of responsibility: our responsibility for past injustice. In particular, I wish to look at this issue through the case of the treatment of aboriginal peoples by settler societies, asking what claims contemporary aborigines may legitimately make upon their fellow citizens for past injustices suffered by aborigines at the hands of earlier settlers. My concern, however, is not simply with this problem — important though it may be. My concern is with the more general political problem of allocation of responsibility; and the aim of this essay is to offer an argument as to how that problem should be approached. I tackle the problem through the question of the claims of contemporary aboriginal peoples because it raises very clearly a particular challenge for any theory of responsibility. The challenge is a straightforward denial of the existence of any responsibility.

The denial of responsibility goes something like this. It makes no sense to hold us responsible for the wrongs perpetrated by people in the past on other people in the past. Human history is a pretty sorry tale of injustice, and many have been victims. While we may be able to learn from this tragic story (and certainly we should try to do better), there is nothing we can do for those now dead. To their descendants we ought to show a measure of sympathy, but we owe them nothing simply in virtue of the sufferings of their ancestors, for which we are in no way to blame. Nor do we owe them anything in virtue of their own suffering as the descendants of the victims of injustice — except insofar as those of us who are well owe something to any who is suffering. Thus I, speaking as, say, a wealthy white Australian descended from a member of the First Fleet, owe nothing to you, an unemployed Aboriginal simply because your ancestors were dispossessed. For one thing, my ancestors, as convicts, were themselves the victims of injustice, but no one is going to compensate me for that. For another thing, I was poorly off too and have risen by my own efforts — and in spite of my handicaps. In addition, my children certainly owe nothing, since their mother, who is a recent migrant, can in no way be held responsible for the sins of the original settlers of the society she has only just joined. If she can be held responsible, anyone can be held responsible; and if all must share the responsibility, then no one is responsible. In such messy historical circumstances, the best thing to do is to put the past aside, or behind us, and address present injustices — holding responsible the living perpetrators of wrong, not the distant descendants of dead ones. This is, many would argue, the individualist attitude par excellence.2

There is something powerful and compelling about this denial, which cannot be easily dismissed (and about which I will say more presently). Yet it is also a
(morally) disturbing reply. Even if the assertion is only a denial of responsibility on the basis of past injustice, and one is (while denying what might be called ‘historical responsibility’) perfectly willing to accept duties of care for Aborigines on the basis of their present suffering, there is something troubling about this indifference to history. Indeed, it is the denial of the relevance of history (and so, the denial of historical responsibility) that many aboriginal peoples find unsettling. This kind of indifference sends out a signal saying that the past does not matter; and that seems uncomfortably close to saying that injustice does not matter. The impulse to accord responsibility is a powerful one — even if the mere existence of this impulse is not enough to settle anything. If this is where the individualist attitude leads (to the denial of the relevance of past injustice) then perhaps we need to look at responsibility in different, more ‘collectivist’, terms, so that we do not end up excusing ourselves because individually we are innocent.

The concern of this article is to address the problem posed by these two conflicting views of responsibility, and, in so doing, to answer a larger political question about the allocation of responsibility. How can we be held responsible for the past or for wrongs suffered by others, particularly when we have not been individually culpable? The argument it puts is that the proper allocation of responsibility is only possible if there exist political institutions which make this feasible; and that what this requires are institutions which properly divide authority, and so give authority to agents who can in turn be found (and so, held) responsible. Unless such agents can be found, shifting the burden of responsibility will become an arbitrary matter, subject to the vagaries of political power, popular opinion, or superstition. Moreover, unless clear lines or chains of responsibility can be drawn, assertions of responsibility will be of little value: the legitimacy of many claims will go unrecognized (even if enforced), and responsibility will come to be regarded less as a moral requirement than as a political asset or liability to be bargained away as necessary. The problem, then, is how to draw the lines of responsibility. The argument offered in this article is that these lines are best drawn guided by the political principles of liberalism, at the heart of which lies a particular understanding of freedom. Responsibility can only be recognized and allocated when freedom is properly respected. It is the aim of this article to show why, and how, this is so.

The article is organized in the following way. The first section puts the case for thinking that there is no reason to hold people today responsible for past injustice since they are not individually responsible, and tries to show why this is, indeed, a powerful challenge. The second section then shows why this challenge is, nonetheless, unsustainable, morally speaking. The third section then goes on to consider a collectivist alternative which asserts our responsibility on the basis of our membership of a community; and the fourth section argues that this approach is also flawed. From here the article goes on, in the fifth section, to present an alternative model of responsibility which explains how we might have
responsibilities arising neither out of assumed obligations nor out of mere membership of a community. The sixth section offers a fuller account of this theory by comparing and contrasting it with some prominent alternatives, and considering and rejecting some objections which might be raised against it. The article concludes with some more general reflections on the significance of this view of responsibility.

I. No responsibility for past injustice

There are many reasons why someone might deny that he should take any responsibility for past injustice, or for its contemporary consequences. The most obvious reason (assuming, of course, that the events in question took place before he was born) is that what happened in the past was not his fault, and the modern results of those past events are not his fault either. To be sure, the notion of ‘fault’ is a complex one, and fault is itself not easily defined or established. It is often difficult to establish the causal connections which allow us to identify particular persons as blameworthy. Furthermore, an established causal connection is not always enough to apportion blame: we can only sometimes be blamed for things we have caused, or played a part in causing.3 But to hold someone responsible it is surely necessary that we show either that he was somehow ‘at fault’, or that it was, indeed, ‘his fault’.

According to this way of thinking, there is a distinction to be drawn between being found responsible (for something that has happened) and being asked or required to take responsibility for future outcomes. To be found responsible, one has to be found culpable; to be given responsibility, one does not. Someone might thus deny responsibility for past injustice on the grounds that it was not his fault, even if he is quite prepared to accept responsibility for what happens in the future. I may reasonably be expected, as the incoming director of a corporation, to take responsibility for its future performance, but could not really be expected to accept responsibility for its past performance. Similarly, or so the argument goes, I might be reasonably expected (according to some political principles) to take some responsibility for the future treatment of aborigines on the grounds that in a good society, political institutions will be designed to ameliorate the condition of the worst off, but not to accept responsibility for the suffering of aboriginal victims of past injustice or ill treatment. Let us call responsibility in the first sense historical responsibility and in the second sense assumptive responsibility.

Now it might be asked why fault should loom so large in any account of historical responsibility. The person denying responsibility for past injustice is asserting that he bears no responsibility because it is not his fault that the injustice took place, and that others have suffered as a consequence. But why does fault matter? What is being asserted in any such invocation of the importance of fault is that desert matters. If someone is to be held (historically) responsible, he
should *deserve* to be accused, or to be brought to book — or, for that matter, rewarded if he is responsible for some resulting good.\(^4\) Certainly, desert is the relevant moral notion here; for desert (unlike, say, rights or justice), is the past-regarding or backward-looking moral notion *par excellence*. Indeed, to appeal to the past as the basis of moral judgement is almost invariably to invoke some aspect of the idea of desert.

Anyone denying responsibility for past injustice and its consequences would, therefore, be posing a very powerful challenge in demanding that he be shown why he should be held responsible. Any plausible response would have to show why he would deserve to be accused, and to be punished or made to compensate victims if that is what is required. This cannot be done by asserting that he is simply a member of a category of persons who ought to be held responsible; if the past is to be taken seriously as morally relevant, it has to be the morally relevant past — and in this case, it is the past (acts or omissions) of the person deemed responsible. The fact that it is not his fault would, indeed, appear to be a decisive answer to any assertion of historical responsibility.

For this reason, any attempt to press the case for an imputation of historical responsibility would have to draw on other moral considerations. But most of the readily available arguments are no less problematic. The most obvious and tempting argument is the argument from benefit or advantage. Someone who is well-to-do has clearly done well; and if aborigines, for example, are doing badly, this surely indicates that the well-to-do individual has benefited from injustices which have at the same time done down aborigines. The beneficiaries of injustice surely owe something (perhaps everything) to the victims of injustice.

There are a number of problems with this line of argument. First, demonstrating that particular people in the present are the beneficiaries or the victims of past injustice is not an easy matter. In part, this is an informational problem: not only can we never know the details of all past injustices, but we can never work out the consequences of those injustices beyond their immediate effects — to the extent that we can reliably know even that.

But there is also the problem of dealing with counterfactuals: what would have happened had any particular injustice not taken place. In some cases (perversely) victims or their descendants do better as a result of injustice than they could otherwise have done, while the perpetrators and their offspring do badly. This does not change the fact of injustice, but it makes it difficult to assert that this is the basis of any sort of claim of one descendant upon another. If I, as the poor descendant of an ancestor guilty of injustice, am asked to compensate you, the well-to-do descendant of my ancestor’s victim, I would reply that this is perverse. I am being asked to bear the triple burden of a disgraceful past, poverty and, now, the cost of compensation, while you enjoy the benefits of an honourable lineage, wealth and, now, additional compensation.

This is not, of course, to suggest that such cases abound. On the contrary, even a cursory glance at the basic statistics relating to Australian Aboriginal welfare,
for example, would reveal the extent to which the descendants of the dispossessed have suffered — enduring the highest rates of infant mortality, sickness, unemployment and incarceration, and the lowest levels of income, wealth, and life expectancy. But variations in individual well-being within Aboriginal society, and variations among non-Aborigines, suggest that past injustice is only one of many possible predictors of present success or failure — and an unreliable predictor at that. This becomes all the more clear once we admit that an important part of the explanation of present suffering may be our current policies and institutions.

All of these problems are compounded by the elapse of time. The more remote the injustice, and the more generations there are separating the present from past injustice, the more complicated the story becomes, the more difficult it is to draw clear lines of cause and effect, and, obviously, the more difficult it becomes for the distant descendant of a victim to assert his own victimhood or to impute his own suffering to earlier crimes.5

Where the initial wrong was done many hundreds of years ago, almost all of the difference between the victim’s entitlements in the actual world and his entitlements in a rectified world can be expected to stem from the actions of various intervening agents in the two alternative worlds. Little or none of it will be the automatic effect of the initial wrong itself. Since compensation is warranted only for disparities in entitlements which are the automatic effect of the initial wrong act, this means that there will be little or nothing left to compensate for.6

But there are more difficulties still. In the time between the initial injustice and the assertion of any kind of claim for rectification or compensation, not only is it possible that generations have come and gone, but it is also all too likely that the descendants of victims and perpetrators have become entangled in morally compromising ways. Most obviously, many people are of mixed descent; so even if we could clearly distinguish groups of people into victims (say, aborigines) and oppressors (say, settlers), many today are the descendants of both. Now, of course, it may be open to us simply to identify anyone with aboriginal ancestry as an aborigine (and, so, as a victim), but this would be to take history much less seriously — which is precisely the move which the defender of the appeal to historical injustice as a basis of responsibility wishes to resist.

It is also important to note that many settlers may have arrived after the perpetration of the most serious injustices, and may have played no part in them, directly or indirectly. Recent immigrants, for example, and particularly those who have themselves come to a country as refugees fleeing oppressive regimes, would find it difficult to accept responsibility for past injustice in their adopted society. Equally, there may be some who are the descendants of those who have benefited from past injustice, but who have left, or are about to leave, for another society. Why should they be able to relinquish responsibilities which new immigrants must now bear?
Yet even if all these difficulties could be overcome, the matter would still remain anything but settled. If compensation were the issue, one would have to try to estimate what the lives of victims might have been like had the injustice not taken place. This would be important to determine what level of compensation might be justified. But here several difficulties present themselves.

Strictly speaking, there is a problem that, in the absence of the injustice, present persons would not even exist — given the basic facts about conception, and that our identity depends on when we were conceived. In the absence of some particular injustices, it is quite likely that different persons would have been conceived in that period, and successive generations would have contained very different persons. If this is so, it is, strictly speaking, perverse to complain about being compensated for an earlier action without which one might never have existed. Had European settlers never landed in Australia, not only would none of their modern descendants ever have existed, but none of the living Aborigines would ever have existed either — though, most likely, other Aborigines would have. I propose to ignore this problem, not because it is morally insignificant (or because treating it seriously brings us uncomfortably close to the tasteless suggestion that we should be grateful for past injustices because they made our existence possible), but because we do not need to consider it to recognize that there are serious difficulties standing in the way of addressing past injustice.

One important difficulty stems from the fact that we cannot assume that, in the absence of past injustices, everything would have worked out well and the claims of victims and their descendants would have been properly honoured. To take the case of property rights, for example, there is no assurance that in the absence of dispossession, property rights in place 200 years ago would have prevailed over the next two centuries. Economic and political circumstances have conspired to transform property rights or property systems all over the world over the millennia. Indeed, we should not assume too hastily that the property systems that were displaced were themselves just or even justifiable. Moreover, one particularly contentious aspect of systems of property is the system of property transfer, especially between generations. In the absence of unjust dispossession, property may have been available for individuals or groups to bequeath to their descendants; or it may have been available only to male, or first-born descendants; or it may have reverted to common ownership or public ownership if inheritance was not conventional. In all this, what has to be considered is not only what were systems of property, but also what would have been the consequences of their prevailing. Some earlier systems of property might be morally troubling because they are inconsistent with modern systems of property, particularly if they turn out to exclude some modern claimants who are the descendants of victims of past injustice.

Generally, it is at best unclear how far the claims present people have to property stem from the original rights of their ancestors. Property rights regimes change over time. The law changes. And if this is so, it is not clear that a plausi-
ble claim can be made now on the basis of rights or entitlements which were in existence 100 years ago.\textsuperscript{10} In the end, the remoteness of the past makes the rectification of past injustice a problem which seems to demand at least \textit{some} wiping clean of the slate. Those, such as Waldron, who see this, have a strong point when they say that, in the end, it may simply be more sensible to address contemporary social problems, or injustices, or inequities in contemporary, forward-looking terms. Even Robert Nozick, who insists that justice is historical and backward looking and not a matter of establishing preferred distributive patterns, wonders whether the intractability of the problem of rectification does not mean we would do best to adopt patterning principles as distributive rules of thumb — to make up for our inability to set right ancient wrongs.\textsuperscript{11} Perhaps we should discount the past, let bygones be bygones, and recognize that addressing present injustice is not only a more feasible undertaking, but also a better justified one. At least this way we do not run the risk of shifting the burden of responsibility onto those who are, in the end, innocent of wrongdoing.

\textbf{II. The problem with denying the significance of the past}

Strong as these arguments may be, however, there is something troubling about them. Put most simply, it does not seem right for those who are not descendants of victims of past injustice to say to those descendants: ‘Let us let bygones be bygones.’ Only the aggrieved can properly make such an offer. If the descendants of slaves wish to say to their fellow Americans, ‘let us put the past behind us’, that is one thing; but it would be another thing altogether for Americans generally to say to them that the past should be put aside — no matter how well intentioned might be their motives.

All that said, however, there must be more to this than etiquette. Indeed, there are a number of other reasons why putting the past aside is a morally troubling strategy. One very important reason why the ‘let bygones be bygones’ attitude is unsatisfactory is that it gives too little acknowledgement (if any at all) to the fact of past injustice. For many people, acknowledgement is as important (perhaps even more important) than compensation. Those whose ancestors were wronged want the wrongs recognized, even if they cannot be righted. But one very important way of recognizing wrongs is by trying to right them, since this indicates publicly that the wrongs are indeed being taken seriously. Thus it is unsurprising that indigenous peoples consistently demand a form of recognition which distinguishes them from other minorities in a society. While they want attention to their material welfare, they also desire a form of acknowledgement which gives weight to their history.

Yet it is not only indigenous peoples who want acknowledgement of past injustice. Jewish people around the world also want acknowledgement of their own sufferings, in this century in particular. The different character of this par-
ticular wish for acknowledgement, however, brings us to another aspect of this aspiration. People do not want the past forgotten; more particularly, they do not want the evils of the past forgotten. Holocaust memorials are important because they are memorials, as are war memorials, and (to some extent) sacred sites, and commemorative events. In all these cases, what is manifest is the wish to honour not only ancestors, but forebears generally, particularly when they have suffered. This is important not only for its own sake, but also because it is from such activity that the living gain succour. Thus we find, for example, that among the poor an ‘irrationally’ large element of income has often been spent on funerals, despite the incredulity of the middle classes. Similarly, American slaves developed elaborate funeral ceremonies which adverse white reaction never succeeded in suppressing. In Genovese’s judgement, the ‘significance of proper funerals for the slaves lay, not in the peripheral if real danger of conspiracy, but in the extent to which they allowed the participants to feel themselves a human community unto themselves’. The atrocity of Nazi treatment of concentration-camp victims in refusing them proper burials was in part that it not only denied the victims’ humanity, but also denied the survivors the right to show their own respect for those deceased.

To the extent that these things matter (and that is a considerable extent) the pursuit of claims of justice and the demand for rectification matter, even when injustices are old and dimly remembered. It is the remembering which is important for many people; and it is the forgetting which is the most offensive. The demand for redress of past injustice is thus important because of the symbolism in the claim. But the claim would lose some of its symbolic power if it were simply presented as an abstraction: a mere demand for words of official recognition.

This brings us to another closely related issue: the significance of culture and identity. The longing for rectification of past injustice is often important for some people because it has a significant bearing on their identities. In the case of Aborigines in Australia, for example, a particularly important dimension of their grievance is the erosion of their identities as a consequence of European conquest, and government policies which have, over the centuries, shown little appreciation of their cultural traditions, and displayed little understanding of the importance of cultural preservation for Aboriginal well-being. While Aborigines have been eager to win compensation for what they have suffered as a people, this has been not simply so that they would have the resources to deal with particular contemporary problems in Aboriginal society, but as much so that they could win the respect that comes with recognition of their distinct status, of their particular identity. In the 1960s and 70s, when Australian Aboriginal protest took a more militant form, and ended in demands for compensation through land rights, it was Aboriginal identity which was raised as one of the most important matters at stake. Some 30 years later, in his report on Native Title, the Aboriginal and Torres Straits Islander Social Justice Commissioner
raised similar concerns, arguing (in the context of a very different debate about
the High Court judgement in the Wik case) that ‘Just once, cultural values, criti-
cal to indigenous persons and of great value to the entire nation, should be
recognized and asserted as a national priority’.18 In criticizing the government’s
proposed bill restricting native title, the commissioner complained not only that
the proposal was unjust in contemporary terms (in denying native title-holders
equality before the law), but also that it signified ‘a return to the use of “doctrines
of dispossession”’ and, so, the thinking of an earlier, colonial period in
Australian history.19

For many Aborigines, justice in contemporary terms is inextricably linked with
an acknowledgement of past injustice.20 Doing justice now requires recognizing
and repudiating past injustice. It would not be enough to aim at ameliorating the
Aboriginal condition by improving welfare. It is necessary to attend to Aborigi-
nal culture and Aboriginal history — to attend to its collective past, and to
acknowledge society’s responsibility for the injustices committed in that past.
This is, indeed, an aspiration voiced by many indigenous peoples. What, it might
be asked, could be more reasonable?

III. Collective responsibility for past injustice

Reasonable though such aspirations might seem, there is a problem. Much as the
plight of aboriginal people may engender sympathy, it is not obvious that this is
enough to overcome the difficulties inherent in the pursuit of rectificatory justice.
As we have seen, it is no easy matter to hold particular people responsible for the
consequences of actions they had little or no hope of preventing. Thus it is tempt-
ing to say that, however much we may regret the destruction of aboriginal
culture, and while we may be willing to help aborigines improve their living con-
ditions and their standing in society today, we can accept no responsibility for the
sins of the past.

But here there is another argument which might be put in defence of our
responsibility for past injustice — one which looks even more critically at the
arguments against accepting responsibility. The problem, this argument goes, lies
with the very idea of thinking in terms of individual responsibility. Individual
responsibility may have its place, and an important place, in our moral thinking;
but we are also social beings; and many of our responsibilities are owed not indi-
videntally, but collectively. Societies too have responsibilities, and we share in
them as members of such communities.

To see how this position might be developed, we should consider the critique
of individualism offered by the American philosopher, Iris Marion Young, in her
attempt to present a theory of the oppression of minority groups.21 The object of
Young’s criticism is the whole approach to distributive justice which conceives
justice as a distribution of goods among individuals in a way which involves
analytically separating the individuals from those goods. ‘Such an atomistic con-
ception of the individual as a substance to which attributes adhere fails to appreciate that individual identities and capacities are in many respects themselves the products of social processes and relations. Societies do not simply distribute goods to persons who are what they are apart from society, but rather constitute individuals in their identities and capacities. For Young, society is made up of groups, and social groups are defined not primarily by a set of shared attributes, but by a sense of identity. Though sometimes objective attributes are a necessary condition for classifying oneself or others as belonging to a certain social group, it is identification with a certain social status, the common history that social status produces, and self-identification that define the group as a group.

In insisting on understanding society and social groups in this way, Young is rejecting the social ontology which she thinks underlies many contemporary theories of justice: an ontology which presumes that the individual is prior to the social. This individualist social ontology usually goes together with a normative conception of the self as independent. The authentic self is autonomous, unified, free, and self-made, standing apart from history and affiliations, choosing its life plan entirely for itself. This understanding of the self or the individual, she argues, is deeply flawed—in ways that post-structuralist philosophy has exposed. When it comes to justice, the flaws have serious consequences. Justice is not simply a matter of giving individuals their due, but, more importantly, a matter of giving groups their due. This means not only giving them resources to which they are entitled, but also dealing with the fact of their oppression. Social justice . . . requires institutions that promote reproduction of and respect for group differences without oppression.

In saying all this Young has in her sights the political theory of liberalism, whose individualist foundations preclude it from offering any defensible response to questions of justice. Adopting her alternative, more explicitly collectivist approach thus promises a very different answer to the problem of dealing with past injustice. But before going on to construct the alternative theory, it is worth noting that this view of the matter has a great deal in common with an important strand in conservative thought. The problem with liberalism, according to conservatives, is that it does not take proper cognizance of the social dimension of human nature. As a philosophy, it ‘isolates man from history, from culture, from all those unchosen aspects of himself which are in fact the preconditions of his subsequent autonomy’. Conservatives, however, tend to be much more sceptical about the individualist presuppositions of liberal thinking, and more inclined to emphasize the importance of our pre-rational commitments and prejudices—and of feelings, emotions, and experience. Repudiating the ‘abstract, universal “ought” of liberal theory’ in favour of the ‘immediate “ought” of family attachments . . . the “ought” of piety, which recognizes the unquestionable rightness of local, transitory and historically conditioned social bonds,’ conservatism regards itself as more sensitive to the claims of those whose ‘local’ and particular
attachments are not so easily defended by appeal to reason or justice, and only make sense in terms of historical institutions and custom. Indeed, such attachments, 'being founded not in abstract justice but in Wordsworth’s “natural piety”, are corroded by the very liberal conscience which they generate.\textsuperscript{28}

While there is much over which the post-modernist and the conservative disagree, they are at one in thinking that individualism is the problem, and that social questions need to be approached by focusing on the value inherent in unchosen attachments. While one appeals to the virtue of tradition and custom and the other to the importance of culture and group solidarity, both share a conviction that many of the most pressing problems of political society can only be addressed from within a kind of collectivist perspective. Looking at the world as if only individual claims were morally significant misses the fact that many of our entitlements stem from, and can only be exercised through, our social attachments.

If this collectivist outlook was right, however, what would it mean for the approach to the problem of allocating responsibility for past injustice? Most likely, it would mean treating the matter as one of the responsibility of a society as a whole for its history and, specifically, for its treatment of a particular people. It would mean ceasing to view the issue through the needs or wishes of particular individuals and viewing it through those of communities. In philosophical terms, it might mean adopting the outlook recommended by Charles Taylor in his critique of the ‘politics of universalism’ and defence of the politics of difference.\textsuperscript{29} What many people want, and what liberal institutions fail to provide, is a form of recognition which is sensitive to their distinctness or particularity. Liberalism, he argues, tends to emphasize universal individual rights, but remains unsympathetic to difference, and unwilling to grant special rights to groups. But it is important to see that, for many communities, what matters is not the individual, but the community and communal goals. What is important for them is not individual well-being, but the flourishing of the community, which is an entity with a history and interests of its own. Recognition should, therefore, be granted to communities who have an interest not only in the flourishing of their individual members, but also in the standing, the honour, and indeed the very survival of the community.

In practical terms, this would be the basis for addressing the problem of rectification of past injustice by according responsibility to society as a whole for the sufferings of unjustly treated communities. One would not be forced to concede, for example, that particular Aborigines have done well while some white Australians had done badly over recent years, since the condition of particular individuals assumes no particular relevance. Mediation between people takes place at the collective or communal level.

The kind of process which exemplifies this form of allocation of responsibility is the process of ‘reconciliation’ between Aborigines and Australian society currently being pursued through the activity of the Council for Aboriginal
Reconciliation. Patrick Dodson, former Chair of the Council, described what this process involves:

The way forward in the reconciliation process is fundamentally to reassess our notions of who the Aboriginal people are. And I don’t mean simply how you identify Aboriginal people that was a part of the early history — the old stud book approach. So, while we have a desire to see equality, we have a desire to see justice, we have a desire that people enjoy the benefits of our society, but the indigenous people are unique in this nation: they are the first Australians. And by virtue of that they are entitled — even though it’s not recognized or accepted — to maintain their own cultural identity. And part of that cultural identity are their beliefs; their connection to land; their ability to hand on to their future generations their traditions and customs, interpretations and world views.30

The pursuit of justice in rectification here is not through the mechanics of attribution of the responsibility of particular people for particular actions or failings. It is, rather, through the vaguer process of bringing about a meeting of minds: the mind of the Australian community and the mind of Aboriginal society.

IV. The problem with collective responsibility for past injustice

Tempting though it may be to go down this particular collectivist path, however, in the end it leads nowhere. Although it looks as though it overcomes the problems evident in the individualist approach, in reality it simply ignores them. It appears to solve the most difficult questions, which, in fact, it simply begs.

It does this in the first instance by assuming that the identification of the relevant social groups or communities is a straightforward matter, when in truth this is a problem which is itself fraught with difficulties — difficulties which stem, among other things, the fact that communities are made up of individuals (and, indeed, of other communities). There is no uncontestable and uncontroversial definition of the Aboriginal community, or even of particular Aboriginal communities. Indeed, the definition of Australian society is itself a complex matter given the diversity of peoples which make it up, and the changing nature of a society shaped by successive waves of immigrants. If one is to talk about the relationship between Australian society and Aboriginal society, it is not clear that there are two clearly specifiable entities whose engagement can be examined. This is surely important if one is to discuss one’s responsibility for the other.

This matter is made more difficult by the fact that societies and communities are divided — even when divisions are not particularly deep or bitter. Australia, for example, is not only comprised of a number of separate states with their own interests and rivalries, but is also divisible along less formal regional lines. There are differences between urban and rural interests, between protectionist and free-trade traditions (in Victoria and New South Wales respectively), and between the growing capital cities and the dwindling inland towns. These differences
matter because they affect not only the interests, but also the attitudes of ‘Australians’, particularly when they are confronted by Aboriginal issues. Similarly, Aborigines are also divided, not only because they belong to different linguistic and cultural traditions, but also because some are urban Aborigines of mixed descent while others live in more remote parts of Australia and have retained a closer, and unbroken, attachment to their traditional homelands. Indeed, they differ over the very political issues (such as reconciliation) which are sometimes held to unite them.

In these circumstances, there is a serious problem in trying to account for responsibility by assuming that it is a matter of the relationship between two undifferentiated collectives or communities. To begin with, it is wrong to think that mediation between one and the other can actually take place as mediation between communities. It is just not meaningful to say that one group says, or believes, or wishes to do anything about the other. There may not be an Aboriginal view, or an Australian one. But even if there were, there is no sense in which collectivities or communities can relate to one another, since communities themselves are not agents. Communities may relate to one another through agents (whether these be persons or institutions), but they cannot do so without them.

Furthermore, if a community is to be held responsible, there has to be some agent (or agents) who can be identified as responsible. In some cases when dealing with matters of collective responsibility, this is not a problem: it may be unambiguously the case in some instances that everyone is responsible when the collective is responsible — whether they are responsible jointly or severally. But a problem does arise when the community is a large one and more likely to be marked by divisions and disagreements. Here, it is not so easy to say that everyone is responsible when the collective is responsible. In part, this may be because the matter of who or what is the relevant collective is itself the subject of dispute. But it also leads to the problems raised earlier in the first section: once collective responsibility is disaggregated, it is not clear how responsibility for the consequences of past injustice is to be attributed to individuals who were not themselves at fault.

In philosophical terms, the collectivist approach to responsibility for past injustice does not get us very far because it skips around the problems involved in the allocation of responsibility. In the end, talking in general terms about ‘our’ responsibility to ‘them’, when ‘we’ and ‘they’ are complex and ambiguous categories, takes us nowhere. Like talk in the 1970s and 1980s of the ‘North’s’ responsibility for the ‘South’, or talk of the capitalist West’s responsibility for the welfare of the post-colonial third world, it addresses complex questions of justice by ignoring moral complexity.

But there is a more troubling aspect still to the collectivist approach to responsibility for past injustice. If the starkly individualist approach is inadequate because it seems coldly indifferent to the facts of past injustice, the collectivist...
approach presents a danger by raising expectations it is unlikely to be able to ful-
fil. The language of collectivism in this set of issues is the language of inclusiveness. Its concern is with the oppression of people who have been exploited or marginalized or generally excluded; and it asks how is it that those who have been so excluded can be brought into the ‘mainstream’ (a bad word, for which there is no suitable alternative), without assimilating them and, thus, denying them any right to their own identities. The answer it offers is an answer which extols the virtue of political engagement. Iris Young, for example, argues for a ‘democratic cultural pluralism’: a thorough social and political democracy which draws the marginalized and dominated into the political process and so empowers them. Similar aspirations characterize other proposals for democratic representation. They also inform various practical endeavours to address the grievances of Aboriginal people, such as the attempt to negotiate a treaty with the Australian Aborigines in the 1980s and, now, the pursuit of ‘reconciliation’ through the Council for Aboriginal Reconciliation.

The problem with all this is that there is little reason to think that political engagement will do much to solve any of the problems stemming from past injustice. In part, this is because dialogue in itself (if this is what politics is about) will add little to the solution of a problem if the problem is the problem. Endless discourse over an intractable problem is more likely to produce bitterness and discord rather than harmony if the expectation is that an answer is to be found. More importantly, it is because politics is the realm in which what counts is power; and victory will go to the strong, not the just. This is not to say that politics should therefore be avoided (as if it could be), only that it is not, in itself, a solution.

The greatest danger is that the expectation will be encouraged that politics can indeed produce a solution to problems of according responsibility for the consequences of past injustice. The pursuit through the Council for Aboriginal Reconciliation of ‘reconciliation’ between Aborigines and non-Aboriginal Australians may be an instance of this hope. The thought seems to be that, provided the majority make some concessions, Aborigines will agree that justice has now been done, and will no longer wish to make any claims against the majority arising from the wrongs of colonial settlement. But this expectation, as Richard Mulgan observes, is likely to prove groundless.

Aborigines will continue to need and demand institutions and structures which provide ongoing recognition of both their present disadvantage and their past injustice. Their spokespeople will continue regularly to berate the non-Aboriginal majority for the sins committed by the colonizers under former and now discredited policies of settlement and assimilation. If they suspect that the process of reconciliation is being used as a means of eventually letting the majority off the hook of colonial guilt, the likely result is a heightening of ethnic tension.

Morally speaking, indigenous peoples and those who speak on their behalf
surely wish to see past injustices righted — if this is in any way possible. But politically, it has to be conceded, a final resolution is probably undesirable from their perspective. For politically, the fact of past injustice is a powerful tool which gives indigenous groups additional political leverage in public policy debate. ‘Politically, they cannot afford to let their fellow citizens off the hook of colonial guilt.’

The collectivist approach to the problem of dealing with the consequences of past injustice, in the end, has little to tell us about who should be held responsible and why. It promises neither a philosophical solution nor a political one. It shifts the burden of responsibility by loading it unhelpfully onto society as a whole.

V. An alternative model of responsibility

If neither the collectivist nor the individualist approaches to responsibility for past injustice are satisfactory, is there an alternative way of thinking about how responsibility should be allocated? To answer this question, we need to see what is right as well as what is wrong with the answers considered so far. What is right about the collectivist view is that it recognizes that there is an important moral problem at stake, and one which cannot be resolved simply by denying the existence of anything but individual responsibility. What is wrong with it is that it does not tell us how properly to allocate responsibility because it places the burden of responsibility not on particular agents, but on entities (societies or communities) which cannot act and, so, cannot act responsibly. What is right about the individualist perspective is that it clearly recognizes that responsibility requires responsible agents. What is wrong with it is that it fails to take sufficiently seriously certain responsibilities which have come to be regarded as critically important today: responsibilities for the consequences of past injustice. This is because some responsibilities simply cannot be assigned to individuals.

This problem can only be solved if there are, in fact, entities to which responsibility can be assigned. And indeed there are. To see this, we have to recognize two things: first, that responsibility can only be accorded to agents or actors; and second, that society is made up of different kinds of agents to whom responsibility can be assigned (though not all of these agents are individuals).

That responsibility is only to be assigned to agents is important because it indicates that there are many entities which cannot be held responsible — tempting as it may be to try. We cannot hold ‘things’ responsible; nor can we hold animals or plants (or nature generally) responsible. We cannot attribute responsibility to processes: much as we might rail against the weather or market forces, or politics, we cannot hold them responsible for anything, even though these notions may play a part in explanations of events. None of these things can be held responsible, in the end, because none is capable of willing anything. These things cannot act because they cannot decide anything, even though in some
cases their operations display the consequences of particular decisions. What this also means, however, is that communities and societies also cannot be held responsible because communities cannot act.39 Communities are not persons; they cannot decide, any more than marsupials, or railway networks, or categories of people (economists, socialists, or redheads), or classes (working, shirking, or otherwise) can. Thus we cannot attribute responsibility to them.

However, this does not mean that responsibility can only be accorded to individual human persons. Society is made up not only of individual persons, but of a variety of kinds of ‘person’, including groups, clubs, companies, universities, churches, schools, courts, and professional associations, to name only a few. All of these entities can be described as persons because they are agents or actors. ‘An actor is a locus of decision and action, where the action is in some sense a consequence of the actor’s decisions.’40 What makes these non-human persons actors or agents is the fact that they are not simply aggregates or collectivities of individuals, but are associations. There are many kinds of collectivities of individuals which are not associations because in these collectivities there is no locus of decision: mobs and crowds; databases; and parties (dinner or birthday, not political).

To put it another way, these entities are not associations because they have no structures of authority. Thus, for example, my local football club and the neighbourhood scout group are both associations, but my neighbourhood community is not. My local football club can be held responsible for its actions, and for the actions of its members when they act as members of the club, but my neighbourhood cannot be held responsible for the actions of my neighbours — even if those neighbours can themselves be held responsible for their own actions. Associations are groups which comprise individuals whose relations are ordered in such a way as to require them to recognize the authority of some person or persons to take decisions on behalf of the group as a whole. That authority might be invested in a single person or in an assembly of persons (a committee), which in very small associations might consist of all members of the association. But there will be somebody (or some body) whose decisions will be authoritative.

Now, it should be recognized straightaway that this view of the nature of the group as association is a kind of individualist view. It accepts Goodin’s view that, ultimately, ‘all group responsibilities must be analyzed in terms of responsibilities of individuals comprising the group’.41 But it is also an account which recognizes that responsibility can be allocated to entities other than individuals. And, the responsibilities which flow to individuals as a result of their association’s responsibilities are not necessarily the same responsibilities. If, for example, American Express wrongly accuses me of failure to pay a bill and so adversely affect my standing with a credit-rating agency, American Express is responsible for correcting the error, and refunding the interest charge, and issuing an apology. Neither the employees nor the shareholders of American Express, however, are individually responsible for doing any of these things;
even though it will be some employees’ responsibility to make sure each of the necessary steps is taken for the company to fulfil its responsibilities.

This point is important because the responsibilities of associations not only remain distinct from the responsibilities of their members, but also endure despite changes in the membership. A university will have to retain its existing responsibilities even after its present members are long gone; and a business corporation cannot rid itself of its debts or liabilities by being sold to new owners. Because many associations remain in existence for a long time their responsibilities outlive their members, and extend over many generations. Some business corporations are generations old, while some universities have been around for centuries; and the church has a history which goes back earlier than those of many of the oldest corporations and of most modern states.

The significance of this lies in the fact that there are entities (associations) which are capable of being held responsible not for what happened before they existed, but for what they themselves did — in some cases, well before people now living were themselves alive. Indeed, many of these associations can be held responsible for past injustices because they were themselves involved directly in the committing of injustices. Two kinds of associations are particularly culpable in this regard: churches and political associations such as states.

Churches and states are eminently eligible to be held responsible for many past injustices (although in Australia the absence of old established church institutions meant that government was at the outset much more closely involved with the financing of religious activity, especially teaching, than it was in other societies). In 19th-century Australia, for example, dispossessed Aborigines in New South Wales were often ‘settled’ on missions partly financed by governments, but run by the church. The history of such missions is not encouraging. Writing of the Wellington mission, which was a prototype for so many in Australian history, Rowley observes that, "it is quite basic that in the Australian situation the mission began . . . with a collection of beaten tribal remnants; and that the whole concept, since the effect of government and other policies and practices had been to reduce the Aboriginal rapidly to the complete economic dependence of the pauper, resembled that of the workhouse'. At the same time, Aborigines had to face the problem of the missionary, whose concern was less with their material welfare than with the state of their souls, or, more seriously, the souls of their children. ‘The Aboriginal who tried to maintain his Law fought the missionary for the minds of his children’. Well intentioned though many missionaries were, the missions themselves were all too often little more than ‘temporary holding centres for people assumed to be dying out’, and run on authoritarian lines.

In the Queensland frontier, where the church was not so prominent at the early stages of settlement, contact between Aborigines and whites tended to be between armed settlers backed up by the Native Police — whose brutality is well documented. But here the development of government policy toward Aborigines moved to establish a regime under which a people were defined in
rigid racial terms, to be directed where to live by officials who could determine
the shapes of the lives of Aborigines, ‘half-castes’ and other part-Aborigines
‘habitually associated’ with Aborigines.46

Without going into the details of Aboriginal history since settlement, it is
enough to note that there is more than sufficient evidence to confirm that many
injustices were committed by the governments of the various states of Australia.
To a lesser extent, the sins of the church are also on the record. In these circum-
stances, the attribution of responsibility for past injustice is not a problem: it can
be laid plainly at the door of those associations, still in existence, which com-
mittted them. When governments take Aboriginal earnings, invest those monies,
refuse to pay interest, and transfer such sums to consolidated revenues to be spent
elsewhere, this is a clear instance of a taking for which the government can still
be held responsible.47

Yet none of this requires attributing responsibility for past injustice to now
living non-Aboriginal Australians. Responsibility lies with the institutions, not
with the individual persons — although, to be sure, individuals can be held
responsible for not performing their institutional duties, or obstructing others
from carrying out theirs. There is no need to think that people now are directly
responsible for the sins of the past or their consequences.48

All this said, however, there is an important objection that needs to be con-
sidered. This solution, which seeks to specify chains of responsibility by identi-
fying agents to whom responsibility can be imputed, and agents who can be
identified as claimants, may run aground on the fact that it still places unjustified
burdens on the individual persons who are members of associations which were
guilty of wrongs long before the present generation joined up. For example,
members of various churches could surely not reasonably be asked to shoulder
the burden of their church’s wrongs in the past. If I am required to contribute to
the fund to compensate those wronged by the church at a time when I was not a
member, or perhaps not even alive, this is surely a requirement which does not
take responsibility seriously.

While there is something to this complaint, however, it stands up only in
certain circumstances. It is a plausible defence in an association comprised of
members who conduct the affairs of the association out of their current financial
contributions. Such associations would have no assets which are the product of
the contributions of earlier members, say because members consumed the funds
they raised in fulfilling the purposes of the association, leaving future generations
to raise their own funds to continue their activities. In such cases, even if one
generation of members enjoyed pursuing the activities of the association by
unjustly expropriating the property of others, succeeding generations of members
of that association cannot be held to have taken advantage of this injustice if
nothing was inherited.

In many instances, however, this is not the case. Associations that endure
over time confer upon present members benefits that are the product of earlier
expropriations. For example, if a church builds its endowment, and funds its constructions, out of the unjustly expropriated labour or property of others, future generations who are members (and trustees) of the church cannot claim any entitlement to that property to the extent that it is the product of illegitimate takings. That property was, and remains, ‘hot’ property. As Renée Hill points out, even ‘two hundred years after the injury, unjustly acquired property remains “unjustly acquired property”’. The wrong does not lose its potency as long as the gain from the wrong still exists and a victim (or her legatee) is available to receive reparations.49

A slightly different objection, however, raises a more difficult problem. What if the association in question is the state? The problem here is that, if the state can be regarded as an association, and so as an agent to whom responsibility may be attributed, then this seems simply to throw the burden of responsibility willy-nilly upon all taxpayers. Once again, this seems to disregard the fact that many who would then be asked to shoulder the burden of compensation for past injustice are really people who do not bear any responsibility for it. How one answers this challenge will depend very much upon how one regards the nature of the association that is the state and, more particularly, the nature of public assets.

One could, for example, consider that the value of public assets must include returns on the investments made by earlier generations (which exist in the form of roads, public buildings, police and fire stations, for example). If such facilities were financed by previous generations (and quite possibly by the unjust expropriation of the assets or labour of others) and the returns are now passed on to current taxpayers in the form of lower tax rates, all members of the present generation benefit. Thus even immigrants coming into such an arrangement are then sharing in a boon that would otherwise only have been available to descendants of original settlers. On the other hand, one might regard the assets and facilities the state owns and provides as if they were financed by a bond issue repaid over the life of, say, a building out of current tax revenue, which means that there is no intergenerational transfer resulting from taxation. If so, immigrants paying tax would have to be viewed as contributors to the cost of construction. Which conceptual understanding should we adopt in trying to determine who is paying and who is gaining? Indeed, what view should we take on the question of who receives the returns on earlier public investment, since there are many possible candidates: government employees, or politicians, or all current taxpayers, or some current taxpayers, or beneficiaries of the programmes? For the view of how responsibility for past injustice ought to be addressed that is defended in this article to work, at least to the extent that it suggests that the state can be held responsible, it has to be assumed that the state’s assets are, at least in part, gains from earlier acquisition (some of it unjust) and investment. Much state property is ‘hot property’ and, as such, is subject to claims for its return to the extent that rightful claimants can be identified.

This does not, of course, mean that there are no problems that remain. Even if
it is clear that an agent is responsible for injustices, it still has to be established who the victims are, and how they might be compensated. This is no easy matter after the passing of a good deal of time. Moreover, there will always be people who fall into the cracks, and for whom justice will never be done. But all that said, there is something to commend this way of allocating responsibility for the consequences of past injustice, since it takes seriously the fact of injustice.

VI. The politics of responsibility

If this way of looking at responsibility for past injustice is sound, can it be generalized to account for responsibility more broadly? To put the question slightly differently, what implications does this view have for the nature of political society? If a good society is one in which responsibility is taken seriously, and if responsibility can only be borne by agents, then a good society must be one in which there are agents who can properly bear responsibility. But if government, or the state, can be such an agent, is it then the case that all we need to do is to allocate responsibility to the state (which can then parcel out duties to others in allocating responsibility for specific tasks)? The state could simply take responsibility for all past injustices as the agent of society generally.

Placing all, or a substantial level of, responsibility with the state is not the best option. The most obvious problem with holding the state responsible for all past injustice is that it diminishes the significance of past injustice. It no longer becomes a matter of uncovering specific injustice and rectifying it when its consequences can be traced. It means aggregating all injustices and laying them at society’s door, and simply regarding the state as society’s representative. It risks, then, opening up again the question in the minds of all citizens regarding why they have to be held responsible for everything that happened in the past.

If all responsibility is allocated to the state, the consequence would be, in effect, the collectivizing of responsibility. Here, it also has to be recognized that the state is a very particular kind of institution. It is the locus of substantial power in society, and because of the resources and capacities at its disposal it is the target of groups in society which struggle to capture it (or elements of it) for their own purposes. If the state is held to have responsibility for everything, the struggle will not be to try to hold the state responsible, but to see what can be extracted from or through the state.

For responsibility to be taken seriously, responsibility has to be denationalized — even if not thoroughly privatized. There are a number of reasons for this. First, since responsibility involves being held accountable, it requires that there be some capacity within society for responsible agents to be held accountable. This requires a society in which power is distributed widely enough that no single power is capable of escaping its responsibilities. Leaving all responsibility with the state would effectively mean giving almost all power to the state. Second, it has to be acknowledged that the state has interests of its own. Leaving responsi-
bility in the hands of the state is to leave it in the hands of an agent with considerable power and an inclination to shape and structure society in accordance with its interests. In Australia, for example, much of Aboriginal policy reflects the interests of the state in managing a people in order to make them conform to particular standards which suit the demands of administration. Once again, this makes it important that there be other sources of power in a society, both to hold the state to account, and to assume responsibility. Third, if responsibility is to be taken seriously, there must be some capacity in society for responsibility to be practised and taught, and this means that the buck must stop in many places. If the only agent which takes responsibility is the state, or if all responsibility ultimately goes to the state, the capacity of other associations to practise responsibility will wither and the idea of responsibility will be eroded.

The general implication of all this is that a society in which responsibility is taken seriously has to be, in some way, a free society. For it must be a society in which responsibility (like power) is not concentrated, but dispersed. It must not be a society in which it is easy for some to pass on responsibility to others, or for a few to arrogate it to themselves. To some extent, to be able to take over responsibility is to be able to take power.

What all this points to in more general terms is the importance of certain liberal institutions: most notably the rule of law and constitutional government, underpinned by a respect for freedom of association and private property. These are all crucial if responsibility is to be allocated to particular agents who can then be held responsible. From the perspective of Aborigines interested in redressing ancient wrongs and gaining compensation for past injustice, this point is of particular importance. It is a notable fact that their claims for land rights and compensation went nowhere when they were pursued politically, by appeal to governments to act responsibly and justly. Even the most well-meaning governments found that, in the end, it was simply too hard. The failure to do justice in substantive terms degenerated into talk of treaties and other symbolic gestures. Success came only with victory in the courts: notably in *Mabo v. Queensland*, and subsequently in *The Wik People and the Thayorre People v. State of Queensland and Others*. In both these cases, claims of justice were pursued against particular agents (the state of Queensland). In addition, victory made it possible for Aboriginal peoples to pursue particular claims in the future.

Still, there might be some reservations about all of this. Clearly, court settlements do not mean the end of politics, as the continuing debate about Aboriginal claims in Australia today makes clear. Governments can still make laws restricting the claims people can rightfully pursue, and there will always be political pressure from various interests for it to do so. But there is also another kind of concern which needs to be noted — one which recalls the concerns of the collectivist approach to this whole matter. Is there not something important that is lost if responsibility is particularized or privatized? And, is there not something to be gained by making responsibility something which is shared by all of us?
This might be important not only symbolically, but also because it speaks to something else that is important: our identity as members of a particular collective (in this case, Australia). In this regard, there is something important about our being able to acknowledge collectively the injustices of the past, and, even if not to bear the guilt or accept the blame, at least to acknowledge our shame.

This is clearly an important concern, and one worth considering. But in the end, answering the question from a liberal perspective demands a response that this is not how one should look at the question. If justice and responsibility are our concerns, questions of group membership and identity are, in the end, beside the point. Indeed, far from encouraging us to enlarge the scope of our sensibilities, it encourages us to narrow our focus to our own society. Responsibility requires the drawing of boundaries; but there is no good reason to think that they are necessarily political ones.

notes

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4. Why desert matters is a large topic. For a defence of its importance, and an account of its place in moral and political theory, see George Sher, *Desert* (Princeton: Princeton University Press, 1987), especially Ch. 11.
7. See Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1986), pp. 351–5. ‘You were conceived at a certain time. It is in fact true that, if you had not been conceived within a month of that time, you would never have existed.’ See ibid., p. 351.
8. I say ‘most likely’, rather than ‘certainly’ because there is no way of telling what Australian Aboriginal history might have been in the absence of European settlement.


12. See Eric Hobsbawm, Industry and Empire (London: Weidenfeld and Nicolson, 1968), p. 69. ‘The irrationally expensive funerals and wakes on which [19th-century English] labourers insisted as a traditional tribute to the dead and communal affirmation of the living were incomprehensible to a middle class. . . . The first benefit paid by a trade union and friendly society was almost invariably funeral benefit.’ This is quoted in Eugene Genovese, Roll, Jordan, Roll: The World the Slaves Made (New York: Pantheon Books, 1974), p. 201.


14. Genovese’s assessment is again worth quoting: ‘The Nazis knew what they were doing when they refused to bury concentration-camp victims. Considerations of cost and convenience were not paramount. Joost A.M. Meelo comments: “There is in this mass murder and defiance of the dead the defiance of life itself, the defiance of the vital and moral forces guiding men. It is the denial of any aim in this world.” Conversely, respect for the dead signifies respect for the living — respect for the continuity of the human community and recognition of each man’s place within it. The slaves understood their responsibilities’. See ibid., p. 202.


16. The work of Will Kymlicka has been especially important here since he has attempted to give theoretical expression to the distinctiveness of the claims of indigenous peoples, as contrasted with the claims of other minorities in a culturally diverse society. See Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (Oxford: Oxford University Press, 1995).


19. Ibid., p. 151.

20. Thus James Anaya argues that ‘The cultural suffocation historically experienced by Native Americans and other indigenous peoples around the world, along with other multiple effects of colonialism, have left indigenous peoples with deep wounds which manifest themselves in social, political, economic, as well as cultural spheres’. See James Anaya, ‘On Justifying Special Ethnic Group Rights; Comments on Pogge’, in Ethnicity and Group Rights, edited by Ian Shapiro and Will Kymlicka, NOMOS XXXIX (New York: New York University Press, 1997), p. 229.


22. Ibid., p. 27.

23. Ibid., p. 44.

24. Ibid., p. 44.

25. Ibid., p. 47. I offer an extended critique of Young’s views in Chandran Kukathas,


31. Brennan makes this point very bluntly: ‘Now I’ve been forewarned; I’ve already got into trouble for saying that it’s easy for Victorians to talk about reconciliation in the wake of Wik. I’m fairly unapologetic because it is easy for Victorians to talk about reconciliation in the wake of Wik. In places like the Western Lands area of NSW this land is a tinderbox. Reconciliation is a dirty word. People do not come to meetings like this and sit silently and say, “what can we learn?” People are very afraid. People are full of mistrust. The battle-lines are drawn’. See ibid., p. 30.

32. The Council for Aboriginal Reconciliation itself has been severely criticized by other Aborigines for being an overly compliant body, bending to the wishes of the government.

33. In cases in which communities are small enough that members of one can associate directly with all the members of the other, I would say that the members are also the agents — assuming that there is no disagreement among members.


37. Ibid., p. 84.

38. I am assuming that this is true of all animals except human beings.

39. Here I am with Hobbes rather than with Rousseau. There is no such thing as a general will; there are only particular wills, which are incapable of aggregation. The ‘will of the people’ is, at best, a highly questionable metaphor.


43. Ibid., p. 102.
46. Ibid., p. 183.
48. In this regard, Prime Minister Howard and Minister Herron are in error in thinking an official apology is inappropriate in response to the Stolen Generations report. Senator Herron explained that the government does not support an official national apology because ‘Such an apology could imply that present generations are in some way responsible and accountable for the actions of earlier generations; actions that were sanctioned by the laws of the time and that were believed to be in the best interests of the children concerned’. (Quoted in Dodson and Brennan, ‘The Way Forward’, p. 31.) But an apology from the government could imply no such thing; for it is the government which must apologize, not a living person — even if the apology can only be delivered by a living representative of the government. What is quite inappropriate, however, is a personal apology on the part of the prime minister or, for that matter, anyone else; for that does imply the possibility of personal responsibility of present generations for the actions of earlier ones. Arguably, however, it is the state governments who most need to apologize, since the wrongs committed were mainly the result of state government policies. The failure of the Federal Government dates back only to 1967 when it acquired power, and responsibility, for Aboriginal matters.
50. This has been argued by Rowley, Destruction of Aboriginal Society. For a more general analysis of this aspect of state activity, see James Scott, Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed (New Haven: Yale University Press, 1998).
51. On this see Scott Bennett, Aborigines and Political Power (Sydney: Allen and Unwin, 1989).
52. It must, however, be conceded that victory in the courts did not come immediately. Earlier appeals were unsuccessful, notably the Gove Land Rights case in 1970. For a brief discussion, see C. Kukathas, ‘Cultural Rights in Australia’, in New Developments in Australian Politics, edited by B. Galligan, I. McAllister and J. Raven (Melbourne: Macmillan, 1997), pp. 167–79, especially pp. 168–70.