"Indigenous sovereignty-never ceded": sovereignty, nationhood and whiteness in Australia

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Chapter Two: Theoretical perspectives on
Sovereignty, Nationhood, and Whiteness

Recent work on whiteness has engaged a range of questions. ... This scholarship helps make it evident that the formation of specifically white subject positions has in fact been key, at times as cause and at times as effect, to the sociopolitical processes inherent in taking land and making nations (Frankenberg 1997: 2).

The contemporary pluralist imagination, proclaimed as the guardian of diversity and generosity in social relations, remains haunted by ghosts it seeks to exorcise. ... These stingy dispositions sustain operational standards of identity, nature, reason, territory, sovereignty, and justice that need to be reworked. For crucial presumptions within them both camouflage injuries that might otherwise be ventilated and foreclose admirable possibilities that might otherwise be pursued (Connolly 1995: xii-xiii).

Introduction

As Chapter One explained, this thesis takes as its basic premise the fact that Indigenous peoples' sovereignty over the continent of Australia has never been ceded. Thus, the issue of sovereignty is the substantially unaddressed and fundamentally unresolved legacy of the myth that the continent now known as Australia was terra nullius before British invasion began in 1788. Recognition of Indigenous peoples' sovereignty raises several issues: if Indigenous sovereignty has never been ceded, what, if anything, makes "Australian sovereignty" legitimate? And why is it that, in twenty-first century Australia – more than two centuries after the demonstrably false idea of the Australian continent as terra nullius was first imagined – the issue of sovereignty still remains unresolved and unaddressed? This thesis seeks to answer these questions by exploring the relationship between Whiteness, sovereignty, nationhood, and legitimacy.

According to Kanien'kehaka (Mohawk) theorist Patricia Monture-Angus, the "essential and often overlooked step in creating a renewed relationship between Aboriginal Peoples and [non-Aboriginal peoples] is an examination of the meaning of the concepts we are building our relationship with" (2000: 33). Examining the concepts which are the basis of relations between Indigenous and non-Indigenous peoples, Monture-Angus writes, "necessarily involves an analysis of the ways in which
individuals and institutions attain the legitimacy and authority to have their definitions accepted" (2000: 33). In William Connolly's terms, this means interrogating the existing "operational standards" of "identity, nature, reason, territory, sovereignty, and justice" and the presumptions which underpin them (1995: xii-xiii). The consequences of not examining the concepts on which Indigenous-non-Indigenous relations are based is that White people will continue to have a monopoly on terminology, and this "holds the book open to a page where the oppression of Aboriginal Peoples is still writ large" (Monture-Angus 2000: 33). Further, Monture-Angus points out that:

If we are not certain that we are constructing a conversation based on a common understanding of both the legal and political terms, we cannot be certain that we are turning the page in the history of the absolute legal and political oppression of Aboriginal Peoples. If we cannot even have a conversation, then how can we hope to build a relationship, legal or otherwise? (2000: 33).

This chapter seeks to contribute to the process of interrogating and critiquing dominant understandings of the concepts of sovereignty, nationhood, and legitimacy which underpin Indigenous-White relations in Australia. It also poses a framework for interrogating in the rest of the thesis, the processes through which these dominant understandings – that is, White monopolies on terminology – are maintained. It does this by drawing on theoretical work on Whiteness – broadly defined as a system of power which privileges certain norms, values, interests and systems of knowledge – and demonstrating how this work can be used to interrogate and critique existing "operational standards" of sovereignty, nationhood, and legitimacy. I also use the concept of hegemony to show how dominant conceptualisations, and the systems of power which they support, become normalised. Hegemony is defined in this thesis as the existence of systems of ideological and cultural domination which are discursively constructed, and which normalise existing sets of power relations.

This chapter shows how the hegemony of Whiteness, or hegemonic Whiteness – that is, the particular sets of norms, values, interests and systems of knowledge which normalise White privilege – is what shapes contests and debates over sovereignty, nationhood, and legitimacy in Australia. Thus, hegemonic Whiteness needs to be undone if a conversation about relations between Indigenous and non-Indigenous
peoples, rather than a contest or debate which is automatically geared towards one set of interests, is to take place. Drawing on William Connolly’s discussion of the “ethos of pluralisation,” this chapter begins to outline an ethical framework by which the process of dismantling hegemonic Whiteness might be able to take place. The basis of this framework is the idea that because of the illegitimacy of the White invasion and occupation of the continent of Australia, White people have an ethical obligation to engage with Indigenous peoples’ assertions of their inherent and originary sovereignty. As Chapter One briefly explained, these assertions of sovereignty can be read as attempts by the Indigenous people and groups who make them as attempts to engage with unresolved questions about sovereignty and legitimacy in Australia. That is, the absence of any just or appropriate response to the illegitimacy of White invasion and occupation means that there is an important moral dimension to the issue of Indigenous sovereignty. Hegemonic Whiteness and the moral obligation to engage with Indigenous assertions of sovereignty are inter-related because it is only through beginning to dismantle hegemonic Whiteness – and thus reconsidering the political, legal, theoretical, and conceptual frameworks in which Indigenous-non-Indigenous relations are currently played out – that it will be possible for our ethical obligation to engage with the issue of Indigenous sovereignty to be met. Equally, however, coming to terms – or engaging – with the ethical and moral aspects of our relationships with Indigenous people is necessary for hegemonic Whiteness to begin to be dismantled.

The outline of this chapter is as follows. The first section discusses in more detail the understanding of Whiteness on which this thesis is based. It also discusses how theories of Whiteness can be applied to debates about sovereignty and legitimacy in Australia in order to show how these debates currently privilege White peoples’ interests, and subsequently disadvantage Indigenous peoples and Indigenous articulations of sovereignty. This section of the chapter also discusses this thesis’ conceptualisation of hegemony in more detail, and shows how this concept is useful in explaining the way that Whiteness as a system of power in Australia is normalised. Second, the chapter surveys existing literature on the concept of sovereignty, and its relationship to the idea of legitimacy. This part of the chapter uses the theories of Whiteness discussed in the first section to highlight shortcomings in traditional theoretical conceptualisations of sovereignty and legitimacy in light of Indigenous
peoples’ assertions of sovereignty and nationhood. It also shows how this critique of traditional understandings of sovereignty and nationhood using Whiteness theories informs the alternative definition of sovereignty which I employ in this thesis.

Similarly, the third part of the chapter applies Whiteness theories to dominant understandings of the concept of nationhood, and poses a definition of nationhood which seeks to avoid the biases inherent in dominant White understandings. This part of the chapter also discusses in more detail why the concept of nationhood is fundamentally important to discussions about sovereignty and legitimacy. In the final section of the chapter, I begin to outline my idea of an “ethics of engagement”: the ethical framework which informs the approach I take to examining the issue of sovereignty in the remainder of the thesis, and which seeks to contribute to the process of dismantling the system of hegemonic Whiteness which currently prevents a fair and honest conversation about sovereignty and legitimacy in Australia from taking place.

**Hegemonic Whiteness**

As stated briefly above, in this thesis Whiteness is broadly defined as a system of power which privileges and normalises certain values, interests and systems of knowledge, and which is maintained by a series of discursive strategies and practices. By ordering relations of power in Australia, Whiteness is able to bestow privilege and other benefits to White people that are unmarked, unacknowledged, and unearned.

In the first part of this section of the chapter I show how this understanding is grounded in the body of theoretical literature on Whiteness which has emerged in the last decade. I draw on five major aspects of Whiteness that Whiteness theorists have articulated and developed, which contribute to my understanding of Whiteness as a system of power, which functions to normalise both White privilege and the existing power relations between White people and other groups on which White privilege is based, and which functions as a socially constructed norm or ideal which regulates discussion and debate about issues such as sovereignty and legitimacy in Australia. These aspects are as follows: Whiteness as power; Whiteness as socially constructed; Whiteness as dominant subject position; Whiteness as conferrer of privilege; and Whiteness as practice.
This section of the chapter also demonstrates that there are significant gaps in the theoretical literature on Whiteness. For example, the majority of the British and North American literature fails to examine the fundamental connections between the process of colonisation in countries such as the United States, Canada, and Australia, and the establishment and maintenance of Whiteness as a system of power. Accordingly, the second part of this section of the chapter outlines how I employ Whiteness theory in this thesis to make a contribution towards filling this gap: it shows how Whiteness theory can be used to highlight the ways in which dominant understandings of concepts such as sovereignty, legitimacy, and nationhood shape discussion and debate about these issues in Australia. Whiteness theory can also be used to make visible the particular norms, values, interests and systems of knowledge which underpin these dominant understandings, and helps to show how they are inherently linked to the process of colonisation. The third part of this section of the chapter also shows how I employ the concept of hegemony to explain how Whiteness is normative, invisible, and centred by and embedded in dominant social, political, and cultural institutions. The fourth part of this section of the chapter draws on Frankenberg (1993: 16) to outline the idea of the “discursive repertoire” of Whiteness which is a central theme of this thesis.

**Conceptualising Whiteness**

The last decade has seen a considerable body of literature emerge on several aspects of Whiteness. These include the social construction of Whiteness and its centrality to the formation of race, class, and national identities; the representation of Whiteness in the media; the experience of Whiteness from the standpoint of Blackness (or other embodiments of “non-Whiteness”); and the power, privilege, and other benefits that Whiteness bestows. Here I provide a synthesis of the different usages of Whiteness in the literature which inform my definition of Whiteness, and my use of this literature in

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8 See, for example, Dyer (1997) and Gabriel (1998).
9 See, for example, hooks (1997), and the various essays in Roediger (ed., 1998). It is important to note that, as hooks points out, black folks’ “special knowledge” about, and experience of, Whiteness is not a new phenomenon (1997: 165).
10 See, for example, Harris (1993), Hill (ed., 1997), Lipsitz (1998), and McIntosh (1998).
this thesis to make two specific claims. One is conceptual: that Whiteness should be understood as a system of power which privileges White norms, values, interests and systems of knowledge. The second is methodological: that this conceptualisation of Whiteness can be used as an analytical tool to illuminate the ways in which discussion and debate about issues such as sovereignty and legitimacy in Australia are weighted towards White peoples’ interests.\(^\text{11}\)

First, my idea of Whiteness as a system of power is primarily drawn from the work of Charles Mills (1997), though this idea is present in the work of many Whiteness theorists.\(^\text{12}\) Mills argues that “White supremacy is the unnamed political system that has made the modern world what it is today” (1997: 1). Rather than being seen as a by-product of other relations of power (such as those defined by gender or class), or a “mysterious deviation from European enlightenment humanism” (Mills 1997: 26-27) Mills argues that:

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\text{racism (or ... “global White supremacy”) is itself a political system, a particular power structure of formal or informal rule, socioeconomic privilege, and norms for the differential distribution of material wealth and opportunities, benefits and burdens, rights and duties (1997: 3).}
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Mills uses the idea of the “Racial Contract” to explain how this works. He argues that the theory of the “social contract” – the notion that government and civil society are based on the “popular consent of individuals taken as equals” – is a “profoundly misleading account of the way the modern world is and came to be” (1997: 3). This is because it ignores the fundamental inequalities in Western political systems which are informed by White supremacy. Thus, the “Racial Contract” is used to explain the way that the social contract “is not a contract between everybody (‘we the people’), but just between the people who count (‘we the white people’)” (Mills 1997: 3). Another point which follows on from Mills’ conceptualisation of the “Racial Contract” in this way is that it subsequently becomes viewed by its beneficiaries as being justified and thus legitimate, and as a result, it is normalised as both ethically sound and as non-racial. I return to the role of ‘consent’ in political systems, and in particular in discussion and

\(^{11}\) The idea of articulating these two usages of Whiteness as conceptual and methodological claims comes from Mills (1997: 7).
debate about sovereignty and legitimacy, in the later parts of this chapter. But for the purposes of this discussion, Mills’ theory of the “Racial Contract” is important because it positions race as central to the power relations on which modern Western societies are based, and explains how these power relations work to privilege White people as a group. That is, it explains how all White people benefit from the “Racial Contract”, whether or not we all consciously sign up to it (Mills 1997: 11). Mills’ theory also provides a basis for showing how the establishment and maintenance of Whiteness as a system of power is inherently tied to the process of colonisation, as I discuss below.

Mills’ idea of the “Racial Contract” leads on to the second major area of the Whiteness literature that I draw on in this thesis: that which focuses on the social construction of Whiteness as race: that is, the ways in which race – broadly conceived as the social construction of biological, cultural, and physical ‘difference’ – and racism shape White people’s lives, just as much as they do the lives of black people, Indigenous people, Asian people and other non-White people. In other words, as White American feminist theorist Ruth Frankenberg explains, “white people and people of colour live racially structured lives”, because “any system of differentiation shapes those on whom it bestows privilege as well as those it oppresses” (1993: 1). Clearly, this idea is present in the work of Mills, discussed above. Here I am referring to those works which examine in more detail the ways in which Whiteness and race shape peoples’ lives, particularly White peoples’ lives. Frankenberg’s White Women, Race Matters is one of the most widely cited works in this area. In this book, Frankenberg uses a series of interviews with White American women to show how race figures prominently in these women’s lives, though in such a way that it is both unmarked and unnamed. She argues that Whiteness should be seen as socially constructed: a “set of locations that are historically, socially, politically, and culturally produced” (Frankenberg 1993: 6). Frankenberg also argues in White Women, Race Matters that naming Whiteness, or making Whiteness visible, “displaces it from the unmarked, unnamed status that is itself an effect of its dominance” (1993: 6).

12 Some theorists whose work includes – implicitly or explicitly – a conceptualisation of Whiteness as a system of power include Frankenberg (1993), Kincheloe, Steinberg, Rodriguez and Chennault (1998), Moreton-Robinson (2000), and Shome (1999).
In the introduction to their edited collection of essays on Whiteness, Rasmussen, Klinenburg, Nexica and Wray note that the invisibility thesis articulated by Frankenberg in *White Women, Race Matters* – the "idea that Whites do not recognize or acknowledge their unearned racial privileges" – has "become one of the most cited claims of critical whiteness studies" (2001: 10). In her contribution to their collection, however, Frankenberg revises her thesis about the invisibility of Whiteness, and suggests instead that "the notion of whiteness as an unmarked norm is ... a mirage or indeed, to put it more strongly, a white delusion" (2001: 73). Frankenberg argues that when we consider all of the characteristics of Whiteness in societies which are "structured in [racial] dominance" – such as that Whiteness bestows certain structural advantages, and that it provides a 'standpoint' "from which to see our selves, others, and national and global orders" – the idea of Whiteness as invisible suddenly "seems bizarre in the extreme" (2001: 75-76). It is only to the extent that "racially supremacist hegemony" is ever achieved, Frankenberg argues, "that whiteness can come anywhere near to invisibility" (2001: 76). Thus, she poses the question, "to whom is whiteness invisible?" (Frankenberg 2001: 77).

I agree with Frankenberg that the question of to whom Whiteness is invisible is fundamental: black, Indigenous, and other non-White people have pointed out time and time again that Whiteness is not invisible to them. And as bell hooks notes, black peoples' awareness of Whiteness is not a recent phenomenon; the only recent aspect of this phenomenon is White peoples' interest in it (1997: 165). However, I have some disagreements with Frankenberg where she suggests that the notion of the invisibility of Whiteness to *White people* has become somewhat tired. Frankenberg points to a number of examples which she says imply a "certain naivety" about the "assertion of the invisibility of Whiteness" (2001: 82). These include the "entanglement of the notion of whiteness in colonial history", and her own earlier research which points to the "self-consciousness of self as white" among American women in the U.S.A. (Frankenberg 2001: 81-82). I read Frankenberg's implication here to be that because of these sorts of examples, where Whiteness is, or at the very least should be, marked, it is somewhat disingenuous for scholars of race and racism in societies which are

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13 See, for example, hooks (1997), Mills (1997), and Moreton-Robinson (2000).
structured by racial hierarchies still to claim that Whiteness is invisible. I agree with Frankenberg in as far as she suggests that Whiteness should no longer be invisible to those who study race and racism: as Melissa Steyn points out, as literature on it has grown, Whiteness has increasingly become “exposed, at least at an academic level” (2001: xxix). However, Whiteness remains largely invisible to the majority of those for whom it is the dominant subject position. For example, the research of North American scholars Michael Alan Sacks and Marika Lindholm (2002) shows that a key element of White privilege is its invisibility to those who are beneficiaries of it. In their study of a group of young White male university students, Sacks and Lindholm demonstrate how the privileged are limited in their ability to recognise the ways in which they are complicit in maintaining social inequality (2002: 129-131; Levine-Ransky 2002: 15). That is, Whiteness remains invisible to us White people because we can ignore it; its invisibility subsequently provides us with a standpoint from which we don’t have to account for our privileged status. Rather, Whiteness provides White people with a framework in which we attribute our dominance and other peoples’ subordination to other factors. It is for these reasons that I still argue that Whiteness (in societies such as Australia at least) can be said to be hegemonic: because it functions to normalise existing sets of power relations. The normativity of Whiteness is what allows it to become invisible to those White people who inhabit it and benefit from it. I expand on my understanding of the idea of Whiteness as hegemony, below.

In addition to Frankenberg’s work on the social construction of Whiteness as race, other authors such as Matthew Frye Jacobsen (1998) and Warwick Anderson (2002) have undertaken studies in this area. In particular, the work of these two authors demonstrates how the social construction of race shapes White systems of knowledge. For example, by mapping what he calls the “racial designations” that have framed the history of European immigration to and assimilation into the United States, Jacobsen shows how ideas of ‘race’ have been produced and reproduced over time (1998: 6). In demonstrating the arbitrariness with which labels such as ‘Caucasian’ and ‘White’ were applied to different groups at different times, Jacobsen demonstrates that both Whiteness, and the racial categories it is defined in opposition to, are socially constructed in accordance with particular political or economic imperatives (1998: 13). Anderson draws similar conclusions in his study of “medical and scientific visions of
what it meant to be white in Australia during a period in which the colonial settler society came to refashion itself as a nation” (2002: 1, 244-245). While there is a considerable body of literature which shows how Indigenous and other non-White peoples have historically been seen as racially inferior (Wander, Martin and Nakayama 1999: 16-18), Anderson goes beyond this to illustrate how doctors and scientists played an important role in the ‘cultivation’ or invention of Whiteness as a racial category during the nineteenth and early twentieth centuries (2002: 1, 7). That is, that the cultivation of Whiteness was an active process. He also shows that for “most doctors, biologists and anthropologists, whiteness was not an empty category, defined only in opposition to other races: rather, it was filled with ... physical, cultural and political significance” (Anderson 2002: 3). In this context, it is important to note the way in which Whiteness functioned as a regulatory norm: it was the standard of humanity against which doctors and scientists measured or judged non-White people. The social construction of the White standard subsequently played an important role in the distribution of social benefits, including access to rights and entitlements. In documenting the role of medicine and science in the production and reproduction of Whiteness in Australia, Anderson demonstrates the enormous amount of effort and energy that went into this process: “the work it took to put it together, [and] to make it look normal” (2002: 3, my emphasis). I return to this point about the work that is involved in ‘cultivating’ or maintaining Whiteness in my discussion of Whiteness as hegemony, below.

This work on the social construction of Whiteness and race is important to this thesis because it makes it possible to see that the power relations which Whiteness and ‘race’ give rise to, and the norms, values and systems of knowledge which keep these systems of power in tact, are also socially constructed. This is not to say, as Frankenberg points out, that the effects of the social construction of race and Whiteness are not ‘real’ because they are socially constructed; both are real in that they have tangible effects on “individuals’ sense of self, experiences and life chances” (Frankenberg 1993: 11; 2001: 76), and, as I will demonstrate in this thesis, on social and

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14 See also Allen (1994, 1997).
15 On the social construction of Whiteness as race, see also Mahoney (1997), and Nakayama and Martin (1999).
political structures. The important point is that these social and political structures, and the systems of power which support them, are not natural or inevitable. The question then becomes how these systems of power are maintained.

The third conceptualisation of the concept of Whiteness which I draw on in this thesis helps to explain the maintenance of Whiteness as a system of power: this is the idea of Whiteness as dominant subject position. Understanding Whiteness in this way helps to illuminate the ways in which power relations which privilege White people are preserved, because it explains both how Whiteness is seen as ‘normal’, and subsequently, how the dominance of Whiteness is maintained. For example, in her study of Indigenous women’s experiences of and representations within Australian feminism, Aileen Moreton-Robinson demonstrates how the subject position “middle-class White woman” operates as an invisible norm within a series of feminist contexts (2000: xvi-xvii). In showing how White middle-class women’s privilege is tied to the colonisation and dispossession of Indigenous people, Moreton-Robinson demonstrates how Whiteness derives it power from its invisibility to those on whom it confers privilege; she also shows how the invisibility of White middle-class women’s racialised subjectivity often makes these women blind to their own complicity in gendered racial oppression (2000: xx-xxiii).

White British cultural theorist Richard Dyer argues that the invisibility of Whiteness, and hence its power, stems from the fact that we White people have colonised the definition of “normal.” Consequently, we have deemed concepts such as “race” to be the realm of the “other.” As a result, White people are “not racially seen and named, they/we function as a human norm. Other people are raced, we are just people.” Dyer goes on to note that “[t]here is no more powerful position than that of being ‘just’ human” (1997: 1-2). According to him, the invisibility of Whiteness is “at a piece with its ubiquity” (1997: 3), and – as Moreton-Robinson (1998c: 11) also argues – this is why it is important to see Whiteness and to make it visible:

[for those in power in the West, as long as whiteness is felt to be the human condition, then it alone defines normality and fully inhabits it. ... White people have power and believe that they think, feel and act like and for all people; white people, unable to see their own peculiarity, cannot take account of other people’s. ... white people set standards of humanity by which they are bound to succeed and others are bound to fail. Most of this is not done deliberately or
maliciously ... [but] White power nonetheless reproduces itself regardless of intention, power differences and goodwill, and overwhelmingly because it is not seen as whiteness, but as normal (Dyer 1997: 9-10, my emphasis).

Dyer's point about the reproduction of White power "regardless of intention" connects with Mills' argument, discussed above, that all White people benefit from the racial contract irrespective of whether we consciously choose to do so (Mills 1997: 11). The later chapters of this thesis provide several examples of the ways in which White power reproduces itself. And I take up this general point about the normativity of Whiteness in my discussion of Whiteness as hegemony, below.

The idea of Whiteness as "invisible, omnipresent norm" (Moreton-Robinson 2000b: xix) leads on to the fourth broad usage of Whiteness theory which I draw on in this thesis: Whiteness as conferrer of privilege. As Moreton-Robinson argues, by virtue of its place at the centre of Australian society, "Whiteness confers both dominance and privilege; it is embedded in Australia's institutions and in the social practices of everyday life" (1998c: 11). Several writers have elaborated on the specific powers and privileges that Whiteness affords: Chapter One, for example, drew on Peggy McIntosh's (1988) idea of White privilege as an "invisible package of unearned assets." North American scholars Sacks and Lindholm (2002) have also conducted work on White privilege, as discussed briefly above. White American scholar George Lipsitz uses the idea of a "possessive investment in whiteness" to denote the various powers, privileges, and other benefits that come from Whiteness, along with the social and cultural forces that "encourage white people to expend time and energy on [its] creation and re-creation" (1998: vii-viii). African-American legal theorist Cheryl Harris argues that Whiteness has evolved into a form of property that has its origins in the domination of Black and Native Americans, "out of which were created racially contingent forms of property and property rights" and which is now protected by American law (Harris 1993: 1710). As I discuss below, Harris is also one of the few North American Whiteness scholars to discuss the relationship between the establishment of Whiteness as a system of power and the process of colonisation.

This work on Whiteness as privilege also informs the part of my definition of Whiteness as a system of power which privileges particular sets of interests. Moreton-
Robinson argues, however, that the work of scholars such as McIntosh and Frankenberg, discussed above, can be critiqued on the grounds that they:

fail to appreciate that their position as situated knowers within white race privilege is inextricably connected to the systemic racism they criticise but do not experience ... [their] knowledge of systemic racism is easily abstracted from their embodied experience as white middle-class women (2000: xx).

Drawing on the theoretical work on Whiteness which I have discussed here, in this thesis I attempt to demonstrate the connection between the experience of my own White privilege with the systemic racism on which it is based by showing how White race privilege in Australia is tied to the denial of Indigenous peoples' sovereignty. In other words, I argue that a specific privilege of Whiteness – in Australian society at least – is the ability of White people to ignore Indigenous peoples' sovereignty (or at the very least, to pick and choose which aspects of Indigenous peoples' assertions of sovereignty we will countenance), thereby ignoring questions about the legitimacy of our own occupation of the continent of Australia. My development of the idea of an "ethics of engagement" – a framework within which White scholars might tackle some these questions about the legitimacy of our own belonging in Australia, and in doing so to begin to dismantle the White power and privilege which enables us to ignore these questions if we want to – is put forward as a way of coming to terms with the important connection between the lived experience of White privilege and the systematic racism on which it is based.

White peoples' ability to ignore questions about sovereignty and legitimacy, like other aspects of the lived experience of White privilege, is inextricably connected to the power that comes from the normativity of Whiteness and White norms and values. This connects with the fifth major definition or usage of Whiteness which I draw on in this thesis: Whiteness as practice. Fiona Nicoll, for example, defines Whiteness as a "set of institutionalised practices which legitimate and privilege specific ways of knowing, seeing ... and being at home in Australia" (2003: 1). Similarly, Frankenberg argues that Whiteness is best regarded as a "practice rather than an object, in relation to racial formation and historical process rather than as isolable or static" (1997: 264). The ability of White people and White institutions to ignore Indigenous peoples' sovereignty can be seen as one such practice. Hence, the idea of Whiteness as practice informs my
definition of Whiteness as a system of power which is *maintained* by a series of discursive strategies and practices. Seeing Whiteness as practice rather than object is also important because it avoids defining Whiteness as monolithic. Rather, as Dyer points out, there are enormous variations of power among White people (1997: 9). While I broadly define Whiteness as a system of power, seeing this system of power as constituted by specific practices or processes makes it more open to critical challenge than if it is seen as a singular, monolithic entity. This point about the importance of not seeing Whiteness as monolithic is also taken up further in my discussion of Whiteness as hegemony, below.

Accordingly, to restate the definition of Whiteness which I employ in this thesis: Whiteness can be broadly conceptualised as a system of power which pervades political, social and legal institutions. As I will show in the remainder of this thesis, this system of power privileges certain norms, values, interests and systems of knowledge, and as I discuss further below, is maintained by a series of discursive strategies and practices. This part of the chapter has also shown how Whiteness, while socially constructed, functions to make White people oblivious to their own powerful and privileged positions. Consequently, White people act, usually unconsciously, in ways which serve to protect our own interests and our own privileged positions. For example, as later parts of the thesis will show, Whiteness functions as a regulatory norm, enforced by White people and White institutions, in discussion and debate about Indigenous peoples’ assertions of sovereignty.

This thesis uses this general definition to demonstrate some of the specificities of Whiteness in the Australian context: that is, the particular norms, values, interests and systems of knowledge that comprise Australian Whiteness, and, using discussion and debate about ‘sovereignty’ in Australia as the site of my analysis, the particular discursive strategies and practices which are employed by White people in Australia to keep White norms, values, interests, and privileges in place. That is, the contribution of my thesis is to draw on this existing body of literature on Whiteness to conduct what Levine-Ransky (2002: 17-18) calls a contextual approach to ‘working through whiteness’, or what Shome describes as an examination of Whiteness from the
perspective of location (1999: 110). That is, an analysis of Whiteness which demonstrates its specificities in a particular context – the competing claims to legitimacy of White and Indigenous sovereignties in Australia. The remainder of this chapter explains in more detail the way I use Whiteness theory as a conceptual tool with which this can take place.

**Whiteness and colonisation**

The preceding discussion demonstrates that there now exists a healthy body of scholarly literature on Whiteness. As stated above, I draw on this literature in this thesis to make both conceptual and analytical, or methodological, claims. Brady and Carey point out, however, that the majority of this literature on Whiteness and White race power has been generated in the United States, where the relationship between Whiteness and Blackness has, "by and large, been problematised in terms of white race dominance *vis-a-vis* African Americans" (2000: 276), in the historical context of the injustices of slavery. It is only relatively recently that a body of scholarly work on Whiteness in Australia has become to emerge, most notably exemplified by the work of Aileen Moreton-Robinson. Moreton-Robinson's work has demonstrated that while the British and American literature on Whiteness is instructive in many ways, as a body of work it contains one fundamental weakness. This is the lack of due regard given to the association between the "social construction of whiteness ... [and] ... the appropriation of Indigenous land and the incarceration and enslavement of Indigenous people by colonial governments" (Moreton-Robinson 2000: xx): that is, to the relationship between Whiteness and the colonisation of Indigenous peoples.

One exception to this general rule can be found in the work of Cheryl Harris (1993), who, in her development of the idea of Whiteness as a form of property, discusses how the expropriation of Indigenous land was fundamental to the establishment of American sovereignty and nationhood. Harris points out that the taking of Indigenous land was justified by constructions of racial identity where Native Americans were seen as inferior to the White colonisers (1993: 1716). This "supported white privilege

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16 See also Steyn (1999).
through a system of property rights in land in which the 'race' of the Native Americans rendered their first possession rights invisible”, thus justifying the process of conquest and colonisation (Harris 1993: 1721). Further:

Possession – the act necessary to lay the basis for rights in property – was defined to include only the cultural practices of whites. This definition laid the foundation for the idea that whiteness – that which whites alone possess – is valuable and is property (Harris 1993: 1721).

Subsequently, Harris argues, although Native Americans were the original occupiers and possessors of land, their “racial and cultural otherness allowed this fact to be reinterpreted and ultimately erased as a basis for asserting rights in land” (1993: 1721). That is, just as was the case in the invasion and occupation of the continent of Australia, Native Americans’ possession of land was not seen to be “true possession and could safely be ignored” (Harris 1993: 1722). The effect of this application of the rule of possession was to make the rights of possession contingent on race: “only particular forms of possession – those that were characteristic of white settlement – would be recognised and legitimised” (Harris 1993: 1722). Harris therefore shows that the conquest and occupation of Indigenous land was supported by the rule of law, because the law provided a “naturalised regime of rights and disabilities”, and subsequently, "power and disadvantage ... flowed from it” (1993: 1723). That is, the expropriation of Indigenous lands was both supported by a system of law which privileged Whiteness, but also contributed to embedding White privilege within the legal system of the new colony. Harris’ work therefore show that ideas about White supremacy were fundamental to European colonial expansion, rather than a by-product of it.18

While Harris’ work explores some of the connections between Whiteness and the colonisation of Indigenous people and their lands, by and large, this is a theme which is missing from the American and British literature on Whiteness. A related observation can be made about the existing Whiteness literature, which is about the disciplinary contexts in which critical and theoretical work on Whiteness has been done. While Whiteness Studies is now increasingly being recognised as a field in and

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18 See also Mills (1997: 35, 38) on this point.
of itself, it largely emerged out of disciplines such as cultural studies, literature studies, feminism and gender studies, and more recently, education and pedagogy. Two broad areas which thus far seem to have resisted the incorporation of critical work on Whiteness into their research agendas, however, are law, and political science and political theory. Along with history, these are two of the domains in which colonisation – and in particular, its relationship to concepts such as sovereignty – are traditionally discussed. Subsequently, there is also very little work which shows how Whiteness has shaped legal and political concepts such as sovereignty, and how the relationship between Whiteness and sovereignty is central to the colonisation process. As I have discussed above, Harris' (1993) work in some ways sets the foundations in as far as it shows how Whiteness was tied to colonisation. However, there is little literature which goes beyond it.

My thesis seeks to contribute to filling this gap by making connections between the existing literature on Whiteness and the often narrow, legalistic context in which issues of sovereignty and legitimacy are often addressed. It uses Whiteness theory to show how dominant ideas about sovereignty shape discussion and debate about these issues in Australia, and in particular, White responses to Indigenous people who assert their originary sovereignty. As I show in the later parts of this chapter and this thesis, Whiteness theory can be used as an analytical tool, to make visible the particular norms, values, interests and systems of knowledge which underpin dominant understandings of sovereignty, and to show how they are inherently linked to the ongoing process of colonisation. Thus, while this thesis is not a historical account of relationship between dominant White Western models of sovereignty and the process of colonisation, it presents an account of how the relationship between dominant understandings of sovereignty and colonisation is played out in the present day. That is – the thesis uses Whiteness as an analytical tool to show why the issue of Indigenous

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19 See, for example, Dyer (1988, 1997).
20 See, for example, Babb (1998), Morrison (1993).
23 Though the work of Harris is one exception.
sovereignty and related questions about the legitimacy of White occupation of the continent of Australia remain substantially unaddressed.

**Whiteness as hegemony**

The preceding parts of the chapter explained the definition of Whiteness I employ in this thesis and the literature on which it is based; the virtual absence of scholarly work on the relationship between the establishment of Whiteness as a system of power and the colonisation of Indigenous peoples and lands was also discussed. In this part of the chapter I discuss how and why I use the concept of hegemony in this thesis to help explain the maintenance of Whiteness as a system of power and privilege which keeps colonialist power relations in tact.

By “hegemony” I mean the existence of systems of ideological and cultural dominance which normalise existing sets of power relations. Hegemony is constructed and maintained through discourses – the sets of ideas, expressed through a range of articulatory practices, which constitute and organise social and political relations. Hegemony is thus constituted by the norms, values, interests and systems of knowledge on which dominant discourses are based. The concept of hegemony is derived from the work of Italian Marxist Antonio Gramsci, particularly from his *Selections from the Prison Notebooks* (1971), which were written while he was imprisoned by the fascist regime in Italy in the late 1920s and early 1930s. The concept of hegemony has evolved considerably since Gramsci first developed it, and neo-Marxist scholars such as Ernesto Laclau and Chantal Mouffe (2001) have made notable contributions to its development. 24 Although hegemony is a notoriously contested and complex concept, I argue that it is nevertheless a useful tool for considering some of the central issues with which this thesis is concerned, and in particular for understanding how systems of power which privilege particular groups are maintained.

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24 Other scholars have also developed Gramsci’s theory of hegemony. Lukes, for example, argues that hegemony works so that people accept the existing order of things, and the effect of this is that political systems can “prevent demands from becoming political issues or even from being made” (1974: 38).
Boggs (1976: 39) describes hegemony generally as the permeation through a given society of an entire system of values, attitudes, beliefs, and morality that is supportive of the established order. This manifests itself in what Gramsci referred to as "common-sense": the "uncritical and largely unconscious way in which a person perceives the world" (Simon 1982: 25, my emphasis). Subsequently, people accept as given the existing order of things (Lukes 1974: 38). That is, the existing order of things seems both natural and inevitable and becomes the unspoken and almost unchallenged norm. I argue that Whiteness in Australian society – such that it is a source of power and privilege, and yet is invisible to the majority of those whom it benefits at the same time – can also be understood to be hegemonic in this way. Hence my use of the term "hegemonic Whiteness" in this thesis to describe the particular sets of norms, values, interests and systems of knowledge which privilege Whiteness and in doing so work to maintain Whiteness as a system of power in Australia.

Ruth Frankenberg points out that the "canny critic will always qualify her use of the term 'hegemony' by noting the inevitable instability, the inherent ineffectuality, of any ideological system" (2001: 76). Similarly, as Adamson describes it, hegemonic rule is "never a closed, static empire of thought and culture"; it is not fixed but is rather a process of continuous creation (1980: 174). One of the areas of Gramsci’s conceptualisation of hegemony in which its inherently incomplete nature is evident is the central idea of consent, achieved through political and ideological leadership (rather than through domination achieved by other means, such as a monopoly on the means of violence in a society) (Simon 1982: 21).25 This is the idea that "[h]egemonic leadership involves developing intellectual, moral and philosophical consent from all major groups in a nation" (Bocock 1986: 37). The "development of consent" is achieved through the permeation of norms and values so that the existing order of things seems normal, natural, and inevitable – at least to those who benefit from it. Subsequently, the beneficiaries of the existing power structure do not think to question it.

25 See also Sassoon (2000: 45-49).
This is one area in which my understanding of hegemony departs from traditional Gramscian conceptualisations: I argue that the concept of hegemony is not weakened by the fact that complete hegemony – that is, complete ideological and cultural domination, or in Bocock’s (1986: 37) terms, the consent of all major groups in a society to the prevailing power structure – is never achieved. In Australia, for example, the resistance of Indigenous peoples to White invasion, occupation, and the ongoing process of colonisation demonstrates that Indigenous peoples have not consented or willingly submitted to the imposition of the prevailing power structures. Rather, my understanding of hegemony focuses on members of the dominant group, and thus the beneficiaries of the existing power structure. I argue that the concept of hegemony is useful in accounting for the way that the dominant group’s power and privilege seems normal, natural and inevitable to its own members, such that they do not think to question their own privilege, or their complicity in the maintenance of inequitable power relations. Thus, the concept of hegemony can help to explain what Frankenberg refers to as the way that Whiteness “[assumes] its own normativity” and becomes invisible to those who benefit from it (2001: 81). At the same time, the fact that, as Adamson points out, hegemony is “bound to be uneven in the degree of legitimacy it commands” (1980: 174), also explains why the process of constructing and maintaining the consensual basis of an existing political system is an ongoing, active process that requires constant maintenance. That is, because hegemony is inherently unstable, it is in constant need of being propped up.

Thus, rather than seeing hegemony, and hegemonic Whiteness, as being somehow monolithic or singular, this thesis is based on an understanding of hegemony as being contestable and therefore open to critical challenge. This is demonstrated by the fact of Indigenous resistance to the imposition of White power structures, as discussed above. It is also demonstrated by the fact that Whiteness, while omnipresent (Moreton-Robinson 2000b: xix), is internally differentiated (Dyer 1997: 9). Accordingly, hegemony is a useful concept for explaining the normativity of Whiteness and the ubiquity of White norms and values. But it is important to see these hegemonic effects as capable of being challenged and dismantled so that they may cease to have as substantial a hold as they do presently over the possibility of meaningful conversion or discussion between Indigenous and non-Indigenous people about issues such as
sovereignty and legitimacy. This dismantling can take place firstly through making visible the ways in which hegemonic Whiteness prevents meaningful conversation at present, a task which I take up in the following chapters of this thesis. Secondly, the process of dismantling the effects of hegemonic Whiteness means engaging in what Frankenberg describes as “the quest for a means of drawing a large enough proportion of white people into the making of a new, more equitable multiracial common sense” (2001: 83). I outline my approach to this task of positing an alternative means of relating in the last part of this chapter, in which I discuss the idea of an ethics of engagement.

Clearly, the issues with which this thesis is concerned are different to those with which Antonio Gramsci was concerned when he was writing from a prison cell in fascist Italy in the 1930s. Yet, as I have discussed, the concept of hegemony as he described it still resonates with the problems that I am examining here, because my general concern is with the following: the dominance of a particular set of norms, values, and perceptions; the systems of power that maintain their dominance; and the privilege bestowed upon those to whom the dominant norms, values, and perceptions adhere. Broadly speaking, this is why Laclau and Mouffe argue that “hegemony” is still a centrally important category of political analysis (Laclau & Mouffe 2001: x). Laclau and Mouffe conceive of “hegemonic rearticulations” as being “far more generalized than they were in Gramsci’s time” (Laclau & Mouffe 2001: xii). They argue that the problem with liberal democracy, for example, is not necessarily with the values of liberty and equality, “but with the system of power which redefines and limits the operation of those values”. It is on this basis that they have developed the idea of “radical and plural democracy” (Laclau & Mouffe 2001: xv).26 In a similar way, this thesis is concerned with the systems of power in Australian political culture that define and limit claims to sovereignty other than those made by the state.

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Although the work of Laclau and Mouffe has been criticised by other Marxist scholars,\textsuperscript{27} in the context of my argument, it demonstrates that the concept of hegemony is an important tool in the kind of analysis I conduct in this thesis. For example, the broader understanding of hegemony on which the work of Laclau and Mouffe is based employs a conception of the social as a \textit{discursive space} (Laclau & Mouffe 2001: x). The political is still privileged in their account of social structure, though it is not conceived of as a superstructure (in the traditional Marxist sense) \textit{"but as having the status of an ontology of the social"} (Laclau & Mouffe 2001: xiv). Discourse, in Laclau and Mouffe's terms, refers not simply to a \textquote{cognitive or contemplative entity} but to the \textit{articulatory practices} that constitute and organise social relations (Laclau & Mouffe 2001: 96). Doty describes Laclau and Mouffe's conceptualisation of discourse as social practices (1996: 126). These practises include \textquote{writing, speaking, and practices often considered to be \textquote{behavioural,} which are embedded in institutions,} and which are inextricably linked to constitute and organise social relations around a \textquote{particular structure of meanings} (Doty 1996: 126). The idea that hegemony -- and the norms, values and systems of knowledge which are its constitutive elements -- is discursively constructed is one of the ideas developed by Laclau and Mouffe upon which I draw in this thesis. This is because of the importance of discursive strategies and tools in the maintenance of White race power and privilege, as the following discussion outlines.

\textbf{The discursive repertoire of hegemonic Whiteness}

The preceding discussion outlined in broad terms the conceptualisation of hegemony that I employ in this thesis, and explained why I think hegemony is a useful concept despite being a notoriously contested one. Here I discuss in more detail what can be described as the \textquote{mechanics} of hegemonic Whiteness: its constitutive elements and the discursive strategies and practices which keep these constitutive elements intact.

\textsuperscript{27} Bockock, for example, questions whether what he describes as Laclau and Mouffe's \textquote{anti-essentialist} philosophical position \textquote{is necessarily the one implicitly, or explicitly, to be found in Marx and, more importantly, whether or not it is an adequate basis for constructing an hegemonic moral and political philosophy in modern Western societies} (Bocock 1986: 103).
This understanding of White discursive strategies and tools draws on Ruth Frankenberg’s idea of “discursive repertoires.” These are the “clustering of discursive elements” that White people employ in the enactment of White power (Frankenberg 1993: 16). Frankenberg argues that it is important not only to differentiate between various tools and strategies. In addition, we must recognise the continuities across discursive repertoires from (ostensibly) “left” or “progressive” to apparently more conservative: the traces of essentialist racism, colonial discourse, and evasion of colour and power in the discursive repertoires of [people] whose intentions are, in fact, quite different (Frankenberg 1993: 20).

As the following chapters demonstrate, the continuities across the discursive repertoire of hegemonic Whiteness form a central theme in this thesis.

The preceding discussion defined hegemony as the existence of systems of ideological and cultural dominance which function to normalise existing sets of power relations. It also explained how hegemony is constructed and maintained through discourses, defined in this thesis as the sets of ideas, articulated through a range of practices, which organise social and political relations. Accordingly, hegemony can be understood as constituted by the norms, values, interests and systems of knowledge on which dominant discourses are based. In other words, hegemonic Whiteness is maintained by various discourses which give expression to the norms, values, interests and systems of knowledge which are hegemonic Whiteness' constitutive parts. That is, as I discuss in the later parts of the chapter and demonstrate in the later chapters of the thesis, norms such as that of state sovereignty, values such as that which says state sovereignty is a superior form of political organisation, interests such as White interests in property, and systems of knowledge such as the law, are the constitutive elements of hegemonic Whiteness in Australia. The discourses which maintain the dominance of these norms, values and systems of knowledge include discourses of White nationhood, discourses of White race superiority, and discourses of Indigenous delinquency and disorderliness.

These discourses manifest themselves in a range of discursive strategies or articulatory practices. In documenting White responses to Indigenous peoples' assertions of their sovereignty, the remaining chapters of the thesis show that White
people and institutions have a range of tools and strategies at our disposal, through which our White race power and privilege is maintained. For example, Indigenous people who make assertions of sovereignty have variously been described as "misguided" and "naive," "radicals," "ratbags," "extremists," "unrepresentative" of Indigenous opinion, and "un-Australian." They have been discursively constructed as inauthentic, disorderly, and delinquent. The effect of these discursive practices is to marginalise, silence and make invisible Indigenous people and groups who are construed as extremist and radical. Indigenous people and groups who are positioned as unrepresentative and un-Australian can then be justifiably ignored. And those who are seen to be misguided and naïve are treated in a paternalistic and patronising manner. For example, Chapter Three demonstrates a range of instances in which the Aboriginal Tent Embassy is discursively constructed as disorderly, unruly, derelict, and disruptive. This is positioned as being in opposition to the orderliness, cleanliness, stability, and inherent superiority of White structures of governance, and thus works to reinforce the White system of power on which White governance structures are based. Chapter Four shows that another strategy for eliding Indigenous assertions of sovereignty is to pay "lip service" to Indigenous demands for recognition, without engaging with them in any meaningful or genuine way. Further, these discursive practices and strategies of Whiteness are accompanied, even motivated, by emotional responses to Indigenous peoples' demands for recognition. The emotions which are highlighted in this thesis include anxiety, fear, panic, and anger.

These discursive practices rely on a range of binaries, in which the Indigenous "other" is constructed as opposite to the White self: for instance, the disorderliness and delinquency of Indigenous people is positioned in opposition to White order and respectability. The disorder and delinquency of Indigenous people who assert sovereignty is constructed as "bad," in opposition to the inherently "good" White self. In keeping with the logic of a binary, each of these discursive practices are, I argue, underpinned by a conceptualisation of Indigenous people as inherently inferior, in contrast to the inherent superiority of White people and institutions. In the following chapters I demonstrate that sovereignty is defined through these discursive practices, as something which, as Harris has demonstrated in relation to property, only includes "the cultural practices of whites" (Harris 1993: 1721). That is, sovereignty is seen as

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something which only White people can have, or do: hence making it easy to dismiss other assertions of sovereignty, such as Indigenous ones. This discursive construction of sovereignty also makes it easier to dismiss proposals for alternative configurations of sovereignty in a particular society or polity, such as those which are based on the understanding that sovereignty is able to be shared between different groups.

Sovereignty and legitimacy

The first part of this chapter has outlined the understanding of the key concepts of Whiteness and hegemony on which this thesis is based. It also explained how Whiteness is employed in this thesis to make two specific kinds of claims: one is broadly conceptual or theoretical – that Whiteness should be understood as a system of power and privilege – and the second is broadly analytical or methodological – that this understanding of Whiteness can be used as an analytical tool to examine debates about sovereignty, legitimacy and nationhood in Australia. In this part of the chapter I discuss in more detail the concepts of sovereignty and legitimacy, and begin to show how the critical literature on Whiteness discussed in the first part of this chapter can be employed to examine debates or contests over these concepts.

In this thesis, sovereignty is broadly understood to mean a people’s ability and authority to govern itself, where “ability” comes from the existence of laws and customs recognised by the group that is being governed, and “authority” is derived from the consent of the group that is being governed. Sovereignty is a fundamental concept in both political theory and the realpolitik, because of its fundamental relationship to power. In political theory, the concept of sovereignty is used to explain how the supreme political authority in any given polity is legitimated. In realpolitik, sovereignty is essentially about who or what ultimately has power (and who does not). As well as understanding the importance of sovereignty in this somewhat perfunctory way, Patrick Macklem argues that sovereignty can also be conceptualised as the “legal expression of collective difference” (2001: 111). This is why sovereignty is important to both White, or non-Indigenous, and Indigenous peoples, and also why sovereignty is such a contested concept:

A conquered people that yearns to rid itself of its colonial past seeks sovereignty as a vehicle for and expression of this desire; it seeks to be free to express its collective identity. Similarly, a conquering nation values its
sovereignty because sovereignty permits the domestic and international expression of its collective identity, as well as the continued projection and enforcement of that identity against those it has conquered... Each side cherishes its own collective difference and values sovereignty as a way of expressing that difference and protecting it from the encroaching views of the other... The value of sovereignty lies in the legal space it establishes for a community to construct, protect, and transform its collective identity (Macklem 2001: 111).

In other words, sovereignty can be understood as a “good” which is concerned with law-making authority and control over territory. How sovereignty is distributed – for example, between Indigenous and non-Indigenous peoples, between Commonwealth, state and local governments – determines who has authority and control over what, and to what extent. Thus the distribution of sovereignty determines whether law-making authority is absolute, or is limited somehow (for example in the extent to which it does not conflict with a higher authority). Accordingly, as Augie Fleras argues, the “politics and polemics over competing sovereignties have transformed Indigenous-State relations into a site of contestation in which oppositional readings compete for authority” (1999: 187). This part of the chapter outlines the framework in which this thesis’ examination of the contestation between Indigenous and White sovereignties in Australia takes place.

There is a vast literature on the idea of sovereignty: on the concept and its history in Western political thought;28 on related issues and concepts such as autonomy and authority;29 and on the ways that traditional understandings of sovereignty are being challenged by recent structural changes in international and interstate relations brought about by what is broadly referred to as the process of “globalisation.”30 Also, a body of literature has recently emerged, which critically analyses the Western Eurocentric biases within the concept of sovereignty and, in particular, the relationship between sovereignty and the state.31 This part of the chapter draws on this recent body

29 See, for example, Edmundson (1998), Lindley (1986), and Raz (1990).
30 See, for example, Bateson (1990), Camilleri (1990), Camilleri and Falk (1992), Falk (1990), Gelber (1997), Keating (2001), Sassen (1996), and Youngs (1997).
of literature, and on the theoretical work on Whiteness discussed in the first part of the chapter, to highlight shortcomings in traditional theoretical conceptualisations of sovereignty in the light of Indigenous peoples’ assertions of sovereignty and nationhood. This section also points to some ways that traditional theorisations might be reconceptualised and reconsidered with Indigenous peoples’ critiques in mind.

Conceptualising sovereignty

According to Steven Curry, the “classic” view of sovereignty – that “sovereign power in a state is absolute, indivisible and inalienable” (2000: 5) – has its origins in the work of philosophers Jean Bodin and Thomas Hobbes (see Bodin 1992 and Hobbes 1946). The classic view was “essentially a doctrine developed to account for and defend the power of the absolutist state, as it developed in Western Europe in the 16th and 17th centuries” (Curry 2000: 8). Curry argues that sovereignty has been so historically influential as an idea because it “enabled a form of government to emerge which proved conducive to the development of capitalism, and to the emergence of the distinctively liberal form of democratic government, which has been its political correlation” (Curry 2000: 8; see also Hinsley 1986). As a result of its historical influence, as Biersteker and Weber suggest, sovereignty has come to be characterised as “a basic rule of coexistence within the states system, a concept that transcends both ideological differences and the rise and fall of major powers, and it is frequently invoked as an institution that must be both protected and defended” (1996: 1). Sovereignty is also traditionally said to depend on a state’s claim to have a “monopoly on the legitimate use of violence within its territory” (Biersteker and Weber 1996: 14).

Whereas sovereignty tends to be conceived of as fixed, stable, and inhering in the state – particularly in “mainstream” or popular political discourse – Biersteker and Weber argue that sovereignty is in fact an inherently social construct based on a normative conception of the modern state system, which links “authority, territory, population (society, nation), and recognition in a unique way and in a particular place (the state)” (Biersteker and Weber 1996: 3). As Ashley argues, discourse around ideas such as state sovereignty is “actively produced in history and through practice” (1988: 32). See also Wilmer (1993: 170-177).
228-229). State sovereignty is therefore not a “necessary condition that the ‘realistic’
conduct of politics must take to be beyond question”; rather, state sovereignty is an
“arbitrary political construction that is always in the process of being imposed”
(Ashley 1988: 228-229). State sovereignty can therefore be seen to be what Wendt and
Friedheim describe as an “historically contingent social identity rather than an inherent
quality of stateness” (1996: 247). And, as Walker argues, “the very attempt to treat
sovereignty as a matter of definition and legal principle encourages a certain amnesia
about its historical and culturally specific character” (1993: 166). The centrality of
amnesia to the social construction of a normative conceptualisation of sovereignty is a
theme that re-emerges later in this chapter (and, indeed, in this thesis). This is because
it has a corollary in the process by which dominant understandings of nationhood and
national identity are constructed and maintained, as I discuss below. As Walker also
suggests, state sovereignty “is a discourse that constantly works to express and resolve
all contradictions arising from a specifically modern account of who ‘we’ are” (1993:
161-162). Consequently, this “historically specific account of political identity is
affirmed as inevitable, [and] other identity claims are marginalised” (Walker 1993:
161).

The discourse of state sovereignty – which defines sovereignty as inhering only in
the state – is therefore hegemonic: that is, in White Western societies such as Australia
at least, it is widely seen as normal and inevitable. Further, dominant
conceptualisations of sovereignty can be seen as examples of what Dyer refers to as the
“standards of humanity” which White people set, “by which [we] are bound to
succeed and others are bound to fail (Dyer 1997: 9-10). That is, White people set the
standards of sovereignty by which our claims to sovereignty are bound to succeed, and
others are destined to falter. For example, Ashley argues that one of the central
features of discourses of sovereignty is the construction of a hierarchical opposition
between sovereignty and anarchy, where sovereignty is “privileged as a higher reality,
a regulative ideal,” and anarchy is seen as almost seditious: a failure to live up to the
ideal of sovereignty (or the outcome of any successful challenges to it) (1998: 230).
“Sovereignty,” Ashley argues, “betokens a rational identity ... a coherent ‘self,’ and that
is demarcated from, and in opposition to, an external domain of difference and change.
... ‘Anarchy’ signifies a problematic domain yet to be brought under the controlling
influence of a sovereign centre" (Ashley 1988: 230). As a result – and as shall be
demonstrated in the following chapters – Indigenous challenges to the White state’s
claim to legitimate sovereign authority are represented or portrayed as its opposite:
“external, dangerous, and anarchic” (Ashley 1988: 230). Through the discursive
construction of sovereignty in this way, sovereignty becomes conflated with Whiteness
in a manner analogous to the conflation of Whiteness and property which Harris
describes: sovereignty is defined only to include White cultural practices (Harris
1993: 1721). This in turn informs the idea that sovereignty can only inhere in White political
structures such as the state. Thus, the hegemony of Whiteness means that the
“distribution” of sovereignty favours White people: it is distributed according to White
norms, and is configured so as to protect White interests. Thus, hegemonic Whiteness
and the hegemony of state sovereignty are inextricably connected: indeed, they are
mutually constitutive.

Therefore, as Biersteker and Weber point out, sovereignty is not a “timeless
principle” upon which the modern state system is based (1996: 3). Rather, they argue,
state sovereignty is an inherently social construct that must be critically evaluated as
such. Brace and Hoffman point out that sovereignty is a concept that is still central to
contemporary political debates and concerns and that pervades dominant political
discourse (1997: 6). It is also a concept that Indigenous peoples in countries such as
Australia and Canada have used to articulate their demands for justice and for political
recognition. But assertions of Indigenous sovereignty challenge the White state’s claim
to legitimate sovereign authority and the constructions of political identity upon which
that claim relies. They also tend to sit outside normative understandings of sovereignty
as something which inheres in the White state. As a result, Indigenous assertions of
sovereignty (and the people and groups who make them) tend to be marginalised or
dismissed. Therefore, to provide an analytical framework for considering Indigenous
sovereignty and the responses that assertions of it receive, it is necessary to
reconceptualise traditional notions of sovereignty with Indigenous assertions of
sovereignty in mind.
Reconsidering sovereignty: Indigenous sovereignties

At this stage, it is important to remember that, because of its origins in Western political philosophy, the concept of sovereignty has been critiqued by some Indigenous theorists as inappropriate for the articulation of Indigenous peoples’ demands for justice and recognition. According to Kanien'kehaka (Mohawk) political scientist Taiaiake Alfred, for example, there is no equivalent concept in Indigenous languages in Canada (Taiaiake Alfred, pers. comm., 22 August 2001). Alfred argues that sovereignty “is an exclusionary concept rooted in an adversarial and coercive Western notion of power.” As such, it cannot be seen as an appropriate framework for Indigenous peoples’ liberation (1999: 54-55, 58-59).\textsuperscript{33} Similarly, in Australia Noel Pearson has questioned whether the “concept of sovereignty as understood in international law is an appropriate expression” of Indigenous laws, lands and institutions (1993b: 15).\textsuperscript{34}

This thesis takes sovereignty as its main focus for two central reasons. First, as stated at the outset of this chapter, the issue of sovereignty is the un-addressed legacy of the myth of terra nullius. Second, many Indigenous people and groups in Australia do view “sovereignty” as an appropriate framework in which to articulate their demands for justice and recognition, and these people and groups – and the way that White people and institutions respond to them – are the substantive focus of this thesis. As Werther points out, when theorists are building an analytical framework in which to consider Indigenous peoples’ articulations of their rights, they face a challenge of central theoretical and methodological importance: the framework must account for the actual demands that groups make, rather than reframing them in language the analyst might view as more appropriate (Werther 1992: xxii). That is, theorists must build a framework that avoids what Moreton-Robinson describes as White people’s tendency to want Indigenous people to perform their politics “according to [White] ideas about what constitutes correct and proper political action” (cited in Nicoll 2002: para.19). Nonetheless, it is with the critiques offered by scholars such as Alfred and

\textsuperscript{33} See also Boldt & Long (1985).
\textsuperscript{34} Noel Pearson’s engagement with debates about Indigenous sovereignty in Australia is discussed in more detail in Chapter Six.
Pearson in mind that I develop the following argument for a reconceptualisation of traditional notions of sovereignty.

In response to what might be described as a general growing awareness of the unresolved nature of Indigenous peoples' demands for recognition in places such as Australia and Canada, a considerable body of literature has emerged around the concepts of self-determination and self-government.\textsuperscript{35} In addition, political theorists in the liberal philosophical tradition have addressed questions about Indigenous rights in the context of work on minority rights more generally.\textsuperscript{36} But where sovereignty is discussed in the context of Indigenous political rights, it tends to be in the context of these broader sets of concerns about recognition of Indigenous peoples within liberal democratic polities. That is, there is very little theoretical literature – particularly in the Australian context – that discusses Indigenous peoples' assertions of sovereignty per se. Moreover, there is little scholarly work that reconsiders traditional theorisations of sovereignty in the light of Indigenous peoples' articulations of the sovereign status of their communities and nations.\textsuperscript{37}


\textsuperscript{36} Contributions to debates about Indigenous and minority rights from liberal political philosophy can be broadly categorised into three schools of thought. First, traditional or orthodox liberals argue that Indigenous peoples' demands for political recognition should be accommodated using the traditional liberal principles of individualism and non-interventionism. Most notable among these theorists is Chandran Kukathas (1992, 1993, 1997a, 1997b, 1998), but see also Hardin (1995) and Ofie (1998). Second, by arguing that there is a connection between individual wellbeing and the wellbeing of the group, some liberal theorists argue that traditional liberal principles can accommodate group rights such as those demanded by Indigenous peoples. The most prominent theorist in this school of thought is Will Kymlicka (1989, 1995, 1996, 1998, 1999), but see also Tamir (1993), Taylor (1994), and Waldron (1992). The third approach is strongly critical of the first two, arguing that a much more comprehensive reshaping of liberal democratic norms and institutions is required to do justice to Indigenous peoples' demands for political recognition. As I discuss in the following paragraphs, James Tully (1994, 1995, 2000) is one of the most prominent theorists in this tradition, but see also Connolly (1995, 2000), Young (1990), and, more recently, Ivison (2002). For a more extensive overview of this literature, see the introduction to Ivison, Patton, and Sanders (eds, 2000: 5-11), Bern and Dodds (2000: 166-173), and Dodds (1998: 193-202).

It might be argued that this avoidance of the issue of sovereignty implicitly recognises critiques of the concept such as those raised by Alfred and Pearson. There is, however, a problem with this argument: it provides a justification for ignoring the assertions of sovereignty made by other Indigenous people, and it thereby entrenches an avoidance of the unresolved issue of sovereignty in the Australian context. This is certainly not to say Alfred and Pearson are misguided in their critiques of the concept of sovereignty. It is simply to reiterate that the central concern of this thesis is with why non-Indigenous people find it so difficult to come to terms with the unresolved issue of sovereignty that is nevertheless central to our relationship with Indigenous peoples. Little in the existing theoretical literature on Indigenous political rights to date speaks to this problem.

In the Australian literature, the following White scholars are exceptions to this rule: Steven Curry (1999, 2000), Henry Reynolds (1996a, 1996b, 1996c, 1998, 1999b), and Janna Thompson (1990, 1993). Each has published work that takes the issue of Indigenous sovereignty as a key focus. Fiona Nicoll’s work (2000, 2002, 2003) on Whiteness and Indigenous sovereignty provides an important and valuable framework for the consideration of non-Indigenous people’s engagement with Indigenous sovereignty, which I take up in the last part of this chapter where I begin to outline the idea of an “ethics of engagement.” Here, however, I wish to deal with some potential shortcomings in the work of Thompson, Curry, and Reynolds, which illustrate the limitations of existing theoretical literature which deals with non-Indigenous responses to Indigenous assertions of sovereignty in Australia.

Thompson offers a philosophical account that considers the issue of sovereignty specifically in relation to Aboriginal land rights, arguing that the dubious moral basis of the British claim to sovereignty over the Australian continent provides a pretext for

the contemporary recognition of Indigenous peoples' rights to land (Thompson 1990). Although she advocates a conceptualisation of sovereignty that does not rely on the state as the institution through which it can be recognised (Thompson 1990: 317), Thompson does not argue for the recognition of Indigenous sovereignty *per se*. In fact, she suggests that "as long as Aborigines remain citizens of Australia then they cannot exercise 'sovereignty' in the usual sense of that word" (Thompson 1990: 328). It is certainly important to draw a distinction between the *recognition* of Indigenous sovereignty, on the one hand, and the capacity for Indigenous people to actually exercise it, on the other. Thompson, however, seems to draw this conclusion because of what she perceives as the insurmountability of White sovereignty and the incommensurability of Indigenous sovereignty with the Australian state.

Further, Thompson’s *quid pro quo* is that an inquiry “into sovereignty and its justifications has a bearing on how we understand the present position of Aborigines and what we think they have a right to claim” (Thompson 1990: 314, my emphasis). This rationale is premised on the assumption that “Australian sovereignty” – by which is really meant White sovereignty – is something that is beyond question or challenge. It also positions White people as the legitimate arbiters of what Indigenous people are able or not able to “claim.” For example, Thompson concludes (it might be argued rather paternalistically), that “Aborigines are entitled to claim land rights from us” (1990: 328, my emphasis). This is problematic because it has the effect of reinscribing an understanding of “Australian sovereignty” in which White people are the legitimate holders of power, sovereignty, and land, and subsequently eliding questions about how we came to be the holders of power, sovereignty, and land in the first place. As Chapter One outlined, this thesis aims to disrupt the assumption that White people are the rightful owners of land on the Australian continent and therefore the rightful arbiters of Indigenous peoples’ “claims.” It aims to do this by considering not what Indigenous people have a “right” to “claim,” in Thompson’s terms, but, by focusing on questions of legitimacy, which I discuss in more detail below, suggesting that the more important and more honest question is what we White people have a “right” to “claim” instead.
Reynolds and Curry argue generally – albeit from different perspectives – for the accommodation of Indigenous peoples’ assertions of sovereign authority. Reynolds offers an essentially historical-legal account, which argues that Indigenous peoples could be seen to have had sovereignty according to the international laws of the nineteenth century, which provided for the establishment of (what would eventually become) the sovereignty of the Australian state. By virtue of a pre-existing Indigenous sovereignty, where it has not been extinguished by an act of state, what Reynolds describes as “remnant” Indigenous sovereignty might still exist today (Reynolds 1998: 211), recognisable under the auspices of the Australian state.38 In his contribution to Ivison, Patton and Sanders’ (2000) recent edited collection on Indigenous rights and political theory, Jeremy Webber makes a similar point in his discussion of the implications of the High Court of Australia’s Mabo 1992 decision for Australian constitutionalism (2000). He argues that the implicit recognition of Indigenous political autonomy implied by Mabo 1992 should not be overstated: “The recognition, though real, need not imply any acceptance that indigenous societies are immune from non-indigenous governmental action ... In that sense, indigenous societies may lack sovereignty” (2000: 63). Along the same lines as Reynolds, Webber then suggests that the question of whether “partial” Indigenous sovereignty might exist in Australia “has yet to be squarely addressed” (2000: 63). In his argument for the recognition of Indigenous sovereignty, Curry is critical of Reynolds’ reliance on existing legal principles and structures (1999: 19), and he is subsequently careful to avoid “privileging” the state (1999: 22). He argues that the “classic” view of sovereignty is nonetheless redeemable (2000: 9), and suggests that it is also preferable to questioning the “legitimacy of the whole state” (Curry 2000: 12).

Both Reynolds and Curry suggest that the accommodation of Indigenous peoples’ sovereignty might be achieved through the reconceptualisation of sovereignty as something that can be shared, or through the reinvigoration of notions of popular sovereignty. However, although both these scholars make a case for rethinking sovereignty in the Australian context, like Thompson, they both frame their accounts essentially in terms of how recognition of Indigenous peoples’ demands must take

38 Reynolds’ analysis of Indigenous sovereignty is discussed in more detail in Chapter Six.
place within existing theoretical and political frameworks. In their work, therefore, the White state is inevitably the institution through which any shared or popular sovereignty will be exercised. That is, they take state sovereignty as the norm against which "other" assertions of sovereignty such as Indigenous ones, must be judged.

It is undoubtedly true that there must be some mechanism or institution through which sovereignty can be exercised. The later chapters in this thesis will argue, however, that this rigid adherence to the relationship between sovereignty and the White state obscures and constrains alternative articulations of the relationship between Indigenous and non-Indigenous peoples, articulations that are not necessarily affirmed by the state. This characteristic rigidity also means that the important distinction between effective authority and justified authority is lost. This is a distinction between, on the one hand, authority that is currently being exercised and, on the other, a claim to authority that is not currently being exercised but which may be legitimate nonetheless. Furthermore, assertions of sovereignty that do not accept the existence of the existing invader-colonial state as either legitimate or inevitable – such as those made by Indigenous people – are more readily marginalised or ignored. As William Connolly suggests, "crucial presumptions" within existing "operational standards" of sovereignty (and identity and justice) "both camouflage injuries that might otherwise be ventilated and foreclose admirable possibilities that might otherwise be pursued" (1995: xii-xiii).

This tendency to conflate sovereignty and state is informed by what I call the "incontestability of the state" myth. This hegemonic understanding of sovereignty has two components: the first is the idea that the state is the only political unit in which sovereignty can reside and the related idea that sovereignty cannot be divided or shared. This is characteristic of the traditional normative conceptions of sovereignty discussed above. This part of the "incontestability of the state myth" is also central to the process by which sovereignty comes to be defined in a way which excludes the cultural practices of Indigenous people, as discussed above: that is, the way that sovereignty essentially comes to be defined as White. The second component of the "incontestable state" myth is the notion that the state's assertion of sovereignty over the continent now known as Australia was and is legitimate and therefore cannot be
challenged or contested. That is, as I discuss further below, legitimacy is not privileged in dominant conceptualisations of state sovereignty because assumptions about legitimacy of the existing state constitutes a key element in the hegemony of state sovereignty itself. I am distinguishing here, therefore, between what is required for a state’s claim to sovereignty to actually be legitimate, and the assumption that the effective exercise of sovereignty constitutes legitimacy in and of itself. In other words, in hegemonic understandings of sovereignty, the legitimacy of state sovereignty is presumed, whereas I argue that for sovereignty to be legitimate, legitimacy must be positively established. The later parts of this chapter will argue that dominant constructions of nationhood and national identity are central to the maintenance of the “incontestability of the state” myth, and the later chapters of this thesis will show how it informs non-Indigenous responses to assertions of Indigenous sovereignty. One particular manifestation of this idea, discussed in detail in Chapter Four, is the “act of state” doctrine.

Reconceptualising the idea of sovereignty so that it can adequately account for Indigenous peoples’ sovereignty requires a framework for challenging the “incontestability of the state” myth. This can be achieved in the first instance by what Biersteker and Weber describe as a “disentangling” of the notion of sovereignty from the state (1996: 2). One theorist who has taken up this challenge is White Canadian political philosopher James Tully. In his contribution to Ivison, Patton and Sanders’ (2000) recent edited collection on political theory and Indigenous rights, Tully draws on the work of Indigenous theorists such as Taiaiake Alfred, discussed above, and Anishnabai political philosopher Dale Turner (2001: 324). Turner argues that Aboriginal philosophies and traditions must be central to Aboriginal peoples’ assertions of sovereignty.39 Tully argues for a conception of sovereignty in which the presumption that jurisdiction must be exclusive is replaced with the idea that “free and equal peoples on the same continent can mutually recognise the autonomy or sovereignty of each other in certain spheres and share jurisdictions in others without incorporation or subordination” (2000: 53-54). In this view, prior and continuing Indigenous “sovereignty” “does not refer to state sovereignty, but, rather, a stateless,

39 See also Turner (2000).
self-governing and autonomous people, equal in status, but not in form, to the ... state, with a willingness to negotiate shared jurisdiction of land and resources” (Tully 2000: 53-54). Central to Tully’s conceptualisation of sovereignty is the idea that the legitimacy of any sovereign authority depends on the consent of those affected by it (Tully 2000: 52). Indeed, as Tully points out, this is a basic principle of Western law, “both domestically and in international relations among independent nations” (2000: 52, 57).

At this stage, it is important to distinguish between originary and derivative sovereignty. “Originary” sovereignty has its basis in a people’s own systems of law, culture, and government. “Derivative” sovereignty is that “created” or “granted” by another system of government. That is, “derivative” Indigenous sovereignty would mean that “Aboriginal peoples have no rights of government other than those that the written ... Constitution creates or that the federal and provincial governments choose to delegate” (Royal Commission on Aboriginal Peoples 1993: 9). Recognising originary sovereignty, by contrast, means recognising that Indigenous peoples are “the bearers of ancient and enduring powers of government,” which are based in their own cultures and traditions (Royal Commission on Aboriginal Peoples (Canada) 1993: 9).

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40 Tully argues that relationships between peoples should be based on the principles of mutual recognition and mutual consent and on an understanding of the continuity of both parties’ independent nationhoods (1995: 117-124). Tully argues that treaty-making based on these principles of treaty constitutionalism potentially provides a possible path to the establishment of a genuinely shared sovereignty, which would give credibility to the state’s claims to legitimate sovereign authority. That is, treaties – as agreements between two nations – are potentially a way of resolving the competing claims of Indigenous and non-Indigenous peoples to sovereignty. Similarly, Curry argues that a treaty negotiations process – in which the sovereignty of both the Indigenous and non-Indigenous communities is recognised – would lead to a unified, and more just (and therefore more stable) state reflecting both Indigenous and non-Indigenous values, concerns and priorities in its structures of government, its constitution and its laws. ... The process would be akin to a constitutional convention in which the terms of engagement for members of a ‘new’ state would be hammered out. In this way the dignity and autonomy of indigenous peoples would be restored and made real. The result would be a state in which each group could feel like a stakeholder (Curry 2000: 13).

Although they share some similarities, as I argue above, Curry and Tully’s arguments also have some important conceptual differences. See also Tully (1998).

41 Tully also notes that this “fundamental principle” has been upheld by the International Court of Justice in its Advisory Opinion Concerning the Western Sahara (1975) (Tully 2000: 52).
For the purposes of this thesis, then, Indigenous peoples and non-Indigenous people can be seen to have competing claims to, or assertions of, originary sovereignty over the territory claimed by the state. The distinction between the basis of these claims is fundamental: Indigenous peoples' sovereignty is based on Indigenous laws, institutions, and connections to land; non-Indigenous people’s sovereignty is based on the formerly accepted practice of colonisation. Or, as Nunga theorist Irene Watson (2000: 4) puts it, “Aboriginal laws are based on the songs of creation, while the coloniser’s law is legitimised by the act of state doctrine” (see also Watson 2002). The difference between the ideas of originary and derivative sovereignty highlights the difference between the theorisations of sovereignty presented by Reynolds and Curry on one hand, and theorists such as Tully and Turner on the other. Although they recognise that Indigenous systems of government pre-exist the establishment of the sovereignty of the non-Indigenous state, Reynolds and Curry argue that the non-Indigenous state is the mechanism through which Indigenous sovereignty must be recognised and exercised. For them, the contemporary exercise of Indigenous sovereignty would still be derived from the state. By contrast, Tully’s and Turner’s conceptualisations of Indigenous sovereignty do not rely on the state for legitimation.

Justice, legitimacy, and consent

The work of scholars such as Tully highlights the central importance of legitimacy in discussion about the concept of sovereignty. On the other hand, the normative conceptions of sovereignty discussed above omit the primacy of legitimacy, as I briefly discussed above. These normative conceptions also tend to emphasise authority (defined in terms of external recognition of a state’s authority by other states), actual control over territory (as opposed to an assertion of original ownership or custodianship of territory), and population (defined in terms of the people living in the territory over which the state’s authority and control is exercised). In contrast, and with Tully, I argue that legitimacy – based on the consent of those being governed – should be the basis of any normative conception of sovereignty.
As with the concept of sovereignty, there is in Western political theory a vast literature on questions of legitimacy and consent, and on related issues such as political obligation. In this thesis, I draw on the framework of legitimacy outlined by David Beetham (1991), who argues that there are three essential features or characteristics that can be said to contribute to political legitimacy:

[...] there is the legal validity of the acquisition and exercise of power; there is the justifiability of the rules governing a power relationship in terms of the beliefs and values current in the given society; there is the evidence of consent derived from actions expressive of it. These factors, successively and accumulatively, are what make power legitimate. To the extent that they are present, it will be legitimate; to the extent that they are absent, it will not (Beetham 1991: 12-13).

According to Beetham, these criteria provide the grounds for “obligation to support and cooperate” with the holders of power. They also drive the obligation to support and cooperate with the group/s or institution/s that claim to have sovereign authority (Beetham 1991: 13). It is important to point out, however, that at times there is a tension between “legal validity” and “justifiability.” For example, it has been argued that the application of terra nullius was legal according to eighteenth-century international law. If this is so, it is only because of the inherent racism of international law at that time (which meant that the Indigenous peoples of Australia were not seen as having “civilised” systems of law and governance). That is, even if the application of the terra nullius doctrine was legal, it was not necessarily justifiable or legitimate. Later chapters will deal with this tension in more detail.

Similarly, the test of consent is potentially problematic because, though scholars such as Beran (1987) and Herzog (1989) have pointed out that “consent” is difficult to positively establish, it could be argued that the British government did have the consent of the majority of its subjects – that is, the majority of White people – to

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43 See, for example, Dunn (1980), Harris (ed., 1990), Pateman (1979), Pennock & Chapman (eds, 1970), Steinberg (1978), and Wright (1992).

44 See also Green (1990) and Simmons (1979).
colonise Indigenous peoples and lands in Australia. This is because colonisation used to be seen as an acceptable, and indeed a worthy, endeavour. It would also be feasible to argue that the White Australian state has the consent of the majority of its citizens to continue its assertion of sovereignty over Indigenous people in the present. I have two responses to this sort of critique: first, to the extent that the test of consent potentially does legitimate the process of colonisation and the assertion of White sovereignty over Indigenous peoples and lands in Australia, this demonstrates the way that existing political norms – such as that of majority rule – tend to be geared towards the protection of White peoples’ interests. Second, however, this kind of critique does point to one of the weaknesses in Beetham’s theory: that it does not differentiate between different groups in a given society (for example, between the Indigenous minority and the White majority). Thus, Beetham does not account for the differences in power between different groups, nor for the significance of differences among social groups and the importance of recognising these differences in the establishment or determination of legitimacy.45

Notwithstanding these critiques that can be made of Beetham’s argument, his framework is still useful for my discussion of sovereignty and legitimacy. The reason for this is as follows: while the test of consent might be problematic because if taken simply as the consent of the majority then it is likely to favour White peoples’ interests, or because consent is difficult to positively establish, legitimacy as defined by consent provides a valuable analytical framework for the purposes of discussing Indigenous assertions of sovereignty. This is because the articulations of Indigenous sovereignty that are the focus of the later chapters insist upon the absence of consent by Indigenous people to the state’s claim to sovereign authority. As Dodson and Strelein (2001: 838) point out, and as I have already briefly discussed, the failure of the state to obtain Indigenous peoples’ consent to its assertion of sovereignty over them means that issues of sovereignty and legitimacy have an important moral aspect. Similarly, as later chapters will show, Indigenous peoples in Australia have variously challenged the Australian state’s claim to sovereign authority over them on the other grounds which Beetham poses as being tests for political legitimacy: the “legal validity of the

45 See Tully (1995) and Young (1990) on this point.
acquisition and exercise of power”, and the “justifiability of the rules governing a power relationship in terms of the beliefs and values current in the given society” (Beetham 1991: 12-13). That is, although Beetham’s framework certainly has some weaknesses, it is still valuable because it provides a clear basis for identifying a number of grounds on which the legitimacy of political authority can be brought into question.

It is also important to point out at this stage that the concept of treaties is significant in discussions about sovereignty, legitimacy, justice, and consent. Treaties are generally defined as agreements between two sovereign nations (Gilbert 1994: 13). It follows, therefore, that they should take place on a nation-to-nation basis – that is, between nations who consider themselves to be equals in the negotiation process. Accordingly, engagement in treaty negotiations constitutes a recognition by each party of the other’s nationhood and sovereignty (Tully 1995: 118-125). As later chapters demonstrate, this inter-national aspect of the concept of treaties can help to explain White aversion to the idea of a treaty between Indigenous and non-Indigenous people in Australia. The aversion arises because a treaty would necessarily pose a challenge to the Australian state’s claim to legitimate sovereign authority over the continent of Australia. But, for the same reason, the concept of a treaty is important: treaties can function as mechanisms for exchanging consent and thus for resolving competing claims to sovereignty. I return to the idea of treaties in the following chapters.

Towards a reconceptualisation of sovereignty

With the considerations that I have outlined above in mind, I wish now to restate the broad definition of the concept of sovereignty on which this thesis is based. This thesis does not take state sovereignty as its conceptual referent, and it works against a normative conception of sovereignty based on externally recognised authority and control over territory and population. Rather, sovereignty is understood to mean a people’s ability and authority to govern itself, where “ability” is derived from the existence of laws and customs recognised by the group that is being governed, and legitimate “authority” is derived from the consent of the group that is being governed. Indigenous sovereignty and state sovereignty are then considered to be two derivations of this broad definition. For the purposes of this thesis, when I refer to “Indigenous
sovereignty” and “state sovereignty,” in each case I am referring to the assertion of originary sovereignty.

Of course, this broader definition is by no means a culturally neutral one (there is no such thing — after all, as I’ve discussed above, the idea of the relationship between legitimacy and consent is firmly based in Western political theory). I have nominally adopted this definition, however, because it allows Indigenous sovereignty and state sovereignty to be understood as concepts of equal standing. This is in contrast to the traditional position in Western political theory, which takes state sovereignty as the norm against which “other” understandings of sovereignty, such as those held by Indigenous peoples, should be measured or justified. I am not arguing that issues that comprise traditional conceptualisations of sovereignty — such as control over territory and external recognition by other sovereign authorities — should be left aside; these characteristics of the exercise of sovereignty are clearly important. I am proposing, however, that White standards of “control” and “recognition” should not be privileged. Furthermore, these elements of sovereignty should not be privileged at the expense of other factors such as legitimacy. To do so is to weight discussion about sovereignty in favour of claims to sovereignty, such as the White Australian claim to legitimate sovereign authority, that are well-established (or at least widely accepted by similarly constituted sovereigns) in these terms.

One brief example demonstrates how this is the case: the Australian Federal Court’s 1998 judgment in the Yorta Yorta native title case. While not explicitly about the Yorta Yorta’s sovereignty over their lands, the judgment demonstrates the consequences of privileging actual control over territory and of accepting the state’s authority as given. In his judgment, which did not find in favour of the Yorta Yorta people, Justice Olney said:

[The question of obtaining permission to enter upon or use the resources of the claim area was raised by a number of witnesses. ... Neville Atkinson (Jr) said that the Yorta Yorta can determine who will come onto Yorta Yorta land and Gary Nelson said that a lot of Aboriginal people ask permission before entering Yorta Yorta country. ... There is overwhelming evidence that Aboriginals [sic] and non-Aboriginals [sic] alike enter, travel through, live, fish and hunt within the claim area without seeking permission other than as may be required by State or Commonwealth law. The tide of history has undoubtedly washed away any traditional rights that Indigenous people may previously have]
exercised in relation to controlling access to their land within the claim area (Members of the Yorta Yorta Aboriginal Community v The State of Victoria & Ors 1998, para.126, my emphasis).

According to this small excerpt from the judgment, while the Yorta Yorta people “may previously have exercised” traditional rights to control access to their land, the “tide of history” (presumably a euphemism for the violent process of colonisation to which the Yorta Yorta have been subjected) has “washed [these rights] away”. As a result, access to Yorta Yorta land is ultimately determined by State and Commonwealth – that is, White – law. My point here is that if the state was not seen as the unit in which sovereignty naturally, inevitably, and ultimately resides, there would have been some scope in the Yorta Yorta judgment to question whether the “tide of history” is a legitimate reason for denying Indigenous people the right to control others’ access to their land. There would also have been scope for recognising the legitimacy of the Yorta Yorta’s efforts to continue controlling access to their land, rather than simply assuming that these efforts are subsumed by White law.46

The remaining chapters illustrate in more detail the problems inherent in adhering to a definition of sovereignty which privileges White norms and values. Chapter Four in particular provides further examples from the legal system. But for the purposes of this discussion, the example of the Yorta Yorta case demonstrates the importance of employing a normative framework for understanding and evaluating claims to sovereign authority which privileges legitimacy. Positing Australian sovereignty as a given, and Indigenous sovereignty as something that has to be justified against it, is a path that is commonly and easily taken to grapple with issues of relations between Indigenous and non-Indigenous people. I argue, however, that this path is taken somewhat disingenuously. Accordingly, in this thesis, “Indigenous sovereignty” and “Australian sovereignty” are seen as two competing claims to legitimacy.

46 The Yorta Yorta appealed the decision in the High Court, but the Federal Court’s was upheld (Members of the Yorta Yorta Aboriginal Community v Victoria 2002). For a more extensive discussion of the Yorta Yorta judgment and its implications for Indigenous sovereignty, see Buchan (2002).
Nationhood and identity

The previous section of the chapter outlined the conceptualisation of sovereignty on which this thesis is based, and began to demonstrate how critical literature on Whiteness can inform a critique of traditional understandings of sovereignty. In this part of the chapter I discuss the concept of nationhood, and the ways in which this concept is important to the key themes of this thesis. I argue that nationhood - broadly defined as the collective sense of being that stems from common descent, language, culture, and history, and which underpins a people's laws and customs - is centrally important to any discussion of sovereignty. This is because dominant discourses of nationhood are fundamentally important in the maintenance of dominant norms, values and systems of knowledge that keep hegemonic Whiteness intact. In other words, the process of constructing, reinforcing, and reinscribing dominant ideas about White nationhood and national identity is part of the ongoing "maintenance project" of hegemonic Whiteness. Discourses of nationhood are thus an important site of analysis in an examination of hegemonic Whiteness in Australia. As Frankenberg has argued, the "formation of specifically white subject positions has in fact been key, at times as cause and at times as effect, to the sociopolitical processes inherent in taking land and making nations" (Frankenberg 1997: 2).

Dominant constructions of nationhood also inform the way that a people's claim to sovereignty is conceptualised or understood: nationhood, or national identity, broadly conceived, is what we mean when we talk about the collective difference that sovereignty gives legal expression to (Macklem 2001: 111). Thus, sovereignty and nationhood are inextricably connected. Further, as Doty (1996: 121-125) points out, discursive constructions of nation are central to the maintenance of dominant conceptualisations of state sovereignty. Thus, examining discourses of nation is critical to understanding the unresolved nature of the issue of sovereignty in Australia. That is, understanding dominant constructions of White Australian nationhood is important in explaining the logic of non-Indigenous engagement with the issue of sovereignty in general, and the character of non-Indigenous responses to assertions of Indigenous sovereignty in particular.
Accordingly, this part of the chapter sets up the framework for the analysis of White responses to Indigenous assertions of sovereignty in later chapters — that is, for the examination of the way that the contest between competing claims to legitimacy is played out within the framework of the Australian “nation-state.” It does this first by expanding on the definition of nationhood briefly posed above, and then by exploring some of the connections between nationhood, Whiteness and sovereignty.

**Conceptualising nationhood**

As briefly stated above, in this thesis, nations are broadly understood to be groups of people who have established systems of governing themselves according to their own laws and customs and who are recognised by other “similarly organised peoples” (Tully 1995: 120, my emphasis). As is the case with defining sovereignty, it is important to pose a definition of “nation” that is not specific to the dominant/non-Indigenous discourses of nationhood that I discuss in this thesis. Furthermore, my definition does not take the dominant/non-Indigenous version of nationhood found in invader-colonial societies as the norm against which other forms of nationhood and national identity ought to be compared. Like the concept of sovereignty, to talk of nations and nationhood only in terms of the way White people construct them is to perpetuate one of the central problems in dominant or traditional understandings of nationhood and nationalism in White Western political theory.

In this context, nationalism can be conceived of as both the process of constructing and maintaining the nation as well as the process of asserting and articulating the particularities upon which a specific nationhood is based. National identity can be defined broadly as the characteristics or traits that distinguish nations from one another. It is important to recognise the ontological aspect that stems from nationhood, nationalism, and national identity: that is, the collective sense of “being” that nationhood and nationalism engender. As Simpson suggests, in addition to being a “collectively self-conscious, deliberate and politically expedient formulation,” the nation is a “lived phenomenon” for the people in it (2000: 118). I argue that an ontological approach to examining constructions of nationhood — that is, one that

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47 See also Rex (1996: 4) on this point.
understands nationhood as a sense of self – is especially important to understanding the difficulties White people have in facing up to issues of sovereignty and legitimacy.

Combined with my conceptualisation of sovereignty outlined above, this way of conceptualising nationhood will illuminate the importance of White constructions of nationhood in the relationship between sovereignty and Whiteness, which I discuss in later chapters. Traditional White Western accounts of nationhood tend to limit the forms nationhood can take, but nationhood as it is conceived here allows for a broader range of forms, including Indigenous ones. These broader definitions do not, however, imply that Indigenous and non-Indigenous forms of nationhood are the same. Kahnawake Mohawk theorist Audra Simpson points out that a nation “receives its analytical particularities in the process and the place that it is articulated through” (2000: 118); nationalism, Simpson suggests, is a “process that is wedded to culture and must be treated so in analysis” (2000: 119). Clearly, then, articulations of nation will be different for Indigenous and non-Indigenous peoples (and for different nations within these two broad categories), as Simpson’s Kahnawake countryman Taiaiake Alfred points out: the “territorial and legal bases for Western nationhood are the specific products of the European experience of territorial consolidation and rationalism” (Alfred 1995: 10-11).

That is, in the case of White Australia, the establishment and subsequent maintenance of the nation was/is based on the idea of *terra nullius* and the invasion and theft of Indigenous peoples’ land. By virtue of its centrality to the colonial drive for capitalist expansion, as Grossman and Cuthbert point out, land has always been at the centre of discourses of White Australian nationhood (1998: 774). I would add that it is also at the centre of White claims to sovereignty. Moran argues that a key element in White discourses of land was/is the idea that White people’s link with the land was/is *originary* – that is, by “claiming that Aborigines had no proprietary interest in the land, white colonizers were claiming that only they had real ownership of the land, and were the first to take possession of it” (Moran 2002: 1021). Once again, Harris’ description of the process by which “[p]ossession – the act necessary to lay the basis for

48 See also Pettman (1988a: 73, 1998b: 22) on this point.
rights in property – was defined to include only the cultural practices of whites” resonates here (1993: 1721). It was through this process – justified and rationalised by discourses of the emergent White nation – that White peoples’ interests in land and property were privileged, and Indigenous peoples’ property rights subsequently excluded and ignored.

In terms of the importance of culture, which Simpson emphasises, I argue that the hegemonic political culture, in which concepts such as state sovereignty (and justification of land theft) are embedded can be seen as the basis of Western forms of nationhood. Conversely, non-Western forms of nationhood, such as Indigenous ones, are rooted in cultures that are based on religion and kinship (Alfred 1995: 10-11), as well as connection to land (Watson 2002: 45-48). (This is not to say, however, that all forms of Indigenous nationhood, or indeed non-Indigenous nationhood, are the same). The stuff of Indigenous nationhood per se is not the focus of this thesis, except in so far as it is connected to assertions of Indigenous sovereignty, and such that the exercise of it is prevented or limited by the imposition of non-Indigenous nationhood (and the discourses of nation by which this imposition is achieved and maintained). My focus here is on outlining an analytical framework in which the hegemonic project of constructing and maintaining White nationhood – and its relationship to sovereignty in Australia – can be understood.

Whiteness, sovereignty and nationhood

There is an extensive scholarly literature on nations, national identity, and nationalism.49 Much of this literature has been produced by White men working in Western academic institutions. Perhaps not surprisingly, then, nationalism has tended to be conceptualised – in both scholarly theorisations and popular manifestations – as a strictly Western phenomenon, as both Simpson (2000: 121) and Alfred (1995: 9) point

out. Alfred argues that this body of literature has "created a model of nationalism based upon a narrow view of one aspect of European history and applied it as the global standard" (1995: 9). Consequently, traditional Western theorisations have not allowed for what Simpson describes as those "collectivities which do not fit the template – those that are non-western, economically integrated and at times, appear to be politically dominated" (Simpson 2000: 119). In other words, Western theorisations do not accommodate non-Western (and non-White) forms of nationhood such as Indigenous nationhood. Dyer's (1997: 9-10) point about the standards White people set by which we are bound to succeed and "others" destined to fail is once again resonant here.

By virtue of its basis in Western experience, a central feature of this literature is that "nationhood" has tended to be conflated with the state, a conflation that is evidenced most obviously by the ubiquitous term "nation-state." In this view, as Simpson suggests, nationalism is seen as "the means to an end – the end being the formation of 'the nation' and its political enclosure, 'statehood'" (2000: 119). It is only relatively recently that some scholars of nationalism have begun to "drive a conceptual wedge between nation and state" (Reynolds 1994: 282). Although I have suggested that nation and state should be seen as conceptually distinct, "the state" is still a key concept or agent in the analysis of sovereignty and nationhood contained in this thesis. This is not because the state is the inevitable end-product of nationalism or the natural political unit in which nations should be encased. It is because of the important, active role that the modern state itself plays in the process of identity formation and construction, which it does by virtue of having a "monopoly over territorial boundaries and institutions" (Simpson 2000: 121). That is, the state and the institutions that comprise it are not dispassionate, neutral actors. This is demonstrated in Chapter Four. This also points to the important relationship between the maintenance of the hegemony of state sovereignty, and discourses of nationhood and national identity.

Indeed, Simpson also suggests that nationalism is a "political theory of legitimacy" (2000: 119, my emphasis). I would argue that this is particularly so where nationalism and statehood are intertwined. In the preceding part of the chapter which dealt with sovereignty and legitimacy, I briefly discussed the way that legitimacy in modern
states is hegemonically constructed. For the purposes of this thesis, then, dominant constructions of nationhood and national identity can be seen as one of the means by which this takes place. As discussed above, the traditional or dominant tendency in Western political theory is to conflate nations with states, and states with sovereignty. Consequently, if we are to explain why White claims to sovereignty are privileged and why the competing claims of Indigenous and non-Indigenous people to sovereignty in Australia remain unresolved, we must examine the hegemonic construction of legitimacy vis a vis dominant discourses of nationhood and national identity. The construction of legitimacy through White discourses of nationhood is the basis of what I described above as the “incontestability of the state” myth.

Within dominant White discourses of nationhood and national identity, Indigenous peoples are not viewed as being able to “have” sovereignty because they are not considered to “be” nations. Indeed, in dominant discourses of nationhood and national identity, Indigenous “difference” from the White norm is reduced to the sphere of “culture.” “Culture” can easily coexist with dominant forms of nationalism, and, moreover, as Moran suggests, it can even be embraced (or perhaps more accurately, appropriated) by it (Moran 1998). This reduction of “difference” to “culture” means that “difference” is not able to translate to alternative articulations of the political: “cultural difference is included not on the terms of the marginalised culture, but on those of the dominant group” (Moreton-Robinson 2000b: 47). Edward Said’s famous theorisation of the West’s construction of an “Orient” as a way of understanding itself provides a tool for understanding the way the process of identity construction that I have described here is played out. Said argues that “a culture, a self, a national identity, is always produced in relation to its ‘others.’” That is, the construction of identity involves “establishing opposites and ‘others’ whose actuality is also subject to the continuous interpretation and reinterpretation of their differences

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50 See also McClean’s discussion of the appropriation of Indigeneity in discursive constructions of White Australian nationhood (1998). Further, Nicoll argues that, since the White bicentenary in 1988, “the deployment of Aboriginal art has become part of the state’s response to the articulation of Aboriginal grievances, past and present” (1993: 706).
from 'us'" (Said 1995: 332). According to Dyer, Said’s self/other dichotomy suggests that

white discourse implacably reduces the non-white subject to being a function of the white subject, not allowing her/him space or autonomy, permitting neither the recognition of similarities nor the acceptance of differences except as a means for knowing the white self (Dyer 1997: 13).

One way in which the "otherness" of Indigenous people is interpreted or positioned in dominant constructions of Australian nationhood may be seen in the way it is represented as having culture – but not to the extent that this constitutes nationhood.

De Costa describes this as the "positioning of a true or authentic Aboriginality as passive or harmonious within a European-directed polity" (de Costa 2002: 20). In some instances, as Wolfe argues, this positioning is manifested in a discourse of "repressive authenticity," which "imposes on colonised people the impossible task of acting out pre-contact stereotypes of themselves that have been produced within the colonising culture" (2000: 134). This closely connects with the theoretical literature on Whiteness discussed in the first part of the chapter: because Whiteness is the dominant subject position and subsequently normative, White people often make demands of "others" that they perform or demonstrate their difference. The discourse of repressive authenticity that Wolfe describes is an example of this. Similarly, Bhabha (1994: 66) argues that the concept of "fixity" is central to ideological constructions of "otherness" in colonial discourse:

[fl]ixity, as the sign of cultural/historical/racial difference in the discourse of colonialism, is a paradoxical mode of representation: it connotes rigidity and an unchanging order as well as disorder, degeneracy and daemonic repetition (Bhabha 1994: 66).

Because of the impossibility of "acting out" the "pre-contact stereotypes" on which the discourse of colonialism relies – by virtue of the fact that it involves "standing outside history," as Wolfe suggests (2000: 134) – these discourses have the effect of rendering inauthentic those Indigenous people who "do not embody the construction" (Wolfe 1994: 111). As I suggested above, the discursive construction of the inauthentic Indigene is one of the tools White people use to dismiss Indigenous peoples' assertions

51 See also Bain Attwood’s discussion of non-Indigenous Australia’s construction of knowledge about Indigenous people (1992).
of sovereignty. Moreover, Indigenous people who challenge the order of things imagined for them in White discourses by asserting sovereignty (simultaneously exposing the lack of legitimacy that characterises Australian sovereignty and nationhood) are subsequently constructed as delinquent. In some cases, as the later chapters will show, they are also effectively “locked out” of the frameworks in which relations between Indigenous and non-Indigenous peoples are played out. This is all part of the hegemonic project of reinforcing and reinscribing dominant constructions of sovereignty, nationhood, and identity. Hage describes this as a “constant struggle to eradicate not otherness as such, but the capacity for any otherness to constitute itself into a national counter-will” (1998: 110).

Several other elements or factors are central to the continuous project of “shoring up” dominant constructions of nationhood and identity, and thus White sovereignty. For example, many theorists have written about the important relationship between identity and memory. Jon Stratton suggests that national identity can be understood as a product of “shared national cultural myths,” where “history” is ultimately a cultural construction of the past (1998: 111). Renan writes that “forgetting, I would even go so far as to say historical error, is a crucial factor in the creation of a nation” (1990: 11). Similarly, Rowley once described White Australia’s selective remembering of our past as a “mental block” (cited in Cowlishaw 1999: 9). As I suggested in the preceding discussion of sovereignty, the amnesia that is so important to the construction of nations is the corollary of the forgetfulness upon which dominant understandings of state sovereignty depend. Gaudreau-Desbiens argues that memory is closely, even inextricably, intertwined with the identity narrative of the community, serving as what he describes as its “identity reference,” which in turn forms the “intellectual/ideological background against which this community assesses and reacts to contemporary socio-political events” (Gaudreau-Desbiens 1999: 797-798). Schaffer points out that it is particularly at times when the “identity reference” is challenged or threatened that the “selective or cumulative memory” requires a reinvestment in an “imagined and unified historical past” (Schaffer 2001). This is so as

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52 See also Batty (1998) and Brown and Sant (1999).
to avoid the trauma that such threats to the national sense of self invoke. As Schaffer argues with reference to Australia, this is about

what 'we', on an ontological level of national selfhood, cannot afford to know, to see, to hear or to speak of. We turn away, uncomprehending, not from the words but from the recognition they threaten to provoke of a nation and its people, a recognition so remote from the myths of nation that fuel our perceptions of ourselves as Australian so as to be unrecognisable (Schaffer 2001).

The later chapters in this thesis will discuss the ways in which White people's responses to Indigenous peoples' assertions of sovereignty are mediated by dominant constructions of nationhood and identity and, in particular, by the perceived threats to the national ontology that assertions of Indigenous sovereignty provoke. The later chapters also examine the ways that some White responses to Indigenous assertions of sovereignty can be read in terms of the White desire to maintain a sense of the national self as inherently "good." As Hage argues, nationalist practices that are perceived as morally "good" are "structurally similar to the 'evil' nationalist practices of exclusion" that these practices are designed to negate (1998: 79). This is because those who "execute them, 'good' as they are, share and inhabit along with White 'evil' nationalists the same ... position of power within a nation imagined as 'theirs'" (Hage 1998: 79). That is, discourses of the national self in which that self is represented as inherently "good" often function to reinforce and maintain hegemonic Whiteness.

An ethics of engagement

The preceding discussion locates Australia's failure to deal with the issue of sovereignty in hegemonic Whiteness and the discourses which support it, in particular discourses of White nationhood. In doing so, it demonstrates that analyses of relations between Indigenous and non-Indigenous peoples must extend beyond focusing on the "accommodation" of "difference," "culture," and "diversity," where the nation-state is accepted as the impartial framework within which these relations are played out, and where Whiteness is the normative arbiter of all of these conversations. As I have argued above, to accept the "nation-state" as a given is to skew the direction of the conversation considerably before it has even begun. Rather, as Doty argues, the recognition of the foundations of dominant constructions of nationhood and national identity – and the dominant conceptualisations of state sovereignty which they inform
and are informed by – has an important implication. This is the need to interrogate the practices that produce “seemingly stable and fixed foundations” (Doty 1996: 123). The preceding sections of the chapter began to outline some of the analytical tools that can be used in this interrogation of hegemonic Whiteness. The aim of this part of the chapter is to set out an ethics or ethos of engagement with these issues according to which this process of interrogation can take place.

Here I take up Connolly’s idea of an “ethos of pluralisation” as a point of departure: Connolly argues that coming to terms with the “ambiguous relationship between new movements and congealed standards of political judgement, and between hegemonic identities and the intrasubjective and intersubjective differences in which they are inextricably implicated,” requires cultivating an “ethos of critical responsiveness to political movements that challenge the self-confidence and congealed judgements of dominant constituencies” (Connolly 1995: xv, my emphasis). But he points out that this requires more than ensuring that the existing moral code is applied “fairly and consistently.” In fact, it requires the introduction of a “new possibility of being” (Connolly 1995: xv, my emphasis). That is, it requires challenging the existing order of things, and the dominant modes of self-perception which make the existing order of things seem normal, natural and inevitable. This, of course, invokes resistance on the part of what Connolly refers to as the “established” or hegemonic identities. Connolly describes this as a “state of panic in the self-confidence of the established identities” which is caused by the disruption to existing definitions and constructions of identity on which hegemonic identities depend (Connolly 1995: xv-xvi). But this disruption is crucial to an ethos of critical responsiveness: “to redefine its relation to others a constituency must also modify the shape of its own identity. ... The ethos of critical responsiveness pursued here does not reduce the other to what some ‘we’ already is” (Connolly 1995: xvi-xvii).

Connolly provides a useful framework for developing an ethics with which to engage in discussion about questions of sovereignty, nationhood, identity, and their relationship to hegemonic Whiteness. A limitation of his work, however, and my subsequent point of departure from it, is as follows. Although Connolly argues for a revision of “established identities,” he locates this discussion in the context of
responding to "difference" rather than on the basis of the imperative to interrogate existing constructions of identity – in the context of this thesis, those identities constituted by, and constitutive of, hegemonic Whiteness – *per se*. However, building on Connolly’s basic framework, I return to Aileen Moreton-Robinson and her argument for theorising the relinquishment of one’s own power (Moreton-Robinson 2000b). I also draw on Fiona Nicoll’s idea of Indigenous sovereignty as an “ethical yardstick” to pose what can broadly be termed an “ethics of engagement,” which forms the basis for my approach to these issues.

One of the key arguments in Moreton-Robinson’s work is that the standpoints of all academic analysts are inextricably related to their/our embodied subject positions (2000b: xvi). Subsequently, our “ability to know and our experiences are limited, therefore standpoints are partial and so are the knowledges we produce” (Moreton-Robinson 2000c: 351). Yet Moreton-Robinson’s research on White feminists in Australia demonstrates that Whiteness works to support White feminists “being racially disembodied [in] their thinking, knowing and writing” (my emphasis); that is, Whiteness deludes us into thinking that our epistemologies, and subsequently our approaches to scholarly analysis, are unaffected by our racially embodied standpoints (Moreton-Robinson 2000c: 351).

As I will argue in later chapters, the tendency that Moreton-Robinson observes in White feminists is a more general one contained in much of the work produced by White scholars on Indigenous people and Indigenous rights in Australia. Indeed, the very fact that I can write “on Indigenous people and Indigenous rights” is indicative of this tendency: scholarly work by White people on issues to do with “race relations” is rarely about us. As Dyer argues,

> it has become common for those marginalised by culture to acknowledge the situation from which they speak, but those who occupy positions of cultural hegemony blithely carry on as if what they [we] say is neutral and unsituated – human but not raced (1997: 4).

Moreton-Robinson also makes the point that White women’s (and, more generally, I argue, White people’s) refusal to *own* our race privilege and, moreover, to challenge it, makes us complicit in the racially hierarchical ordering of society and in the racial
oppression this social ordering produces (Moreton-Robinson 2000c: 351). This occurs even though these might be the same hierarchies that our work seeks to critique.

Therefore, Moreton-Robinson argues that it is incumbent upon us White scholars to critique and interrogate our own privilege. Subsequently, she argues that the real challenge for White feminists is to:

theorise the relinquishment of power so that feminist practice can contribute to changing the racial order. Until this challenge is addressed, the subject position middle-class white woman will remain centred as a site of dominance (Moreton-Robinson 2000b: 186).

Although this imperative and the challenge contained within it is clearly addressed to White women in the context of feminist debates, as I have already suggested, the issues to which Moreton-Robinson speaks can also be abstracted to the more general condition of hegemonic Whiteness discussed in this chapter. That is, it is incumbent upon White scholars generally to theorise the relinquishment of our power, and, until we do so, Whiteness will remain centred as a “site of dominance” and we will remain complicit in this. This thesis seeks to contribute to this process by interrogating the ways in which White race power and privilege is maintained by White people’s refusal to own up to the “public secret” of Indigenous sovereignty in Australia (Nicoll 2002: para.33). Likewise, it also seeks to consider how engagement with the demands by Indigenous people for recognition of their sovereignty can contribute to the process of undoing White race power and privilege.

Using the idea that an ethics of engagement must be driven by theorising the relinquishment of one’s own power, Fiona Nicoll offers a means by which this can occur in her discussion of the “ethical yardstick of Indigenous sovereignty” (2001a: 1). As the opposite of terra nullius, Nicoll argues that Indigenous sovereignty can be understood as an ethical frontier, a “point beyond which non-Aboriginal Australians should never have invaded” (2001a: 17). Therefore, the acknowledgment and recognition of Indigenous sovereignty is a point against which contemporary policies and practices – including one’s own practice – should be evaluated (Nicoll 2001a).53 Recognising the need to theorise the relinquishment of White power and privilege

brings with it a responsibility to engage with Indigenous peoples’ demands for the recognition of sovereignty (Nicoll 2000: 382). That is, by “ethics of engagement” I mean that White people have an ethical obligation to engage with Indigenous peoples’ assertions of sovereignty.

Nicoll directly contrasts the “ethical yardstick of Indigenous sovereignty” with the ubiquitous but rather vague notion of “reconciliation,” which, as I have argued elsewhere (Pratt, Elder, and Ellis 2001), can work to reinforce rather than challenge hegemonic constructions of nationhood and identity. The ethical yardstick of Indigenous sovereignty, on the other hand, directly challenges these constructions. It also challenges the hegemonic Whiteness that informs, and is informed by, these constructions, and it consequently contests the way that dominant constructions of White sovereignty and nationhood function to elide the issues of legitimacy and consent. As discussed above, these issues are central to relations between peoples, particularly relations where two peoples have competing and unresolved claims to originary sovereignty. Therefore, if the “ethics of engagement” is used in conjunction with it, a normative framework of legitimacy – as outlined above – can be used to theorise the relinquishment of White power. The ethical obligation of White people to recognise, acknowledge, and engage with Indigenous sovereignty is the analytical referent employed in my examination of White responses to Indigenous assertions of sovereignty in the remaining chapters.