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# Mabo and the politics of community


## Abstract

The main interest of this paper is to attempt to theorize, not the current Mabo debates, or even the various media productions of Mabo, but rather the notions of community which the media and other related institutions use to contextualize, situate, and evaluate Mabo. More specifically, I am going to suggest that various conservative productions of Mabo can be read as being predicated on discourses and narratives which strategically and necessarily locate Aboriginal peoples simultaneously inside and outside the so-called Australian community. This paper does not attempt to trace the various developments, legal and otherwise, which led up to the High Court judgement in June of 1992, as does, say, Tim Rowse's 'Mabo and Moral Anxiety' (Rowse 1993). This paper is concerned, not so much with what Rowse calls 'The Possibilities of Moral Community' (1993: 245), as with the deployment of the notion of Australian community as a political and ideological practice. This, and other related issues, are to be addressed and theorized through reference to, and appropriation of, two recent sets of writings on the politics of community: specifically, Carole Pateman's and Slavoj Zizek's (separate) descriptions and critiques of enlightenment and social contract theory.



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# MABO AND THE POLITICS OF COMMUNITY

Tony Schirato

The main interest of this paper is to attempt to theorize, not the current Mabo debates, or even the various media productions of Mabo, but rather the notions of community which the media and other related institutions use to contextualize, situate, and evaluate Mabo. More specifically, I am going to suggest that various conservative productions of Mabo can be read as being predicated on discourses and narratives which strategically and necessarily locate Aboriginal peoples simultaneously inside and outside the so-called Australian community. This paper does not attempt to trace the various developments, legal and otherwise, which led up to the High Court judgement in June of 1992, as does, say, Tim Rowse's 'Mabo and Moral Anxiety' (Rowse 1993). This paper is concerned, not so much with what Rowse calls 'The Possibilities of Moral Community'(1993: 245), as with the deployment of the notion of Australian community as a political and ideological practice. This, and other related issues, are to be addressed and theorized through reference to, and appropriation of, two recent sets of writings on the politics of community: specifically, Carole Pateman's and Slavoj Zizek's (separate) descriptions and critiques of enlightenment and social contract theory.

Pateman's feminist readings of the history and character of social contract theory make the point that such a theory has been, and still is, based on two central tenets: firstly, that all subjects/contractees within a community are free and equal members, and secondly, and as a corollary, that all members consent to contract in, and in doing so give themselves over to the authority and laws of that community. The two are, of course, closely connected: since Rousseau, liberty and equality (along with the often downplayed, and embarrassingly problematical, notion of fraternity) have been positioned at the heart of the enlightenment notion of community, while at the same time liberal and democratic theorists argue that "if freedom and equality is to be preserved, free and equal individuals must voluntarily commit themselves - for example, by consenting" (Pateman 1989: 72) - to the rule of authority.

Pateman and Zizek critique these notions from two main perspectives. Firstly, Pateman makes clear that those constituting the dominant groups in Western cultures (groups identified by markers of race, gender and class, for example) have recognized the usefulness of limiting which groups can be accepted as "free and equal." Generally speaking, narratives have been produced which valorise the place of certain groups as deserving of "free and

equal" status, while allowing the "postponing" or even outright denial of the possibility of that status to other groups.

The narrative that Pateman identifies as being particularly central to these histories of exclusion concerns the movement of human subjects from a state of nature to that of civilization. Pateman makes the point that the connection between social contract theory and civilization "is suggested ... by the fact that the term civilization came into general use only towards the end of the eighteenth century, to express a particular stage of European history, sometimes the final or ultimate stage" (1989: 42). White, upper class men were civilized precisely because they had either moved beyond, or had come to control, their 'natural' inclinations, predominantly through recourse to the quality of enlightened reason. Other groups - non-western, colonized races and women, for instance, were generally characterized as still being located within the domain of nature. As a consequence of this narrative, various groups could be 'reasonably' excluded from free and equal status within the community: women, for instance, could be banished to the so-called private sphere of the community, where they could be denied access to a public voice or power, and non-western races to the condition of slave or servant.

Zizek makes much the same point, but by way of reference to the enlightenment and democratic "abstraction" of its subjects, what he refers to as "The preamble of every democratic proclamation 'All people without regard to' (race, sex, religion, wealth, social status). We should not fail to notice the violent act of abstraction at work in this 'without regard to'; it is an abstraction of all positive features, a dissolution of all substantial, innate links..." (Zizek 1991B: 163).

For Zizek this practice of abstraction serves much the same purpose as Pateman's civilization narrative. By positing a universal and undifferentiated subject, enlightenment and democratic discourses specifically disallow the possibility of a communally valorized heterogeneity. That the supposedly abstracted and universal subject of enlightenment discourse is always, in practice, a white male means that theoretically there is no place for otherness or difference within the social contract or its community.

If the enlightenment/social contract notion of liberty and equality is susceptible to the charge that certain groups are more deserving of free and equal status than others, its strong dependence on consent is equally problematical. Social contract theorists have contended that freedom and equality are produced and guaranteed because subjects consent to contract in. Pateman addresses this notion as follows:

> *The straightforward assertion that liberal democracies are based on consent avoids the standard embarrassment that occurs when theorists attempt to show how and when citizens perform this act. This assertion also avoids the question of who consents, and therefore glosses over the ambiguity, inher-*

> *ent in contract theory from the beginning, about which individuals or groups are capable of consenting and so count as full members of the political order. (1989: 71)*

Consent, Pateman points out, has to be taken for granted, because it can never actually be identified, with any conviction, as a practice. More importantly, this inability to identify a practice that could prove or exemplify the notion of consent allows - or forces - social contract theorists such as Hobbes to argue that consent can be understood without regard to the possibility of the withdrawal or denial of consent. To quote Pateman again:

> *Hobbes' concept of 'consent' merely reinterprets the fact of power and submission; it makes no difference whether submission is voluntary, or obtained through threats, even the threat of death. Because Hobbes argues that fear and liberty are compatible, 'consent' has the same meaning whether it arises from submission in fear of a conquering sword or ... whether it is the consequence of the (hypothetical) social contract. (1989: 73)*

How is it possible to apply these theories and critiques of social contract theory to the production of Mabo? How do the tenets of social contract theory work to position Aboriginal subjects, and their agendas, simultaneously inside and outside the fantasy of an Australian community, and what are the ramifications of this dual positioning? Take, firstly, the notion that Aboriginal peoples are "free and equal" members of the community. Now this, of course, is patently untrue, both historically and currently. But if this position is asserted, and various institutions (governments, the media) act as if it were true, how can it be used to mediate and/or deny Mabo?

If Aboriginal peoples are free and equal members of the Australian community, it proceeds logically that to grant them any special rights would be to introduce into that community an imbalance, an inequality, that would seriously threaten the possibility of community. Further, Aboriginal peoples can be understood to have consented to contract into this community; their claim for "special rights" can be negated precisely because by giving their contractual consent (in the Hobbesian sense, by being conquered) they have no legal right to renegotiate that contract.

These arguments are, of course, only possible if one accepts the hegemony of a particular (enlightenment/social contract) discourse, and the narratives that help constitute it. It could be pointed out, for instance, that the social contract and the enlightenment were the product of a particular ideology; that is to say, rather than social contract theory/the enlightenment being understood as both originally producing and encompassing all history ( as has been argued for Marxism), they could be read historically, as a part, rather than an explanation, of history. From this perspective, they would have no right to disperse heterogeneity or fabricate the "others'" consent.

The problem with this move is that, as Slavoj Zizek has pointed out, the notion of community is virtually unthinkable if the origins of that community, and its laws, are shown to be either contingent or, as a corollary, predicated on a (repressed) violence. By contingent I mean that, following Laclau and Mouffe (Laclau 1990), we need to understand any political categorisation, organisation, practice or alignment as being without specific metaphysical grounding or foundation; or again, as without necessarily being articulated from any overdetermining section of society (such as is the case in classical Marxist theory, where there is a necessary articulation between the economic and cultural or political spheres). But not only is this notion of community without moral or metaphysical or even specifically political affiliations (since even this last 'identity' is read and deployed retrospectively, as a means of appropriating the past as a legitimation of the present); it is also always built on a violence which can never be explicitly articulated, but which, at the same time, makes the myth of community possible. Zizek writes that:

> *At the beginning of the law, there is a certain outlaw, a certain real of violence which coincides with the act itself of the establishment of the reign of law: the ultimate truth about the reign of law is that of an usurpation, and all classical politico-philosophical thought rests on the disavowal of this violent act of foundation. The illegitimate violence by which law sustains itself must be concealed at any price, because this concealment is the positive condition of the functioning of law: it functions in so far as its subjects are deceived, in so far as they experience the authority of the law as authentic and eternal, and overlook the truth about the usurpation. (Zizek 1991A: 204)*

Aboriginal peoples constitute a threat to the notion of an Australian community precisely because they function, in Lacanian terms, as evidence of an unintegrated symbolic order; the symbolic order here being understood as those laws and discourses and categorisations which locate and define - that is to say, produce - subjectivity . Aboriginal peoples, in Zizek's terms, can only be members of that community/symbolic order, can only become "same" - if they disappear, if their difference and otherness is abstracted, and in the process done away with. Mabo, of course, threatens to function in precisely the opposite way. This is perhaps why Mabo is accorded such extraordinary symbolic significance in the media, and why it engenders, amongst so many conservative groups, so much passionate criticism, opposition and denial. Mabo is not just about land claims and threats to mining rights; it is much larger than that. It constitutes the threat to the fantasy of a free and equal Australian community governed by, and conducted in terms of, the law of enlightened reason.

Where can we find, in what has been written and spoken about Mabo, its supposed issues and arguments, the traces of this failure of 'symbolic integration'? Traces of Aboriginal peoples dual status as both inside and outside the community are abundant: in the binary distinction between Aboriginal and taxpayer, for instance. But perhaps the most interesting discourses and narratives to emerge from debates about the nature of our 'colonial' history have been those - in letters to the editors of Australian newspapers, but also in articles written by journalists such as P.P. McGuinness - which seem to squarely face up to, and even valorize, those originary acts of racist violence.

An interesting example of this approach is a article written by McGuinness (McGuinness 1994: 15), not about Mabo, but about the more recent controversy over the use, in primary school texts, of the word 'invasion' rather than 'settlement' to describe the British colonisation of Australia.

On one level McGuinness suggests that there is no simple solution to this question, but, after discrediting 'invasionists' in the first half of his article (describing them, amongst other things, as the products of "kindergarten Marxism"), he proceeds to explain "the simple truth" about colonisation, which means denying, or at least diminishing, the validity of the claim that Aboriginal peoples were the victims of invasion and violence. He writes:

> *Did Europeans invade Australia? Yes in the sense that they arrived and occupied land. Did they consider it an invasion? No, not really, since they assumed that they had the right to take what seemed to them a largely unoccupied and unused land, to care for it, and to take account of the welfare of its 'savage' occupants. (1994: 15)*

What strategies and discourses are being employed here? Firstly, the question of settlement or invasion seems to be reduced to a simple relativism: "yes the British did more or less invade, but no they didn't because they didn't know anyone was here, and anyway they only wanted to care for the land and those "savage" people (who weren't really there)." This makes use of two ploys. Firstly, any notion of violence is removed from the invasion, which means that it wasn't really an invasion. There is no reference to mass slaughter, rape or depopulation; the British merely "arrived and occupied land". Secondly, it wasn't an invasion because the British acted on the best of intentions: the country wasn't occupied, and the British felt duty bound to help the people who didn't occupy it.

Leaving aside the obvious contradictions in these rationales, we can focus on two crucial moves in this paragraph which repeat the more general tendency to naturalize and depoliticize colonization. Firstly for McGuinness, if there was an invasion it wasn't such a bad thing, since it is produced here as bloodless (the British "arrived and occupied"). Perhaps more importantly, the failure of the British to see that the country was occupied, and their assump-

tion of the burden of taking care of the "savages", are made to seem apolitical. McGuinness doesn't wish to consider the notion, for instance, that failing to treat other groups as human, or assuming that a group needs taking care of, is predicated on a violence, in this case a racist violence.

There was nothing particularly violent about the British colonisation of Australia, so the argument goes; if there were problems, they were mostly due to the failure of Aboriginal peoples in coming "to terms with the impact on them of European civilization and religion"(1994: 15). Notice the important shift here: we are not dealing with British violence, but with the "failure" of Aboriginal cultures and societies. Indeed it was "extremely lucky" for Aboriginal peoples that they were colonized by the British; after all, "the history of Australia is not nearly so bloody or so brutal as that of the Americas, particularly those parts of the Americas which were faced with Spanish, Portuguese, and French imperialism"(1994: 15).

Finally McGuinness admits, after carefully editing out or relativizing the violence done to Aboriginal peoples, that "many things which were done ... by the Europeans to the Aborigines were, and are in retrospect, horrifying."(1994: 15) The crucial phrase here is "in retrospect". From the privileged, and presumably more civilized, position "we" now occupy, "we" can agree that mass slaughter was not a good thing, but that at the time perceptions - at least the perceptions of the whites, which is all that matters here - were quite different. What happened was not "genocide or racism", but rather "the social policy orthodoxies of their day" (1994: 15). By taking this line, McGuinness' article reproduces the violence and cultural myopia that allowed the British to declare Australia 'Terra Nullius' in the first place: Aboriginal perspectives and meanings are completely absent - in fact almost unthinkable - here, just as they were two hundred years ago.

The haste with which such sentiments (and even more conservative opinions offered by figures such as Geoffrey Blainey and Hugh Morgan) are dismissed as scandalous by "concerned" politicians, and even by some sections of the media, could be read as sensitive anti-racism. I would contend, however, that such public interventions are an attempt to repress references to what Zizek calls "The absolute, self-referential crime ... which is forgotten the moment the reign of law is established" (1991A: 208). That is to say, "scandalous" statements about Aboriginal peoples or race relations refer back to an originary, founding violence, which is also white Australia's "social imaginary" moment and site. Australian identity is constituted out of this social imaginary, but only so far as that site can be understood as an ideal which both legitimates and drives contemporary political practices. If that social imaginary were to be infected by discourses, narratives, images or meanings which could not be integrated into, or affiliated with, contemporary social ideals and values, then contemporary political practices, and the "law" that guarantees them, become illegitimate at virtually every level of

society.

An example of the impossibility of ever seriously questioning the status of colonisation as a "social imaginary" site can be found in the way the High Court, in June 1992, dealt critically with the question of the disregard of native title, while at the same time refusing to address or engage with the more salient question of the British colonial appropriation of Australia. The disregard of native title can be dealt with, openly and critically, as a kind of "scandal" within the larger category or site of colonisation. In a sense what the law does here is to demonstrate the ability of the law to address and negate a minor scandal, in order that the overdetermining scandal - the law - can be saved and legitimated, and even enhanced.

It against this background that we can perhaps read many of the debates and discourses and narratives that are produced about and around Mabo. The enlightenment's patron saint, the German idealist philosopher Kant, denied that one could arrive at or locate the origins of legal power because it was forbidden to search for it. As Zizek writes:

> *This paradoxical prohibition is precisely the fact of the absolute crime upon which legal power is founded. Every reign of law has its hidden roots in such an absolute - self-referential, self-negating - crime by means of which crime assumes the form of law, and if the law is to reign in its normal form, this reverse must be unconditionally repressed. (1991A: 208)*

Mabo can be read, then, not as something disloyal and divisive, something which threatens the fabric of the Australian community, but, on the contrary, as a series of sites, of traces, of moments, which interrogate, and bring into view, the politics of community. Mabo is a symptom or trace, if you like, of the processes and acts of violence, the moments of foreclosure and exclusion, that are constitutive of any notion of community or identity; and the challenge of Mabo is a challenge to a history of originary moments of "community", written in the present in order to justify and legitimate, not just the violence of the past, but the continuing violence and repression that characterizes the present.

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