

Restorative Justice

Rethinking the Impact of Representative Democracy upon Indigenous Peoples

John Keane

Abstract

This essay proposes that revisiting the historical relationship between indigenous peoples and popular self-government is important for several reasons. In surprising ways, it potentially alters our understanding of the violence encoded within the history of democracy in representative form. It prompts questions about whether and to what extent indigenous ways of handling and restraining the exercise of power helped shape, either positively or negatively, the resulting institutions of representative democracy. And it raises still unanswered questions about how functioning democracies today can best come to terms with their past, by means of new forms of restorative justice.

Keywords: Civilization, indigenous peoples, power, representative democracy, restorative justice, violence.

Although the first Australian association of self-declared democrats was formed in Sydney in only 1848, the year of revolutions in Europe, the political tides flowing in its favor were anticipated several decades earlier in a short but salient letter by the former President of the United States, Thomas Jefferson. Writing in the northern summer of 1816, Jefferson pondered the astonishing changes that had come over government and political thinking during his lifetime. Jefferson wasted no words: the arrival of self-government in democratic and representative form, he wrote, was fundamentally altering the dynamics of the modern world. He pointed out that the ancient Greeks knew nothing of the principles of representation. For them, *dēmokratia* meant “direct democracy,” the making of decisions by the whole body of (male) citizens gathered in one place. The ancient Greeks were unable to think, let alone act, outside a political framework that posed a stark choice between either

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“democracy” or forms of oligarchy, such as aristocracy and tyranny. According to Jefferson, it did not occur to the Greeks “that where the citizens cannot meet to transact their business in person, they alone have the right to choose the agents who shall transact it.” Greek citizens, political thinkers, and orators alike did not see the possibility of breaking free from the false choice between self-government of the people and government based on rule by a few.

The defining novelty of the modern era, Jefferson continued, was its invention of a new type of self-governing polity based on the mechanics of popular representation. The experiment in combining “government democratical, but representative, was and is still reserved for us,” he concluded. Without historical precedent, the new representative system offered “the people” a new method of protection “against the selfishness of rulers not subject to their control at short periods.” In providing such protection, the experiment with representative democracy “rendered useless almost everything written before on the structure of government.”¹

Representative Democracy

Jefferson’s letter proved prescient. Its bold words accurately signaled the birth of a new vision of handling power through a form of self-government in which people, understood as voters faced with a genuine choice between at least two alternatives, are free to elect others who then act in defense of their interests, that is, represent them by deciding matters on their behalf. Lord Henry Brougham’s widely read defense of the nineteenth-century struggle for representation captured its spirit: “The essence of representation,” he wrote, “is that the power of the people should be parted with, and given over, for a limited time, to the deputy chosen by the people.” The job of the representative is to “perform the part of the government which, but for the transfer, would have been performed by the people themselves.”²

The vision of government by the people through their chosen representatives was charged with radical potential. Wherever it took root, the struggle for representation threw into question the antidemocratic prejudices of those—rich and powerful men—who supposed that inequalities among people were “natural.” New groups, such as slaves, women, and workers, demanded the franchise. Subjects of empires joined in, as in the Australian colonies, especially during the decade after 1845, when the struggle for self-government came laced in local variants of the principles of representative democracy.

¹ Thomas Jefferson to Isaac H. Tiffany, August 26, 1816, in *The Writings of Thomas Jefferson*, vol. 15, ed. Andrew A. Lipscomb and Albert E. Bergh (Washington, DC: Thomas Jefferson Memorial Association of the United States, 1903-1904), 65-66.

² Lord Henry Brougham, *The British Constitution: Its History, Structure and Working* (London: Richard Griffin and Co., 1861), 33.

While its white-skinned champions often thought of themselves as free-born Britons, sang “God Save the Queen,” and professed their belief in monarchy, they were fierce champions of what they variously called “representative government,” “democracy,” “self-government,” and “responsible government” based on the will of “the people.”³ The term “representative democracy” was rarely used, but its substance and spirit commanded increasingly wide support, manifested in the refusal of “tyranny” and “corruption” and calls for adult male suffrage, periodic elections, the supremacy of parliament, a free press, trial by jury, and the right of peaceful public assembly. At first, the demand was for “representative government,” with the aim of limiting the power of the Governor, who was seen as a local autocrat responsible to the British government. Legislatures were created, with a blend of nominated and elected members, but the Crown still had a veto on legislation, and Westminster representatives retained ultimate control of public affairs in the colony because Parliament’s powers were devolved to the colony, not surrendered. By the 1850s, demands increased for a more “democratic” responsible government, where the legislature, not the Governor, controlled the selection of the effective executive, the premier, and cabinet, which controlled both government policy and its implementation through advice to the Governor. The Crown, however, still appointed the Governor (who now played a largely ceremonial role) and, most importantly, could still veto legislation considered inimical to British imperial interests.⁴

With a whiff of popular empowerment through representation permanently in the air, the nineteenth century unleashed what the French writer and politician Alexis de Tocqueville famously called a “great democratic revolution” in favor of political and social equality.⁵ The principle of representation seemed inherently democratic, capable of being stretched to include the whole adult population. But the historical records show that such stretching, which often reached breaking point, happened with great difficulty, and against formidable odds. Throughout the nineteenth century, the ideals and institutions of representative democracy were permanently on trial. Whatever advance they enjoyed sparked great public excitement, tinged with sabotage and pandemonium. Sending shock waves outward from the Atlantic region, all the way to the far-flung colonies founded and run by Europeans, the revolution in favor of “government democratical, but representative” often suffered setbacks and reversals, especially in Europe, where in the early decades of the twentieth century it was to collapse into a swamp filled with political

³ See Paul Pickering, “The Oak of English Liberty: Popular Constitutionalism in New South Wales, 1848-1856,” *Journal of Australian Colonial History* 3, no. 1 (2001): 1-27.

⁴ Martin Wight, *British Colonial Constitutions 1947* (Oxford: Clarendon, 1952), and Alan Ward, *Parliamentary Government in Australia* (Melbourne: ALS, 2013), chap. 3.

⁵ Alexis de Tocqueville, *Democracy in America*, vol. 1, ed. J. P. Mayer (New York: Doubleday, 1969), 12.

predators.⁶ Elsewhere, including the United States, the reigning definition of representation was actually narrowed during the course of the nineteenth and early twentieth centuries by withdrawing the right to vote from certain groups, particularly black and poor people.⁷ Not until the early decades of the twentieth century did the right of people to vote for their representatives come to be seen as a universal entitlement. That happened first for adult men and later—usually much later—for all adult women.

Why Popular Representation?

Organized resistance to the principles and practice of popular representation was widespread, and often effective.⁸ It confirmed that there was nothing “natural” about democratic self-government. “Ever since the birth of modern societies,” the nineteenth-century French liberal author and politician, François Guizot, told a Paris audience during a famous course of public lectures on the subject, “the representative form of government ... has constantly loomed more or less distinctly in the distance, as the port at which they must at length arrive, in spite of the storms which scatter them, and the obstacles which confront and oppose their entrance.”⁹ Only nineteenth-century believers in historical progress could have thought so optimistically about representative democracy. For the prickly truth is that its appearance was bitterly contested, subject to unforeseen consequences and constant setbacks. Its champions were dogged by double standards, especially when they excluded women, slaves, and the laboring classes from the structures of government. Great controversies erupted over what exactly representation meant, who was entitled to represent whom, and what had to be done when representatives snubbed or frustrated those whom they were supposed to represent. The advantages and disadvantages of “government democratical, but representative” were hotly disputed. Its friends had to work hard to win over skeptics and opponents.

Proponents’ reasoning proved complex and novel. Popular self-government in representative form was praised as a new type of polity distinguished by its respect for the principle that, when electing their representatives, people are entitled publicly to air their different social interests and political opinions. Representative government consequently exposed the fictional quality of

⁶ John Keane, *The Life and Death of Democracy* (London: Simon and Schuster, 2009), 455-581.

⁷ Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000).

⁸ Cf. Benjamin Evans Lippincott, *Victorian Critics of Democracy: Carlyle, Ruskin, Arnold, Stephen, Maine, Lecky* (Minneapolis: University of Minnesota Press, 1938), and Jon Roper, *Democracy and Its Critics: Anglo-American Democratic Thought in the Nineteenth Century* (London: Unwin Hyman, 1989).

⁹ François Guizot, *Histoire des origines du gouvernement représentatif, 1821-1822* [The history of the origins of representative government, 1821-1822], 2 volumes (Paris: H. G. Bohn, 1821-1822), translated as *The History of the Origins of Representative Government in Europe* (London: 1861), part 1, lecture 1, 12.

talk of “the people.” It underscored the point that “the people” is in reality rarely a homogenous social body, and that political reality is therefore usually disputed and fractured. Representative government was further praised as a way of freeing citizens from the fear of leaders to whom power is entrusted, according to merit; the elected representative temporarily “in office” was seen as a positive alternative to power personified in the body of tyrants or unelected monarchs. Although (as in the colonies of Australia) more than a few champions of representative democracy expressed their loyalty to the Crown, they consistently thought in terms of “the people” as the ultimate source of legitimate power. Popular government founded on responsible leadership guided by merit, in their view, cast grave doubts on the view that fine breeding and regal sperm were carriers of good government. Representative government was hailed as an effective way of ridding the world of hereditary stupidity, a new method of apportioning blame for poor political performance—a way of encouraging the peaceful rotation of leadership and, thus, of overcoming the unpalatable choice between the despotism of leaders who ignore the wishes of their subjects and the confusion and demagoguery of government based on the vicissitudes of a demos. In open defiance of talk of hero-worship as rooted in the human condition, later associated with figures such as Thomas Carlyle and Friedrich Nietzsche, representative democracy was thought of as a useful weapon against pandering to the powerful. It was reckoned to be a new form of humble government, a way of creating space for dissenting political minorities and leveling competition for power, a method of enabling elected representatives to test their leadership skills in the presence of others equipped with the power to sack them. If representatives fail, then they are removed. The rotation of leaders, hence, was seen as a way of peacefully controlling the exercise of power by means of permanent competition that ensures that nobody has the last word.

Then there was a pragmatic justification of popular representative government. Many of its nineteenth-century champions saw it as the practical expression of a simple but challenging reality: that it was not feasible for all of the people to be involved all of the time, even if they were so inclined, in the business of government. Large populations living across vast swathes of territory were unbreakable barriers to democracy in its ancient Greek assembly form. Given that reality, so the argument ran, the people must delegate the task of government to representatives who are chosen at regular elections. The job of these representatives is to keep tabs on the expenditure of public money. Representatives make representations on behalf of their constituents to the government and its bureaucracy. Representatives debate issues and make laws. They craft foreign policy. They decide who will govern and how—on behalf of the people, at a distance from them. Thomas Paine put the point forcefully. “In its original state,” he wrote, “simple Democracy was no other than the commonhall of the ancients. As these democracies increased in population, and the territory extended, the simple democratical form became unwieldy

and impracticable.” The peculiarly modern political problem of handling large-scale societies with diverse identities could be solved through a new form of open and fair-minded government called representative democracy. “By engrafting representation upon democracy,” he concluded, “we arrive at a system of government capable of embracing and confederating all the various interests, and every extent of territory and population.”¹⁰

“The Natives”

The bold spirit of universalism fostered by the earliest champions of representative democracy was impressive, but (as we shall see) it was so deeply self-contradictory that it bequeathed problems that are still unresolved. The vision of a representative democracy did more than help unleash claims for inclusion in the body politic by unrepresented groups. The case for representative government also became entangled in the colonial problem of how its ideals and institutions could come to terms with indigenous peoples. Cold silence about their exclusion from the claimed benefits of democratic representation was one type of reaction; but those scholars who suppose indigenous peoples functioned as the “absent center”¹¹ of the colonization project during the nineteenth century considerably understate the great volume of public outpourings on the need to combat the “backwardness” of the peoples encountered by the colonizers.

Far from thinking in terms of occupying an uninhabited or thinly inhabited land that supposedly belonged to nobody, the colonizers treated indigenous peoples as a clearly visible problem. Democrats and antidemocrats alike rummaged around to find a political language that could recognize and assimilate these visible differences in order better to rank them as deficiencies. An initial theme, affirmed in the original “secret instructions” given more than a generation earlier (in 1768) to Captain Cook before setting off for Terra Australis Incognita, was the importance of “consent.” His brief was to “observe the Genius, temper, Disposition and Number of the Natives, if there be any, and endeavour by all proper means to cultivate a Friendship and Alliance with them.” The appropriate means included “such Trifles as they may Value” and “every kind of Civility and Regard.” Cook was authorized “with the Consent of the Natives to take possession of Convenient Situations

¹⁰ Thomas Paine, *Rights of Man*, part 1 (New York: Thomas Paine National Historical Association, 1925 [1791]), 272-274. See also, Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: University of Chicago Press, 2006).

¹¹ Stuart Macintyre, *A Colonial Liberalism: The Lost World of Three Victorian Visionaries* (Oxford: Oxford University Press, 1991), 211. The counterpoint to the “absent center” thesis is developed by Duncan Ivison, “Locke, Liberalism and Empire,” in *The Philosophy of John Locke: New Perspectives*, ed. Peter R. Anstey (London: Routledge, 2003), 86-105, and Bruce Buchan, *The Empire of Political Thought: Indigenous Australians and the Language of Colonial Government* (London: Pickering and Chatto, 2008).

in the Country in the Name of the King.” If the territory was found to be unoccupied, then the order was to “take Possession for His Majesty by setting up Proper Marks and Inscriptions.”¹² The principle that the governed must consent to their representatives was fundamental to the vision of representative democracy, but this mission to engage and control peoples deemed strange and inferior required that representation be understood in the old regressive sense once defended by Thomas Hobbes. In this earlier meaning, “representation” was simply equivalent to the supposed prior authorization of state power by its passive subjects; on the basis of that fiction, the rulers of the state were entitled to claim that they were “personating” those subjects by acting on their behalf.¹³ Top-down definitions of representation as the “personation” of subjects by agents of the state may have had roots in the world of theater, as Quentin Skinner has pointed out,¹⁴ but they nevertheless made a mockery of the whole process of representing citizens considered as independent actors entitled to express and to defend their separate interests before their representatives. The colonizers claimed to be representative of those they subjugated by virtue of their superior power and civilization. That understanding contained a difficulty for nineteenth-century definitions of self-government in representative form. In effect, it called into question the whole effort to restrain excesses of governmental power through the use of such inventions as written constitutions, adult male suffrage, periodic elections, and the secret ballot. Representative democracy instead became a champion of tyranny over people who had given their “virtual” consent to a form of popular self-government that treated them as unworthy and incapable of abiding by its rules.

The solution to the contradiction, which drew upon an earlier meaning of representation that it otherwise categorically rejected, led representative democrats toward an equally suspect family of phrases centered on terms such as “civility” and “civilization.” The ideals of representative democracy were rescued by portraying indigenous peoples as “uncivilized,” as ugly, dirty beasts miserably under-equipped for life. The linguistic pact was mooted in the additional “Instructions” given to Cook before his departure. Bloodshed should be avoided. The “voluntary consent” of “the Natives” was mandatory, both because they were “the natural... legal possessors of the several Regions they inhabit” and, importantly, because these people were “the work of the same

¹² “Secret. Additional Instructions for Lt James Cook, Appointed to Command His Majesty’s Bark the Endeavour,” in *The Journals of Captain James Cook on His Voyages of Discovery: The Voyage of the Endeavour 1768-1771*, vol. 1, ed. J. C. Beaglehole (Cambridge, UK: Published for the Hakluyt Society at the University Press, 1955), cclxxxii.

¹³ Thomas Hobbes, *Leviathan Or the Matter, Forme, and Power of A Commonwealth Ecclesiastical and Civil (1651)*, Egerton MS (London: British Library, 1910), chap.16, “Of Persons, Authors and Things Personated.”

¹⁴ Quentin Skinner, “Hobbes and the *Purely Artificial Person of the State*,” in *Visions of Politics: Hobbes and Civil Science*, vol. 3 (Cambridge, UK: Cambridge University Press, 2002), 181.

omnipotent Author, equally under his care with the most polished European.”¹⁵

Talk of less “polished” peoples readily fed claims about the “savagery” of “the natives,” but great intellectual and political muddle was the consequence, especially considering that the formal acknowledgement of their status as “British subjects” had existed for some time. But the invaders had other thoughts. For if the indigenous inhabitants were indeed British “subjects,” then, according to some colonial authorities, their “savagery” required that they be fully subsumed under the strictures of British law. George Grey (who became Governor of South Australia in 1841) was among the chief proponents of the view that the laws of indigenous peoples should be treated as “barbarous customs” and correspondingly replaced by British laws applied by colonial governors throughout the continent.¹⁶ The recommendation won the support of Lord John Russell, chief architect of the Great Reform Act of 1832, but dissenting figures such as Governor Hutt in Western Australia maintained that there were practical and ethical reasons why “the aborigines are not in a position to be treated in all points as British subjects.” Reacting against the claim by Paine and others that representative government could be applied on any scale, Hutt acknowledged the special difficulty of subjugating by law nomadic hunting and gathering peoples. He pointed out “we have not the means to supervise and control their dealings with one another in the bush and in the wild districts.” He went on to emphasize the ethical pointlessness of efforts “to make them at all times and under all circumstances in their habits and customs amenable to our laws.” Not only would “the aborigines” understandably resist the “teasing and tiresome persecution” of being forced to live under the laws of the colonial authorities, but also such force would have the contradictory effect of hardening the attachment of “the aborigines” to “their own rude and barbarous observances.”¹⁷

Hutt’s “civilized” way of thinking came tinged with violence. It was profoundly antidemocratic in any meaningful sense of the word. Since colonial control over land and resources was at stake, it implied at a minimum

¹⁵ “Hints offered to the consideration of Captain Cooke, Mr Bankes, Doctor Solander, and the other Gentleman who go upon the Expedition on Board the Endeavour,” in *The Journals of Captain James Cook on His Voyages of Discovery: The Voyage of the Endeavour 1768-1771*, vol. 1, ed. J. C. Beaglehole (Cambridge, UK: Published for the Hakluyt Society at the University Press, 1955), 514-519.

¹⁶ “Captain Grey to Lord John Russell 4 June 1840,” in *Historical Records Australia*, vol. 21, ed. James Frederick Watson (Sydney: Library Committee of the Commonwealth Parliament, 1914-1925), 34-35, cited in Bruce Buchan, *The Empire of Political Thought: Indigenous Australians and the Language of Colonial Government* (London: Pickering and Chatto, 1998), 97.

¹⁷ “Hutt to Lord John Russell 10 July 1841,” in *Historical Records of Australia*, vol. 21, 312. See also, Ann Hunter, “The Boundaries of Colonial Criminal Law in Relation to Inter-Aboriginal Conflict (‘Inter se Offences’) in Western Australia in the 1830s-1840s,” *Australian Journal of Legal History* 10 (2004): 215-236, and Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Cambridge, MA: Harvard University Press, 2010).

the physical subjugation of indigenous peoples and either their outright elimination (although colonial governors typically spoke against outbreaks of frontier violence) or the transformation of these peoples—using such means as informal negotiations, government reservations, and religious education—into “civilized” characters capable of acknowledging that representative democracy was a superior form of government. Here was yet another case of the self-contradiction of representative democratic norms, this time by talk of “civility” and “civilization.” The difficulty that some people could be robbed of their land, bossed and bullied, and physically eliminated in the name of a political ethic founded on the equality of citizens seemed lost on Hutt, but it triggered a nineteenth-century alternative that seemed ethically preferable: indigenous peoples were to be regarded as “dependent allies” or as “nations” with whom some kind of agreement or treaty was desirable.

The option failed to gain traction, especially at the Colonial Office, although the Aboriginal Protection Society in London did support it.¹⁸ So did J. W. Willis, a loose cannon justice of the District Court at Port Phillip whose heterodox finding in the *Bonjon* case (1841) was that an indigenous man accused of murder could not be tried before a colonial court because the alleged act could be judged only in terms of the criteria of indigenous customary law.¹⁹ It was a ruling with politically dangerous connotations. Although its reasoning remained, strictly speaking, within the confined universe of European “civilization,” it stated explicitly that the indigenous tribes were “neither a conquered people” nor that they had “tacitly acquiesced in the supremacy of the settlers.” The conclusion (unsurprisingly) hastened the dismissal of Willis from the bench. By tabling the principle of competing sovereignties, he did more than call into question the legitimacy of British colonization. Willis had also implied that indigenous peoples enjoyed their own legitimate form of law and government.

Campfire Democracy?

Among the most striking qualities of nineteenth-century thinking about “government democratical, but representative” was its insistence that the methods used by indigenous peoples to handle the exercise of power within their communities did not count as a form of government. The judgement was not nurtured by lack of curiosity or plain ignorance. As Buchan has pointed out, figures such as colonial explorer Edward John Eyre and George Grey (Governor of South Australia, 1841-1845) were simultaneously fascinated and

¹⁸ Standish Motte, *Outline of a System of Legislation for Securing Protection to the Aboriginal Inhabitants of All Countries Colonized by Great Britain* (London: John Murray, 1840), 14.

¹⁹ *R. v. Bonjon*, Supreme Court of New South Wales, September 16, 1841, http://en.wikisource.org/wiki/Melbourne_Advertiser/Report_of_R_v_Bonjon (accessed December 10, 2011). See also, Susanne Davies, “Aborigines, Murder and the Criminal Law in Early Port Phillip, 1841-1851,” *Historical Studies* 22, no. 88 (1987): 313-334.

repulsed by “savages” and “hordes” who allegedly had no sense of “social ties and connections,” who bore the iron yoke of “custom” that allowed no freedom of thought or action, and who therefore (as Colonial Secretary Edward Deas Thomson summarized the mantra) lacked “possession of any Code of Laws intelligible to a Civilized People.”²⁰

The claim that “the Natives” had no regular “intelligible” society or government made its mark on later ethnographic and anthropological studies of the customary habits of “primitive societies.” As we shall see in some detail, the claim was false, yet among the factors that made it appear plausible was the contrast with the North American encounter with indigenous peoples, who had considerable bargaining power in the interstices of British imperial rivalries with Spanish, French, and (later) American forces. In the colonies of Australia, indigenous peoples stood alone, face-to-face with their invaders. Growing bodies of evidence show that they resisted cleverly and on all fronts.²¹ But the power imbalance they suffered fed the presumption, originally noted by Cook, that whereas the Tahitians had their “kings” and “chiefs,” or the Maori appeared to be “united under one head or chief,”²² the indigenous peoples of Australia had no polity. Sovereign authority and regular government was foreign to them, or so it was said. They knew nothing of the arts of making fine clothing or putting a cup to their lips. They had no houses, no agriculture, no farms, no sense of property rights, and no systems of law or government. “It is the universal opinion of all who have seen them,” concluded a Methodist missionary in the 1830s, “that it is impossible to find men and women sunk lower in the scale of human society. With regard to their manners and customs, they are little better than the beasts.”²³

For “the Aborigines,” such talk had a killing quality; it forced them into life-or-death struggles for survival. Little wonder that, during the twentieth century, intellectuals who tried to engage with indigenous peoples on their own terms to right wrongs, were attracted by the thought that indigenous polities were examples of a “crude,” or “primitive,” or “early” form of democracy. The possibility that indigenous peoples had their own form of “democratic” self-government is implied by the research of anthropologists who claim that, since democracy involves people getting together as equals to decide things for

²⁰ *Historical Records of Australia*, vol. 21, 655; Buchan, *The Empire of Political Thought*, chaps. 5-6; George W. Stocking Jr., *Victorian Anthropology* (New York: Free Press, 1987); and Lester Richard Hiatt, *Arguments about Aborigines* (Cambridge, UK: Cambridge University Press, 1996).

²¹ Henry Reynolds, *The Other Side of the Frontier: Aboriginal Resistance to the European Invasion of Australia* (Ringwood, Victoria, Australia: Penguin, 1982), especially chaps. 3-4.

²² James Cook, *The Journals of Captain James Cook*, vol. 1, 85, 121. On the background, see Julie Evans, Patricia Grimshaw, David Philips, and Shurlee Swain, *Equal Subjects, Unequal Rights: Indigenous Peoples in British Settler Colonies, 1830-1910* (Manchester, UK: Manchester University Press, 2003).

²³ Joseph Orton, *Aborigines of Australia* (London: Thoms, 1836), 3.

themselves, it has in effect always been around, even in the earliest hunting-gathering societies. The claim has older provenance. Its roots stretch back to the 1940s, when the Polish-American anthropologist, Bronislaw Malinowski, first attempted to define these societies as examples of “proto-democracy.” According to Malinowski, the propensity of people to form political communities is more or less a universal human quality. Equally human is the knack of developing independent, functionally autonomous institutions that both facilitate nonviolent co-operation among divergent social interests and prevent the concentration of power in a few hands. In this respect, Malinowski argued, modern representative democracies are located on exactly the same continuum as hunting-gathering cultures, in which “there is no ballot, no vote, yet a general public approval and acceptance. There is very little centralized power, which gives results as good if not better than when such power is placed in the hands of authorities elected and controlled by the people.”²⁴

The thesis that all human beings yearn for democracy and that democracy is human, or that to be human is to be fit for democracy, is restated at length by more recent political anthropologists, such as Ronald Glassman. Aware that early kinship systems were riddled with hierarchies structured by criteria such as gender and age, he nevertheless thinks of our earliest hunting-gathering ancestors as practitioners of democracy as we experience it today. The propensity for democracy is among the “unique species characteristics of human beings.” He adds: “consciousness plus intelligence, plus language communication, produce the possibility of democracy.” But what is democracy? For Glassman, the term is synonymous with deliberative democracy. It refers to “decision making through discussion, and rational processes of legitimation.” It is deliberation guided by such core principles as popular participation in the making of rules and the punishment of rule breakers; the application of strict limits upon the exercise of power and leadership; and the use of rules designed to preserve group order as debatable and amendable. In hunting-gathering societies, he continues, the felt need to co-ordinate both the search for food and defense against invasion spawned the growth of “campfire democracy.” It was a form of self-government founded upon the “popular assembly,” the “male council,” and mechanisms for guaranteeing unanimity. Campfire democracy stimulated informal discussion of perceived problems: “the men, the women, the old, the young—everyone discusses the problem informally. Everyone makes his or her opinion known.” Campfire democracy also depended upon formal procedures for reaching agreement, above all the practice of adult men sitting “in a circle around a campfire in the center of the band.” Their job was to “attain unanimity or unanimous approval of the political course finally emergent from the formal debate.” Campfire democracy minimized the use of “physical dominance and fear.” It knew nothing of majority rule or minority rights, or the harsh

²⁴ Bronislaw Malinowski, *Freedom and Civilization* (New York: Roy Publishers, 1944), 228-229.

punishment of deviants. “Social pressure is brought to bear on all dissenters who continue to resist the decision reached,” says Glassman. “Women as well as men are talked to, persuaded, chided, cajoled into unanimity.”²⁵

Is there substance in this way of thinking about “proto-” or “campfire” democracy? Much evidence speaks against the whole idea of a deep political connection between modern representative democracy and hunting-gathering peoples. The implied teleology lurking within the prefix “proto-,” the inference that campfire assemblies were the first of a kind, a prototype of what was to follow, begs tough questions about their historical links with latter-day democracies. The inference supposes, in other words, that despite all the differences there is an unbroken evolutionary chain that links the earliest forms of assembly with contemporary representative forms of democracy, as if the Pitjantjatjara or Kunai peoples were the original brothers and sisters of James Madison, Winston Churchill, Jawarhalal Nehru, and Barack Obama. That is implausible. The free use of the term “proto-democracy” risks falling into the trap of calling too many societies “democratic,” just because they lack centralized institutions and accumulated monopolies of power, or because they prohibit centers of violent oppression, blatantly illegal or camouflaged, against which people have no redress or appeal.

Matters are not helped by the anachronistic use of the word “democracy.” The anthropological record shows quite clearly that neither the word (which, in fact, has roots in the Mycenaean civilization) nor anything resembling it was ever used during campfire assemblies. But this point is minor compared with the least obvious but most consequential objection: by calling campfire gatherings “democratic,” there is a great danger of overlooking or understating the strange originality of democracy as a way of naming, handling, and controlling power.

The experience of democracy, whether in representative or other institutionalized forms, requires and reinforces people’s shared sense of the contingency or mutability of the world—their rejection of claims that matters to do with who gets what, when, and how in life are determined by “natural” or God-given or deity-determined processes, or by mere chance.²⁶ Democracy is much more than citizens gathering together in public assemblies, joining or supporting political parties, voting in periodic elections, or keeping tabs on decisions taken by parliamentary representatives. These practices are surface symptoms of something that runs much deeper. Considered as a set

²⁵ Ronald M. Glassman, *Democracy and Despotism in Primitive Societies* (Millwood, NY: Associated Faculty Press, 1986), 45, 46-53. Cf. Larissa Behrendt, “Aboriginal Australia and Democracy: Old Traditions, New Challenges,” in *The Secret History of Democracy*, ed. Benjamin Isakhan and Stephen Stockwell (London: Palgrave Macmillan, 2011), 149: “Within traditional Aboriginal societies, notions of collective agreement-making that resonate with democracy were pervasive.”

²⁶ This is a core theme of Keane, *The Life and Death of Democracy*.

of institutions and as an entire way of life, democracy stimulates people's awareness that, as equals, they do not need to be bossed about by powerful others; it teaches them that they have the ability to shape and structure their lives as equals, who are capable of living together and deciding in common how they are to live during their time on earth. Democracy thus supposes the human's release from pure determination by forces natural and supernatural, however they are conceived. Democracy does not necessarily demand the practical rejection of belief in transcendental or sacred standards (the history of democracy is full of examples of actors, customs, and institutions which thrive on belief in the sacred). But for a society to qualify as "democratic," it must contain mechanisms that foster a measure of self-reflexivity among equals, their awareness that "is" and "ought" are not identical, and that things do not have to be what they currently are, or seem to be.

It is true that those who speak of "proto-democracy" have been guided by benign intentions. Malinowski, himself, explicitly acknowledged that the incorporation of hunting-gathering peoples in the analysis of democracy would help counter the prejudice that they were "savages" with "blind passions" and "slaves to custom, warlike and cruel."²⁷ He had a point. By favoring the inclusion of hunting-gathering societies in the history of democracy, he and other scholars have sought to overcome the long-standing prejudice that dismisses these people as "backward," "uncivilized" and generally inferior to us. It is also true that those who have spoken of "proto-democracy" never intended to overlook the fundamental quality of democracy, its propensity to "de-nature" power relationships and to resist bondage, in the name of equality. Yet, that is exactly what they have done, by exaggerating the degree to which hunting-gathering societies cultivated the capacity to foreground and question the so-called nature of things.

Societies against the State

In a fine study of the Maori of New Zealand, Marshall Sahlins emphasizes that hunting-gathering societies are typically in the powerful grip of cosmic myths that structure everyday life and adjust it to particular circumstances, in effect by interpreting, harnessing, controlling, and concealing their contingency.²⁸ He makes the important point (against Evans-Pritchard and other anthropologists) that it is a mistake to see these societies as "frozen" or as without "history." That condescending view needs to be replaced with an understanding of how different cultures have different senses of historicity. But even when hunting-gathering societies are seen in this fresh way, the evidence he presents strongly suggests that these societies are different from—not necessarily inferior to—political orders defined by institutional mechanisms that have the effect of

²⁷ Malinowski, *Freedom and Civilization*, 241.

²⁸ Marshall Sahlins, *Islands of History* (Chicago: University of Chicago Press, 1985).

making explicit people's felt sense of the contingency of the power relations that shape their lives as equals.

Within the nineteenth-century world of Maori people, for instance, Sahlins shows that, while many relationships were constructed by choice, desire, and interest, the level of "openness" to history was different from anything toward which democracies had been accustomed. The ongoing, daily interaction between new and old ways of doing things was structured by communities of meaning that ensured that everything ultimately appeared to its members as if it were unfolding by means of an unending process of return to the way things always had been. In the absence of means of communication (such as alphabets and writing) that enabled past, present, and future to be prised apart—Sahlins presumes their absence—the present and future were understood as recurrent manifestations of a past that was very much alive. Everyday life was a reenactment and confirmation of the wider ways of the world, or, in the words of Sahlins: "Ontogeny recapitulates cosmogony."²⁹

Much the same picture emerges from studies of indigenous societies in the neighboring Australian continent. As usual, generalizations are as risky as they are difficult: in 1788, when the British colonizers began to arrive in force, there was no single Aboriginal and Torres Strait Islanders "nation," and (unlike Maori) no shared language. There were at least 250 different communities; each spoke a different language or dialect and typically occupied more or less geographically separate areas. The diversity was the product of prior indigenization across a vast territory, but also partly the effect of differential contact with non-Aboriginal and Torres Strait Island peoples, for instance, Indonesian and Macassan traders and fishing peoples.³⁰ Yet, what is clear is that these diverse indigenous societies and the multiple spaces they inhabited were not an "Australian tribe" with a common language unblessed by a "political authority."³¹ Contrary to the claims raised by nineteenth-century believers in representative democracy, they were not "primitive" societies "lacking" a territorial state. Their modes of life and methods of handling power were different. The surviving evidence suggests that these societies had no system of government in any hierarchical sense, and that there was no single body that made laws and no hierarchy of courts or other enforcing authorities. These were most definitely "societies against the state" (the famous formulation of Pierre Clastres).³² Power was handled largely through informal and loosely organized

²⁹ Ibid., 59.

³⁰ The diversity and complexity of indigenous communities at the point of European invasion is examined at length in Ian Keen, *Aboriginal Economy and Society: Australia at the Threshold of Colonisation* (Oxford: Oxford University Press, 2004).

³¹ Alfred R. Radcliffe-Brown, "The Social Organisation of Australian Tribes, Part 1," *Oceania* 1 (1930-1931): 36-37.

³² Pierre Clastres, *La Société contre l'État* [The society against the state] (Paris: Éditions de minuit, 1974).

means. Wherever there were hierarchies, power relations were understood in terms of “looking after” others and acknowledgement of the importance of co-operation, help, and interdependence. The “boss” was duty-bound to assist and support others. Although these societies were infused with a strong sense of gerontocracy, in that older people were repositories of ancestral virtues and customs, they were always heavily dependent upon mechanisms of consensus and balance, not force. There were tribal elders (whether and how commonly they or councils of elders held sway is still disputed) but no chieftains and no organized political class of men. Marriage customs for women, along with their roles in ritual life, were typically defined by men, yet women generally regained control with age; they were not treated as objects of male consumption and typically they were protected by eminent women ancestors, who lived on in the form of birds, reptiles, and other animals.³³

In all matters, including sexuality and age, the interpretation and application of ancestral laws played a primary co-ordinating role. The effect was to make it appear as if norms and rules were “external” to the community, so that matters as varied as access to land and water, the performance of ceremonies, and marriage arrangements were decided for the community by reference to totemic rules that were understood to be nonarbitrary because of their timelessness. Adherence to the “proper ways” of ancestral laws, living within a totemic landscape infused with ancestral authority, meant that the Pitjantjatjara, the Pintupi, and other indigenous communities had no need of legislators or legislatures; but, paradoxically, the communication of such laws by means of oral traditions scattered across wide geographic areas meant that considerable discretion in their interpretation and application was exercised by individuals, kin groups, and whole communities, some of them overlapping.³⁴ More or less elaborate ceremonies, some requiring pain or privation, took care of the resulting tensions. The dramas of male initiation, bodily mutilation, and female marriage, for instance, imbued ancestral laws with a “uniquely realistic” quality.³⁵ If and when they failed, and power disputes erupted, as they often did, sophisticated mechanisms for mediating and resolving disputes and nurturing order then came into play.

Such conflict resolution methods are intriguing, exactly because they underscore the strange originality of representative democracy as a political form, and as an entire way of life. Common to the indigenous communities

³³ Francesca Merlan, “Gender in Aboriginal Social Life: A Review,” in *Social Anthropology and Australian Aboriginal Studies*, ed. Ronald M. Berndt and Robert Tonkinson (Canberra: Aboriginal Studies Press, 1988), 15-76.

³⁴ See Fred R. Myers, *Pintupi Country, Pintupi Self: Sentiment, Place and Politics among Western Desert Aborigines* (Canberra and Washington, DC: Australian Institute of Aboriginal Studies and Smithsonian Institution Press, 1986).

³⁵ Clifford Geertz, “Religion as a Cultural System,” in *Anthropological Approaches to the Study of Religion*, ed., M. Banton (London: Routledge, 1966), 8-12.

of the Australian continent were different mechanisms that had a weighty effect: since ultimate authority was collectively understood to be external and prior to the foundation of the political community, its members' sense of openness to novelty was constrained. These were not "frozen" societies in any simple sense. The ways and means of naming, handling, and resolving disputes about who gets what, when, and how within the community certainly depended heavily on maneuvers by aggrieved parties to win support for their cause. Justice was contingent, and it was never blind revenge. Punishment was understood as reciprocity in exchange and its purpose was always to restore balance, even when sorcerers and "feather-foot men" filled victims with fear or (as in the case of serious infringements of ritual secrecy) the verdict was death. The proceedings were infused with a powerful sense of the primacy of past events and living-dead characters. It was taken for granted that obedience of individuals and kin groups to their instructions was mandatory, and that dangerous consequences would otherwise follow, as surely as night follows day, or sun follows rain.

The presence of the past within these events and characters was powerfully reinforced by an unshakable sense of dependence upon their surroundings, to the point where the indigenous communities normally saw themselves as extensions of the sacred living landscape. Its spirits lived inside them, beyond, and around them. The landscape was their "spirit home."³⁶ It conferred their names. It could smell their presence. Their own blood, flesh, hair, feces, and urine belonged to it. The landscape throbbed with life; it was the space of their ancestors, the medium through which they communicated with living people, offering them guidance, providing them with "the proper way" (the *tjukurrpa* [dreaming] of the Pitjantjatjara and the *rom* [law] of the Yolngu are examples) and granting them powers to act, even to travel far and wide when they were asleep. At death, the individual rejoined the landscape as "spirit" or (in some communities) in reincarnated form. This strong spiritual and physical dependence upon the biosphere was supervised by a host of mythical characters who belonged to the origins of the world, but who regularly reappeared among the living, as shadowy ghosts, or as animals or objects. The strong dependence of the living upon their landscape was structured by the performance of sacred rites and sacred songs and the possession of sacred objects (known among the Loritja, the Illpirra, and other peoples as *tjurunga*) and it was mediated by sacred places and special knowledge, vested in a few men and women of the community.

There is much surviving evidence that although indigenous peoples were unfamiliar with such distinctions and terms as "good" and "bad" and "sin" and

³⁶ W. E. H. Stanner, "Religion, Totemism and Symbolism," in *Aboriginal Man in Australia: Essays in Honour of Emeritus Professor A. P. Elkin*, ed. R. M. Berndt and C. H. Berndt (Sydney: Angus and Robertson, 1965), 207-237.

“atonement” for wrongdoing—they were the terms used by their invaders—harsh penalties were applied to individuals or kin groups who violated the sacred rules of ancestral law. Various means were invoked. There were informal customs such as ridicule and gossip and the hearing of evidence and the meting out of punishment by meetings of older people or (as among the Ngarinyerri of South Australia) leaders of neighboring groups.³⁷ Conflicts were resolved as well by forms of “payback,” such as thigh wounding, death by spearing, and extended blood feuds, some of them lasting for many years. The means of justice encompassed the dispatch of avenging parties (such as the Aranda *atninga*, where the attackers fought mainly with words, not weapons). There was compensation in the form of goods; the use of sorcerers to inflict harm on offenders, supposedly by such means as removing their “dream spirit” or inserting stones inside their bodies; and deprivation of mortuary rites. Secret meetings of ritual leaders were convened; and there was the ceremonial practice of running a gauntlet of blunted spears (an example was the *magarada* of northern Arnhem Land). Alleged offenders were also brought to trial before councils, such as the *tendi* of the Lower River Murray peoples, where different clans gathered in the presence of negotiators (*rupulle*) whose judgements and punishments were guided by the testimonies of the accused, the defendants, and witnesses.

Ceremonies designed to repair the fabric of the social order, to structure the lived experience of time as the repetition of a living past, were typical. A pertinent example was the *bugalub* ceremony found in northeastern Arnhem Land.³⁸ It was not a case of “campfire democracy,” but a ritual washing ceremony that was believed to heal dissension and to produce mutual goodwill among the disputants, as well as provide entertainment for the rest of the community not directly involved in the dispute. People gathered around specially prepared ground in the main camp, outlined with mounds of sand, within which a hole had been dug to represent a sacred waterhole connected to the living-dead persons responsible for hosting the rite. Secret-sacred songs were sung, usually to the accompaniment of clapping sticks and didjeridu. During the singing, women jumped up and danced, in preparation for the moment of final healing, when the prime parties to the dispute (most often they were men) finally entered the “waterhole,” to be showered with water and invocations of the mythical beings connected with the ceremonial site.

³⁷ George Taplin, *The Narrinyeri: An Account of the Tribes of South Australian Aborigines* (Adelaide: J. T. Shawyer, 1873).

³⁸ Ronald Berndt and Catherine Berndt, *The World of the First Australians: Aboriginal Traditional Life—Past and Present* (Canberra: Aboriginal Studies Press for the Australian Institute of Aboriginal and Torres Strait Islander Studies, 1999), 349 ff., and Larissa Behrendt and Loretta Kelly, *Resolving Indigenous Disputes: Land Conflict and Beyond* (Leichhardt, Australia: Federation Press, 2008), 93 ff.

Restorative Justice

Why should the political practices of indigenous peoples be given closer attention by historians of colonialism, political thinkers, and citizens interested in the history and present-day fate of representative democracy in Australia and elsewhere? There are several reasons.

Most obviously, ceremonies such as the *bugalub* are revealing of the complex patterns of power and conflict resolution that structured daily life within and among indigenous communities on the threshold and during the next century of European colonization. They show that indigenous societies were not stone-age people caught in the unbreakable grip of “kinship” obligations and “nature worship.” Indigenous communities were neither instances of “primitive society” nor examples of “proto-democracy”; they were different societies, for which different categories are needed in order to comprehend their sophisticated rituals of what are now called power and politics.

Paying attention to the historical relationship between indigenous peoples and popular self-government is important for another reason: in surprising ways, it potentially alters our understanding of the history of democracy in representative form. It prompts questions about whether and to what extent indigenous ways of handling and restraining the exercise of power helped shape, either positively or negatively, the resulting institutions of representative democracy. Contemporary scholars presume that influence was all a one-way street, altogether negative, and that during the nineteenth century indigenous forms of government were simply crushed alive. That belief, as A. J. Brown has pointed out in a critique of conventional accounts of the coming of federalist visions of democracy to Australia, probably understates the ways in which the nineteenth-century push toward a federated representative democracy was the contested result of many forces, including the calls by white settlers for decentralized regional institutions that were quite probably inspired by the mental maps and patterns of seasonal movement of indigenous peoples.³⁹ The calculated use of the petition by indigenous peoples to press their claims for compassion and compensation is another example of the same counter-trend. Their petitions not only helped give them a voice in public affairs, but also they publicized the vital point that the emergent system of representative democracy suffered a fundamental defect: its dependence upon the Westminster principle of “winner-takes-all” majority rule meant that some minorities, and certainly indigenous peoples, were fated mathematically to be permanent “losers” in the political game of electoral competition.⁴⁰

³⁹ A. J. Brown, “Constitutional Schizophrenia Then and Now,” *Papers on Parliament* 42 (2004): 33-58.

⁴⁰ Mark McKenna, *This Country: A Reconciled Republic?* (Sydney: University of New South Wales Press, 2004), 67 ff; Ann Curthoys and Jessie Mitchell, “Bring This Paper to the Good Governor’: Indigenous Petitioning in Britain’s Australian Colonies,” in *Native Claims: Indigenous Law against Empire, 1500-1920*, ed. Saliha Belmessous (Oxford: Oxford University

The broader implication here is that the “indigenization” of representative democracy is a subject worth exploring. There is plenty of evidence that some nineteenth-century Europeans learned to speak pidgin versions of indigenous languages, whose words (kangaroo, gibber, woomera, waddy) permanently entered the local English-language vernacular.⁴¹ In the same vein, many white Australians have since carved out a distinctive sense of national identity through the generous absorption of indigenous symbols. Slowly but surely, indigenous peoples have meanwhile begun to teach white people lessons about the need to “blacken” their ways with nature, abandon their profligate ways with the biosphere, and understand and acknowledge their dependence upon its long-term sustainability. So, the question, analogously, is whether the history of Australian democracy might be redescribed, certainly to include the never-to-be-forgotten bigotry and violence that it unloaded upon indigenous peoples and their polities, but also, more positively, rewritten in terms of a new understanding of the creative impact of indigenous practices upon the transplantation of representative democracy into the soils of the Australian continent.

The whole point about indigenization is admittedly speculative, but typically it is neglected within recent historical narratives, probably because the deep implication of representative democracy in the wanton destruction of indigenous polities seems more consequential, and more disturbing. The point is well taken; to invert the meaning of a favorite term in the arsenal of its nineteenth-century champions, the “barbarous” side of representative democracy should not be forgotten, and needs further investigation. More detailed analyses elsewhere have shown that there was nothing “essentially” violent about either the spirit or structures of representative democracy.⁴² Yet, the hard fact remains that both the colonial opponents and colonial champions of representative democracy indulged talk of “the aborigines”

Press, 2012), 182-203; and the discussion about the early experiment with proportional representation in the colony of South Australia in Keane, *The Life and Death of Democracy*, 517-522.

⁴¹ Reynolds, *The Other Side of the Frontier*, 40 ff.

⁴² Claims about the intrinsically violent quality of representative democracy are traceable to the leading proto-fascist jurist of Weimar Germany, Carl Schmitt: “A democracy demonstrates its political power,” he wrote, “by knowing how to eliminate or keep at bay something that is foreign and unequal and threatens its homogeneity.” He added: “Does the British Empire rest on universal and equal voting rights for all its inhabitants? It could not survive for a week on this basis; with their monstrous majority, the coloureds would outvote the whites. In spite of that, the British Empire is a democracy” (*Die geistesgeschichtliche Lage des heutigen Parlamentarismus* [Berlin 1926], 14, 15-16). See my extended replies in “Dictatorship and the Decline of Parliament: Carl Schmitt’s Theory of Political Sovereignty,” in John Keane, *Democracy and Civil Society* (London: Verso, 1988 [1998]), 153-189, and id., “Epilogue: Does Democracy Have a Violent Heart?” in *War, Democracy and Culture in Classical Athens*, ed. David M. Pritchard (Cambridge, UK: Cambridge University Press, 2010), 371-408.

and their “uncivilized” ways.⁴³ As if to prove that representative democracy could sit comfortably at the table of tyranny, such talk fueled the bigoted belief that a “people” comprising proud adult male voters could do no wrong, that the majority was always right, certainly when confronted by “savages” complaining of mistreatment.

From the point of view of indigenous peoples, the coming of representative democracy from over the horizons of Europe made things worse. Armed with strange ways of talking, weird institutions, and lethal weapons, the invaders prided themselves on their commitments to popular self-government in representative and responsible form. The sad and well-documented truth is that the invaders refused to recognize and respect the fundamental difference between the hunting-gathering polities of the Australian continent and the conquering “civilization.” The refusal inflicted misery and violence on indigenous peoples, who nevertheless fought back hard against their conquerors. Facing frightening odds, their population numbers were reduced by an estimated five-sixths during the period of colonization. Yet, they managed to survive and to multiply, even to experiment with new ways of living, including, as in our time, demands for political representation in the prevailing structures of power.

Such demands suggest another powerful reason for rethinking the relationship between indigenous peoples and nineteenth-century representative democracy: the unintended birth of a politics of restorative justice, of the kind that has emerged in other settler democracies, such as Canada, Chile, and South Africa. Thanks to their survivor qualities, indigenous peoples and their supporters have gradually forced onto the political agenda the whole issue of whether and to what extent the predominantly white citizens who are the offspring of a conquering democracy can come to feel shame, to say “sorry,” and to strive for new democratic forms of reconciliation that have no precedent in the history of their local democracy.⁴⁴

In the Australian context, this process of restorative justice has barely begun, but its political significance and strong sense of unfinished business should not be underestimated. Guided by the fundamental principle that in the twenty-first century democracy is much more than elections, and that democracy means nothing unless it strengthens the diversity and influence of all citizens’ voices and choices in decisions that affect their lives, the unfinished politics of remembering refuses to let by-gones be by-gones. Its

⁴³ An important iteration of this point is developed in Jessie Mitchell, “‘Are We in Danger of a Hostile Visit from the Aborigines?’ Dispossession and the Rise of Self-Government in New South Wales,” *Australian Historical Studies* 40, no. 3 (2009): 294-307.

⁴⁴ See Jennifer Balint and Julie Evans, “Transitional Justice and Settler States,” in *The Australian and New Zealand Critic Criminology Conference 2011*, ed. M. Lee, G. Mason, and S. Milivojevic, <http://ses.library.usyd.edu.au/bitstream/2123/7361/1/Balint%20and%20Evans%20ANZCCC2010.pdf> (accessed January 5, 2012).

starting point is that elections and elected governments alone cannot handle the injustices of the past. In effect, the politics of restorative justice seeks to extend a vote to an excluded constituency: the dead. With the help of sympathetic historians,⁴⁵ it supposes that democracy among the living requires democracy among the dead; on that basis, it points to the need publicly to remember not only the patterns of indigenous resistance, contribution, collaboration, and adaptation, but also the injustices suffered by indigenous peoples in the name of representative democracy, under the whip hand of methods ranging from murder, rape, dispersal, and child removal to exclusion from elections, insult, amnesia, and the silence of outright public and private denial.

The theory and politics of restorative justice keeps an open mind about whether and to what extent indigenous peoples can retain or “go back” to at least some of their customary ways of handling power, but it certainly takes a hard-nosed view of forgetfulness. It warns of the dangers to democracy of amnesia, confabulation, and political manipulation. At a more personal level, restorative justice supposes that victims and victimizers alike are vulnerable to these dangers, albeit in different ways. Supposing that memories of past injustices can be a corrective to present-day injustices, it therefore depends upon the encounter of all parties and requires apologies, bills of rights, and treaties to protect the restitution of land and other forms of compensation for the victims.⁴⁶ The politics of restorative justice provides no quick fixes. It takes time. It is a form of slow politics. It calls on victims to take an active role in the restorative process, while offenders meanwhile are encouraged to take responsibility for their actions, to help repair the harms that were done long ago, but which can still be felt and observed. Restorative justice reckons that nobody is entitled straightforwardly to cast the first stone of accusation. It supposes in principle that there were and are no saints and sinners, and that all living citizens are in one way or another deeply implicated in the sordid past.

The work of remembering the past harnesses the principle that both victims and victimizers likely suffer from what analysts call “dissociation,” the painful and disabling repression of traumatic memories. Restorative justice therefore calls on whole societies to own up, to bear witness to past acts of injustice and violence. It recognizes that the tricky process of setting

⁴⁵ Notable examples include Charles Rowley, *The Destruction of Aboriginal Society* (Canberra: ANU Press, 1970); Reynolds, *The Other Side of the Frontier*; Bain Attwood and John Arnold, eds., *Power, Knowledge and Aborigines*, special edition, *Journal of Australian Studies* 5 (1992); Anna Haebich, *Broken Circles: Fragmenting Indigenous Families 1800-2000* (Fremantle, Australia: Fremantle Arts Centre Press, 2000); and Ann Curthoys, Ann Genovese, and Alexander Reilly, *Rights and Redemption: History, Law and Indigenous People* (Sydney: University of New South Wales Press, 2008). More generally, see Arthur J. Ray, *Aboriginal Rights Claims and the Making and Remaking of History* (Montreal: McGill-Queen's, 2016).

⁴⁶ Roderic Pitty, “The Political Aspects of Creating a Treaty,” in *What Good Condition? Reflections on an Australian Aboriginal Treaty 1986-2006*, ed. Peter Read, Gary Meyers, and Bob Reece (Canberra: ANU E Press, 2006), 51-69.

the record straight, opening up and democratizing memories of the past is not easy; it understands that the past is at least as complicated as the present. It calculates that memories are always constructed—reconstructed—and not just straightforward matters of recall and that, for that reason, it is always better to prevent the denial of incriminating memories or the implantation of false memories by having an open process of publicly checking and cross-checking claims about what actually happened in the past. Armed with these principles, the politics of restorative justice is willing to take on accusations of wearing indigenous armbands. It opposes cults of forgetfulness. The politics of restorative justice tries in practice to shatter public silences, to expose past abuses using unconventional narratives; it examines practical ways of restoring the dignity of both the dead and the living; and it supposes that the work of publicly monitoring and compensating for the evils committed in the name of representative self-government can eventually help to discharge political tensions.

Can the balm of public “truth telling” have soothing effects, like helping symbolically to heal the wounds of indigenous peoples, or helping the offspring of the colonizers to hold their heads higher, and less in shame? The new politics of restorative justice supposes that these effects are possible, so long as certain conditions are met. Restorative justice involves much more than positive initiatives by professional experts, the courts, or by the government of the day. It operates according to the quite different but supplementary premise that the standard machinery of electoral politics and constitutional protections cannot alone deliver restorative justice, which can take effect only when citizens themselves and the whole civil society pitches in and works hard to make amends in search of solutions that promote repair, reconciliation, and the rebuilding of relationships, the better to promote a culture of mutual respect through the permanent remembrance of things past. The point of restorative justice is to keep alive what happened through public fact-finding, to promote public shaming and forgiveness, so better to enable the wider society to live together through a more durable democracy—in effect, by granting a vote to the past for the sake of the future.