

Indigenous Peoples, Liberal Democracies and Public Reasoning

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Duncan Ivison, [Can Liberal States Accommodate Indigenous Peoples?](#) (2020).

Duncan Ivison's *Can Liberal States Accommodate Indigenous Peoples?* opens with the following questions: "Can liberal democracy accommodate the claims of Indigenous peoples? More precisely: can it do so *justly*?" (P. 12.) Ivison's text is a rigorous and elegant response to these questions and essential reading for all who grapple with the circumstances of Indigenous peoples in contexts of "settler colonialism." (P. 13.)

In the first chapter, Ivison identifies two key features of this form of colonialism. First, it involves "seizure and control of territory" that is justified by reference to "ideologies of civilizational and racial superiority and the denigration of Indigenous political institutions, philosophies, cultural practices and ways of life." (P. 13.) Second, this process of "political domination and dispossession of territory" is "ongoing" and not a mere remnant of history. (Pp. 13-14.)

What, then, does Ivison mean by liberalism? He situates his arguments within "egalitarian liberalism"—a strand of liberal theory associated with John Rawls—which Ivison describes as a "cluster of arguments [that] seeks to reconcile freedom with social equality in both the political and economic sphere." (P. 15.) For Rawls, the concept of "justice as fairness" provides the standard for assessing whether "the main social and political institutions of society" distribute goods fairly, as a procedural matter and as a matter of outcomes. (P. 17.) Ivison notes that in settler colonial societies, Indigenous peoples suffer from severe forms of social and economic injustice (Pp. 19-20) that "cry out for distributional redress." (P. 20.)

Ivison adds structural considerations to this distributive conception of fairness and specifies their significance for the circumstances of Indigenous peoples. He argues that the background conditions of society—"the institutions, norms, practices and material conditions" that "enable and constrain individual and collective action"—can give rise to harms that Iris Marion Young calls forms of "structural injustice." (P. 17.) These harms arise when background conditions are configured in ways that prevent individuals from exercising "their effective political agency." (P. 19.)

In the context of settler colonialism, this focus on political agency is especially important since Indigenous peoples in liberal democratic states are "polities" or "generative sources of normative order." (P. 16.) Settler colonialism denies the political agency of Indigenous peoples through ongoing processes of domination and dispossession, which efface Indigenous peoples' status as polities. As a consequence, the legitimacy of the state in liberal theory "as the apparent protector of equality, freedom and toleration," (P. 16) is put into question.

With these theoretical foundations established in the first chapter, Ivison turns in chapters two and three to assess whether liberal multicultural accommodations or aboriginal rights are adequate responses to the claims of Indigenous peoples.

In chapter two, Ivison argues that liberal multiculturalism aims to advance the universalist liberal values of "equality, autonomy, toleration and equal respect" (P. 23) and to "transform the identities and practices of both minority and majority groups, in line with liberal democratic norms of anti-discrimination, equality and basic human rights." (P. 23.) For Ivison, this stance commits liberal multiculturalism to a "rich sense of equality," (P. 25) according to which a "societal culture" (which he defines as "a territorially concentrated culture, centred on a shared language used in a wide range of societal institutions in both public and private life." (P. 27.) that is dominant in a given context can create inequality by making it difficult for minority groups to sustain their cultural practices. (P. 26.) In response, multicultural

rights—including rights to self-government and language rights—aim to protect “the *structure* within which people exercise their freedom and through which they make sense of the world.” (P. 27.)

Yet insofar as liberal multiculturalism assumes that the state has the authority to grant “recognition to a minority group’s claims for self-government or autonomy” (P. 28), the theory runs into problems when it is applied to Indigenous peoples. Ivison notes that “Indigenous sovereignty is an assertion of autonomy that is not dependent on the grant of that authority from any other entity” (P. 29) but rather “persists alongside that of the liberal state.” (P. 29.) This form of “normative pluralism” (P. 29) can call into question the state’s *authority* to recognize multicultural claims. And this challenge shapes the understanding of Aboriginal rights that Ivison articulates in chapter three.

Ivison claims that if “Indigenous peoples were sovereign and self-determining at the time of settlement, then Crown sovereignty can only be reconciled with their sovereignty through some mechanism of consent, or at least through means consistent with their freedom and equality.” (P. 36.) In settler states, this did not happen. Nonetheless, Ivison argues, this “ideal” (P. 36) can guide our understanding of the interests that Aboriginal rights aim to secure. These comprise “a bundle of specific rights to do with control over their territories and the various activities that occur on them; with political rights of self-government, and with their rights as citizens of both Aboriginal nations and the wider political community in which they reside.” (P. 36.) These rights place others under a duty (P. 34) to “protect and promote the basic interests of Indigenous peoples, both individually and collectively.” (Pp. 36-7.)

It seems that for Ivison, Indigenous sovereignty can in this way be accommodated within a liberal theory of Aboriginal rights: these rights aim to empower “Indigenous polities to address the social and economic disadvantages they continue to suffer from.” (P. 41.) Yet Ivison identifies a remaining, thorny question: if these rights are “grounded in liberal conceptions of the person and political institutions,” how can they be reconciled with distinctively Indigenous “political theories and institutions”? (P. 42.) The final chapter of *Can Liberal States Accommodate Indigenous Peoples?* answers this question.

In chapter four, Ivison defines a normative order as “a cluster of values, beliefs, and legitimization ‘narratives’ (religious, cultural, moral, political and legal) that people appeal to in order to justify (and contest) the practices and institutions they are both subject to and help constitute.” (P. 50.) A liberal state, Ivison notes, is comprised of a constellation of normative orders, and the challenge for liberal theory is to reconcile this “plurality of normative authority ... within a single political entity.” (P. 52.)

The key question, then, is: How can power in a settler colonial state be exercised in ways that members of the plural normative orders within the state can (in Rawls’ terms) “reasonably be expected to endorse”? (quoted at P. 53.) Ivison’s response is to require that political decisions “be justified to citizens” on the basis of “reasons that can be endorsed from a range of different perspectives and that emerge from the bottom up—through ongoing, historically situated, multi-perspectival public reasoning—as opposed to ‘top down’ state-based reasoning.” (P. 54.)

Ivison provides an example of this kind of “multi-personal” reasoning (P. 54.) when he analyses the 2017 protests of the Standing Rock Sioux Tribe. These protests aimed “to uphold” the Tribe’s “treaty rights and block the US government from allowing an oil pipeline to run across their lands and near to rivers they depended on for a range of purposes.” (P. 57.) Ivison argues that in analyzing this kind of action, we should consider issues that would be salient to a diversity of perspectives. These would include: the existence of a treaty right and the importance accorded to the land and rivers within the Indigenous normative order; the possibility that denying access to the land would impose severe harms on individuals who are not members of the Indigenous group; and the relevant colonial history of dispossession. (P. 57.)

Moreover, Ivison argues for “institutional innovation” that will create “the conditions in which these complex and sometimes conflicting claims can be discussed and mediated.” (P. 57.) In settler colonial states these innovations would involve developing: “ways of deliberating about the past democratically;” (P. 57) the capacity “to see the world from the perspective of another”; and “a shared set of practices and reasons for going on together.” (P. 58.) When

seen in in this light, Indigenous movements provide “an extraordinary resource for free societies,” as they “expose enduring injustices” and “propose new ways of addressing them.” (P. 58.)

For those of us who share Rawls’ understanding that the essential content of a constitution includes public reasons that “all citizens as free and equal may reasonably be expected to endorse,” (quoted at P. 53) Ivison lays down a challenge: how can we innovate so that constitutions and the procedures of constitution-making facilitate multi-personal public reasoning? The institutional and doctrinal answers we provide may also partially respond to the crucial question posed by the title of Ivison’s masterful text.

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