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Reconciling Responsibilities

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Reconciling Responsibilities

This paper explores some of the theoretical issues that complicate the process of reconciliation between indigenous and non-indigenous citizens in modern liberal-democracies. My specific purpose is to consider whether it is appropriate to hold contemporary populations responsible for the wrongdoings of their ancestors and I will refer regularly to David Miller's theoretical framework to determine when nation A owes a responsibility to nation B to right the wrongs that A may be causing or, crucially, may have *caused* to B in the past. I have also been lucky enough to have access to an unpublished manuscript authored by him which will hit the book shelves with the title *National Responsibility and Global Justice* in the next month or so; my thanks go to David for authorising me to cite from this work before it officially appears in print.

Given that I am Australian I naturally draw upon my understanding of the reconciliation process there, however this paper is theoretical and therefore any insights that may emerge from it are, I hope, broadly applicable to other 'settler societies' facing similar dilemmas. Having said that, I also acknowledge that there are important differences between the various societies grappling with these issues, so I humbly ask that you consider my presentation in this light. Many of you will also be aware of the Australian government's recent 'offensive' against the social ills that bedevil many indigenous communities in the Northern Territory. This paper will not speak directly to these issues although I will state openly that in my opinion while the motives behind these recent developments are sincere the manner in which they are being implemented threatens to tragically repeat the paternalistic mistakes of the past.

Flawed Assumptions - Liberalism

It is not controversial to claim that the dominant ideology of most of the societies that confront reconciliation issues is liberalism. We are all familiar with its central tenets, particularly Mill's harm principle which requires that the state should assume a 'neutral' stance towards its population by not promoting one particular 'good life' over another, allowing citizens maximum scope to determine how they will live their lives.

But a number of scholars (Yael Tamir and David Miller being perhaps the most prominent)¹ have pointed out that in practice the version of liberalism historically practiced is actually best described as liberal *nationalism*. That is, while the state is not nearly as intrusive as a totalitarian state, it nevertheless does promote certain ‘ways of life’ over others. The most obvious is the manner in which a particular ‘national language’ is promoted; there are often good pragmatic reasons for promoting one language (or perhaps two – we are in Montreal today after all!). Imagine the burden on resources if every organ of a multicultural state like Canada had to cater for the preferred language of everyone living within its borders! So are liberal states really neutral? Iris Marion Young does not believe they are; she claims that “If some groups’ experience differs from the ‘neutral’ experience, or they do not measure up to those standards, their difference is construed as deviance and inferiority.”² These ‘deviant’ groups may not be actively discriminated against by the state, but as any ‘outsider’ knows social prejudices can be nevertheless still be very humiliating and debilitating.

We must recall, however, that Young was primarily discussing contemporary liberal societies. Historically liberal states have behaved, I would suggest, in far more openly discriminatory ways. A particularly reprehensible example was the practice, between approximately the 1860s and 1969, of removing Australian Aboriginal children from their families with a view to extinguishing their race itself. This practice, which technically counts as genocide, relied upon the supposedly ‘self-evident truth’ of the inherent inferiority of the Aboriginal way of life in comparison with that of White Anglo-Saxon Australians. There are many other examples of similar injustices; I do not want to labour the point but indigenous groups worldwide have indisputably suffered tremendously at the hands of liberal states that arbitrarily determined that their traditional way of life should be actively undermined by assimilationist policies. I would also argue that these states have largely abandoned these goals and no longer actively discriminate against their indigenous citizens, and that in some cases significant steps have been taken to improve the impoverished position of contemporary indigenous populations. But what is the theoretical justification for such ‘affirmative action’ programmes?

¹ Yael Tamir, *Liberal Nationalism* (Princeton University Press: Princeton, 1993), David Miller *On Nationality* (Clarendon Press: Oxford, 1995) and David Miller *Citizenship and National Identity* (Polity Press: Cambridge, 2000).

² Quoted in Miller, *Citizenship and National Identity*, 63.

Contradictory Intuitions

Miller distinguishes clearly between two basic reasons why an actor may take responsibility for the harm suffered by another, which he characterises as the “liberal intuition” and the “communitarian intuition.” He explains the difference between them in the following way:

On the liberal side, we are drawn to the idea that we are only implicated in responsibility when as agents we have made some causal contribution to [an] outcome... On the communitarian side, we have identities that connect us to larger groups of people, and we often feel vicarious pride or shame in what they do... With pride and shame comes responsibility³

I would argue that the primary theoretical basis for affirmative action programmes in contemporary liberal societies is the communitarian intuition, namely, that we feel connected to other members of our community and feel obligated to offer help to those who are struggling or suffering, regardless of whether we contributed to their plight or not. Consider the analogy of a family member who, wholly through their own poor choices, has fallen on hard times. Most of us would agree that their family has a responsibility to assist despite having had nothing to do with the ‘fall from grace’. Obviously the obligation is not a legal one, and it is also limited; we all know families whose efforts come to naught and who eventually wash their hands of the problem. But most of us would also agree that if a family absolutely refused to help a struggling member it would, at the very least, become a legitimate target for moral approbation.

Can the analogy be widened to include other groups, like the ‘imagined community’ of a nation? Ordinarily I would say yes, yet this raises a fundamental problem in the reconciliation context; communities rely on feelings of mutual solidarity which usually implies that there is a significant degree of ‘sameness’ between their members. In the reconciliation context this may either be lacking or, perhaps more importantly, indigenous groups may want to retain a sense of their own distinct identity. Indeed, many of the problems they now face were been caused by the efforts of liberal states to assimilate them. Given these observations I believe it is important to search for additional (not alternative) means of justifying government programmes targeted at improving the lot of indigenous peoples.

³ David Miller, *National Responsibility and Global Justice*, forthcoming publication, 135.

The 'Connection Theory'

In a similar vein Miller recognises that in the context of International Relations there is typically an insufficient sense of community between nations to underpin the communitarian intuition. Instead, we should look to liberal theory and hold nations responsible for the outcomes produced by their *choices*, and if a 'connection' can be established between harm-causing nation A and harm-suffering nation B then there may good reasons to hold A responsible for remedying B's suffering. He refers to six criteria that should be considered to determine whether this connection exists; I will hold off on discussing the fourth, fifth and sixth criteria until later and will focus at the moment on the first three which investigate differing notions of responsibility that can be differentiated from one another with reference to the concept of *choice*. Specifically, I will consider when it is appropriate to assign 'moral,' 'outcome' and 'causal' responsibility to a particular actor.

None of us should be troubled by the claim that someone who deliberately or maliciously *intended* or *chose* to cause harm should be held responsible for it; they are clearly *morally* blameworthy and therefore clearly responsible for the harm they cause. This is probably so even if they had acted negligently or recklessly in the absence of specific intent to harm. What about an actor who is merely *causally* responsible for an outcome? Think of a person in a bar who is jostled by a rowdy fellow-patron and who then in turn accidentally spills someone else's drink. They did not intend to cause the harm; indeed, they did not intend or *choose* to act at all. Most of us, I submit, would feel somewhat uncomfortable with holding the drink-spiller responsible for the otherwise heinous crime of wasting good booze, although if the jostler had run out of the bar (or could not be identified) we may reluctantly agree that the drink-spiller is the only agent who could reasonably be expected to replace the drink. Causal responsibility for harm is, then, likely to be enforced only in specific circumstances.

The mid-point between these two extremes is, Miller argues following the eminent legal scholars Hart and Honore, a situation in which an actor may be held to be *outcome* responsible for harm. How does this differ from moral and causal responsibility? Well, if a person chose to act, but did not intend to cause harmful consequences and did not act negligently or recklessly, then Miller argues that they should nevertheless often still be held responsible for harmful outcomes. He explains the underlying logic as follows;

Our interest in outcome responsibility arises from our interest in the fair distribution of benefits and burdens between different agents: as far as possible we want people to be able to control what benefits and burdens they receive, but we also want to protect them against the side-effects, intended or unintended, of other people's actions.⁴

Take the analogy of a person lighting a bonfire to spice up their backyard party; they take a number of precautions to ensure it doesn't get out of control (checking the weather report, raking leaves, positioning the fire carefully etc) but later in the night an unexpectedly strong wind begins to blow and a spark flies onto their neighbour's shed and burns it down. Is the fire-lighter responsible? Miller argues that they are, as long as the outcome was reasonably foreseeable and the chain of causation was sufficiently close (releasing a butterfly in China that resulted in a cyclone in Bermuda is an example where the act and the harm would be too remote from one another for outcome responsibility to attach).⁵ Importantly, however, even if our fire-starter is held responsible to repair damage caused by his act he should not be subjected to *moral* approbation because he did not act maliciously, recklessly or negligently.

Capacity and Benefit

I will now turn to the other criteria that make up Miller's connection theory. The sixth or final criterion is whether there are 'community ties' and is basically analogous to the communitarian intuition discussed earlier. But it is the fourth criteria, benefit, and the fifth, capacity, that should interest us most. These do not fall into a continuum with moral, outcome or causal responsibility, however they nevertheless interact with these other criteria and affect the process of assessing whether there is sufficient connection to enable responsibility to be sheeted home to a particular actor.⁶

To take *capacity* first, imagine a party around a pool where A deliberately pushes B into the pool for fun, however the situation turns serious when it becomes clear that neither A nor B can swim. If C, a champion Surf Life Saver is also present then it would be reasonable to expect that his capacity to save B makes him responsible for doing so while A, who would otherwise have to bear the unacceptable cost of drowning, may be absolved of the responsibility of *rescuing* B (although A cannot escape *blame*, which

⁴ Ibid. 85.

⁵ Miller, *National Responsibility*, 83 – 85.

⁶ Miller, *National Responsibility*, 101.

brings other responsibilities, like apologising or compensating B for distress). With respect to *benefit*, we can all imagine a number of situations where X benefits from an injustice suffered by Y that X had no part in causing. Consider a small town where there are only two lawyers competing for a steady amount of business. If one is injured in a car accident by a drunk driver while on holiday and has to spend six months in hospital then the other lawyer will probably benefit from the first's misfortune.

Indeed, benefit and capacity seem to be intimately related in the sense that a completely unsolicited or 'mere' benefit may create a responsibility to assist a suffering actor in two senses. First, it is a fair assumption that the beneficiary, because they have benefited, has the *capacity* to help. Second, the beneficiary in the case above did nothing to *deserve* the benefit. It is arguable, then, that the beneficiary has been 'unjustly enriched.' The lucky beneficiary, by dint of the fact that they have both the capacity to help, and did not deserve the benefit, should be held responsible for alleviating the suffering of the unlucky victim. Or should they?

Does Receipt of a Benefit Create a Responsibility?

This is a very problematic issue. On the one hand we may answer 'yes' because that person did not deserve the benefit. On the other hand, if the beneficiary did not take part in the act harm-causing act they are not only *not* blameworthy; they are arguably too 'remote' from the harm as well. Indeed, in the case of a truly unsolicited benefit the beneficiary did nothing, did not intend or choose to act at all and 'things just fell into place' for them. How are we to resolve this dilemma?

Margaret Moore, a theorist at Queens, notes that Miller's "claim that mere benefit gives rise to a duty is also highly controversial."⁷ Why, she asks, should we assume responsibility solely because we have received a benefit, particularly if it was unsolicited in the sense that the beneficiary took no part whatsoever in the relevant act? Moore discusses an example whereby a man offers to walk a woman home at night. If the woman accepts this unsolicited benefit then she should not have to pay the white knight or even compensate him if he trips, falls and hurts himself. But I wonder whether this situation really represents an unsolicited or mere benefit; couldn't the woman have said

⁷ Margaret Moore, *Global Justice, Climate Change and Miller's Theory of Responsibility*, presented to Queens University Department of Philosophy, February 2007.

'no thanks'? Isn't it arguable that by accepting the unsolicited offer she has *chosen* to receive the benefit of his protection?

I think so, so long as it was reasonably foreseeable that she would benefit. In this case we all know that there is a small but nevertheless real chance that a woman walking home alone at night may be attacked and that the chances of this occurring are reduced significantly if she is accompanied by a male. Accordingly, she should have refused the offer of protection point-blank if she wanted to avoid outcome responsibility completely. Yet this does not help us resolve the intergenerational case because the benefit the contemporary generation received was *truly unsolicited*; because they were not in existence when the benefit of living in a developed, affluent and stable society was 'offered' they could not have 'reasonably foreseen' that they would benefit.

Intergenerational Responsibility

We have seen so far that liberal theorists seem generally reluctant to attribute responsibility in the absence of intention or choice on the part of actors; moral responsibility attaches when one deliberately, recklessly or negligently acts in a harmful manner and outcome responsibility requires an intentional act that could foreseeably cause harm and is not too remote from the act. On the other hand we have determined that where the actor does not intend to act at all we feel uncomfortable with holding them responsible and only do so if no other responsible party can be identified, if they have the capacity to help and if they benefited undeservedly. The issue of responsibility, then, largely turns on the matter of whether an actor *chose* to act.

So, if choice really is the most important consideration when assigning responsibilities can we move to the next stage and assign intergenerational responsibility? Can we rightly hold a contemporary generation responsible for the injustices committed by their ancestors? Considering what we have discussed to this point the answer seems simple; *the contemporary generation did not choose to take part in the injustices, so they are therefore not responsible*. Having said that, we have also established that if no other party can be held responsible, if there is a capacity to help and if the beneficiary did not deserve the benefit, then we *may* be able to attribute responsibility to them. But the first response is the standard reply to demands to acknowledge past injustices; for example Prime Minister John Howard has openly stated "Australians of this generation should not

be required to accept collective guilt and blame for past actions or policies over which they had no control".⁸

Certainly the contemporary generation in modern liberal states is affluent and therefore has the capacity to help and, more importantly, haven't they *benefited significantly* from injustices perpetrated by their ancestors? As Janna Thompson points out the contemporary generation in settler states would probably not even *exist* but for past injustices;⁹ existence itself, then, is perhaps the ultimate benefit. They have also benefited from the schools and hospitals and football stadiums built on land taken from indigenous groups; indeed the entire economies of such states would never have been developed but for the unjust dispossession of indigenous groups. I believe that if we can find a stronger basis for assigning responsibility by at least finding the contemporary generation *outcome* responsible, which requires finding that they exercised some sort of choice, then we may be able garner more support for the reconciliation process.

Collective Responsibility

One way to do so may be to consider a model of collective responsibility discussed in an earlier article authored by Miller, the 'cooperative practice' model.¹⁰ Take the example of, say, an agricultural co-op. Some of the co-op's members may have wanted to switch to new environmentally friendly, but more expensive, pesticides. Unfortunately they were outvoted by the majority of members who wanted to keep using the ordinary cheaper yet more environmentally damaging pesticides. Miller argues that the collectivity, including the dissenting members, can still be held responsible for damage caused to the environment because they *benefited* from the continuation of their old practices. In other words despite the more environmentally aware members' specific preference, manifested as a choice to vote a particular way, after losing the vote, they also *chose to remain* in the co-op and benefited thereby.

In this way Miller argues that the members of a nation, even if they opposed the particular practice that caused harm to another nation, cannot escape responsibility completely if they benefited from it. He acknowledges that it would probably be

⁸ P Muldoon, "Reconciliation and Political Legitimacy: The Old Australia and the New South Africa", *Australian Journal of Politics and History*, 49 no.2 (2003), 190.

⁹ Janna Thompson, 'The Apology Paradox,' *The Philosophical Quarterly*

¹⁰ David Miller, 'Holding Nations Responsible', *Ethics* 114 (January 2004), 253.

appropriate to hold the dissenters in a collective *less* responsible than other members; it would not be appropriate to subject them to strong moral condemnation which the majority of the co-op deserves for deliberately choosing to pursue profit at the expense of the environment.¹¹ Yet the minority should nevertheless not be allowed to evade responsibility completely; to absolve them absolutely would mean they were unjustly enriched because they would have *chosen* to continue to benefit from a practice that they could reasonably foresee would cause harm to others.

The Choice to Leave

So, we seem to have a solution – beneficiaries who may not have chosen ‘directly’ to act unjustly can still be held outcome responsible for harms as long as they also chose to remain as part of the collective entity that caused the harm, particularly if they have benefited from membership and are likely to continue doing so. But can this logic be applied to a nation, and can it be applied intergenerationally? I argue that it can be because *if the contemporary generation chooses to continue living in that nation and receiving benefits that arose from past injustices they should be held responsible for the remedying the harm caused by their ancestors’ choices*. In other words, they *do* have a choice; they could choose to acknowledge and take responsibility for their ancestors’ unjust practices, or they could choose to pull up stakes and leave.

But is this a reasonable solution? At first glance it seems quite harsh; the strict liberal who is not prepared to give in easily to my manifestly inescapable logic may face banishment or exile, punishments that seem pretty considering he had no say in what occurred before he was born. But I will argue below that this problem can be circumvented to by the consideration of three additional matters. The first is the notion that specific injustices committed in the past can sometimes be shown to ‘echo in the present’ and, by implication, the future if they are not addressed by the contemporary generation. Second, Thompson makes an essentially pragmatic ‘future-oriented’ argument whereby the contemporary generation should accept responsibility for their ancestors’ unjust acts to ensure that future relations between them proceed smoothly. Finally, the nature of majoritarian decision-making in modern liberal democracies enables us to take concrete steps towards addressing past injustice without having to exile or banish dissenting members of the nation.

¹¹ Miller, *National Responsibility*, 121 – 125.

The Echo of History

Consider the analogy between a nation and a company; when a company is acquired the new proprietor implicitly assumes responsibility for both assets *and* liabilities. But the analogy is not a perfect one because the purchaser of a company has clearly *chosen* to assume responsibility for both assets *and* liabilities. Perhaps the analogy of inheritance is closer because, as Miller points out, the beneficiary of an estate cannot resist valid claims against it arising from events that occurred prior to the death in question; they must accept the estate's liabilities if they want its assets.¹² Still, in an historical context this creates a fairly weak form of responsibility; one may tell the average Aussie that celebrating the courage of the ANZACs at Gallipoli without acknowledging the injustices perpetrated against indigenous Australians is hypocritical. But a charge of hypocrisy is arguably not going to achieve much more than a concession by the contemporary generation that they should take responsibility by 'saying sorry'.

Instead I suggest that history be taught in a way that connects specific past injustices to present inequalities with the implication that if nothing is done now then these 'structural injustices' will continue in the future. Thomas McCarthy provides an excellent example in the American context. He explains how under Roosevelt's New Deal many Americans were able to participate in public housing projects that in effect significantly subsidised their purchase of a home. In contemporary America the vast majority of household savings are in the form of equity in property. So, when it is pointed out that only 1% of successful applicants for this assistance were black despite that they comprised around 20% of America's population while the scheme ran (between 1935 and 1950), the contemporary imbalance in rates of household savings becomes easier to understand. In other words present inequality is linked directly to past discrimination.¹³

Such examples take the sting out of the standard claim that contemporary blacks 'don't work hard enough' or 'make poor investment choices' and therefore are responsible for their own plight. Crucially, once these historical injustices are revealed and explained a contemporary who still refuses to support steps to remedy them *chooses* to implicate

¹² Although note that if the estate's liabilities *exceed* its assets the beneficiary is not personally responsible for making up the shortfall – they simply get nothing; Miller, *National Responsibility*, 142 – 4.

¹³ Thomas McCarthy, 'Vergangenheitsbewältigung in the USA: On the Politics of Memory and Slavery,' *Political Theory*, 30 no. 5 (October 2002), 635 – 7.

themselves in a *continuing* injustice. Such a *refusnik* becomes like the minority in the company we discussed earlier; they may not have chosen to commit the injustice in the first place, but *once they are made aware* that they are nevertheless benefiting from *continuing injustice* they should assume responsibility for remedying the harm.

Thompson and the Future

Janna Thompson has argued that present generations should respect *all* treaties made by their ancestors and not pick and choose by complying with the ones that suit them while rejecting the ones that don't. Picking and choosing in this manner is arguably hypocritical¹⁴ but, more crucially, a nation that did this consistently would damage its credibility as a 'trustworthy' nation. Accordingly, then, Thompson argues that nations should keep a pragmatic eye on the future, understanding that it is in their interest to cultivate a reputation for honesty and reliability. I note that in the Australian context there were never any treaties signed between the state and indigenous groups, but she argues that we should *imply* treaty obligations as if both parties were dealing with each other on the basis of mutual respect for one another.¹⁵ I am somewhat uncomfortable with accepting this line of argument as the sole basis for taking responsibility for the past; were it the only argument advanced I would feel somewhat concerned that it is too *instrumental* in nature. It smacks of 'throwing the dog a bone' to stop it barking. However when one considers that it is only one of several arguments that would be deployed its offensiveness is diluted somewhat.

The Democratic Majoritarian Tradition

As I noted above framing 'choice' in terms of taking responsibility for past injustices or being exiled is not really much of a choice. But upon reflection there is a powerful convention in modern liberal democracies that minorities on a particular issue are not exiled or banished; they simply 'lose' on that particular issue. Granted, they have to comply with the decision of the majority by, for example, continuing to pay taxes, some of which will be diverted to the affirmative action programmes that they opposed. But they will have their chance to be in the majority on another issue and they also have the chance to vote the government that implemented the policies out of office and 'have

¹⁴ Although she does concede that this principle conflicts with the notion that a contemporary democratic community should be free to decide its own fate without being hedged in too strongly by past undertakings; Janna Thompson, *Taking Responsibility for the Past* (Cambridge: Polity Press, 2002), 7.

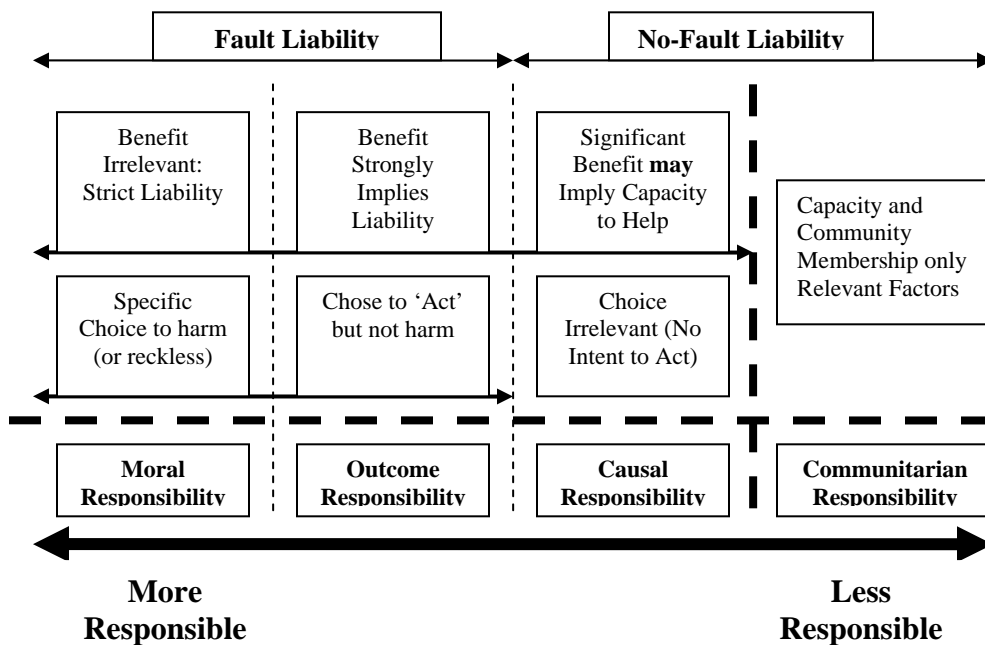
¹⁵Thompson, 35.

another go' on this particular issue in the future. This observation demonstrates clearly that they *have* indeed had the opportunity to choose, that their choice is not ephemeral, and strengthens the argument that they should be held responsible for their choices.

The Responsibility Continuum

So we now have a basis for assigning responsibility to contemporary generations for the injustices committed by their ancestors that is based in the liberal intuition that actors should be held responsible for their choices. I want to make clear, however, that this liberal intuition does not rule out the communitarian intuition entirely; it should be seen, in my opinion, as an *additional* rather than an *alternative* reason to assume responsibility for assisting downtrodden indigenous groups. I suggest that we can get a better handle on these matters if we conceptualise a 'responsibility continuum', which I have represented directly below in graphical format. Note that I have used the concepts of choice and benefit/capacity to explain why responsibility decreases as one moves from left to right along the continuum. Further, the table does not specifically address the question of intergenerational responsibility but is designed to assist the conceptualisation of how the various types of responsibility relate to one another.

Figure 1



The fundamental principle behind the continuum is that *someone* has to be held responsible for remedying instances of injustice, so we should begin on the left side of the continuum and look for a *morally* responsible agent. If one cannot be found then we should look for, in order, actors that can be held to the standard of *outcome* responsibility and if this fails then we need to look for *causal* responsibility. Only if none of these can be found we are forced to rely on the communitarian intuition alone.

Conclusions

I have found that it is possible to hold a contemporary generation responsible for injustices committed by their ancestors. I readily admit, however, that doing so was not straightforward and required a somewhat convoluted chain of logic. Nevertheless I agree with Miller that *someone* has to be found responsible for remedying the manifest injustices which indigenous groups have been subjected to over the past few centuries; this is why I have created the responsibility continuum to represent in visual form the sort of 'checklist' reasoning that should apply to consideration of this matter. But even though the matter was discussed briefly above a question remains regarding whether we need anything more than the communitarian intuition to underpin reconciliation efforts.

To reiterate what has already been said above, there are two parts to this answer. First, there is no guarantee that the type of 'community spirit' necessary to underpin the communitarian intuition is strong enough to provide support for the type of affirmative action programmes which necessarily 'discriminate' against the majority. Second, indigenous groups may be suspicious of arguments based solely on the communitarian intuition because they may fear a repeat of past assimilationist practices; we must recognise that such groups do not necessarily want to completely lose their distinct sense of identity. It is for these reasons that I believe that every effort must be made to educate the 'comfortable majority' within liberal states about the true history of their nation, the fact that they have benefited from past injustices, and that a failure to take steps to remedy the situation would implicate in the injustices that will otherwise persist. If this argument is presented coherently and convincingly to the wider public in settler states then it is my hope that the responsibility to pursue reconciliation will gain recognition, momentum and, it is hoped, may eventually be discharged in full.