

Self-determination and the politics of indigeneity

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Abstract: O'Sullivan's paper claims that Maori have self-determination rights as indigenous people, not just needs as citizens. Such a claim requires a normative theory of indigenous self-determination; but such theory has many compelling problems, when it views self-determination rights as held within a state. Most obviously, indigenous claims for self-determination rights within the state are often seen to be trumped by contemporary distributive justice theories. Also, historical injustice and structural inequality arguments are arguments for self-determination by secession not self-determination. But when arguments for indigenous rights are shorn of claims of structural inequalities within the state or historical injustice, they look like aristocratic privileges.

Keywords: historical injustice, indigeneity, indigenous rights, self-determination

Dominic O'Sullivan's paper plumbs contemporary Māori politics and theories of indigenous politics to suggest that indigenous self-determination 'transcends...addressing need' (O'Sullivan, 2006, p. 10). Put simply, his argument is that Māori have rights as indigenous peoples, not just welfare needs as citizens. The claim to rights as indigenous peoples is framed as a claim to Māori self-determination.

However, the paper fails to commit to a normative view of Māori self-determination. A normative argument prescribes, within reason, what ought to be able to be claimed as a right (Barry, 1989, p. 72). In the context of claims of indigenous peoples' rights, it does seem to need stating that a claim to a right is not a guarantee of that right, but the beginning of a moral argument about the content and justification of that right. Simple statements of rights are descriptions, not arguments. Without a coherent explanation of how indigeneity (for Māori) ought to transform into a right to self-determination, such right claims by indigenous peoples are 'superseded' by the contemporary need for a fair distribution within the state (Waldron, 1992, p. 26).

There are compelling and coherent political theories in the international literature about indigenous self-determination. Indigenous peoples' right to self-determination has been generally defended as a right to self-government, rather than secession (Macedo & Buchanan, 2003). One argument in the literature is that self-determination will enable the preservation of indigenous cultures, which in turn would provide a context where the choice to live as indigenous was possible (Kymlicka, 1989). Another argument is that the right of self-determination rectifies the twin historical injustices of loss of self-government, and the deprivation suffered by indigenous peoples during colonisation (Keal, 2003; Moore, 2003). In this commentary, I present some thoughts about problems we encounter in generating the substantive rights of self-determination from such theories, using the O'Sullivan's vibrant paper as an example.

Methodologically, the phrase 'Māori self-determination' is used often in O'Sullivan's paper as though it *describes* something important, when its potency as a concept derives from its normative associations (what the political position of Māori ought to be) rather than its descriptive accuracy. When Durie writes of the quest for Māori self-determination he is writing as a social scientist (Durie, 1998). He describes where and how Māori are self-determining in their actions, in the face of structural inequalities of society. Describing a Māori social service provider or the Māori party as an assertion of the *political right* of Māori to self-determination however, reduces such a right to the banal, and Māori to an abject lack of agency. It makes the creation of such organisations seem like a victory: perhaps it is personally and professionally for those who created it, but it is not a description

of a right that arises from being Māori, but from being a citizen who has faced obstacles, for any number of reasons, in any state that allows collective action. Māori, like any group, will find ways of expressing themselves politically and throughout society should they feel the need; thus we have Māori organisations and political groups. This is what representative politics does. There is no surprise here, and it does not need to be wrapped in the hubris of 'nationhood' or 'self-determination' for it to be worthy of study and comment; it is simply what any free and equal people do.

There are ways, however, in which the descriptions of structural inequalities between Māori and non-Māori can lead to a normative argument for self-determination. However, it is an argument for a separate Māori state. The argument would be that structural inequalities exist because equal political rights have not been granted to Māori. For example, the legislative rejection of the court's rulings on the possibilities of Māori owning the foreshore, or historic injustices as described by the reports of the Waitangi Tribunal. Following this logic one could conclude, theoretically, that the New Zealand state is structurally unjust toward Māori. In the face of continual unjust treatment by the state any group may reasonably claim the right to secede (Simmons, 2001). To complete the argument Māori would simply need to argue that they are, or could be, a self-determining political entity (Margalit & Raz, 1995). The demand for secession could be used either instrumentally, to extract more justice from the current state, or as an end in itself as the start of a call for a Māori state in New Zealand.

The secessionist argument seems strong, but O'Sullivan's paper, like much of the indigenous literature, argues instead for self-determination within the state. He asks whether, leaving aside equality and historic injustice arguments, there is

... a deeper politics of indigeneity providing a legitimate foundation for rights which are not necessarily superior to the rights of citizenship, but are important and distinguishable adjuncts? (O'Sullivan, 2006, p.1)

Perhaps there are such rights, but once one removes the arguments about historical injustice and structural inequality (and thus secession), 'important and distinguishable adjuncts' look perilously close to an argument for aristocratic privilege rights. Namely, rights that accrue to indigenous people because they are indigenous would be based on blood and property claims, the very definition of an aristocratic claim: that you were born within a lineage, within family who held such privileges, and that the family accrued such privileges as a result of residing on land. All over the world, resistance movements, including those of Māori, have fought privileges such as these when held by their colonial oppressors.

Remarking on the problems of using self-determination arguments to generate indigenous rights within a state does not mean that indigenous identity and culture should not be protected. Instead, at least in normative political theory, one need not look for a deeper politics than equality to ensure indigenous rights. Any theory of a state that seeks legitimacy through consent, at a minimum will need to provide rights to protect the identity, culture and self-government of its citizens, whether as individuals or groups (Simmons, 2001).

Māori self-determination rests on a paradox. A group (Māori) are thought to hold special and exclusive rights to govern themselves against another group (non-Māori). Yet, if that does not lead to the creation of a new state (as in East Timor, or in the Balkans), then the rights claimed privilege one citizen over another based on their birth. Yet Māori often claim self-determination to reverse inequalities generated by the colonial state's belief in the settler's superior birth. Simply reversing such colonial oppressions today does not seem to privilege anybody. As aristocrats found in the late second millennium and Māori found during the foreshore and seabed matter, the attempt to guard against unequal treatment via special protection rights, is no bulwark against a majority. If indigenous self-determination is to have theoretical coherence and thus political utility it must rise above the paradox of indigenous privilege and grant rights on which all citizens reasonably can agree (Barry, 1995).

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