Giving Back the Space: Freedom, Meaning and the Northern Territory Intervention

Crowe, Jonathan

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*Jonathan Crowe**

Introduction

The Northern Territory is a vast place – roughly 1,346,200 square kilometres – but home to only 220,000 people, including around 66,000 Indigenous Australians (Australian Bureau of Statistics, 2009). You would think there was plenty of space for everyone. However, more than one type of space is necessary for human flourishing: not just geographical expanses but space to work, play, socialise and engage in the other activities that make life meaningful.

There is geographical space, and then there is social space. The construction of social space is due to many diverse factors, one of which is law. The importance of social space in enabling individuals to live meaningful lives, and the capacity of law to construct this space in positive and negative ways, is drawn out by the work of theorists such as Ghassan Hage (2003), Charles Taylor (1985a; 1985b) and Giorgio Agamben (1998; 2005), whom I discuss later in this article.

The focus of this article is on one set of laws in particular: the Commonwealth laws that make up the package widely known as the Intervention.[1] These laws famously introduced a range of measures impacting on Indigenous communities in the NT, including new restrictions on alcohol and pornography; compulsory acquisition of leases and increased government control over communal Indigenous land; increased policing; and quarantining of welfare benefits.

The various components of the Intervention are a response to real and pressing social problems in remote Indigenous communities. The details of the law and policy governing the Intervention and its effectiveness in dealing with these problems are discussed in depth in the other contributions to this issue. The present article, in contrast, can be partly understood as a plea for attention to the wider picture. The challenges facing Indigenous policy cannot be grasped simply by looking at the detail; there is a significant danger here of failing to see the forest for the trees.

I begin this article by explaining the notion of social space, drawing particularly on the work of Hage. I then look at the role of social space in enabling humans to live meaningful lives, focusing on the connection

between meaning and freedom drawn out by Taylor. Next, I apply my analysis of social space to the Intervention, using the work of Agamben to illustrate the dangers of eroding the separation of life and law. I conclude by exploring some lessons this analysis holds for the framing of debates over Indigenous policy-making.

Call and Response

There are certainly problems in NT Indigenous communities that call for clear and decisive legal action. Domestic violence, sexual assault and child abuse should be unequivocally condemned and punished wherever they occur. These forms of violence take place in all sections of Australian society,[2] but there is evidence that the problem is particularly acute in remote Indigenous communities.[3]

Indigenous communities have high rates of unemployment and drug and alcohol abuse compared to other regions.[4] Educational opportunities, levels of policing, medical care and recreational facilities are often inadequate.[5] These problems, too, call for a targeted and effective community response. The Intervention at least attempts to face these challenges. At that basic level, it should be welcomed.[6] However, as we will see, there are deeper issues that need to be addressed.

One issue that arises immediately in this context concerns the tension between the Intervention and Indigenous peoples' right to self-determination. The lack of consultation preceding the Intervention suggests an assumption that Indigenous self-determination is a failed experiment and Anglo–Australian law represents the only possible response to criminality and socio-economic problems in remote Indigenous communities. This assumption in itself has troubling colonialist overtones (Watson, 2007: 21-4). The substitution of the Commonwealth Government's vision of Indigenous welfare for the views of those who are directly affected could itself be viewed as a form of 'epistemological violence', insofar as it crowds out Indigenous voices and ways of knowing in favour of white solutions (Moreton-Robinson, 2004; Watson, 2008).

What about the human rights that the Intervention purportedly aims to protect? The right to be free from physical violence and abuse seems deceptively simple; it is hard to think of a more fundamental human entitlement. Nonetheless, it is useful to inquire into the deeper foundations of the right. The value of being free from violence is unquestionable, but where does this value come from? Is being free from violence valuable in and of itself? Or is it valuable because it enables us to achieve some deeper objective?

At first glance, the intrinsic value account of freedom from violence seems plausible: this seems to be a basic and irreducible aspect of human

wellbeing. However, what would we say about a person who, when asked about her goals in life, says she wishes for nothing more than to be safe and protected from abuse? I think we would certainly wish for her to have those things, but we would not stop there; we would wish for her to have so much *more* in her life than just an assurance of physical safety. Freedom from physical danger is a pre-requisite of a worthwhile human life, but it is not, in itself, what makes life meaningful. Once physical safety is secured, then we can focus on what makes life worthwhile: having friends, gaining knowledge, developing skills, playing games, supporting your community, experiencing beauty, raising a family: in short, deciding who you want to be and acting accordingly.

The community exists to help its subjects live fulfilling and meaningful lives. In order to achieve this, it needs to keep them safe. However, a community that merely keeps its citizens safe is not doing its job. It also needs to allow them space to formulate meaningful life plans and pursue these through free and responsible action. Public order is not an end in itself but a means to the end of facilitating human flourishing.

The Intervention was an attempt to create a space in which Indigenous people can live peacefully and regain control over their communities. However, the practical effect of at least some of the measures was to increase the bureaucracy and social control imposed on Indigenous people's lives. This outcome reflects a paradox at the heart of modern governance: efforts to assist citizens to live fulfilling lives often simultaneously encroach upon the space available for them to do so. (This paradox is in evidence in all the articles in this issue.)

Modern governance is, in many respects, an ongoing sequence of call and response. The rights of members of the community call for protection; the legal system, if it is working properly, responds. Sometimes it responds appropriately; at other times, the response is badly planned, paternalistic or dismissive of alternative viewpoints (Watson, 2007: 24). Over time, these diverse responses create a complex web of laws and regulations that influence social action in both foreseen and unforeseen ways.

In order to govern well, however, it is not enough to respond to a series of discrete problems. We must also ask what type of community our laws create. It is certainly important to ask how the Intervention has impacted on problems such as sexual assault, child neglect, domestic violence and alcohol abuse, and to ask how the government's policies on homelands and outstations is affecting remote service delivery, but it is not enough merely to tailor laws that address these specific challenges. We must also ask: how do the laws and policies create or impede the types of social spaces needed for people's fulfilment?

Space as a Social Gift

Ghassan Hage (2003) tells the story of Ali Ateeck, a Lebanese migrant who, upon arriving in Australia in the late 1970s, developed a fascination with pedestrian crossings. As Ateeck puts it, 'I developed a liking for pedestrian crossings. I spent hours crossing them and crossing them again. I loved the moment cars stopped for me! It made me feel important! I thought it was magical!!' (2003: 145). Hage identifies the 'magic' Ateeck feels at the crossing with the sense of recognition he experiences when strangers stop their cars for him to cross the road. It makes him feel important, not because of his socio-economic status, but simply because he is a human being. In a wider sense, for Hage, the crossing is a 'social gift': 'a space where the dominant mode of occupying and circulating on roads, driving, is requested by social law to yield to a marginalised form of road occupancy, walking' (2003: 146-7).

The pedestrian crossing is social because, while it is an individual driver who stops her car, the courtesy the driver affords is 'really society's gift to the pedestrian': it arises from a social norm that requires the driver to give way (2003: 147). Different drivers react in different ways to the interaction that takes place at the crossing, as do different pedestrians. Underpinning all these diverse interactions, however, is the basic ethical structure that requires a driver to acknowledge her fellow citizen.

There are a number of lessons we might draw from this story. One of them, however, relates to the important role that law plays in creating spaces for citizens to recognise one another through ethical interactions. The pedestrian crossing creates a space where the driver is obliged to acknowledge the pedestrian; this space, however, remains compatible with a wide range of different purposes and behaviours.

The dominant effect of the pedestrian crossing is not to impose a coercive relationship between society and the individual, but rather to create a space for people to interact and acknowledge one another in going about their lives. It does not tell people where to drive or where to walk once the act of crossing is over. It only requires them to recognise and accommodate one another in that brief moment when their paths meet.

We can imagine a society where the element of social control involved in the creation of a pedestrian crossing goes much further. There might be a society where people are provided with cars and houses, and then told how to use them: they are told where to live, where to drive or walk and what to do when they get there. There might also be pedestrian crossings; part of the instructions people are given is that they must stop at the crossing when there is somebody wishing to cross the road. This hypothetical society has pedestrian crossings, too, but one wonders

whether Ateeck would take as much joy in them. Rather than creating a space for individuals to acknowledge one another while going about their lives, the crossings in this community would be yet another part of the planned existence that all citizens are directed to follow. The space created by the crossing would not be open for the individual to use as she wishes, but would already be occupied by additional levels of social norms.

In any community, there are different levels of normative space. First, there is geographical space. Next, layered upon that geographical space, there are social norms and conventions designating certain types of behaviour as especially significant and others as either encouraged or prohibited; these norms give rise to social space. Finally, layered upon this social space, there are legal rules and requirements that place further restrictions on how both geographical and social space may be used.

The pedestrian crossing is a socially and legally significant space. If it were merely a geographical space, Ateeck would not find in it the recognition he craves as a human being. Social norms mark out the space that makes this recognition possible. Once the space is marked out, it might be subject to further social and legal regulation. However, this regulation can only go so far while allowing the space to remain open.

Let us call this the *paradox of social space*. Social space requires norms to bring it into existence and make it available to everyone. Too much social and legal striation, however, results in the space being first restricted and perhaps denied to some people, then completely covered over. It is like the work of an artist who sketches out some bold, promising lines, then spoils the picture with excessive shading and detail.

Freedom and Meaning

Taylor claims that 'to be a full human agent, to be a person or a self in the ordinary meaning, is to exist in a space defined by definitions of worth' (1985a: 3). Humans are defined by reference to the values they affirm and the types of practices they engage in. However, these values and practices are not created out of nothing. They are chosen from an array of options defined for the agent by the norms of her social environment.

The free and responsible choices that make human life meaningful occur against a backdrop of social judgments of ethical significance.[7] Members of a community readily recognise some types of decisions and actions as particularly important in defining a person's sense of self. Most obvious, perhaps, are actions that reveal one's attitude towards others: someone who helps others is seen as kind and generous; someone

who harms others or is reckless as to their wellbeing is seen as vicious or unfeeling. This, however, is merely the tip of the iceberg. A person is also defined by her choice of friends and romantic partners; the way she relates to her family and community; the way she understands and expresses her religious and cultural identity; the work she does and the types of recreation she pursues; and the way she allocates her resources. These choices, along with less momentous examples, like the clothes she wears and the music she likes, all contribute to her sense of identity.

A person's ability to form a rich and meaningful self-identity depends on the availability of a rich array of socially significant choices.[8] What type of community best facilitates the emergence of a rich and accessible social environment for self-realisation? Taylor has addressed this broad topic in a number of places. One of his best-known papers, entitled 'What's Wrong With Negative Liberty?', examines the issue with reference to negative and positive conceptions of freedom (1985b: ch 8).

The distinction between negative and positive freedom was popularised by Isaiah Berlin (1969). Roughly, negative freedom is freedom from deliberate interference, while positive freedom is the freedom to actually achieve particular goals. I am negatively free to buy an expensive computer so long as nobody is deliberately stopping me, but a lack of funds may nonetheless render me positively unfree to do so. Berlin famously argues for a negative conception of freedom. Taylor disagrees. However, Taylor's target is not so much the claim that negative freedom has value as the atomistic ontology that tends to accompany defences of the concept (1985b: 213-4). Negative views of freedom tend to present humans as individuals who may flourish merely by being left alone, whereas positive views focus on the role of the social environment.

A modified version of an example from Taylor's paper illustrates what he has in mind (1985b: 183). In Myanmar, the government tightly controls political expression. On the other hand, traffic laws are loosely enforced; red lights, for example, are widely disregarded. It might be claimed on this basis that Myanmar residents are freer than Australians, since the number of acts restricted is smaller. After all, most Australians stop at traffic lights far more regularly than they express their views in the media.

There is an obvious flaw in this kind of argument. Traffic lights and curbs on political expression are both restrictions on freedom; clearly, however, they occupy different levels of significance in the broader context of social life. Political expression is significant for human life in a sense that not being subject to traffic restrictions is not. The former issue therefore appears serious to us, while the latter seems almost trivial.

What is the basis for this distinction? Political expression plays a crucial role in defining a person's sense of self, in a way that having a

free run along a stretch of road does not. As Taylor puts it, 'we have a background understanding, too obvious to spell out', that some types of actions have significance in human life that others lack (1985b: 183). 'Freedom is important to us because we are purposive beings'; therefore, it is not surprising that we make 'distinctions in the significance of different kinds of freedom based on the … significance of different purposes' (1985b: 183). Taylor goes on to argue that any truly helpful conception of freedom cannot focus merely on external constraints; it must also pay attention to internal and motivational obstacles to self-fulfilment (1985b: 227). We cannot do justice to freedom merely by looking at humans as individuals; we must also pay attention to the type of community that is necessary to make meaningful engagement possible (1985b: 229). In other words, as Taylor argues more fully in 'Atomism' (1985b: ch 7), we must steer away from an atomistic view of humans as self-sufficient individuals and opt instead for a holistic outlook that recognises both the role of capacities in human flourishing and the dependence of those capacities on certain forms of community. We cannot fully appreciate the value of freedom without first grasping the social structures that make having freedom important and worthwhile.

The Role of Negative Freedom

I think Taylor is right about all this. However, it would be wrong to respond to his arguments by discounting the value of negative freedom altogether; nor, as I noted above, does he intend us to do so. We must ask what role negative freedom ought to play in a holistic conception of human flourishing: what limits, if any, should we place on the power of governments and other entities to regulate people's lives? The answer, I think, comes back to the notion of social space. Human flourishing depends on a certain type of community structure, where social norms both recognise and hold open a range of arenas for people to construct their self-identities. This entails what Taylor would call an 'exercise-concept' of freedom: people are free only to the extent that they can effectively determine the shape of their lives (1985b: 213).

What role does negative freedom play in this picture? The answer is twofold. First, some degree of negative freedom is required for meaningful choice to be possible. A person whose choices are wholly dictated by an external authority cannot determine what type of life she wishes to lead. It does not matter whether the decisions foisted upon her are those she would or should otherwise have made for herself; in order to form a meaningful self-identity, she needs some control over her choices.

This point returns us to the paradox of social space, as discussed above. The community plays a crucial role in facilitating meaningful

choice, by recognising ethically significant choices and making them open to all members of society. However, the worth of those spaces is eroded when social or legal norms excessively restrict how people may use them. When social and legal forces converge to limit or close off a range of different forms of expression to members of a specific social group, there is a real risk of impoverishing their ability to form a robust sense of self.

Indigenous Australians living in remote communities are already restricted in their life choices compared to other populations. They face a poverty of economic resources, educational opportunities, career options and recreational facilities. There is a clear need for policies that open up social spaces to members of these communities; we should be wary of laws that reduce their control over the spaces they already have. (In this regard, see Burns' article in this issue.)

The second role for negative freedom within this picture has to do with the way that spaces for meaningful social behaviour are constructed. Are the different ways that humans can shape their self-identity planned in advance by some central authority? No. They evolve over time as humans seek out new ways to exercise their capacities, express who they are as persons and engage with others in their communities. The creation of social spaces therefore depends on some measure of negative freedom, since the spaces arise through a dynamic process of innovation, refinement and sharing of institutional knowledge. Law has a role to play in recognising social spaces and making them open to all, but it typically enters the picture only after the spaces have already emerged. Negative freedom is needed to make this possible.

Efforts to actively expand the arenas for meaningful choice in some remote Indigenous communities therefore run up against the necessarily limited character of human knowledge.[9] The types of opportunities that mostly white bureaucrats in Canberra think are needed in remote communities may not be those their Indigenous inhabitants will find meaningful. Proper community consultation goes some way towards solving this difficulty, but negative freedom also has an important role to play. Indigenous Australians need to be able to shape their own social spaces in order to ensure they can pursue the types of life choices they find fulfilling.

None of this comes close to showing that negative freedom is an absolute value or that it cannot be overridden by other social goals. It does not support the rigid accounts of the concept criticised by Taylor. However, it does show that systematic erosion of the negative freedom of some or all citizens is a threat to both their own ability to engage in self-realisation and the richness of their normative social environment.

States of Exception

The need to keep social space open and accessible to all members of the community and to avoid eroding it through heavy-handed governance explains why constitutions occupy such a prominent place in contemporary legal systems. The constitution, in this sense, does not refer merely to a specific legal document or set of conventions; rather, it is the set of fundamental laws that places limits on the exercise of government powers.[10] One need not endorse a conservative or libertarian view of government to see the importance of constitutions for the integrity of law. Constitutions are a reminder of the paradox of social space: the need continually to strike a balance between a rich set of social and legal norms and an overly restrictive model of governance.

It is for this reason that we should be wary of the willingness of successive Australian governments to suspend provisions of the *Racial Discrimination Act 1975* (Cth) in their pursuit of the Intervention.[11] The Act, of course, does not form part of the formal Constitution. It is, however, a law that Australians have come to rely upon as a bulwark against arbitrary and excessive government actions. The worry that arises from the suspension of the Act is not so much that treating different races differently under the law is never warranted, although such discrimination surely deserves careful scrutiny.[12] Rather, what should concern us is the willingness it shows to go beyond the normal limits of the legal order and, worse, to do this in a way that singles out a vulnerable section of the community.

Other features of the laws passed in 2007 supporting the Intervention raise similar issues. These include the delegation of wide discretionary powers to the executive, including some not subject to parliamentary override and others that allow modifications to the primary legislation; retrospective provisions; and restrictions on access to merits review of executive decisions.[13] The inclusion of these measures, while not unheard of in other types of legislation, underscores the exceptional character of the laws.

The extraordinary provisions mentioned above were advanced on the basis that problems such as child abuse, sexual assault and domestic violence require a decisive response. This is certainly true. However, we should worry about a set of laws that includes such wide discretionary powers, particularly when directed at a vulnerable population. The dangers that accompany suspension of the normal limits of the legal order are discussed at length by Agamben in *State of Exception* (2005).

The state of exception, for Agamben, is simultaneously a space without law (what he calls 'anomie') and a space where norms that would not normally form part of the juridical order claim law-like force. The result is something akin to 'force of law without law', where law

effectively abandons its claim to juridical authority and operates as a form of political violence (2005: 39, 51). In the state of exception, the formal legislative and constitutional order is supplanted in practice by rule by executive decree. In Agamben's terms, 'law splits into a pure being-in-force without application (the form of law) and a pure application without being in force' (2005: 60).

In the case of the Intervention, legal rules such as the *Racial Discrimination Act 1975* (Cth) and principles such as the limits on retroactive law-making and executive power are suspended and replaced by emergency regulations. This has the effect of straitening or constricting at least some of the spaces available for social action. This outcome, for Agamben, lies at the heart of the difficulty posed by states of exception. The point of separating law from politics is to 'open a space between them for human action' (2005: 88); it enables us to find a normative space outside the formal demands of the legal order where we can decide how to live. In the state of exception, however, there is no outside-the-law; the coercive force of law becomes detached from the formal legislative enactments and colonises the realm of life itself.

The Space Between Life and Law

The existence of social space outside the law is particularly important in contexts where the self-identity of an individual or people depends upon traditional norms not fully acknowledged by the formal legal order. Watson puts the point as follows:

> As my ancestors walked over the land, they walked in the law. Today it is difficult to walk that law in a car park that lies on your ancestors' graves or in a derelict and toxic mine site that has replaced ceremonial and gathering places where songs were sung across the land (2009: 44).

These powerful examples show the double role of law in maintaining social spaces for human fulfilment. Watson has in mind examples where the formal legal order failed to protect the spaces needed to continue her ancestors' traditional practices. However, too much law can be just as fatal to meaningful social action as too little, particularly when it takes the form of complex and unpredictable executive edicts. It is necessary to frame our laws with this fundamental tension in mind.

Elsewhere, Agamben links the state of exception to his notion of bare life (1998). We have seen how the ability of citizens to live meaningful and fulfilling lives depends substantially on their ability to access social spaces within which to shape their self-identity. This capacity to shape one's sense of self depends importantly on social recognition: it is the recognition and significance bestowed by community norms on one's

participation in social spaces that makes them meaningful arenas for self-realisation.

Individuals or groups who are not acknowledged as full persons under the legal order are permanently at risk of losing the recognition they require to participate fully in social expression. According to Agamben, such people occupy an ambiguous position under the law: they are marginalised and excluded from the recognition afforded to full citizens, while at the same time their existence is defined by this very exclusion (1998: 8). They, like everyone else, are creatures of law, but law keeps them on hand as subjects of arbitrary power, rather than extending recognition and protection.

Indigenous Australians have long occupied an ambiguous position within the Australian constitutional order. They were denied access, for long periods of Australia's history, to citizenship, voting rights, social security benefits, equal wages and ownership of their ancestral lands. They found themselves subject to harsh and arbitrary legal edicts, while being unable to obtain legal protection for their basic rights. The law drew them in, while also keeping them out.

People denied institutional opportunities for social expression are still alive; they are still subject to the edicts and regulations of the legal order. However, they lack full access to the social spaces left open to other members of the community. Just as social space is layered upon geographical space, so too can the flourishing life, characterised by full participation in the moral community, be stripped back to bare life, unadorned by legal and social recognition. It is this juridical structure of life upon life, for Agamben, which makes states of exception so dangerous.

The state of exception removes the necessarily tenuous space that exists between life and law. Law plays an important role in holding open social spaces, while simultaneously possessing the means of closing them over. Constitutions, properly understood, act as a reminder of the need to preserve the space between life and law, the clearing in the forest of norms and regulation where people can decide who they want to be.

The state of exception occurs when the space between life and law is broached in the name of some higher end: safety, welfare, education or what have you. Sometimes, these interventions are guided purely by prejudice: their stated rationales are mere pretexts for victimisation.[14] In other cases, they have legitimate aims: safety and welfare, as we have seen, are important social goals. However, the wider impact of such incursions is easily overlooked: often, we cannot see the forest for the trees.

Giving Back the Space

Hage notes toward the end of his essay that the pedestrian crossing, as well as being a social gift, is also 'a piece of land; a piece of stolen land' (2003: 152). In this sense, the social gifts that citizens receive in a country like Australia make up a 'black economy' based on stolen goods (2003: 152). It is tempting to respond that what we have stolen must be given back; this basic thought is surely correct. However, there are different ways of giving back, just as there are different ways of conceptualising what was stolen.

The land that was stolen from the Indigenous population by the white settlers was, in a sense, a material object. It was also, however, a space for social interaction, with deep cultural and spiritual significance. Regarding the stolen land *purely* as an object to be used and controlled is at odds with Indigenous conceptions of 'country' based on ancestral, social and spiritual connections (Watson, 2007: 26). It also overlooks the importance of social space in laying the foundations for human flourishing.

Giving back the land or its material equivalent is not the same as giving back the space. The stolen space cannot be returned merely by providing financial aid, infrastructure, health services and the like. It can only be restored through the creation of rich and fulfilling arenas for social life. As we saw above, this requires a genuine commitment to Indigenous self-determination. Indigenous people must be able to shape their own social spaces if they are to find them genuinely meaningful.

The Australian community has a weighty duty to protect the physical safety and autonomy of its members. As things stand, this duty is not being fulfilled as far as Indigenous Australians are concerned, particularly Indigenous women and children. However, progress in this area is not simply a matter of asking questions like: how can we make Indigenous communities safer? These are the questions bureaucrats are used to asking, even if their responses are not always as effective as one would like. We must also ask broader questions, like: what type of community will be left behind once personal safety is improved? What forms of social space will it contain?

The bureaucrats claim to have the interests of Indigenous people in mind: they want to keep them safe and improve their daily lives. However, the upshot of this, ostensibly benevolent, government intervention is that Indigenous Australians in affected communities no longer control many aspects of their existence: the government tells them when and how to access their money, what they can and cannot buy, how to use their land, how to govern their communities and how to look after their children. They are pushed into narrower and narrower spaces within which to choose how to live.

What type of communities are we creating in these remote regions of our vast country: places the overwhelming majority of Australians have never visited? Everyone deserves to be safe and have access to food, shelter and education; this must be the starting point for any productive policy on Indigenous communities.[15] However, these basic entitlements, in themselves, are not what make life worth living. They are just the bare beginnings of what makes a human life truly meaningful.

We should certainly wish for Indigenous people to have these things, but we should take care that this is not the limit of our aspirations. We might end up with a situation where safety and order are improved, but only by further restricting the already limited space available for Indigenous Australians to control their lives and form a meaningful sense of self-identity. That would be a serious failure of imagination and, in the end, an injustice not much better than the one we started out with.

Notes

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1 See *Northern Territory National Emergency Response Act 2007* (Cth) (NTNER Act); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) (SSOLA Act); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth) (FCSIA Act).

2 For a nuanced discussion, see Weston-Scheuber (2007).

3 For a detailed analysis of the issue of child abuse in remote Indigenous communities, see Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007). On the issue of domestic violence, see Cox et al (2009) and Price (2009).

4 For a sustained discussion of alcohol abuse in Indigenous communities and its relationship to other social problems such as unemployment, see Saggers and Gray (1998).

5 For a detailed recent discussion of educational standards in Indigenous communities, see Hughes and Hughes (2010).

6 Compare Langton (2008).

7 For further discussion, see Crowe (2009a: 99, 105-7), (2009b: 44-7), (2008: 322-4), (2007: 175-8), (2006: 425) and (2005: 71-2).

8 For further discussion, see Crowe (2009a: 98-110).

9 For an influential discussion of this issue, see Hayek (1982: vol 1, ch 1).

10 For a useful discussion, see Ratnapala (1999).

11 See NTNER Act ss 132-133; SSOLA Act ss 4-6; and, FCSIA Act ss 4-5.

12 For further discussion, see Crowe (2004) and Billings and Cassimatis' article in this issue.

13 For a detailed analysis, see Billings (2009: 12-17).

14 For further discussion, see Crowe (2008: 324-5).

15 Compare Watson (2005: 17-18).

References

Agamben, G (1998) *Homo Sacer: Sovereign Power and Bare Life* Stanford: Stanford University Press.

Agamben, G (2005) *State of Exception* Chicago: University of Chicago Press.

Australian Bureau of Statistics (2009) *Northern Territory at a Glance* Canberra: Australian Bureau of Statistics.

Berlin, I (1969) 'Two Concepts of Liberty' in *Four Essays on Liberty* Oxford: Oxford University Press.

Billings, P (2009) 'Still Paying the Price for Benign Intentions? Contextualising Contemporary Interventions in the Lives of Aboriginal Peoples' 33 *Melbourne University Law Review* 1.

Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007) *Ampe Akelyernemane Meke Mekarle: 'Little Children Are Sacred': Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* Darwin: Northern Territory Government.

Cox, D, M Young and A Bairnsfather-Scott (2009) 'No Justice Without Healing: Australian Aboriginal People and Family Violence' 30 *Australian Feminist Law Journal* 151.

Crowe, J (2004) 'Reinterpreting Government Neutrality' 29 *Australian Journal of Legal Philosophy* 118.

Crowe, J (2005) 'Existentialism and Natural Law' 26 *Adelaide Law Review* 55.

Crowe, J (2006) 'Levinasian Ethics and Legal Obligation' 19 *Ratio Juris* 421.

Crowe, J (2007) 'Dworkin on the Value of Integrity' 12 *Deakin Law Review* 167.

Crowe, J (2008) 'Levinasian Ethics and Animal Rights' 26 *Windsor Yearbook of Access to Justice* 313.

Crowe, J (2009a) 'Explaining Natural Rights: Ontological Freedom and the Foundations of Political Discourse' 4 *New York University Journal of Law and Liberty* 70.

Crowe, J (2009b) 'Levinasian Ethics and the Concept of Law' in D Manderson (ed) *Essays on Levinas and Law: A Mosaic* Houndmills: Palgrave Macmillan.

Hage, G (2003) *Against Paranoid Nationalism: Searching for Hope in a Shrinking Society* Sydney: Pluto Press.

Hayek, FA (1982) *Law, Legislation and Liberty* London: Routledge.

Hughes, H and M Hughes (2010) *Indigenous Education 2010* Sydney: Centre for Independent Studies.

Langton, M (2008) 'Trapped in the Aboriginal Reality Show' 19 *Griffith Review* 145.

Moreton-Robinson, A (2004) 'Whiteness, Epistemology and Indigenous Representation' in A Moreton-Robinson (ed) *Whitening Race: Essays in Social and Cultural Criticism* Canberra: Aboriginal Studies Press.

Price, B N (2009) '"I Have Seen Violence Towards Women Every Day of My Life": Australia 2009' 30 *Australian Feminist Law Journal* 149.

Ratnapala, S (1999) 'The Idea of a Constitution and Why Constitutions Matter' 15(4) *Policy* 3.

Saggers, S and D Gray (1998) *Dealing With Alcohol: Indigenous Usage in Australia, New Zealand and Canada* Cambridge: Cambridge University Press.

Taylor, C (1985a) *Human Agency and Language: Philosophical Papers I* Cambridge: Cambridge University Press.

Taylor, C (1985b) *Philosophy and the Human Sciences: Philosophical Papers II* Cambridge: Cambridge University Press.

Watson, I (2005) 'Illusionists and Hunters: Being Aboriginal in this Occupied Space' 22 *Australian Feminist Law Journal* 15.
Watson, I (2007) 'Settled and Unsettled Spaces: Are We Free to Roam?' in A Moreton-Robinson (ed) *Sovereign Subjects: Indigenous Sovereignty Matters* Crows Nest: Allen and Unwin.
Watson, I (2008) 'Aboriginal Women's Laws and Lives: How Might We Keep Growing the Law?' in E Johnston, M Hinton and D Rigney (eds) *Indigenous Australians and the Law* London: Routledge-Cavendish.
Watson, I (2009) 'Sovereign Spaces, Caring for Country, and the Homeless Position of Aboriginal Peoples' 108 *South Atlantic Quarterly* 27.
Weston-Scheuber, K (2007) 'Looking Out For "Our Women": Cultural Background and Gendered Violence in Australia' 14 *James Cook University Law Review* 129.

Legislation

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007 (Cth) (FCSIA Act)
Northern Territory National Emergency Response Act 2007 (Cth) (NTNER Act)
Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth) (SSOLA Act)