The living library: some theoretical approaches to a strategy for activating human rights and peace

Robert George Garbutt
Southern Cross University

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Introduction

The papers in this proceedings are the result of presentations given at the international *Activating Human Rights and Peace: Universal Responsibility* conference held at the Byron Bay Community and Cultural Centre, NSW, Australia, from 1 – 4 July 2008.

The *Activating Human Rights and Peace: Universal Responsibility Conference 2008 Conference Proceedings* is a publication of the Centre for Peace and Social Justice at Southern Cross University. Refereed papers have been blind, peer refereed by members of a panel of national and international experts in the fields of human rights and peace. Whether a paper is refereed or non-refereed is indicated at the top right-hand corner above the title of each paper.

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The referencing in this proceedings is a mixed referencing system. While some standardisation has been attempted, the cross-disciplinary nature of the *Activating Human Rights and Peace – Universal Responsibility* conference meant that one referencing system could not suit all writing and topics. For this reason we have chosen a pragmatic path and allowed a range of styles, the key criteria being clarity, consistency and accuracy.

Editorial Correspondence should be addressed to:
The Centre for Peace and Social Justice
Southern Cross University
PO Box 157
Lismore NSW 2480
Australia
Email: cpsjpapers@scu.edu.au

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Preface to the Conference Proceedings:
Walking the tightrope of being human

Baden Offord, Conference Co-Convenor
Southern Cross University

In the papers presented here from the international conference Activating Human Rights and Peace, held in Byron Bay in July 2008, you will find a remarkable diversity of topics and approaches that respond to many pressing problems in the world today. They offer a kaleidoscopic demonstration of what must be discussed, debated and churned over as an outcome of the conference, as part of an enduring conversation that moves us from our complacency. The collection is timely and very relevant to the challenges we face. These thoughts here will hopefully contribute to the language of respectful co-existence found in human rights and peace praxis and provide us with direction for walking across that tightrope of being human.

These contributions have been generated in a momentous year for human rights and peace issues and concerns. As markers of opportunity and celebration, 2008 witnessed the historic apology to Indigenous Australians by the Australian Government; the world-wide acclamation of the 60th anniversary of the Universal Declaration of Human Rights; and the remarkable election of Barack Obama as President of the United States. However, in Africa, extensive starvation in the north of the continent became critical, violent oppression increased in Zimbabwe in the south, and with ongoing wars in Afghanistan and Iraq, terrorism in India and Pakistan, among other examples, 2008 was characterized as a world of endemic human suffering. On top of all this, the collapse of the global financial system and the rapid destruction of the environment brought the world to a precarious state of vulnerability.

The purpose of the conference was to continue the urgent enquiry (begun at the first event in 2003) into how human rights can be activated, that is, brought into both vision and practice as a living praxis. The idea for these conferences derives from a discussion with Archbishop Desmond Tutu, who suggested the best way to engage human rights is to tackle their meaning and purpose through gatherings that bring together scholar, activist and community member to exchange experience and thought on matters of being human.

The 2008 conference was opened by Justice Michael Kirby, Patron of the Centre for Peace and Social Justice at Southern Cross University. In his speech he focused on the need for everyone to take an activist approach to matters of human rights and peace. He offered insights regarding the important relationship of human rights to a peaceful world, that recognition of people’s inherent dignity and humanity was germane to building peace. These ideas, he said, could not be left idle without vision and application; they require sustained input and energy, ongoing commitment and careful deliberations.

But Justice Kirby also made the significant point that human rights issues impact on all of us every day, whether we are conscious of them or not. He spoke of his own experience as a gay Australian and how issues of sexual orientation, gender identity and human rights also sustain peaceful relations and communities. What Justice Kirby did through reflecting on his own life (in truth, telling us how he became aware of his own need to be an activist) was to bring home the fact that human rights and peace provide a language for dialogue about human life in all of its diversity and complexity. He implored the conference participants to make this language deeply coherent and practical; to clarify and extend the framework of human rights into broader discussions about what constitutes and sustains peace. He asked us to think about
what needs to be done within and beyond our own lives, beyond the gathering, what needs to be done for the future. He asked us to go beyond the predictable.

Certainly, at international gatherings such as this one, what was apparent was the extraordinary range of experience and the multiple approaches to human rights thinking and practice. The idea of human rights itself was sifted, negotiated, utilized, refuted, recast, politicized, and re-imagined in all kinds of ways, depending on context. Peace as concept was unpacked as replete with a concordance of contradictions, invoking simplistic approaches to co-existence and ready-made formulas, or dense institutional instrumentalism through its relationship, for example, to ideas of security, terrorism, war, gender and the environment. This conference, like the first one, proved to be a catalyst in considerably opening up theory and practice for activist and thinker alike.

Bringing together critical, creative and activist viewpoints produced possibilities for rich communication that was qualitatively engaged. Concepts were turned inside out, and through practices of listening (so crucial at these events) and considered articulation (rather than dominant speaking), the gathering built conversations infused with vitality, respect, interest and curiosity.

Thus, human rights and peace in this fashion became portals of learning about being human, about how to respond to the urgent problems the world presently faces. Justice Kirby’s call to activate human rights was salient for its strong focus on the sustained meaning and purpose of co-existence, not to rest on easy formulas nor become trapped by ideological, religious, or cultural cul de sacs that lead nowhere. The purpose of the gathering was to extend, invoke, build upon, and contribute to a global conversation about our common humanity, to recast vulnerability as a characteristic of all human life, not as a specific weakness or deficit, but as something substantively related to power in all its forms. No-one is above being vulnerable.

Early in the year, newly elected Australian Prime Minister, Kevin Rudd, made a historic and long due apology to Aboriginal and Torres Strait Islanders. This was an important gesture by the new government in its attempt to build relations of peace with the country’s first peoples. It was an acknowledgement that the human rights of Indigenous Australians had been systematically and purposefully denied through wrongful and inhuman policies in the past. This apology (so contentious in the making) underscored the very contradictions at the heart of the Australian polity and culture, fashioned as these have been through colonialism and paranoid nationalism. But, as Indigenous human rights scholar Larissa Behrendt has put it, ‘Rudd will always be remembered for the unequivocal apology he delivered on the 13 February 2008 but it is what he does next that will define his legacy.’ In other words, in what direction will he move?

Similarly, what is the legacy of this conference? How can its success be measured? How has it improved or aided the activation of human rights and peace in the world? Can such a thing be measured? My answer to these questions is simple. I think we need to appreciate that cultivating a human rights and peace consciousness is choice-less. And, intrinsic to this are necessary conversations that we need to have, that we cannot avoid. That is, there is a moral imperative to engender and sustain an ethical praxis that is motivated by a concern and commitment for how we live with each other. In doing so, we need to link experience substantively to education and vision, as these are mutually sustaining.

Importantly, in cultivating a human rights and peace consciousness I do not think that the approach can ever be merely instrumental (indeed, such an approach is dangerous and
harmful). A principle, a process, an apology – these are only part of the story. The legacy itself is in the activation, energizing, and inspiration to move towards (to know, to listen to, to understand) the whole story, and this is something that can never be reduced to some measurement or formula. Cultivating a human rights and peace consciousness, therefore, is always characterized by walking on a tightrope of being human. I think these conference proceedings will provide some of the muscle required for such an exercise.

Byron Bay
20 December 2008
Preface to the Conference Proceedings

Bee Chen Goh, Conference Co-Convenor
Southern Cross University

The Centre for Peace and Social Justice held the international conference on Activating Human Rights and Peace: Universal Responsibility at Byron Bay on 1-4 July 2008. It attracted inter-disciplinary scholars Australia-wide and internationally, and was hailed as a huge success. This compilation of online Conference proceedings bears testimony to the high-quality contributions and contributors. It was heartening to note that the theme of Peace generated a variety of rich, relevant sub-themes e.g. peace-building, the environment, interfaith, health and aged care, indigenous peoples, conflict resolution, and transitional justice.

The spirit of ‘walk-your-talk’ was evident, and there was a shared optimism of issues such as environmental sustainability and global peace.

The sterling work of Dr Rob Garbutt in making this compilation possible must be acknowledged. I wish to thank Associate Professor Baden Offord as Conference Co-Convenor, and our Conference Team whose vision, passion and tireless effort culminated in the success of this Conference.

Professor Bee Chen Goh
Head, School of Law & Justice
Co-Director, Centre for Peace and Social Justice
Conference Co-Convenor

12 December 2008
Editor’s Preface

Rob Garbutt, Editor
Southern Cross University

The papers in these proceedings represent many labours of love.

The work presented here is from over 50 contributors to the 2008 Conference Activating Human Rights and Peace: Universal Responsibility. Each piece of writing is a labour of love that arises from connections with many others – human and non-human – who are more than subjects of research. These relationships to others are themselves expressions of the love and concern that activates human rights and peace.

For the participants in the conference these proceedings are the final official product of a gathering that occurred many months and years ago. The conference had energy and warmth that fostered relationships of many forms, even if for only four days. Conference proceedings are no substitute for such a gathering, but they are an ongoing gift from the conference that we all hope may foster further connections, and new and ongoing labours of love for the benefit of human rights and peace.

Finally, in this editorial reverie, I think of the many labours of love that make this document physically possible. To the authors, of course, thank you for your contributions, patience, revisions and good will. And on behalf of the authors, and with my own heartfelt thanks, I would like to pay tribute to the band of referees who willingly and generously gave their time to this project, including many not connected with the conference itself, and some who asked for even more work. The good will expressed through the refereeing process was, for me, a highlight I had not expected.

To these proceedings, I wish you well. May you stimulate, challenge, provoke and above all further activate human rights and peace.
Refugee

Shé Hawke
University of Sydney

Do I confine you to lines and words
enclosed by margins, stops and commas,
or give you space to slip through the gaps,
and allow my curiosity to move into your story
which personifies your absence
in the presence of the standard page?

Shall I speak with you
of the less spoken
discover the difference between
what is known
and what is unknown,
or do I colour you in with unconscious thought?

Shall I assume nothing of you
and in that nothingness know much,
or do I hold you hostage to checkpoints and borders
that mimic old truths
and change the shape of the place between us
as you walk widdershins to the common pull?

Do I hear your mother tongue
lamenting in refrain
though it be incomprehensible to me?
Is it your destiny to utter,
though your muted tones
may fall on the boxed ears
of others who are differently sourced?

Will I take the time
to sit with the turn of your tide
and feel its moonly pull
as it washes over mine and other people’s lives,
washes reverently the feet
that shift in shifting sand?

Will I grant you asylum in my court,
underwrite
your human right
and appraise your human being
through my doing,
as you cross the never-ending bridge of becoming?
I watch your fluid identity
transgress the boundaries of printed words and signs,
try to decipher
your lost, sold, stolen, traded
dislocated belonging
that conveys but can’t contain you …
… and I wonder do you seek
a sacramental unity of being
in this disparate humanity
that lacks the certitude of science
and begs the leap of faith,
as we both wander
through the maps that change the world?

A forgotten right? The right to adequate clothing in the Universal Declaration of Human Rights

Dr Stephen James
Member, Australian and New Zealand Society of International Law

Abstract: This paper examines the right to adequate clothing as part of the more general right to an adequate standard of living in Article 25 of the Universal Declaration of Human Rights (1948) (UDHR). Very little has been written about the right, with scholars and international organisations neglecting it compared with food, housing and health. This neglect is baffling and troubling given that the failure to fulfil the right to adequate clothing can seriously undermine human well-being. The right to adequate clothing is especially important to a range of vulnerable people, including children, prisoners, people with disabilities, the elderly, the institutionalised and the drug-dependent. The paper demonstrates the right’s connection with other rights listed in Article 25, as well as its connection with other UDHR articles: including those relating to remuneration and workplace conditions (Article 23) and the international order (Article 28). The paper concludes that we must not forget the right to adequate clothing when analysing Article 25; that we need to elucidate other international, regional and national legal provisions relevant to the right; and that civil society has an important part to play in advancing the right.

Keywords: adequate standard of living; Universal Declaration of Human Rights (1948); economic and social rights

Introduction

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.


The right to adequate clothing in international law is part of the more general right to an adequate standard of living guaranteed in the UDHR and the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR) (reproduced in Center for the Study of Human Rights 1994: 10–16). But very little has been written about the right to adequate clothing, and the Committee of the Economic, Social and Cultural Rights Covenant (CESCR) seems largely to have neglected it as well (for brief discussions, see Craven 1995: 287–288, 289–291, 349, 351; Hathaway 2005: 503–504; Weissbrodt and de la Vega 2007: 150–156; Icelandic Human Rights Centre 2008: 6; Bailey 1997: 39–40; UNESCO 2008: 2). While the word ‘clothing’ is inevitably referred to when scholars quote the principal relevant articles
(Article 25, UDHR; Article 11, ICESCR), it is almost as though it vanishes from the page when they come to interpret and evaluate the provisions.

The forgetting of the right to adequate clothing is baffling given its obvious importance for human well-being. The right has clear connections with other human rights provisions, such as the rights to life and health, housing and social security. One thinks, for example, of the circumstances of a homeless person. Without adequate shelter, a homeless person is much more exposed to the elements. Her poverty means that she is unlikely to be able to afford adequate clothing and to maintain it in reasonable condition. Her health, already likely to be compromised, is worsened still further by excessive exposure to cold, heat, wind, rain and dirt. The same will be true of the shoes she wears, if she is lucky enough to have any. Inaccessibility to proper washing and sanitation facilities is another aggravating factor. We see this reality on the streets of our cities every day, and on our television screens. And yet the right to adequate clothing, like the people who lack it, seems at times invisible. In this short paper I confine myself to an analysis of the relevant provisions of the UDHR, and only touch upon the ways in which the right might be realised.

**Article 25, UDHR**

Article 25 of the UDHR, as we have noted, provides that everyone ‘has the right to a standard of living adequate for’ ‘health and well-being’. Immediately one can see the link between the human right to adequate clothing and to health. The right to an adequate standard of living includes rights to adequate ‘food, clothing, housing and medical care and necessary social services’. The definition is thus inclusive not exhaustive, indicating the breadth of the provision. The article also guarantees everyone ‘the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control’. The article is effectively a wide-ranging guarantee of social security, and it is not limited to the particular challenging conditions and circumstances that it lists. Nevertheless, one must note the qualification ‘in circumstances beyond his control’. This phrase does seem to suggest that the ambit of the right might be circumscribed by notions of who is deserving of social security, harkening back to the notion of the ‘deserving poor’ and the continued importance of an individual being self-reliant and having a real willingness to work (see also Morsink 1999; Kloppenberg 2006; Borgwardt 2005).

Article 25(2) states that ‘[m]otherhood and childhood are entitled to special care and assistance’. Interestingly, it refers to abstract nouns rather than to the concrete nouns ‘mothers’ and ‘children’. But the second part of the clause guarantees that ‘All children, whether born in or out of wedlock, shall enjoy the same social protection’. Earlier notions akin to ‘social protection’ can be found in French declarations of rights and constitutional documents of the eighteenth century, in the Weimar Republic’s constitution of 1919 and in the French constitution after World War II (James 2008; James 2007: 131–132, 163–164; Marks 1998; Palley 1991; Steiner, Alston and Goodman 2008: 269; Ganji 1962: 158–160). The second part of Article 25(2) is designed to protect ‘illegitimate’ children from the kind of stigma and discrimination the name suggests, and which they often suffered from in fact. It further emphasises the case for social paternalism in relation to children as a class of particularly vulnerable people. This principle is a standard exception even in liberal theories that otherwise insist that people are free to choose poorly in life and cannot complain if they suffer unpleasant or damaging consequences because of it.
In Article 25 there are thus many rights that are connected like the spokes of a bicycle wheel, both to the hub of the human right to an adequate standard of living and to each other, which, to continue the analogy, may be understood as the rim.

The right to adequate clothing is necessary for good health and well-being. Without sufficiently warm clothing one might well die from hypothermia, especially during the severe winters of the Northern Hemisphere (see Article 3, UDHR, on the right to life). Presumably, clothing that is inappropriately warm could contribute to heat stroke, dehydration and exhaustion under summer heatwave conditions or in tropical zones. Inadequate clothing could leave a person hazardously exposed to the sun’s ultraviolet rays, a known contributor to skin cancer. The extent to which the clothing is sufficiently ventilated (its ability to ‘breathe’) will also be a factor, as will how easily it gets wet and how quickly it dries. Some clothing may aggravate allergies or worsen skin conditions (especially if the clothes are worn constantly). Ill-fitting footwear can cause serious injury, as podiatrists and physiotherapists attest, particularly in relation to women’s shoes. I make these assessments as a layperson. That is why, as further research takes place in relation to the right to clothing, it will be necessary to integrate knowledge, expertise and experience from the textile industry, the health sciences and the discipline and profession of social work.

The right to clothing is, moreover, connected to the right to medical care. This is evident in a number of circumstances. It is particularly relevant in institutional care settings in which a person (a ‘patient’ or, to use newer terminology, a ‘client’) might have great difficulty in even dressing herself, or dressing herself appropriately for the conditions. It will also be relevant when a health professional has advised a person to wear therapeutic clothing (for example, orthopaedic footwear) as part of the treatment of their condition. Often such specialised clothing is not readily available, especially in poorer countries, or is prohibitively expensive. We can thus see how another spoke joins the hub of the right to an adequate standard of living: one needs sufficient resources to purchase medically necessary items.

Well-being is a very expansive concept. It is reasonably straightforward to see how inadequate clothing can affect well-being, conceived in its physical and psychological dimensions. Ill-fitting or inappropriate clothing can cause great discomfort and also affect a person’s sense of self-esteem and even dignity. These effects are liable to be exacerbated in relation to people who have diminished control over their own lives. For example, adult persons with serious disabilities may be dressed inappropriately for their age, or dressed for the convenience of a carer, without sufficient respect for the aesthetic and other preferences of the wearer. In this sense, choosing and wearing clothing is for many people an important part of self-expression (see Article 19, UDHR). And it is not only persons with serious disabilities who can have their self-esteem and dignity diminished by inadequate clothing. Consider, for example, the relationship between inadequate clothing and the stigma of poverty. Dirty, ripped, ill-fitting and even extremely outdated clothing (I distinguish instances where wearing such clothing is a conscious communication by the wearer of a ‘fashion statement’) can be an invitation to other people to treat the wearer with contempt and ridicule. These incivilities can have dangerous ramifications that erode the respect with which the poor are treated. They can also involve damaging moralistic judgments about the wearer. The more that people are dehumanised in this way the more likely it is that negative stereotypes of them are strengthened, and the more likely it is that they will be seen as not worthy of respectful treatment. To give a concrete example, a school child (or his or her parents) may be ridiculed for inadequate clothing, even causing such shame that the parents are reluctant to continue sending their child to school (see, for example, Kornbluh 2007: 39–41, 139; International Children’s Summit 1992; Interagency Network for Education in Emergencies 2002: 1).
To return to my analogy, there is a strong connection between the spokes of housing and clothing. The paradigmatic example is perhaps the circumstances of homeless persons. Those without adequate housing are more exposed to the weather. Given their poverty, the clothes they are wearing are especially important to their well-being. But the clothes of homeless persons are more likely to get damaged and worn out, as they wander cities, travel in trains and ‘sleep rough’ where they can. The condition of their clothing can be worsened still further through the effects of disabling conditions such as serious mental and physical illness and drug and alcohol dependencies (linking again with the rights to adequate health and medical care).

As I complete this internal comparison of rights in Article 25, we come to the rights to ‘necessary social services’ and to the right to ‘security’. These goods are related to each other and suggest features of welfare provision; for example, by the state in conjunction with other actors. What is certain is that the term encompasses social security systems familiar to many living in modern liberal-capitalist, social-democratic, or socialist welfare states (for a study that concludes that the more generous a welfare state is the happier people are, see Pacek and Radcliff 2008). Thus, everyone has a right to security, including social security, when unemployed, sick, or disabled. One also has this right when in old age, the assumption here being that increasing age might diminish one’s employment prospects at a time, when, for example, medical costs (including possibly the cost of a nursing home) increase. Dependence and healthcare needs might also increase with the death of a partner (though this might be balanced in strictly financial terms by inheritance, insurance and superannuation provisions). The security component of Article 25 is not limited to the items listed since it refers to ‘other lack of livelihood’, albeit with the qualifier ‘in circumstances beyond his control’.

**Article 25’s connection with other UDHR articles**

The right to adequate clothing in Article 25 can be related to many other articles in the UDHR, some of which I have mentioned already. There are the overarching references to all humans being ‘free and equal in dignity and rights’ and to the obligation upon us all to act towards each other in a caring, respectful fashion (Article 1). Furthermore, all of the UDHR rights are to be enjoyed ‘without distinction of any kind’ (Article 2). This non-discrimination provision is illustrated by reference to ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. The provision is very wide-ranging. Since clothing can be an identifier of religion, race, ethnicity, culture (see also Article 27) and national or political identity, Article 2 provides an important protection. Arguably, one could also use the article in relation to those who have very little property, their poverty affecting what clothes they can afford to wear. After all, the signs of their poorer economic status can be a cause of discrimination and vilification. Additionally, culturally distinctive clothing could also provoke discriminatory conduct against the wearer, denying him or her various social goods. For example, persons may be denied entry to public or private premises because of what they are wearing, and thus miss out on social (for instance, educational, sporting and recreational; see also Article 24), economic or political opportunities or resources. Discrimination and obstruction of human flourishing of this kind has been evident in explicitly racially segregated societies (for example, the USA during segregation – as to which see James 2007; Dudziak 2000; Rosenberg 2006; Von Eschen 1997; Anderson 1996 – and apartheid South Africa), and in ones rent by religious sectarianism, pathological nationalisms and patriarchal fundamentalism (for example, respectively, Northern Ireland, the former Yugoslavia and Afghanistan under Taliban rule).
It is possible that one’s right to ‘security of person’ (Article 3) and dignity (Article 1) could be affected by a lack of adequate clothing. For example, one’s sense of dignity can be violated by another’s failure to respect sexual privacy that can depend in part on having adequate undergarments (see also Article 12 on the prohibition of ‘arbitrary interference with … privacy’). If this sounds implausible, one need think only of the potential for abuses of trust, for humiliations and various physical abuses in medical and institutional settings, especially in relation to women and children, the disabled and the elderly. Denying people access to adequate clothing, including by taking someone’s clothing from them (see Article 17 on property), is one way that one can be rendered vulnerable to ‘cruel, inhuman or degrading treatment or punishment’ (Article 5). One can literally be left naked in the midst of power, a tragic condition we have seen too often in prisons, in war and in concentration camps. For example, the NGO Physicians for Human Rights cited the case of a detainee at Abu Ghraib prison in Iraq who now suffers from post-traumatic stress disorder and sexual dysfunction as the result of various humiliations and other mistreatment he experienced there (Hess 2008). The humiliations included ‘being forced to wear women’s underwear’, being ‘stripped naked and paraded in front of female guards’ and being ‘shown pictures of other naked detainees’ (Hess 2008; see also UN 1994; Henderson v. DeRobertis 940 F.2d 1055 (7th Cir. 1991) (United States Court of Appeals), regarding inmates unconstitutionally denied winter clothing during frigid weather). Such coercive denials of the right to adequate clothing are radically disempowering and degrading. Moreover, such denials have also often been part of the exploitation of slaves (including sexual slaves) and those in ‘servitude’ (see Article 4; see also Article 23(1) on work conditions).

Article 23 concerns various rights associated with work. The article guarantees a right to work for ‘just and favourable remuneration’ (including ‘equal pay for equal work’) under ‘just and favourable conditions’ without discrimination. There is a right to a kind of social security supplement if the remuneration is inadequate to ensure the worker ‘an existence worthy of human dignity’. The article is relevant to the right to adequate clothing in three main ways. First, it guarantees that one will have an adequate income with which to purchase clothing. Second, it guarantees satisfactory work conditions. This raises occupational health and safety (and associated environmental) concerns. Employers should, for example, provide workers, particularly in hazardous occupations, with adequate protective clothing (such as boiler suits, gloves, boots, hair nets, hats and helmets). They should also, in conjunction with the state, seek to reduce the hazards to which workers are exposed. The link with health (Article 25(1)) is apparent here. Third, the guarantee of ‘the right to form and to join trade unions’ (Article 23(4)) secures to workers at least one means of protecting their myriad economic and social rights (including the rights to protective clothing and uniforms, to adequate breaks, to adequate sanitation, and to emergency – for example, for decontamination – and routine health facilities).

Conclusion

Article 28 declares that ‘Everyone is entitled to a social and international order in which the rights and freedoms’ of the UDHR ‘can be fully realized’. The article is fundamental to the prospects for the realisation of the right to an adequate standard of living and the right to adequate clothing encompassed within it. This is because the fulfilment of these rights is greatly affected by economic resources at the individual, national, regional and international levels. At the individual level, for instance, one might not be able to afford to purchase adequate clothing without the assistance of a welfare state. To what extent a country can itself afford to have a satisfactory welfare state will depend significantly on global economic factors. Clearly, this will be crucial for poorer countries in the face of the realities of the
radical economic inequalities in the world. Thus the realisation of the right to adequate clothing connects to poorer countries’ claimed rights to economic self-determination and the right to development (James 2008; James 2007: 175–213; Rajagopal 2003). More bluntly, developing states may well need to cooperate with and receive international aid and assistance from wealthy countries if they are to fully realise the rights (Article 11 of the ICESCR, for example, recognises ‘the essential importance of international cooperation’). We know of course that developed countries have in this respect provided only minimal, and often inappropriate, aid. But authoritarian states and their elites in the South must also bear some of the blame when they have corruptly misused their national resources and the limited international aid they have received (examples in recent years include North Korea, Myanmar and Somalia).

How might we proceed in order to advance the economic and social rights I have briefly discussed in this paper? First, we must remember the right to adequate clothing when examining the right to an adequate standard of living in international law. The health, dignity and very lives of a range of vulnerable people (including the poor, the mentally and physically ill, the elderly, the disabled, the drug-dependent, and those in detention or otherwise institutionalised) can be at risk when they are not adequately clothed. Next, we must undertake a thorough analysis of the relevant international, regional, national and local laws and policies that affect the realisation of the right. Finally, we must take account of the myriad ways in which civil society, and especially NGOs, can advance the right by strengthening the role of a humane state in achieving an adequate standard of living through which all persons can be clothed in dignity.

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A House is a Home is a Human Right

Nick Collyer

Abstract: Action on homelessness is front and centre in the reform program of the recently elected Australian Federal Government. This paper draws attention to the need for reform of boarding house legislation as part of that initiative. Rooming house residents make up a significant proportion of Australia’s 100,000 homeless - about 23 per cent when counted with people in caravan parks. Privacy and security of tenure for people in rooming houses are human rights issues. Tenancy laws dealing with this form of accommodation vary from state to state, but most states and the Federal Government are in breach of their international human rights obligations. International instruments such as the Treaty on Economic, Social and Cultural Rights are used here as a benchmark against which our legislative standards are compared. It is argued that if the Federal Government is serious about its homelessness agenda it needs to encourage all states to guarantee security of tenure to the people who most desperately need it.

We are in the ‘Lord Byron’ room. Byron the poet was the grandson of the British Admiral John Byron after whom the Cape here was named. Byron and his good friends the Shelleys were what might be called Jacobin-democratic romantics. Not just poets, they were committed to an idealistic political program of human and national emancipation. They were passionate advocates for what Thomas Paine famously called the ‘rights of man’ or what we now call human rights, such as rights to national sovereignty and self-determination, rights to worship, or not, as we please and rights to fair wages and conditions in the work place. Byron’s was a lone voice of dissent in the House of Lords debate of the Frame-Work Bill of 1812. It was designed to give the government special powers to break the back of the Luddites, the starving factory workers whose livelihoods were threatened by the introduction of textile weaving technologies. In his maiden speech he demanded leniency for the demonstrators. “Are we aware of our obligations to a mob? It is the mob that labours in your fields, and serves in your houses, that mans your navy, and recruits your army, - that has enabled you to defy the world … You may call the people a mob; but do not forget that a mob too often speaks the sentiments of the people” (1872: 553-6).

Well, 23 years after the French Revolution the ‘sentiments of the people’ were precisely what Byron’s peers wanted to suppress. The legislation was passed and arrests were made. A mass trial a few months later destroyed the Luddite’s organization and resolve. Many were hung or transported here, to Australia.

This paper is about legislation and human rights here and now - about human rights to secure and affordable housing, and the absence of legislative commitment to such rights.

On 27 January 2008 the Australian Federal Government announced a new enquiry into homelessness. Due in August 2008, this will be the Rudd government's first White Paper and an important first item in what appears to be a genuinely new social agenda. The Prime Minister's announcement comes just months after the appointment of Julia Gillard as Australia's first Minister for Social Inclusion, and the pre-election and post-election
commitments to national consultation about a federal charter of rights. This is an opportunity for Australia to establish itself as an international front-runner in the human rights of housing - to establish core minimum housing standards necessary for all Australians to live with dignity in an inclusive and participatory community.

The human rights of housing should not be an issue here in Australia in 2008, but they are. We’re lucky in all sorts of ways: our health is good and people don’t die of starvation here. We have a relatively long life expectancy at birth even when the dire figures for people of Aboriginal descent are taken into account. Economically speaking we are generally in pretty good shape. We have an historically low unemployment rate and low inflation. But, according to the recent Federal Green Paper ‘Which Way Home’, on any one night there are about 100 000 people who are homeless (FaHCSIA: 2008) - and for a couple of reasons I believe that estimate is far too low. About one in four of the homeless are sleeping rough in the parks and streets or in shelters and about half are staying with relatives and friends. In this paper I want to focus on the people who are invisibly and chronically homeless - the people who live in boarding houses or rooming houses in all parts of the country, but mostly in the inner cities.

This is not a world with which many of us are familiar, but any of us could find ourselves living in that world. These are mostly single men and women who are constantly on the move from rooming houses to hotels to the street and back again. Single because, apart from anything else, you generally can not have overnight guests in rooming houses.

Why do people like this count as homeless? The answer is simple: they have no security of tenure. Their right to occupy can be removed without negotiation, without consent, without due process and at a moment’s notice. Their rooms are not ‘homes’. In ordinary rental accommodation - about 30% of households - agreements run for six or twelve months. Unlike tenants in many European countries Australian tenants can be evicted without ground as long as reasonable notice is given, but if a tenant wishes to dispute the eviction they can do so in a court or tribunal. People in rooming house accommodation in most Australian states and territories do not have even that remedy. People can be, and are, evicted with no notice at all and have no recourse to a court or tribunal. We currently have a very tight rental market with low vacancy rates in all capital cities. It is very hard to find accommodation. This is a strong disincentive to the assertion of tenancy rights. Tenants rock the boat at the risk of being put out on to the street.

Our legislation appears to provide residents with basic rights but offers no mechanisms that ensure their protection. In the typical private boarding house, residents are still treated as common law licensees, just as they were prior to 2002 in Queensland and as they still are here in NSW. Tenants report, for example, that any kind of complaint about the running of their boarding house may attract a verbal notice to vacate. To quote a resident, “It’s take it or leave it with house rules. You move in and do as you’re told or you’re out!”

The possibility of instant eviction is the service provider’s trump card in any dispute. I work in a tenancy advice service that is surrounded by boarding houses and here are some examples of what I mean. I have changed people’s names for privacy.

Peter approached us when he was evicted without notice. He had been living in the boarding house for a number of months and during that time had repeatedly asked the caretaker to give him a receipt for his rent. The caretaker always refused. On the last occasion Peter lost his temper. He yelled at the caretaker, demanding that he give him a receipt as was his responsibility. The caretaker evicted Peter immediately, saying that he
had committed a serious breach by endangering another person in the premises and significantly interfering with the reasonable peace and comfort of residents. If Peter had refused to vacate the owner could have called the police and had him ejected as a trespasser.

Charlene was given two days’ notice to leave her boarding house. Charlene is an evangelical Christian. The agent alleged that her behavior was objectionable because she had put proselytizing notes under other residents’ doors. We told Charlene they would probably use the police to put her out. The next day she called us. The police were at her door demanding that she vacate immediately. Charlene refused to go, arguing that the notice was invalid and unenforceable. Her behavior was not serious enough to warrant eviction. After an hour’s negotiation the police decided not to act, convinced that there might be a technical problem with the notice. However, the agent did remove the latch and the lock from the door. Charlene didn’t leave the room for two days for fear the manager would replace it with a different lock while she was out. After a few weeks without a lockable door Charlene went back to sleeping in her car.

Jenny moved to the Gold Coast to commence studies, into a modern accommodation complex close to the campus in which there are 200 villas. A married couple living in a villa close to the entrance of the complex were the on-site managers. Jenny was given an agreement and a large folder outlining the house rules. She wanted to take it away and read it but the managers pressured her into signing it straight away, saying they did not have time to waste and there were plenty of other students wanting accommodation. Jenny ended up signing it because they would not give her a key to her room unless she signed there and then. Jenny was astounded at the number of house rules. While Jenny expected some rules around alcohol and drugs, pets and common areas, she learned that:

- Skateboards, rollerblades, bicycles and the bouncing of balls are not permitted in the complex due to the risk of making excessive noise.
- All visitors are to leave the premises by 11pm
- Guests are allowed to stay overnight only at the discretion of the manager and for a fee of $25 per night. No more than two guests are permitted in one villa per night and no guest is allowed to park their vehicle on site.
- No parties are permitted in the villa.

At the end of her exams Jenny decided to have a party. Unfortunately, one of her friends at the party breaks a window. The security guard came to investigate and claimed to have detected the smell of marijuana. Jenny said she was not responsible and she became quite angry. She called the security guard a few unsavoury names. The security guard said he would inform the manager that there has been a serious breach. Jenny was evicted the night of the party after the caretakers called the police stating there had been a serious breach.

Finally, a developer purchased a boarding house in New Farm with a view to renovate and charge more rent. All but a few of the sitting residents were evicted, seven of them with same-day notices alleging they had used the premises for illegal purposes i.e. drug taking. The owner simply called the police, who stood over residents while they packed. Only one was charged with possession of a dangerous drug.
Service Providers’ rights to evict summarily without need of a court order distorts the balance of rooming house legislation. They are a denial of natural justice. Invariably the first thing we say to rooming house residents is, “these are your rights but if you exercise them you might be evicted”. This is not just a Queensland issue. Rooming house residents can be evicted without reference to a court or tribunal in all states and Territories except Victoria, South Australia and Tasmania.

What about our international obligations? Australia is a leading promoter of human rights and we have signed off on more than eighteen Conventions with a human rights focus. The right to housing is entrenched in at least five international human rights instruments to which we are a signatory. These include the *Universal Declaration of Human Rights*, the *Convention on the Elimination of Discrimination Against Women*, the *Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention on the Rights of the Child* and, perhaps most importantly, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. Article eleven of the ICESCR states that:

> The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and [adequate] housing, and to the continuous improvement of living conditions.

What constitutes ‘adequate housing’? The authoritative ‘General Commentary’ (1991) by the Committee on Economic, Social and Cultural Rights provides extensive interpretation of the right to ‘Adequate Housing’ [Article 1(1)]. Considerations encompassed include legal security of tenure, and this attracts considerable attention within the General Commentary.

> All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

It also states that “forced evictions are prima facie incompatible with the requirements of the Covenant”. While forced evictions are considered incompatible with State’s obligations the Commentary acknowledges that in certain circumstances evictions are justified, provided they are carried out “in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality”.

The Commentary provides specific guidelines as to procedural protection and due process that a State should employ when conducting a forced eviction. Appropriate procedural protection should include:

- an opportunity for genuine consultation with those affected;
- adequate and reasonable notice for all affected persons prior to the date of the eviction;
- information on the proposed eviction should be made available in a reasonable time to those affected;
- legal remedies should be available; and,
- legal aid should be available to those in need of it to seek redress from the courts.

The first three procedural requirements are designed to ensure that a tenant becomes aware of an impending eviction and is given the reasonable ability to address it. Five of eight states and territories here in Australia do not allow rooming house residents the opportunity of “genuine consultation”. Nor do they require the owner to give “reasonable notice .. prior to
the date of the eviction” or provide “legal remedies” as anticipated by the General Commentary. It is clear that we do not meet our international obligations.

The current Federal government appears to be serious about homelessness. The *Which Way Home: A new approach to homelessness* (2008) discussion paper was one of its first achievements and I expect that it will be followed by some real action, but the Federal Government is stymied by the Constitution: it cannot directly legislate on tenancy matters. That is for the States to do. It can, however, develop a national framework for boarding house legislation - for all tenancy legislation. The Federal Government can at least be to our states and territories what the United Nations and its human rights instruments are to its member states.

As for the recalcitrant five states and territories that do not guarantee residents security of tenure? They can reform their laws. Doing so would be more than a token gesture. Not only would it eliminate 23 000 people from the homeless statistics - it would legally enshrine the notion that a room is a home, with all the meanings that ‘home’ implies.

**Endnotes**

1. Census collectors are unable to locate all the people sleeping rough. 2. The questionnaire itself does not accurately distinguish rooming house residents and people in multiple dwellings with very small rooms, relying instead on respondents' self-identification. Our experience at the Tenancy Advice and Advocacy Service in Brisbane is that people usually identify as ‘tenants’ not as boarding house residents.


3. Pers. Comm.. For privacy reasons these must be anonymous.

4. (Article 25 (1) Adopted and proclaimed by UN General Assembly resolution 217 A (III) on 10 December 1948.

5. Article 14 (2) and 16 (h) Adopted and proclaimed by UN General Assembly resolution 34/180 of 1979.

6. Article 5 (e) (iii) Adopted and proclaimed by UN General Assembly resolution 2106 (xx) of 21 December 1965.

7. Article 27 Adopted and proclaimed by the UN General Assembly resolution 44/25 of 20 November 1989.

8. Article 11(1) Adopted by the UN General Assembly resolution 2200 A (XXI) of 16 December 1966.

9. Ibid.


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Activist Education at the Albert Einstein Institution: A Critical Examination of Elite Cooption of Civil Disobedience

Michael Barker
Griffith University

Abstract: For most progressive activists, it is a given that the military-industrial complex is a clear and highly visible barrier to progressive social change. So it is particularly interesting to note that a number of groups involved in progressive activist education – which are held in high regard by activists – maintain strong links to military and political elites. One of the best known of these organisations is the US-based Albert Einstein Institution. This paper will provide a systematic analysis of the history of this Institution, and the key people associated with it, and demonstrate how their work is intimately linked to the international democracy-manipulating community – whose work is exemplified by the US-based National Endowment for Democracy, a group which is well-known for its support of the failed 2002 coup in Venezuela. This analysis will expose the crucial role such activist educators play in catalysing revolutions in countries deemed appropriative for regime change by transnational elites. In the light of the dubious nature of these educational activities, this paper will conclude by offering a number of suggestions for how concerned citizens and educators may counter the cynical (ab)use of activist education by political elites as a new and powerful tool of imperialism.

Key Words: Imperialism, Philanthropy, Polyarchy, Revolution

It is well understood by radical political theorists and historians that the strategic use of civil disobedience has provided a vital means of promoting democracy around the world (Zinn, 2003). However, while civil disobedience has certainly been used to benefit progressive activists, by enabling people power to present a viable threat to elite power, there is much overlooked evidence that suggests that elite powerbrokers have responded to this threat by attempting to co-opt this strategic resource.

Progressive activist-scholars theorize about the dynamics of elite power to facilitate its demise, while elitist scholars, on the other hand, document the processes of social change in an attempt to constrain progressive victories. Consequently, given the interests of elite theorists in progressive social change it not surprising that there is a long history of elite cooption of progressive social movements. In this regard, key elites that have been, and continue to be, involved in proactively manipulating civil society to serve their own ends include liberal foundations (Roelofs, 2003), corporations (Sims, 2005), labour groups (Scipes, 2007), government intelligence agencies (Saunders, 1999), and of course governments (Weissman, 1974). The success that such democracy manipulators have had in taming dissent and shaping the contours of progressive activism – in all manner of popular social movements – has been well documented (Barker, 2007a, 2008a; Haines, 1988; Wright et al., 1985). Such overt manipulations have been used to successfully combat the influence of communism through the provision of strategic support to socialists (Saunders, 1999), and have even succeeded in hijacking revolutionary popular uprisings, facilitating transitions from authoritarian to neoliberal forms of governance (Robinson, 1996). It is no contradiction then
that civil disobedience, like all other political resources, is considered to be a key armament of both the powerful and the less powerful, and can be used alternatively to either bolster or challenge imperialism. Thus, given the potential for the abuse of civil disobedience, that is its pragmatic geopolitical use by elites, it is highly problematic that progressive scholars have failed to critically focus on such abuses.

This paper will provide the first critical and comprehensive overview of one elite-supported group that promotes civil disobedience globally, a US-based group called the Albert Einstein Institution. This Institution provides a particularly relevant case study, because in spite of the strong links that it maintains to military and political elites it is still held in high esteem by progressive activists all over the world. By providing a systematic analysis of the history of this Institution, and the key people associated with it, the analyses presented in this study will expose the crucial role that activist educators can sometimes play in catalysing revolutions in countries deemed appropriative for regime change by the international democracy-manipulating community – a community whose work is exemplified by the US-based National Endowment for Democracy. In the light of the dubious nature of these educational activities, this paper will conclude by offering a number of suggestions for how concerned citizens and educators may counter the cynical (ab)use of activist education by political elites as a new and powerful tool of imperialism.

**Gene Sharp and the National Endowment for Democracy**

The Albert Einstein Institution was founded in 1983 by Dr. Gene Sharp and is an organisation that, according to its website, is ostensibly “dedicated to advancing the study and use of strategic nonviolent action in conflicts throughout the world.” At face value both Sharp’s ongoing work – which has caused him to be “widely recognised as the world’s leading non-violence researcher” (Martin, 2005: 252; Weber, 2003: 251) – and Albert Einstein’s historical contributions to peace activism seem related; however, a more critical investigation of the activities of Sharp’s Albert Einstein Institution suggests that this is not the case. It appears that Sharp has, politically speaking, moved a long way from the days when he was able to convince the notable anarchist Albert Einstein (1879-1955) to write the foreword for his first book manuscript in 1953 – a book that was eventually published in 1960 as *Gandhi Wields the Weapon of Moral Power*.

Martin (1989: 213) notes that “compared to the intensive use of his ideas by activists, scholars have devoted little attention to Sharp.” On this score, Martin provides a useful antidote to the uncritical adoption of Sharp’s ideas by critiquing “Sharp’s theory of power… by comparing it to structural approaches to social analysis.” Moreover, given that the funding for Sharp’s major theoretical contribution to non-violent scholarship – his trilogy, *The Politics of Nonviolent Action* (1972) – came from former RAND Corporation ideologue Professor Thomas Schelling’s grants (Abella, 2008), which Schelling had in turn obtained from the US Department of Defense and the Ford Foundation (whose work was intimately linked with that of the CIA, see Berman 1983; Saunders, 1999) (Sharp, 1972: viii), it is fitting that Weber notes that Sharp

…often refers to nonviolence as an ‘alternative weapons system’ and even describes it as a ‘means of combat, as is war. It involves the matching of forces and the waging of “battles”, it requires wise strategy and tactics, employs numerous ‘weapons,’ and demands of its “soldiers” courage, discipline, and sacrifice.’ The central dynamic is one of ‘political jiu-jitsu’ rather than the ‘moral jiu-jitsu’ of Richard Gregg and Gandhi. (Weber, 2003: 258)
This is not something that Sharp has tried to hide, and in the foreword to *The Politics of Nonviolent Action* Sharp observes that...

I have been arguing for years that governments and defense departments – as well as other groups – should finance and conduct research into alternatives to violence in politics and especially as a possible basis for a defense policy by prepared nonviolent resistance as a substitute for war. As acceptance of such Defense Department funds involved no restrictions whatever on the research, writing, or dissemination of the results, I willingly accepted them. (Sharp, 1972: viii)

Eerily, echoing Sharp’s simple defence of the merits of encouraging the military to fund peace research, Serbian activist Ivan Marovic – who is a founding member of the US-funded opposition group, Otpor (for more details, see later) – acknowledged receiving funding from the US government to help overthrow Slobodan Milosevic, but says: “So we did get money, but we never got orders from anyone. That’s why we succeeded” (cited in Mueller 2005). This comment is significant on a number of levels, as not only did Sharp’s Albert Einstein Institution play an integral role in training Serbian activists in the techniques required to oust Milosevic, but Otpor itself also received financial aid from numerous foreign groups which included the National Endowment of Democracy (NED). This latter US-based quasigovernmental organisation, the NED, was formed in 1984 with bipartisan support, and according to their former president, carries out “a lot of work” that was formerly undertaken by the CIA (cited in Ignatius 1991). Indeed, Cavell (2002: 105) in his book *Exporting ‘Made in America’ Democracy* suggests that the “degree to which the NED will go to subvert a country’s sovereignty can perhaps best be gleaned from its funding of anti-Sandinista groups in Nicaragua” throughout the 1980s.

The NED’s current president, Carl Gershman, stated in 1999 that “democracy-promotion has become an established field of international activity and a pillar of American foreign policy” (cited in Cavell, 2002: 112). With a relatively meagre annual budget of around $80 million, the NED’s most important function is to coordinate the work of larger better endowed ‘democratic’ funders like the US Agency for International Development and the CIA. The most detailed critical examination of the NED’s attempts to co-opt progressive movements and install low-intensity democracy around the world is Robinson’s (1996) seminal book *Promoting Polyarchy*: however, since then numerous other studies have bolstered his analyses (for further details, see Barker, 2006a).

**The Albert Einstein Institution and Postmodern Coups**

Writing in 1949, Albert Einstein observed that

…under existing conditions, private capitalists inevitably control, directly or indirectly, the main sources of information (press, radio, education). It is thus extremely difficult, and indeed in most cases quite impossible, for the individual citizen to come to objective conclusions and to make intelligent use of his political rights. (Einstein, 1949)

Einstein’s observations which also raised his concern over the lack of a free and open discussion of socialism, apply almost perfectly to discussions surrounding the arguably polyarchal work of the Albert Einstein Institution. Yet unfortunately within both academia and the peace movement, there has been almost no critical discussion of the problems associated with this Institution’s role in theorizing and promoting civil disobedience globally.
It is perhaps fitting that Sharp named his Institution after Einstein rather than after a more radical dissident, like for example Bertrand Russell. As Chomsky (2001: 167) points out, both Bertrand Russell and Albert Einstein essentially agreed that “nuclear weapons might well destroy the species”, but while Russell demonstrated in the streets and was subsequently denounced and vilified by US elites, Einstein remained in his office and was considered a “saintly figure” who “didn’t rattle too many cages.” Thus as will become clearer later, it makes sense that Sharp wanted to associate his organisation with a leading dissenting intellectual whose activism was considered to be elite-friendly.

In a rare critical examination of Sharp’s work, Martin (2005: 258) observed that the “linkage of nonviolence research to policy makers is weak at best and often nonexistent.” Martin goes on to add that: “Some activists and scholars would say this is a good thing, given the risk that nonviolence could be co-opted by the state, having its radical potential defanged.” However, arguably this cooption has already happened. So considering the lack of critical research surrounding the Albert Einstein Institution’s activities, this article will now examine some of the Institutions’ funders, and investigate the polyarchal ties of many of the people who have been associated with the Institution.

**Polyarchal Funders**

A close examination of the groups that have provided funding to the Albert Einstein Institution over the years suggests that the latter’s work is highly entwined with imperial-minded foreign policy making elites. Consequently, although a complete documentary record of the Institution’s funding relationships is presently unavailable, a summary report of their work between 1993 and 1999 provides an informative list of their financial supporters (see Jenkins and Houlihan, 2000). During this period, the most ‘democratic’ of the Albert Einstein Institutions financiers were the National Endowment for Democracy, the International Republican Institute (one of the NED’s four core grantees), the US Institute for Peace (the NED’s sister organisation, see Hatch and Diamond, 1990), and the German-based Friedrich Naumann Stiftung. In addition, the Albert Einstein Institution received aid from two of America’s most influential liberal philanthropic organisations, that is, the Ford Foundation and the Open Society Institute. This support is particularly significant given that the long history of collusion between the CIA and the biggest liberal foundations (e.g. the Ford and Rockefeller Foundations’) and their corrosive influence on the development of civil society worldwide (Arnove, 1981; Barker, 2008a; INCITE!, 2007; Roelofs, 2003). It is fitting then that from 1974 until 1976 Gene Sharp served as a Rockefeller Foundation fellow at Harvard University.

Other noteworthy liberal foundations that provided funding to the Albert Einstein Institution between 1993 and 1999 include the Arca Foundation (whose secretary, Mary King, is also a director of the Albert Einstein Institution), the Compton Foundation (whose president, James Compton, is Emeritus Chair of the NED-financed Fund for Peace (see Barker, 2007a), and has formerly worked for twelve years for the key democracy-manipulator World Learning for International Development – a group formerly known as the Delphi International Group, see Robinson, 1992), and the Joyce Mertz-Gilmore Foundation (whose former program officer, Antonio Maciel, is now the Director of the Open Society Institute’s US Justice Fund). Likewise, another group with particularly strong democracy-manipulating credentials that has funded the Albert Einstein Institution’s work is the Ploughshares Fund: however, owing to the lack of critical commentary on the Ploughshares Fund’s work, the following section will briefly introduce the work and people behind this philanthropic body.2
The Ploughshares Fund’s website notes that it is a “public grantmaking foundation that supports initiatives to prevent the spread and use of nuclear, biological and chemical weapons and other weapons of war, and to prevent conflicts that could lead to the use of weapons of mass destruction.” Major funders (so-called Council Ambassadors) of the Ploughshares Fund include well known philanthropists like the Ford Foundation; while the Fund’s Peace and Security Funders Group includes, amongst its ranks, some of the most powerful liberal foundations, e.g. the Carnegie Corporation, the Compton Foundation, the Ford Foundation, the MacArthur Foundation, and the Rockefeller Brothers Fund (Ploughshares Fund, 2006). According to the Fund’s most recent annual report, they have provided financial aid to a wide variety of the world’s key democracy-manipulating organisations: some of these include Americans for Informed Democracy, the Center for Strategic and International Studies, Henry L. Stimson Center, the Institute for Middle East Peace and Development (whose president, Stephen Cohen, is a national scholar at the Israel Policy Forum – an organisation that “seeks to strengthen Israeli security and to further U.S. foreign policy interests in the Middle East”), the International Crisis Group, Refugees International, and the NED-funded Search for Common Ground.

Given the Ploughshare Fund’s strong propensity for funding ‘democratic’ groups’, it is not surprising that many of its directors and advisors have vigorous polyarchal credentials: thus their directors include David Holloway (who is a faculty member of Stanford University’s Center on Democracy, Development and the Rule of Law, which is headed by former NED Reagan-Fascell Democracy Fellow Michael McFaul, whose most prominent ‘democratic’ ties are to Freedom House and the Eurasia Foundation), Cynthia Ryan (who serves on the advisory board of the Carr Center for Human Rights Policy, and is a former trustee of the Women for Women International – a group that received NED funding in 2003), and Philip Yun (who is currently vice president for resource development at the Asia Foundation); ‘democratic’ advisors to the Ploughshares Fund include J. Brian Atwood (who was president of the cored NED grantee the National Democratic Institute from 1986 to 1993, and served as the administrator of USAID from 1993 to 1999), Lloyd Axworthy (who is the chair of Human Rights Watch’s Americas Advisory board), Susan Eisenhower (who is a trustee of the Carnegie Endowment for International Peace), and Leslie H. Gelb (who is a member of the International Crisis Group, president emeritus of the Council on Foreign Relations, and a trustee of the Carnegie Endowment for International Peace).

Civil Disobedience in the Service of Polyarchy

According to recent reports, the current Principals of the Albert Einstein Institution are Colonel Robert Helvey (who is the current president), Major General Edward Atkeson and Peter Ackerman (both of whom act as advisors to the Institution). Critical aspects of the biographical details of the first two former high-ranking military men, Colonel Helvey and Major General Atkeson, are fully outlined by Mowat (2005), while Ackerman’s lengthy democracy-manipulating resume has been outlined in full by Barker (2007b). Notably Ackerman is linked to various democracy-manipulating groups that work closely with the CIA, as he is member of the board of directors of the Council on Foreign Relations, serves on the US advisory council of the US Institute of Peace, and is chair of the neoconservative Freedom House (where his his predecessor in this position was none other than former CIA Director, James Woolsey).

Freedom House provides a good example of an influential democracy-manipulating organisation whose work is uncritically promoted by both mainstream and progressive writers. This is despite the fact that Herman and Chomsky (2002: 28) note that Freedom
House “has long served as a virtual propaganda arm of the government and international right wing.” One clear example of Freedom House’s democracy-manipulating activities is provided by their long-term involvement in destabilising the Nicaraguan government throughout the 1980s. Indeed, they undertook vital work for the democracy manipulators in Nicaragua, receiving around US$1 million to create an anti-Sandinista publishing house (Libro Libre), think-tank (CINCO), and quarterly journal (Pensamiento Centroamericano) in San Jose, Costa Rica. Furthermore, Freedom House’s democracy-manipulating propagandizing was not limited to Central America, as between 1984 and 1989 the NED provided them with around US$3 million to disseminate anti-Sandinista viewpoints within the US media. An extended critique of Freedom House, is provided by Barker (2008b).

Here, however, it is particularly important to point out the links that exist between the Albert Einstein Institution and the International Center on Nonviolent Conflict (ICNC), because in addition to serving as an advisor to the Albert Einstein Institution, Ackerman also serves as the chair (and major funder) of the latter group. In addition, ICNC director of programs and research, Hardy Merriman, formerly worked for three years with Gene Sharp at the Albert Einstein Institution. Consequently, it is hardly coincidental that in March 2005 the ICNC funded a strategy workshop in Boston that was hosted by the Albert Einstein Institution for Venezuelan nonviolent activists (Albert Einstein Institution, 2006 :10). The hosting of this workshop is controversial for two reasons, firstly, the workshop involved the participation of two former leaders of the Serbian nonviolent struggle group Otpor (Slobodan Dinovic and Ivan Marovic) – a group that was strongly supported by the NED and the international democracy-manipulating community to help facilitate the ouster of President Milosevic (Barker, 2006a). And secondly, it is not clear why NED-connected groups like Otpor, the Albert Einstein Institution and the ICNC, are training nonviolent activists from a country in which the NED actively supports opposition groups which have been involved in attempting to oust the democratically elected President Chavez from power.

Owing to the Albert Einstein Institution’s Venezuelan related activities, last year the organisation was accused by several writers of being linked to the US-led promotion of polyarchy (Barker, 2007c). Yet the Institution has to date been unable to respond to the various accusations that have been filed against it, and instead resorts to disingenuous claims of innocence. For example, in December 2007, the Albert Einstein Institution’s executive director, Jamila Raqib, wrote that:

The Albert Einstein Institution is an independent nonprofit organization. It does not take direction from any other organization, or from any government, including the US government… The allegation of funding and support for the Albert Einstein Institution from… any… government body, is categorically false. (Raqib, 2007: 1)

Echoing the words of the Institution’s founder, Gene Sharp, Raqib (2007: 1) says that: “In principle… [they are] not opposed to accepting funds from institutions that have in turn received their funds from government sources, as long as there is no dictation or control of the purpose of our work, individual projects, or of the dissemination of the gained knowledge.” Yet besides the fact that his Institution has already received such funding, this statement demonstrates a narrow-minded, ahistorical appreciation of the influence of funding on social change. On this matter in reference to the cooption of academia, Horowitz (1969) points out that: “In the control of scholarship by wealth, it is neither necessary nor desirable that professors hold a certain orientation because they receive a grant. The important thing is that they receive the grant because they hold the orientation.”
Overemphasis in Leftist literature on aggressive aspects of imperialism (waged through both overt and covert military, economic, and diplomatic domination) has unfortunately meant that little attention has been paid to the equally important ‘friendly face’ of imperialism. Thus, when combined with the near total media blackout of critical analyses of elite funding of progressive groups, it is little wonder that there is minimal discussion of this phenomenon. This is not to say that there have not been a number of excellent critiques of the hijacking/colonisation of civil society by liberal elites – although they tend to be ignored (older examples include Brown, 1979; Lundberg, 1975; Whitaker, 1974). However, in recent years Petras’ (1999) landmark article *NGOs: In the Service of Imperialism*, has inspired much critical reflection among the Left – for example, see the work of Choudry (2002), Roy (2004), Bond (2005), Engler (2007), and Mojab (2007).

Needless to say many of the people who have worked for the Albert Einstein Institution over the past few decades have been well connected to elite circles. For example, former directors of the Institution include Joanne Leedom-Ackerman (who is a director of the NED-linked Human Rights Watch and International Center for Journalists (Barker, 2007a)), Stephen Marks (who has served as program officer for international human rights at the Ford Foundation), Hazel McFerson ?? (who is a director of the USAID-funded group, Pact), and Thomas Schelling (a famous economist who formerly worked for the imperial think tank, the Rand Corporation, Abella, 2008). Likewise the late Connie Grice who served as the Albert Einstein Institution’s executive director from 1986 to 1988 was married to William Spencer, a person who was instrumental in guiding the creation of the US Institute of Peace. Having introduced some of the elitist funders and people involved with the work of the Albert Einstein Institution the final section of this paper will briefly review some of the countries in which the Institution has been active.

**Facilitating Polyarchal Revolutions**

According to the Albert Einstein Institution’s (2004: 16) historical overview of its global activities, proponents note that they have “conducted consultations with groups in more than 20 countries” around the world. Countries listed in the Consultations section of this report include Serbia, Venezuela, Belarus, Zimbabwe, Tibet, the Baltic States (Latvia, Lithuania and Estonia), Burma, Iran, and Iraq. Thus given the evident importance attached to supporting civil disobedience in these countries this section will briefly compare the Institution’s work in the first five countries mentioned in their report with the work that undertaken by the NED. (For further details of the NED’s activities in Burma, Iran, and Iraq, see Barker, 2006c, 2008d.)

With regards to Serbia, in March-April 2000, Robert Helvey ran a workshop in Budapest (Hungary) that was funded by the International Republican Institute (one of the NED’s core grantees) for members of Serbia’s US-funded opposition group Otpor. Additionally, the Albert Einstein Institution observes that in 1999 a Serbian nongovernmental organisation called Civic Initiatives “coordinated the publication of a Serbian edition of AEI’s booklet, *From Dictatorship to Democracy*”. This is particularly significant because from 1997 until 2001, Civic Initiatives served as one of the major project partners of the NED-funded Institute for Democracy in Eastern Europe’s Civic Bridges program. Moreover, as Barker (2006a) observes, polyarchy promoters were heavily active in Serbia, and:

> In 2000, the US government provided approximately US$40 million to “promote democracy” in Serbia and “US-funded consultants played a crucial role behind the scenes in virtually every facet of the anti-Milosevic drive.” US$40 million is a significant amount of money, especially if you consider that the Serbian population is less than fifty
million, which means it is equivalent to giving more than US$200 million in foreign aid to US social movements to “promote democracy” domestically. Such an amount of aid would no doubt have also enabled opposition groups in the United States to successfully challenge the results of an election (for example, the “stolen 2000 election”) (Barker, 2006a: 6).

Moving to the next country, Venezuela, the Albert Einstein Institution notes that since President Chavez was elected president of Venezuela in 1998, his “regime has become increasingly authoritarian”, a verdict that stands at odds with nearly all progressive commentators (e.g. Scipes, 2006), but not with the corporate media or the US government (Lendman, 2007). So, contrary to most progressive writers, the Institution then notes that since December 2001 “Chávez’s popularity began to wane” and points that in order to retain his hold on power his “government responded with violent repression against... protesters”. Consequently Gene Sharp and other Albert Einstein Institution staff have met with citizens opposed to Chavez’s democratic presidency to “talk about the deteriorating political situation in their country”, and these talks led to the Institution organising a nine-day in-country consultation in April 2003 in order to – with no irony evidently intended – “restore democracy to Venezuela.” Given the close links that exist between the work of the Albert Einstein Institution and the NED it is fitting that the NED provided aid to Sumate, the key nongovernmental organisation that coordinated the unsuccessful coup against President Chavez in 2002.

Belarus is another country in which the US is attempting to promote polyarchy: as the Albert Einstein Institution writes: “Since 1917, Belarus has been almost completely controlled and operated by the Russian security service... [and] Alyaksandr Lukashenko, the autocratic President of the Republic for the last decade, is himself a former KGB Major.” From 26-31 January 2001, Gene Sharp led a workshop in neighboring Lithuania to help facilitate “democratization in face of a dictatorial regime.” Belarus provides an interesting example of a country that has so far resisted the best efforts of the polyarchy promoters, as in 2000 alone, the US government (that is, Administration) provided opposition groups with US$24 million and according to US officials even more in 2001 (Chaulia, 2005). In addition to such financial aid, at around the time that Sharp was present in Lithuania, diplomatic aid was also used in an attempt to oust Lukashenko, and the skills and knowledge of the US Ambassador in Belarus, Michael Kozak, were of critical importance in organising the opposition. This is because Ambassador Kozak was an old hand at promoting polyarchy, having gained invaluable experience overseeing the ‘democratic’ replacement of the Sandinistas in the 1990 elections, while acting as the US Ambassador in Nicaragua (1990 and 1992).

Next up: “In February 2002, [Albert Einstein Institution] consultants... met with Zimbabwean opposition groups” on two occasions, once with leaders of the Movement for Democratic Change, and another time with representatives from other assorted civil society groups. Again as in Serbia these consultations were sponsored by the International Republican Institute, and so it is fitting that the NED’s British counterpart, the Westminster Foundation for Democracy, has been one of the most influential polyarchy promoters in Zimbabwe, channelling a lot of funding to the Movement for Democratic Change (Elich, 2002). As in the previous cases, the NED has been very active in Zimbabwe busily manipulating democracy, and in 2006 alone they provided civil society groups with $1 million (Barker, 2008e).

In 1996 the Albert Einstein Institution began a series on consultations in India with Tibetan democracy activists, and the Institution note that in 2002 they held yet another strategic workshop at the invitation of the Tibetan Parliamentary and Policy Research Center. This is significant because this Center was formed in 1991 as a “joint project” of the Friedrich
Naumann Foundation and Tibet's Parliament in exile. The Friedrich Naumann Foundation is one of the German ‘democracy promoting’ foundations whose success the NED was modelled upon. It is also important that one member of the Center’s governing council, Samdhong Rinpoche, also serves on the international advisory council of a group called the International Campaign for Tibet (ICT), as this group is a regular recipient of NED funding. Furthermore, like many groups that obtain NED aid, ICT are not afraid to boast of their ‘democratic’ connections: thus in 2005 they awarded one of their annual Light of Truth awards to the president of the NED, Carl Gershman; while the year before (in 2004) ICT gave the same award to the Friedrich Naumann Foundation (Barker, 2007).

Conclusions

In the light of the dubious nature of the educational activities undertaken by the Albert Einstein Institution – in the name of progressive activism worldwide – it seems fitting that activists committed to replacing imperial plutocracies with participatory democracies (not polyarchies) begin to critically reflect upon their relationships with such groups. In many ways activist education is being cynically utilized by political elites as a powerful tool in the service of imperialism. Of course this does not mean that valuable information cannot be gleaned from the research of government funded activist educators like the Albert Einstein Institution: in fact, much of the Institution’s research is very useful to progressive social movements. However, given the pragmatic adoption of civil disobedience by foreign policy elites to facilitate the ouster of ‘unfriendly’ governments, progressive activists must recognize and theorize about the potential limitations of the research undertaken by government-funded groups like the Albert Einstein Institution. For instance, an important question to ask is “are there certain subjects, tactics, or countries that are under-theorized by researchers attached to the Albert Einstein Institution?” Moreover, how do such groups studies compare to more explicitly political activist researchers like Churchill (1998) and Gelderloos (2007)?”

Progressive activists need to determine whether they want to help legitimize the work of a group that is so closely tied to the interests’ of capitalist elites. Indeed considering the evident connections that exist between the Albert Einstein Institution and the National Endowment for Democracy it seems sensible that concerned activists should distance themselves from both groups, and facilitate a public debate that thoroughly investigates the problems associated with both groups’ activities. Only once such forms of critical reflection becomes the norm within progressive social movements will activists be sure that their work is not being subtly manipulated, abused or deradicalised by polyarchal elites.

Endnotes

1. Weber (2003: 259-60) points out: “There are the occasional immediate, practical, and solidly ‘this worldly’ arguments for principled as opposed to pragmatic nonviolence. For example, Hayes has argued, ‘Sharp’s view of nonviolence could allow it to become a content-neutral technique of political struggle stripped of vocative elements which would then render it amenable for use by dominators.’ Richards adds that Sharp’s ‘neutralized concept of nonviolence,’ where the ‘distinguishing characteristic of nonviolent action… seems to be only the absence of any direct use of physical coercion,’ ‘may allow a considerable amount of coercion and harm to others’ and may be used for ‘evil as well as for good purposes.’ However, most of those arguments go strongly the other way with ‘this worldly’ arguments favoring pragmatic nonviolence.”

2. Another interesting group that has provided funding to the Albert Einstein Institution is the Olof Palme International Center – an organization that notes on its website that it “works with international development co-operation and the forming of public opinion surrounding international political and security issues.” The Center’s international work is funded by the Swedish International Development Agency, and crucially the Center’s board is chaired by Lena
Hjelm-Wallen, who is a the former foreign minister of Sweden, and currently serves as the chair of the International Institute for Democracy and Electoral Assistance, and is also a director of the International Crisis Group – two key democracy-manipulating groups (Barker, 2007). The Center’s website also notes that: “Promoting democracy is central to the Palme Center’s programme”, so it is fitting that they are currently “managing over 40 projects and initiatives with a total budget of SEK 35 million” for the Swedish International Development Agency’s Iraq Program.

Other funding bodies that have supported the Albert Einstein Institution that do not appear to have obvious ‘democratic’ ties include the California Community Foundation, the CS Fund, the Greenville Foundation, the Joseph Rowntree Charitable Trust, the Miriam G. and Ira D. Wallach Foundation, and the New York Friends Group.

3. Notably Ackerman also serves on the advisory board of the Council on Foreign Relations misnamed Center for Preventive Action, a group that should arguably be referred to as the Center for Preventing Democratic Action (Barker, 2008).

4. Other countries that the Institution has worked with that are mentioned in the same overview report include Azerbaijan, Turkmenistan, Haiti, Ukraine, and Israel.

References


Belonging, citizenship and children’s rights in the European Union

Katharine Vadura
University of South Australia

Abstract: The European Union (EU) has recognised the need to protect the rights of the child, however given the varied relationships between states and the EU, establishing belonging and securing citizenship for children is not always straightforward. This paper will argue that citizenship and the related notion of belonging, in the case of children in the EU, requires not only special attention but also the establishment of clear protections in the form of children’s rights which recognise their vulnerability and embraces the opportunity to further enhance their protection.

Children as EU citizens are excluded as in practice the understanding of EU citizenship is limited to workers, and as it is linked to nationality only limited rights and protections are afforded to children who are non-EU nationals. The provisional nature of children’s citizenship in general and the specific vulnerability and need for protection in relation to children’s rights are key issues being reviewed in this paper. The final part of the analysis looks at the implications for belonging, citizenship and children’s rights in the EU following the failure of the establishment of the Constitution. The challenge of integration provides a double edged liability for children who face a situation of dual denial of both voice and visibility.

Keywords: children’s rights, citizenship, European Union

[The EU …] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. (Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 2007, Article 2, 3: 13)

The need for the specific protection of the rights of children in an international arena has been evident in both policy and practice for a number of years. In fact 2007 marked the ‘coming of age’ of the Convention on the Rights of the Child (CRC) when this international convention turned 18. The CRC has been one of the most widely ratified international legal instruments and yet in spite of this recognition of the vulnerability of children and their need for protection, many states still persist in adhering to policies which are focussed on criminalisation rather than protection when it comes to children. The European Union (EU), a significant regional governance institution has itself continually sought to establish ways in which the rights of children are protected. It has recognised the need to protect the rights of the child, however, given the varied relationships and contrasting levels of willingness to relinquish sovereignty in different policy areas between states and the EU, establishing belonging and securing citizenship for children is not always straightforward. This paper will argue that citizenship and the related notion of belonging in the case of children in the EU requires not only special attention but also the establishment of some clear protections. These protections take the form of children’s right to nationality and citizenship. Both nationality
and citizenship are understood as multi-level concepts with both national and supranational implications, and recognise a child’s vulnerability and embraces the opportunity to further enhance their protection. This paper will focus on a child’s right to citizenship in the European Union, looking at the institutions, policy and practice established to support children and entrench protection of their rights at both a European and national level.

In relation to children there is a sense of the provisional nature of citizenship. This paper will address this in the following way. Firstly, looking at how European citizenship is constructed and in this sense focussing on the exclusionary nature of EU citizenship as traditionally EU level citizenship is associated with workers, thereby excluding children from its parameters. This is followed by an analysis of the link between nationality and citizenship in Europe highlighting the fragility of belonging and rights for many children. This is then further elaborated in the third point, namely by focussing on the limited rights and protections of children of non EU nationals. The final section will be devoted to a brief review of children’s rights following the failure of the establishment of a Constitution for Europe and the Treaty which replaced it. This treaty, the Lisbon Treaty’s attempt to ‘child proof’ EU laws and policies will be raised. The challenge of integration in the EU provides a double edged liability for children who face a situation of dual denial of voice and visibility in relation to access to citizenship and belonging.

**Rights protection for children in the EU**

The right to a nationality for a child is clearly articulated in the Convention on the Rights of the Child (CRC) which has been ratified by all member states of the European Union. The complex nature of governance in the EU and the process of integration itself, with its variable speeds and levels of compliance, have resulted in nationality and the rights and obligations of citizenship even at an EU level still remaining a policy matter for individual member states. This has resulted in inconsistencies emerging as to acquisition of nationality and citizenship which have direct implications for children, in some instances removing their right to access a nationality by virtue of location of birth and legal status of parents. This section of the paper will endeavour to uncover some of these inconsistencies and look at what role the EU and EU citizenship have played as a part of this process.

The European Union is an example of successful integration at a regional level, and the complexities of relations between member states and the global face of the EU are more than just an institutional relationship. As of the beginning of 2008 the membership of the EU numbers 27 states: France, Germany, Italy, Netherlands, Belgium, Luxembourg, United Kingdom, Ireland, Spain, Portugal, Greece, Austria, Sweden, Denmark, Finland, joined in 2004 by Cyprus, Malta, Poland, Czech Republic, Slovakia, Hungary, Estonia, Lithuania, Latvia, Slovenia, and in 2008 Romania and Bulgaria. The main focus of integration has been economic although increasingly political integration is becoming more entrenched. The shape of governance as it is played out in this framework has itself in part added to the simultaneous protection and vulnerability of children residing in the territory of the EU. The area of human rights, and specifically children’s rights is one where the EU is attempting to present a unified voice.

In the international arena and in the United Nations the EU has a voice but it is through its member states that human rights protections are implemented. The CRC has been ratified by all members of the EU and is therefore binding on those territories. It provides a substantial list of protections for children and recognises their vulnerability. In the area of citizenship it is the right to nationality that is explicitly protected. Significant for rights of the child in the EU
was the introduction of the policy *Towards and EU Strategy on the Rights of the Child* (COM(2006) 367 final). More recently the Commission has produced a follow up document which outlines further strategic initiatives to put in place protections for children in the EU. These initiatives include: the European Forum for the rights of the Child; Daphne III, Hotline 116000, EU-wide Child Alert mechanism, and stopping the sale of child sexual abuse images (EC, 10 April 2008).

It should be noted that when it comes to human rights protection at a European level the impact of the Council of Europe with its conventions protecting human rights is the most extensive. This also includes work related specifically to the issue of nationality. The Council of Europe cannot actually regulate in this area but decisions made by states are subject to conforming to the respective European Conventions. This means that individuals who perceive their rights to be violated have recourse through the European Court of Human Rights. The link between the Council of Europe and the EU is somewhat similar to that with nation states as the impact of Council of Europe conventions is felt via member states of the EU by virtue of the fact that these states are members of both institutions.

There is also a conceptual distinction between citizenship and nationality which needs to be highlighted. All too often the two are conflated and yet in state and international instruments which outline the right to citizenship and nationality the two are understood in quite distinct terms. In fact, the two concepts fall under different headings within the framework of the state – and it is perhaps this which adds to the inherent tensions in protecting children’s rights in this area. The concept of citizenship is bestowed on individuals by the state, in other words the rights assigned by citizenship and who is entitled to them are not necessarily always clear by birth. States differ in their conferral of citizenship rights through the principles of *jus soli* (by place of birth) and *jus sanguinis* (by descent). On the other hand, nationality is a concept which is identified in human rights documents, including the CRC. As a concept it is much more subjectively defined and associated with notions of belonging. Nationality and citizenship can be understood as categories used by states to define or determine membership as well. It is a misnomer to assume that the acquisition of nationality is always automatic. In this paper nationality is linked to the notion of belonging and in relation to EU understandings of citizenship is seen as separate from the concept of citizenship in a legalistic and state or EU defined context.

**Child’s right to citizenship**

Citizenship for a child, “... is an ascriptive status, not chosen, not consented to, that provides the basis for future assumption of the obligations and responsibilities that eventually attach to the status for adults” (Bhabha, 2004: 112-113). Bhabha goes on to argue that for children citizenship provides them with nothing more than a status which is part of an ongoing process reaching conclusion with adulthood. As such, in the case of children citizenship needs to be considered primarily in terms of rights as the obligations side of citizenship do not emerge until the child transitions to full legal age and thus is recognised legally as an adult (Bhabha, 2004: 113). Children are seen as citizens in waiting; “... a perception of children as ‘citizens-in-the making’, or to ‘human becomings’ (as opposed to human beings), legitimising adults’ claims to and regulation of citizenship rights on their behalf” (Hill and Tisdall in Stalford, 2000: 118).

Children are also subjected to different levels of degrees of citizenship due to the binding relationship between citizenship and parental dependence. This then results in, “... discrimination within the class or category of child citizens, between those with alien parents
and those with citizen parents” (Bhabha, 2004: 113-114). When the state is caught up in the citizenship debate invariably the focus turns to the parent / security / right of residency, children are not thought to have a voice. Therefore they are classed as ‘non viable’ citizens from a state perspective, being seen as of no benefit to the state. The CRC is irrelevant when it comes to questions of citizenship and the related rights of children as the focus is on those with a voice – namely the parents. Bhabha (2004) presents a discussion of the ‘ascriptive’ status of citizenship for children. If the vulnerability of children is to be addressed there is a need to give primacy to rights above all else and ensure these are protected irrespective of nationality, voice and visibility.

Understanding citizenship in an EU context

On the one hand citizens of the EU are presented with far greater opportunities than previously, whilst at the same time the there is a greater need for inclusiveness and respect for diversity. Citizenship has become an exclusive framework for constructing levels of belonging which without embracing an understanding of post national citizenship will lead to a divisive and fragmented set of identities emerging in Europe. As Martiniello (1997: 40) argues an outline of levels of belonging can be identified in relation to the European Union. These levels of belonging can be defined in the following way: citizens of member states living in their nation-state; citizens living outside their nation state; ‘denizens’ or citizens of a non EU state legally settled in the EU and ‘margizens’ those who are living illegally in a member state (exclusion from the cultural and political ‘Europeanity’); guest workers; and the various categories of stateless (including those who had citizenship of a nation-state which was lost due to restructure and now fall outside the EU). These divisions are further reinforced by the current structure of the EU, which although having some supranational aspects is still very much at the mercy of the nation states. The EU has not reached the level of a federal structure replacing the nation state, and the resulting struggle over sovereignty has in many ways undermined the capacity of the EU to construct an inclusive notion of citizenship. The linking of nationality and identity at a member state level means that citizenship at an EU level is a compromise. Moving beyond this compromise requires a radical shift in will and understanding of the shape of EU citizenship.

Citizenship in the EU is complementary to that at a state level and as such the ideals presented in this form of citizenship should be inclusive and embracing the diversity of the EU population. It was the Treaty on European Union (Maastricht) which introduced the idea of Citizenship of the Union in Article 8, stating that; “Every citizen holding nationality of a member state shall be a citizen of the Union”; enjoy rights and duties outlined in the treaty (free movement of goods, persons, services and capital), and through it was through this that the rights framework developed (Guild, 1996: 30- 31). Dunkerley et al (2002: 15) outline four objectives of European Union citizenship: new political rights to nationals resident in member states through the recognition of their freedom of movement; citizenship designed to tackle the issue of ‘democratic deficit’; to build a European identity where the formula for citizenship was given legitimacy through consent and allegiance; and determination of who was entitled to belong in the legalistic sense. The Amsterdam amendments to EU citizenship simply stated in Article 8 that EU citizenship would complement and not replace national citizenship, and moved citizenship from the pillar of Justice and Home Affairs (III) to that of the Community, pillar I. The Treaty of Nice simply sought to reinforce the freedom of movement of citizens in a rights context. Still a significant part of society was excluded from the benefits of fundamental rights due to the issue of nationality and the exclusive nature of citizenship both at an EU and national level. The changes in national citizenship to increasingly be based on the principle of jus sanguinis has meant that without the decoupling
of EU and national citizenship in any of the treaties or Constitution an increasing number of individuals are becoming ‘foreigners’. In other words, citizenship as determined by the state by descent has effectively excluded and marginalised many born in a territory where they would previously have automatically gained citizenship. This process of ‘othering’, the establishment of division between those who are deemed to belong and the ‘Others’, has led to such individuals who are deemed not to belong becoming non-citizens of the EU. This is of particular relevance to the notion of citizenship rights pertaining to the particularities associated with children.

Rights of citizens outlined in the failed Constitution continued to guarantee the rights and freedoms of EU citizens, but importantly did not extend the power of the European Union in any way. However importantly for children, the inclusion of the Charter for Fundamental Rights was seen as a way of ensuring recognition of the rights of children and to some extent as the first steps to ‘child proofing’ EU policies, that is to say recognising their vulnerability and need for specific protections. The subsequent Treaty of Lisbon, currently in limbo following a stalling of the ratification process, has continued to include a direct recognition of child rights. In presenting a perspective on what EU citizenship for children should look like, Stalford argues that “… a model for citizenship should be adaptable and applicable to children from a variety of backgrounds with a variety of personal and public experiences” (2000:122).

Nationality, citizenship and belonging: children as EU citizens

It is evident that EU citizenship is multi-level in the sense that there is a national and European layer, and clearly EU citizenship is directly linked back to national citizenship. As already stated EU citizenship doesn’t make specific mention of children or their particular needs, vulnerability and necessary protection. In part this omission is related to the notion that EU citizenship is the guarantor of freedom of movement between EU member states. However, this mobility is focussed on workers and not necessarily families and therefore not children. According to Stalford: “The citizenship status of children is rarely considered in its own right and children rarely acknowledged as marginalised … because of the fact that they are children” (2000: 112). She cites two aspects of EU citizenship which result in the exclusion of children or at the very least highlight the fact that these rights are incidental when it comes to children. Firstly, Stalford rightly sees that the political rights conferred on EU citizens exclude children by virtue of the fact that in order to use these rights individuals must be over the age of 18 and therefore an adult. Secondly, she refers to the free movement right associated with EU citizenship, which again in the case of children is directly dependent on their family and parents as it is very unlikely that a child would be making a migration decision (Stalford, 2000: 118). In summary, Stalford argues that; “Union citizenship as far as children are concerned, therefore, is exposed as a partial and potential one, subjugated to the needs and activities of their parents and to the economic agenda of the Community generally” (2000: 128).

Nationality implications for children of non EU nationals

The situation in the EU in relation to the growing number of non-nationals living in the EU relates in part to worker mobility but as such has implications for children in terms of nationality and access to citizenship. Eurostat data (2006) indicates that the majority of non-nationals are from non-EU countries, with the total number of non-nationals (defined as not being a citizen of the country in which they reside) being just under 5.5% of EU25 population (were EU25 refers to the Union prior to the most recent 2008 enlargement which saw the accession of Romania and Bulgaria to the EU). This highlights the implications of EU
citizenship being defined by member state citizenship and still tied to national frameworks as being problematic. It indicates that as a policy it is an area which has not been successfully Europeanised. For children the implications of these changes are serious as they can result in denial of citizenship even if nationality is established. As stated above, this occurrence is dependent on the way in which citizenship is conferred in member states. As such, it is an issue which emerges in relation to birth registration and lack of this or alternatively the lack of a legal ability to register the birth which leads potentially to situations of statelessness for the children.

Emerging changes in national legislation relating to citizenship, in particular the tightening up of such laws has lead to the denial of access to citizenship for some children of non-nationals of the EU. There are a number of examples around the EU of situations where citizenship and nationality have been denied to non-nationals and the result for children has been an absence of belonging coupled with the added vulnerabilities that go with such a status. Such situations of statelessness have emerged for a number of groups including Roma, stateless Palestinians, the Russian minority in Estonia, Turks in Germany, and Russian non-citizens in Latvia. One particular example is the situation in Ireland which highlights the implications of recent national legal changes for children and the inadequacy of EU citizenship to provide protection for these children. In Ireland residence requirements have been attached to \textit{jus solis} citizenship. Prior to the 2004 Citizenship Act non-nationals were entitled to right of residence through children born on Irish territory as the children automatically gained citizenship and nationality at birth (Garner, 2007: 2). As Garner states, “…in the citizenship debates, children are racially split by the State into Irish and ‘Irish-born’, and their mother’s nationality determines the child’s access to resources” (2007: 13).

**Conclusion: children’s vulnerability post Lisbon**

There is a need to revisit the protection of children’s rights in relation to citizenship and nationality at an EU level. The Treaty of Lisbon, when it was first introduced following the failure to ratify the Constitution, had non government and other organisations making claims that finally there was an attempt at ‘child proofing’ EU policy and law. However in relation to establishing European standards for citizenship or nationality there has been no change. European citizenship still remains tied to national laws for the acquisition and loss of nationality or citizenship.

The provisional nature of citizenship, namely the acquisition and loss of nationality as understood through national citizenship has resulted in countries having different bases for entitlement: \textit{jus solis} and \textit{jus sanguinis}. The implications of this become more complex when states make policy or law that doesn’t take into account other states. In particular in relation to non nationals in the EU, this has seen arguments being mounted for the racialisation of access to nationality and citizenship as a reaction to migration and refugees. In the EU where cross border mobility is facilitated by ‘freedom of movement’ issues like migration into the EU, cross border management of movement amongst others become significant, and of even more concern when dealing with children. Children’s mobility is complex and not always linked to that of a parent or adult carer, as can be seen in cases of children who are refugees, unaccompanied minors, adopted transnationally, or trafficked. Situations of absence of belonging, or statelessness, for children often manifest themselves as a result of the situation of the parent, through problems with birth registration, children born out of wedlock, or situations of state secession.
Understanding notions of belonging and the complex relationship to a legal construct such as citizenship provides a particular challenge when looking at the situation of children. In this sense, children as vulnerable minors require a particular dedicated set of rights which seek to protect their vulnerability. The structures established as part of the EU framework to protect the right of children are under constant scrutiny and improvement. However, the situation related to children and EU citizenship has remained unchanged in spite of the tightening of restrictions on access to citizenship at a national level. Children’s citizenship constitutes membership without full voice and notions of belonging from a child’s perspective would therefore appear to require a specific set of protections which are not yet fully evident at an EU level.

References

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Can Fair Trade coffee remain fair? Investigating the politics of multinational involvement in trade-based development initiatives

Nikki Sullings
University of Sydney

Abstract: The price collapses and systematic exploitation suffered by developing world coffee farmers at the hands of multinational corporations and local traders within deregulated world markets have been well-documented by academics and journalists.

Perhaps less well-documented are the politics surrounding attempts to address these problems. One such attempt is an alternative international trading initiative called Fair Trade, which involves the certification and labelling of commodity products like coffee to ensure farmers receive 'fair' prices and conditions of work. Fair Trade sales have grown rapidly since 2000, mostly in the United States and Europe, with worldwide sales reaching €2.3 billion in 2007 (Fair Trade Labelling Organizations International, 2007). This growth has largely been fuelled by some of the world's most powerful multinational companies including Starbucks, Walmart, Nestlé and McDonalds, as both manufacturers and distributors of Fair Trade products.

The participation of multinational companies in Fair Trade, however, presents a conundrum. The same multinational companies who have for decades exploited producers have now joined the crusade to save them. Is this bizarre twist of fate to be believed? Or do these companies aim to water down standards and redefine what is 'fair'? This paper challenges emerging arguments for and against the involvement of multinationals in Fair Trade, exploring their history of exploiting coffee farmers and critically analysing the trajectory of their involvement in the Fair Trade movement today. Most importantly, it considers the short and long term implications of working with multinationals for the world's poorest farmers and aims to provide more nuanced and better informed parameters for the debate.

Keywords: fair trade, multinational, coffee, trade, development

Fair Trade: a response to market deregulation, price collapses and exploitation by multinationals in the coffee industry

In order to put arguments around the participation of multinational companies in context, it is useful to begin with a brief history of issues in the coffee industry and how Fair Trade evolved.

Fair Trade\(^1\) is an international trade and development initiative whereby Southern producers sell their products (primarily to Northern markets) through a trading system which is regulated by a network of international non-government organisations. It is officially described by the four key organisations of the Fair Trade movement (Fair Trade Labelling
Fair Trade is a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers – especially in the South. Fair Trade organisations (backed by consumers) are engaged actively in supporting producers, awareness raising and campaigning for changes in the rules and practice of international trade. (FLO-I, 2007a).

Fair Trade coffee was developed largely as a response to deregulation of the international coffee market in 1989 and a resultant decline in the terms of trade for Southern producers, which reached crisis proportion in 2001. While these issues in the coffee industry have been well documented by researchers and journalists in recent years, an important, yet less acknowledged issue is the role played by multinational companies in the coffee industry over the same period.

Prior to the problems of deregulation, coffee producers experienced a long period of stability and prosperity. Beginning in 1962 and lasting for a period of almost 40 years, the international coffee market was regulated by the International Coffee Organisation on the basis of numerous multilateral agreements between buyer and seller nations. The most significant purpose of these International Coffee Agreements was to stabilise the (previously volatile) price and supply of coffee on the world market (International Coffee Organisation, 2007b; Bates, 1997, p.16). This situation, in which prices were maintained at relatively high levels, was not only beneficial for Southern producers but also amenable to multinational coffee manufacturers and retailers. Amidst the post-war 'long boom' of economic prosperity, the multinationals saw high prices as a happy compromise in exchange for stable supplies of coffee. The stability allowed them to focus more resources on marketing (instead of procurement) which put their smaller Northern manufacturing and retail competitors (for whom the high price of coffee and small nature of their operations meant they could not afford marketing) at a disadvantage, and thus enabled multinationals to gain a growing share of the coffee market, particularly in the United States (Bates, 1997, pp.172-175).

By 1989, however, this mutually beneficial arrangement came to an end when the International Coffee Agreements were disbanded in favour of a free market approach (Bates, 1997, pp.172-175). By this time, it was widely acknowledged that the long boom had ended, recession had set in across most Northern countries and the neoliberal agenda had gained much ideological ground (Low & Davenport, 2005, p.146; Jenkins, Pearson & Seyfang, 2002, pp.1-3). In a tougher fiscal environment where deregulation was becoming orthodox, the multinationals sounded no opposition to abandoning high prices (Bates, 1997, pp.172-175). As expected, deregulation resulted in a long term decline in coffee prices. For example, a 60kg bag of Brazilian Arabica coffee dropped from an average price of US$155.74 in 1986 to an average of US$91.28 between 1990 and 2000. In 2001 the problem reached crisis point when Vietnam entered the world coffee market as the world's second largest coffee-producing nation, causing an oversupply of coffee and catalysing a price collapse down to just US$36.87 per bag (International Coffee Organisation, 2007a; Oxfam America, 2002, p.17). Of course, the impact on farmers was devastating, particularly in Central American nations where coffee was a key national export, and widespread poverty ensued (Linton in Eade & Sayer, 2006, p.225; Oxfam America, 2002, pp.8-31). While earnings from coffee for producing nations halved (from averages of US$10 to 13 billion per year in the late 1980s to US$5.5billion in 2004), the multinationals, however, captured record profits. Over the same period, the value of retail coffee sales in coffee consuming countries almost tripled, increasing from around
US$30 billion to US$80 billion (Slob in Osterhaus et al, 2006, p.123). By maintaining high retail prices while paying low prices to suppliers, the largest multinational companies exploited the crisis (Oxfam America, 2002, p.59). In addition, these companies used their record profits to gain increasing shares of the coffee market through mergers with, and acquisitions of, their competitors (Pendergrast, 2001, p.345; Hampson, 2000).

It is clear that multinational companies have reaped the benefits from both regulation and deregulation in the coffee industry. While regulation also benefited coffee producers, deregulation clearly had the opposite effect. There are two important points to be drawn from this brief history. Firstly, these companies have historically acted in the interest of their profit margins and market share, with negligible concern for producers. Secondly, there remains an enormous ongoing power imbalance between multinational companies and Southern producers in the coffee industry. Widespread public concern over the unbridled power that corporations have gained under free market policies, for which the coffee industry is a pertinent case in point, is a major factor driving demand for greater corporate social responsibility. It is in this context that Fair Trade coffee was developed by alternative trade organisations.

Alternative trade organisations (ATOs) emerged during the post-war period, in parallel to the coffee industry and all its problems, to develop trade relationships with marginalised producers from war-torn and economically disadvantaged Southern nations (Low & Davenport, 2005, p.145). With an explicitly political ‘trade not aid’ philosophy and determination to provide an alternative to the pitfalls of the free market, these organisations mainly sold handicrafts (and a small amount of coffee) through alternative trade stores in Northern countries. From the 1960s to the 1980s they were quite successful, with sales revenues rising exponentially and the number of ATOs constantly expanding (IFAT, 1999, p.3). By the end of the 1980s, however, changes in economic conditions forced these organisations to reconsider their line of business. Most notably, demand for Fair Trade handicrafts had slowed due to a high volume of cheap imported handicrafts to Northern countries following reductions in the relevant tariff barriers. The recession of the late 1980s also contributed to reduced consumer demand for unnecessary items like handicrafts (Low & Davenport, 2005, p.146; Littrell & Dickson, 1999, p.349). At this point the alternative trade movement became increasingly subject to the forces of the same free market to which it had aimed to provide an alternative. At the same time the alternative trade movement was searching for new products for which a less elastic consumer demand existed, the coffee industry was also suffering the impact of free market policies. Thus, Fair Trade coffee was the logical outcome of this confluence of events (Golding & Peattie, 2005, p.157).

Theorists have characterised the alternative trade movement as a committed attempt to operate both ‘in and against the market’ (Barratt Brown, 1993, p.156; Taylor, 2004, p.130). The pressures of the late 1980s and 1990s, however, demonstrate the problematic nature of that proposition. The difficulties with being both in and against the free market become increasingly apparent upon examination of the evolving relationship between Fair Trade coffee and multinational companies.

**Enter the multinationals**

Critical to the project of trading in coffee and other foods was the need to secure mainstream distribution channels and reach a broader consumer market. The need to sell Fair Trade coffee outside of alternative trade shops gave rise to the need for a label to differentiate and
guarantee these products' more ethical origins. Throughout the 1990s, this new product certification and labelling approach to Fair Trade commodity products grew in popularity and Fair Trade certification organisations developed in many countries, later merging to form Fair Trade Labelling Organizations International (FLO-I) (Wills in Osterhaus et al., 2006, p.16). Where alternative trade organisations previously had a process-focused approach whereby 'fairness' was measured in relative terms of an organisation's improvement against principled criteria, the labelling model necessitated a different approach. Under this model, products - not organisations - are required to meet universal criteria (Low & Davenport, 2005, p.147). With the increased focus on Fair Trade coffee and commodity products, the supply-driven, relativist approach of the alternative trade organisations' was largely replaced by the demand-driven, product-focused labelling approach (Low & Davenport, 2005, p.147). This approach opened the door for any company (including multinationals that have systematically exploited Southern producers for decades) to get a product certified as Fair Trade as long as the product meets the criteria.

While this change did not take place without debate, it would seem that the movement saw no alternative way to capture mainstream markets other than to work with multinational companies.

**Popular debates around multinationals in Fair Trade**

While the movement has remained unified in its broad ambitions, public debate over the involvement of multinationals in Fair Trade has been raised by trade activists and journalists. On the one hand there are those, primarily representatives of Fair Trade organisations and of the participating multinationals, who advocate the affirmative case. They claim that multinationals' participation in Fair Trade is evidence of these companies changing their trade practices which in turn improves the incomes and wellbeing of thousands of Fair Trade producers. Further, for an increasing number of producers to benefit, Fair Trade must become 'mainstream' reaching a greater number of consumers. To do this, Fair Trade must work with the multinational companies that own a significant percentage of the brands in the retail coffee market and also the supermarkets in which coffee is primarily sold. Essentially, they claim that without multinationals Fair Trade cannot succeed in becoming more than just a niche market of Northern consumers (Lamb in O'Nions, 2006; Arias in *The Australian Financial Review*, 2006).

On the other hand there are those, primarily trade activists, who dispute these claims on the grounds of both moral outrage and empirical evidence. They claim it is hypocritical for multinational companies that have exploited coffee farmers for decades, to now be involved in Fair Trade. Further, the percentage of Fair Trade products that these multinationals actually trade is miniscule in relation to the rest of their products which are traded 'unfairly'. Thus, these companies appear to be simply seeking to profit from a new niche market in 'ethical products' and they are not serious about changing their overall practices. Concerns are also raised that as multinationals become more involved in Fair Trade, they will ultimately seek to 'water down' Fair Trade standards (Tucker, 2006; O'Nions, 2006; Cebon, 2006).

To evaluate the relative merit of these arguments, it is necessary to examine the short-term impacts of multinational participation and to consider carefully the potential long-term impacts.
The current state of multinational companies' involvement in Fair Trade

Before considering the impact of multinationals in Fair Trade, it is useful to categorise their involvement. Coffee was central to the product certification and labelling approach to Fair Trade that paved the entry of multinationals into the Fair Trade movement in recent years. Thus, it follows that coffee is the Fair Trade product in which there is currently the greatest degree of multinational involvement.

Multinationals play two key roles in the Fair Trade coffee market. Firstly, large supermarket and retail chains provide mainstream distribution channels for Fair Trade products. These include Walmart (US), Carrefour (France) and Tesco (UK). Secondly - and most controversially - some of the world's largest multinational food and beverage companies now include Fair Trade certified coffee within their product ranges, including Nestlé (UK) and Proctor & Gamble (US) (The Economist, December 7, 2006; FLO-I, 2004, p.2). Perhaps more significantly, some multinationals play multiple roles including retail chains that only stock their own-brand products, such as Starbucks (US) and McDonalds (Switzerland and the US) as well as large retailers who stock both their own-brand and other brands of Fair Trade products, such as Walmart (US) and Tesco (UK) (Wills in Osterhaus et al, 2006, pp.2-14).

It is worth pointing out that these companies are among the largest and most powerful in the world. For the Fair Trade movement, this represents a relationship that has the potential to significantly improve trade practices across the coffee industry. Given that large retailers such as Wal Mart have become notorious for exerting a controlling influence over entire supply chains (Fishman, 2003) the relationship with them may potentially also entail a very disproportionate power dynamic. One way or another, as leaders in their respective markets these companies have significant capacity to engage in, and exert influence over, Fair Trade.

The short-term evidence of multinationals' impact on the Fair Trade movement

After almost a decade of multinational participation in Fair Trade it is pertinent to consider the impact these companies have had on the Fair Trade movement. During the past decade, Fair Trade sales have increased exponentially and among Fair Trade products, coffee accounts for the greatest percentage of sales. As multinationals primarily participate in Fair Trade coffee, we must evaluate their proponents' claim that the Fair Trade movement cannot achieve significant growth without these companies against the available evidence to date.

While total sales of all Fair Trade products only represent far less than 1 percent of all goods exchanged internationally, sales of Fair Trade labelled commodity products have increased rapidly during the past decade. Worldwide sales grew more than 20 percent per year from 2000 to 2005, when they reached approximately €1.1 billion (Vidal in Opal & Nicholls, 2005, p.23; Krier, 2005, p.5). By 2007, this figure had more than doubled to reach €2.3 billion (FLO-I, 2007, p.11). Among the Fair Trade labelled commodities, coffee has experienced the highest growth; it is estimated that between 25 and 50 percent of the turnover of Northern Fair Trade organisations comes from coffee (IFAT, 2007). To assess the degree to which multinationals have aided this growth, the volume of sales contributed by these companies as manufacturers and distributors should be examined. Over two-thirds of all Fair Trade products are sold by mainstream retailers and caterers (IFAT, 2007). In the US, key multinationals Starbucks and Walmart are the number one and three retailers of Fair Trade coffee respectively (Starbucks, 2006; Mui 2006). In Europe, Fair Trade coffee is available in
over 55,000 supermarkets (including market leaders Tesco and Carrefour) and the introduction of Fair Trade products into UK supermarkets in 2001 resulted in a 50 percent overall increase in Fair Trade sales in the UK (Krier, 2005, p.7; French Ministry of Foreign Affairs, 2007). It is clear from the available figures that multinationals, in their role as distributors, have been critical to the growth of Fair Trade. In turn, this growth has delivered benefits to a growing number of Southern producers: by the end of 2007, there were 632 Fair Trade certified producer organisations representing more than 7.5 million producers and their dependents across the South - a significant increase since 2001, when there were just over 200 producer organisations (FLO-I, 2007; FLO-I, 2006, p.9).

The counter argument, which claims that multinationals' involvement is insincere and simply an attempt to capture a niche market while maintaining 'unfair' trade relations across the rest of their business should also be evaluated against the available short-term evidence. While market figures are difficult to source, the following companies' sales figures for their Fair Trade certified products remain miniscule as a percentage of their overall sales: Nestlé - 0.02 percent; Procter & Gamble - less than one percent; and Starbucks - 3.7 percent (David cited in New Internationalist, 2006, p.14; Oxfam International, 2002, p.29; Pendergrast, 2001, p.127; Starbucks, 2006). While the comparison shows only a relatively small commitment from manufacturers, when considered as a percentage of overall Fair Trade sales some of these figures are much more significant. For example, Starbucks is the largest overall buyer of Fair Trade coffee beans, purchasing 10 percent of all Fair Trade certified beans globally and 21 percent of those imported into the US in 2005 (Starbucks, 2006). While multinationals have increased the measurable success of the Fair Trade movement, it seems that the movement is now also largely dependent on them. In this context, concerns over the disingenuous nature of their involvement and the longer term nature of their relationship to Fair Trade require more careful consideration.

**Long-term concerns**

While this article will deal with concerns around the insincerity of multinationals' involvement, it will first consider some more immediate issues arising for Fair Trade that highlight the difficulties of operating within the modern free market.

The first is an issue of the economic power relationship between multinationals and the Fair Trade movement. Since 2004, Wal Mart has been working with a large coffee company, Café Bom Dia, and a large producer cooperative in Brazil, to develop an exclusive Fair Trade certified coffee product with a cheaper shelf price than any currently in the market (Mui, 2006). Wal Mart aims to make savings on this product not by paying less than the Fair Trade minimum price to producers, but through squeezing efficiencies out of the scale of the operation between the farm gate and the store shelf. Released earlier this year, the coffee is available in 40 ounce bags, and costs the consumer significantly less per ounce than the standard 10 or 12 ounce bags of Fair Trade coffee (Wal Mart, 2008; Mui, 2006). As coffee has a relatively long shelf life, this has an obvious appeal to consumers. This sort of upsizing, for want of a better word, is a common strategy used by Wal Mart to cut costs and one which has been detrimental to some of their other suppliers (Fishman, 2003). For example, if large bags of Café Bom Dia's coffee are sold in Wal Mart at minimal profit, it may become difficult for the company to sell its standard size bags of coffee without significantly reducing the price to remain competitive, whether it be on the shelves at Wal Mart or elsewhere (Fishman, 2003).
Even if Café Bom Dia is able to absorb Wal Mart's notoriously merciless cost cutting and this relationship proves mutually beneficial, it is possible that this may have a flow-on effect for other Fair Trade coffee producers - and the ATOs behind them - which may be squeezed out of the market because they are unable to compete with such low prices. For this reason it is feasible that major retailers will favour larger companies as suppliers of Fair Trade coffee, further disadvantaging smaller companies. This issue brings a new dimension to the debate: the pre-existing disproportionate economic power between multinationals and smaller companies in the Fair Trade movement.

To explore this issue further, the evolution of the organics movement in the United States provides an analogous case study. In 2006, Wal Mart announced that 20 percent of produce sold in all its US stores would soon be converted to organic, and that this would cost their customers no more than 10 percent more than equivalent non-organic products (Blobaum, 2006, p.1). Already the largest buyer of organic cotton in the US, Wal Mart's announcement hastened a series of mergers and acquisitions of small and medium organics companies – many of which were pioneers of the organics movement – by multinationals (Blobaum, 2006, p.3). It was expected that Wal Mart would seek a small number of larger suppliers to achieve the economies of scale required for such low shelf prices, so faced with the prospect of being uncompetitive and thus squeezed out of the market, many organics companies chose to sell up instead (Levins, 2006, p.4). This situation is potentially synonymous with WalMart and other large retailers' move into Fair Trade: while some companies within the Fair Trade movement establish large scale relationships with Wal Mart, not only might smaller companies find themselves squeezed out, but the more successful among them may find their best option is to sell out to their multinational competitors.

The next development in the situation for the US organics movement - what happened once multinationals became not only the dominant distributors but also the dominant manufacturers - is also foretelling. Following acquisitions of many smaller organics companies, numerous multinational companies including food industry giants Kraft, Unilever, General Mills, Coca-Cola, Mars and Nestlé became quite influential in the US organics movement (Howard, 2005; Blobaum, 2006, p.4). Some of these companies participated in a series of attempts to ‘water-down’ US organic standards. Some of these were successful (including a reduction in the percentage of organic feed required in the raising of organic poultry), while others were vehemently fought off by organic farmers and consumers organisations determined to protect organic standards (Blobaum, 2006, p.4). The influence of multinationals was also formalised by the controversial appointment of multinational representatives to positions on the National Organic Standards Board that were reserved for consumer and public interest (Blobaum, 2006, p.4). The influence of multinationals on the US organics movement provides a cautionary analogy for the Fair Trade movement. Whether through lobbying or seeking appointments to crucial decision making bodies, it is quite feasible that multinationals will seek more influence over the Fair Trade movement, including its standards.

Concerns over the potential for Fair Trade standards to be watered down are further validated by attempts at harmonisation with the standards of other similar ethical product labelling initiatives. One such attempt is being led by the Sustainable Coffee Partnership (SCP), an organisation which is sponsored by the United Nations Council on Trade and Development and the International Institute for Sustainable Development, and comprised of representatives of multinationals (including Nestlé and Kraft), the World Trade Organisation, governments of coffee producing countries and coffee industry organisations (SCP, 2003; Mutersbaugh, 2005, p.2046). The SCP proposes a set of minimum environmental and worker standards accompanied by a single label that would replace the plethora of existing ethical labels.
including Fair Trade, Rainforest Alliance and Utz Kapeh, among others. Under the new label, a series of long-term contracts would determine the trading terms between producers and buyers, the parameters of which would ultimately be determined by the SCP. The standards for this label would also be harmonised with international standards aiming to avoid any potential clashes with the World Trade Organisation's rules on product processing methods (Mutersbaugh, 2005, p.2047). While this new harmonised label would appeal strongly to multinationals that engage in much cross-border trade, it would potentially entail a number of negative impacts for the Fair Trade movement. First, to combine labels would lead to a 'lowest common denominator approach' in which the standards would ultimately be lower than those of Fair Trade. Second, the process of developing standards would be further removed from Fair Trade producers, leaving them with little influence over standards as well as possible increases in the cost of meeting them. Finally, if Fair Trade chose not to participate, this proposal would represent a competitor code. Future attempts to water down standards may take innumerous and indirect forms, but the important point is that they have already begun and at least one multinational involved in the Fair Trade movement is currently participating in such an attempt.

This paper has thus far been premised on the assumption that Fair Trade coffee is on a continuing trajectory of commercial success with multinational companies clamouring to take part and gain a share of the market. However, while Fair Trade has been immensely successful to date, nothing is guaranteed about its future. Most of the multinationals that are engaged in Fair Trade are also engaged in other private sector initiatives concerned with more ethical trade relations, environmental sustainability and improving the livelihoods of producers that compete with Fair Trade, such as Rainforest Alliance, Utz Kapeh and TechnoServe (Nestle, 2004a; Nestle 2004b; Carrefour, 2006; Procter & Gamble, 2006; Linton in Eade & Sayer, 2006, p.233). In addition, many multinationals also have some form of internal supplier relations code or policy, such as Starbucks' CAFÉ Practices Program. While there are arguments to be made for Fair Trade's influence on improving companies' practices, it is clear that no other initiatives or company policies have standards and monitoring mechanisms that are as high, or as thorough in scope, as those of Fair Trade (MacDonald, 2007). Given the Fair Trade movement and other codes are still in relative infancy, multinational involvement in competitor codes is a concern for the Fair Trade movement. It is clear from Fair Trade's own figures that working with multinationals can bolster sales and potentially make or break an initiative. In this context, capturing these companies’ support is not only an attempt to boost sales, but also a strategic competitive alignment. Ultimately, labels that gain the greatest degree of multinational support and public recognition of the label may flourish while others may be relegated to small niche markets only.

The future of Fair Trade?
The fate of the ethical labelling industry remains undecided, and there is little worth in making predictions about how the cards will fall and what this means for the future of the Fair Trade movement. It is useful, however, to evaluate the available evidence against the debates surrounding multinational involvement in Fair Trade to bring more empirical reasoning to a debate that has largely been dictated by moral and ideological arguments on one side and unquestioning faith in multinationals on the other. To that end, this article has highlighted the crucial role multinationals have played in the commercial and human rights success of Fair Trade coffee over the past decade and raised numerous concerns for the future, opening new elements to the debate. To continue debating whether the key Fair Trade organisations should, or should not, allow multinationals to participate, would assume that multinationals can only influence Fair Trade from within this movement. As demonstrated here, the reality in a free
market context is that these companies have the power to exert an influence over the Fair Trade movement, regardless of whether they are allowed to participate in it. For this reason, the terms of the debate must now be altered: it should no longer be a question of whether or not multinationals are allowed to participate; instead it should be a question of strategy, of how the Fair Trade movement can maintain its high standards and continue improving the livelihoods of producers without being squeezed out, bought out, watered down or otherwise beholden to the prerogatives of powerful multinational companies.

References


Endnotes

1. The key aspects of Fair Trade include fixed minimum prices for products, an additional premium payment for social development projects in producer communities (for example, schools, sanitation, health services) and environmental and human rights standards that must be met during the production of the goods. Products that are traded under the Fair Trade system include (though are not limited to) coffee, tea, bananas, sugar, cotton, flowers and handicrafts. An international network of non-government organisations monitor Southern farms and regulate trade to ensure prices and premiums are paid, and human rights and environmental standards are met. Products that meet the criteria are certified and carry the Fair Trade certification label (FLO-I, 2007). More information on Fair Trade and Fair Trade coffee can be found online at: http://www.fairtrade.net, http://www.fairtrade.com.au and www.fairtrade.org.uk.

2. One of these appointments was later rescinded following a campaign by organic farmers and consumers organisations (Blobaum, 2006, p.4).

3. The World Trade Organisation's rules on product and processing methods prohibit buyers from discriminating between equivalent products based on the methods employed to create the product. For example, a country that imports large volumes of Fair Trade coffee may be considered in violation of this rule as they are buying a product on the basis of a preference for its method of production. Other non-Fair Trade coffee producers and sellers could claim this action discriminated against their products. To date, however, no case related to Fair Trade has ever been raised within the WTO (Costantini, 2008).
Clash of Interests: Cultural Rights vs. Women’s Rights?

Snjezana Bilic  
University of South Australia

Abstract: It can be argued that it is particularly women, from many (non-Western) nations that are not full equals under the law: they do not have the same property rights as men, the same rights of association, mobility and religious liberty. In such position, these women are indeed the victims of the cultures that they belong to. Unfortunately, their migration to the Western countries accentuates the same problem that these women experienced domestically. Research finds that in many Western multicultural settings it is not the universal human rights framework that is applied to women’s rights issues, but rather the local communal law. For these women marriage, divorce, custody of children, inheritance, financial and so on, are decided within their community and not according to national laws and practices. However, this question of the clash between the cultural rights (that justify practice of communal laws in multicultural settings) and women’s rights is not easily resolved.

This paper will focus on the conflict around the question, what should be done when the claims of minority cultures or religions clash with the norm of gender equality that is at least formally endorsed by liberal states? In order to address the issues as well as its root causes approaches by a number of multicultural theorists, including Susan Moller Okin (1998), Ayeley Shachar (2001), Jeff Spinner-Halev (2001), Chandran Kukathas (2001) and Marilyn Friedman (2003) will be examined in the light of my own research findings on the experiences of minority women from Middle-Eastern and African communities in South Australia. Finally some potential preconditions for the resolution of the clash between minority rights and women’s rights will be recommended.

Keywords: Women’s rights, Cultural rights, Multiculturalism

Introduction

The rise in religious fundamentalism and orthodoxy in many parts of the world (partly in reaction to the legacy of colonialism and the pressure of Western values and ideas) is having detrimental effects on women's freedom and equality as these liberites are often understood to be synonymous with such “Western” values. In this climate the control of women remains one of the most critical issues (see Coomaraswamy, 1998; Okin, 1998). Consequently, the claims by religious or cultural conservatives often run directly into conflict with the recognition of women's equal rights. This is not only true in non-Western cultural contexts, but it seems present on the very doorsteps of many multicultural societies. In the West despite the fact that many Western countries are seeking to devise new policies that are more responsive to cultural differences, gender inequality within these policies and practices remains a persistent issue. This has been recognised by a number of multicultural (French, Canadian, American) theorists that draw attention to the clash between cultural/communal laws and practices and the human rights of its members (particularly women) in multicultural settings.
settings. The impact of such a clash could be quite significant in our own multicultural society, yet the number of studies exploring this relationship in Australia is limited.

This paper will examine whether the claims of minority cultures or religions clash with the norm of gender equality that is at least formally endorsed by liberal states? In other words, the main focus of this paper will be to explore the relationship between cultural rights and women's rights in multicultural contexts theoretically and practically from within the Australian context.

This clash between cultural rights\textsuperscript{3} and women’s rights\textsuperscript{4} is recognised by a number of multicultural theorists and feminists, including Radhika Coomawaswamy (1996), Susan Moller Okin (1998), Ayeley Shachar (2001), Jeff Spinner-Halev (2001), Chandran Kukathas (2001) and Marilyn Friedman (2003). These researchers argue that there is a clash between cultural rights and women’s rights and that this challenge to women’s rights is problematic particularly in a multicultural context. Consequently, the approaches by the above theorists will be analysed to address the issues as well as the root causes of this clash.

**Why does the clash between cultural rights and women’s rights occur?**

The problematic nature of the clash between cultural rights and women’s rights becomes obvious once we recognise that the right to self determination is pitted against the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) articles, which “oblige the states to remove any inconsistency between international and human rights law and the religious and customary laws operating within its territory” (Coomaraswamy, 1996:179). Shachar (1998), amongst other multicultural critics (see Okin, 1999; Spinner-Halev, 2001, Nussbaum, 1999), recognises this as well and argues that the rights and interests of vulnerable individuals—in particular, individual women, but also others, such as children and dissenters—can be jeopardized by group rights and other well-intentioned efforts to accommodate groups.

Multicultural accommodation presents a problem . . . when pro-identity group policies aimed at leveling the playing field between minority communities and the wider society unwittingly allow systematic maltreatment of individuals within the accommodated group—an impact which in certain cases is so severe that it can nullify these individuals’ citizenship rights. Under such conditions, well-meaning accommodation by the state may leave members of minority groups vulnerable to severe injustice within the group, and may, in effect, work to reinforce some of the most hierarchical elements of a culture (Shachar, 2001, pp.2-3).

The unavoidability of the clash between multiculturalism and feminism appears highlighted once we recognize two worrisome connections between culture\textsuperscript{5} and gender. Feminists, debating the impact of multiculturalism on women, outline primarily the sphere of personal, sexual, and reproductive life as it provides a central focus of most cultures, and is as such a dominant theme in cultural practices and rules (Okin, 1999; Shachar, 2001; Nussbaum, 1999). In other words, "personal law"—the laws of marriage, divorce, child custody, division and control of family property, and inheritance is often the primary concern of religious and cultural groups. As a rule, the defence of "cultural practices" is likely to have much greater impact on the lives of women and girls than those of men and boys, since far more of women's time and energy goes into preserving and maintaining the personal, familial, and reproductive side of life.
The situation is particularly evident in the multicultural settings, where it is “no surprise” that women and girls are especially affected by “minority cultural practices”, in part because cultural minorities that reside in liberal democratic states featuring powerful capitalist economies may find that the only areas of life in which they can hope to exercise some communal control over lives and practice their cultural traditions unimpeded are areas commonly treated as matters of ‘privacy’ by the surrounding liberal society (Friedman 2003, p.179).

In other words, the clash between minority claims and individual claims for gender equality can be explained from obvious presumptions. Namely, it can be argued that gendered practices and ideologies throughout the world are imbedded within most cultures. Consequently if a culture supports and even assists the patriarchal relations between men and women (the control of men over women in various ways) and if we add to this analysis that there are unequal power relations between the sexes (due to patriarchal beliefs determining and articulating the group's beliefs, practices, and interests), we can argue that cultural rights are potentially, and in many cases actually, detrimental to individual rights of women. Such rights substantially limit the capacities of women of the culture to live freely chosen lives with human dignity equal to that of men (Okin, 1999). The detrimental implications of such relationship will be further elaborated in latter paragraphs.

Proponents of multiculturalism have given significantly more attention in the ongoing debate to the theoretical question of differentiated citizenship than to a thorough exploration of the problematic nature of group rights and their impact on gender inequality (see Okin, 1999; Nussbaum, 1999, Levy 2000; Spinner-Halev, 2001). This lack of consideration is due firstly because of the liberal (theoretical) assumption about (and consequent state treatment of) all cultural groups as monoliths and secondly because the real impact of granting cultural autonomy in the private sphere has often been undermined.

A significant factor impacting on the tension between women’s rights and cultural rights, that contributed to the under researching of gender inequality amongst cultural groups by various cultural theorists (see Kymlicka, 1989; Kukathas, 1992, Raz, 1994, Carens, 2000) is their treatment of all cultural groups as monoliths and an expectation of that the minority groups will wholeheartedly accept granted cultural rights and that all individuals within such groups will benefit from these. Consequently all minority cultural groups are treated as:

... monoliths—thus [multiculturalist theorists and states are] paying more attention to differences between and among groups than to differences within them-[which] gives little or no recognition to the fact that minority cultural groups, like the societies in which they exist (though to a greater or lesser extent), are themselves gendered, with substantial differences of power and advantage between men and women (Okin, 1999:11).

Liberal states under the multiculturalist banner, justify the ignorance of cultural groups’ (oppressive) practices with the culturally relativist defence. Relativism is used as a synonym for cross-cultural tolerance and social diversity (Calhoun, 1995). A relativist perspective is proposed because, the existence of universal human rights values is a contestable topic (Rorty, 1993; Brown, 2000) and consequently we lack the independent basis for criticising the way others think or act.

The relativising rhetoric within liberal institutions causes one issue to reoccur and this is that of the clash between group identities and individual identities. Group identities are not naturally or unavoidably differentiated. Cultures define group as differentiated before they are
so. “Like everything else that is social, minority groups must be socially defined as minority groups, which entails a set of attitudes and behaviours [for individual members of such groups]” (Scott, 1999:5).

It is [in specific political contexts] — when exclusions are legitimated by group differences, when economic and social hierarchies advantage some groups at the expense of others, when one set of biological or religious or ethnic or cultural characteristics are valued over another — that the tension between individuals and groups emerges. Individuals, for whom group identities were simply dimensions of a multi-faceted individuality, find themselves fully categorised by a single element: religious or ethnic or racial or gender identity (Scott, 1999:5).

This labelling by ethnic or gender identity can be illustrated by the example of Muslim woman Nishal in Germany where the court sentence was given primarily on the stereotypical assessment of her gendered identity within her ethnic group.

Nishal, is a twenty-six-year-old Moroccan immigrant to Germany with two kids and a psychotic husband. She was beaten up by her husband since their wedding night. After she crawled to the police covered in wounds, the husband was issued with a restraint order, but he refused, instead terrorising Nishal with death threats (Hari, 2007). Hoping that the divorce would impact on her husbands behaviour Nishal went to German courts to apply for one. However instead of applying the laws of liberal German society (including women’s rights) the judge followed “the logic of multiculturalism” and concluded that an early divorce could not be granted as there was no "unreasonable hardship" in Nishal’s case (despite the police documentation of extreme violence and continued threats). The Judge’s call was made on the basis of her culturally relativist assumption that all cultures are different and thus even treatment of women within those different countries is relative. Applying this to Nishal’s situation the judge concluded that because Nishal is a Muslim woman, she should have "expected" it’. To support her call she read out Sura 4, verse 34, from the Koran to show that Muslim husbands have the "right to use corporal punishment” (Hari, 2007).

Related to this problematic impact of employing the rhetoric of cultural relativism in the public domain is the non-recognition of the private sphere, within liberal western institutions. The difference between private and public is not researched by such liberal institutions and thus it is assumed that liberal (public) laws would be practiced in the private domain of these cultures, yet the opposite appears to be the case with examples from Okin’s and Shachar’s analyses. In my research all ten Afghani women who participated in the focus group agreed that in Australia there is equality between sexes in the public domain, however when they were asked whether this ‘equality’ takes place in the private sphere of ‘home’ all of them answered that it does not.

Thus, problematically enough, it can be argued that most of women’s rights violations occur in the private domain, within the spheres of their own homes or their respective cultural groups, yet it is particularly the private sphere that is not as adequately addressed as the public domain in the Universal Declaration. Susan Moller Okin’s (1998) analysis of the Canadian and French multicultural settings supports this notion. Moreover, a further obstacle to full recognition of women’s human rights is also a problem of “respecting cultural differences” in the public domain that has increasingly been used as a justification for restricting or denying women's rights (see Coomaraswamy, 1996; Okin, 1998; Nussbaum, 2000:1). In consequence, the fact that the laws relating to family life are equally important to women seeking equal rights but also to their religious or cultural leaders, only further accentuates the clash between
religious or cultural claims and claims for women's rights. My own research with some Afghani women further accentuated this notion.

Throughout my research I found that (Afghani) participants were sceptical about a study of the rights that they have as women, claiming that 'women as a topic' is a general taboo in Afghani community - the experiences of women, even in the areas of work and education (but particularly family) is not something to be discussed. Despite the fact that the aim of the study is not to provide legal advice nor an overview of human rights to these women but to understand their comprehension of human rights and of their women’s rights in Australia and in their countries of origin, there was a general apprehension about the enquiry into the debate ‘cultural rights versus women’s rights’. The reason for this is primarily because some women, who were to be the potential participants, feared that they might experience hardship from their husbands, simply on the basis of them being involved in the study on ‘women’s rights’. This concern was particularly emphasised by women who have recently arrived on the basis of ‘spouse visas’. They saw themselves as dependent on their husbands. Such vulnerable position was suggested as one of the major impediments to the involvement of these women in the study.

Okin’s (1999) analysis of polygamous marriages amongst African couples in France further supports the above argument. During the 1980s, the French government quietly permitted immigrant men to bring multiple wives into the country. As a result an estimated 200,000 families in Paris are now polygamous. After consciousness was raised about the burdens this practice imposes on women and the warnings issued by women from the relevant cultures the French government finally ‘looked into the issue’. The research revealed that the women living in these polygamous relationships regarded these as an inescapable and barely tolerable institution in their African countries of origin, and an unbearable imposition in the French context. Despite the fact that anger and even violence amongst wives and against each other’s children as well as hostility and resentment were caused by their polygamous status, overcrowded apartments and the lack of each wife's private space, these women were not speaking out (see Okin, 1999; Favell, 1998). Their silence was due to a number of factors, some of which might include their immigrant status and a lack of understanding about their status as citizens of France and their human rights. However by keeping silent, these women were only further re-enforcing both the expectations of their African culture and stereotypical assumptions about their gendered roles by their host country, France.

In 1993 the French government, partly because of the strain on the welfare state caused by families with 20 to 30 members, decided to recognize only one wife and consider all the other marriages annulled (Okin, 1999). These laws forced ‘secondary’ wives and their children into a status of illegitimacy, resulting in precarious living conditions (Favell, 1998). Having neglected women's view on polygamy for so long, the government now seems to be abandoning its responsibility for the vulnerability that women and children experienced because of its rash policy.

The above examples highlight that, although some of the best liberal defences of group rights urge that individuals need "a culture of their own," and that only within such a culture can people develop a sense of self-esteem or self-respect, or the capacity to decide what kind of life is good for them, this argument needs to be more thoroughly and critically analysed. In Okins’ words:

Liberal institutions, by simply granting the cultural rights illustrate their ignorance and thus often neglect of both the different roles that cultural groups require of their members and the context in which persons' awareness of who they are and their capacities are first
Yet the practice of cultural relativism within liberal societies allows such clashes. Some proponents of cultural rights go as far to suggest that even cultures that "flout the rights of [their individual members] in a liberal society" should be accorded group rights or privileges if their minority status endangers the culture's continued existence (see Kukathas, 1996).

**Analysis of culturalist arguments for group rights as a part of relativist defence**

The problem with such multicultural accommodation arises because, despite all the evidence of cultural practices that control and subordinate women (such as the above mentioned examples from France and Germany), none of the prominent defenders of multicultural group rights has adequately or even directly addressed the problematic relationship between gender and culture, or the clash that occurs between cultural rights and women’s rights. For the purposes of this discussion, I will explore one of the most prominent multiculturalist theorists and his proposals for group rights: Will Kymlicka (1995, 1989).

Kymlicka is a multiculturalist theorist who deals with the question of how can the privileges granted to minority groups (in his discussion, native Canadians) be reconciled with the liberal democratic view present in multiculturalist societies. Kymlicka argues that the right to culture is actually part of the right to freedom and is, therefore, profoundly in accord with liberal values. For Kymlicka, the right to freedom is tied to the recognition that every person has a basic interest in being able to evaluate their goals and loyalties rationally and to change them when that person believes them to be mistaken. Individuals can have a variety of options from which to choose, as well as the ability to evaluate these options, only if they are part of a cultural context. The culture creates a considerable number of options and the criteria to be used in judging the value of the various options. Lack of provision for cultural affiliation will tarnish the possibility for freedom amongst these groups. Cultural minorities need special rights, to prevent their culture from becoming extinct. The most detrimental result of the extinction of a culture would be a lack of self-respect and freedom of group members. Granting rights to practice one’s culture places cultural minorities on an equal level field with the majority, according to Kymlicka (1995).

Nevertheless, granting the cultural autonomy for the groups that claim it Kymlicka conditions upon the primary value of liberalism: freedom. This freedom principle implies that these cultural groups will not be infringing on the basic liberties of its own members by placing internal restrictions on them, or discriminating among them on grounds of sex, race, or sexual preference (Kymlicka, 1989:168). This ‘liberal condition’ has served the purpose of justifying liberal efforts to secure cultural rights for two reasons. The first is that closed or discriminatory cultures prevent individuals to develop the capabilities that liberalism requires. Or in Kymlicka’s words (1996:92): "...inhibit(ing) people from questioning their inherited social roles can condemn them to unsatisfying, even oppressive lives."

Secondly, this requirement of internal liberalism rules out the justification of group rights for the "many fundamentalists of all political and religious stripes who think that the best community is one in which all but their preferred religious, sexual, or aesthetic practices are outlawed" (Kymlicka 1989:171). For the promotion and support of these cultures "undermines the very reason we had for being concerned with cultural membership—that it allows for meaningful individual choice" (Kymlicka 1989:171). However, the examples I
quoted earlier of German courts as well as the French dilemma with polygamy suggest that far fewer minority cultures than Kymlicka seems to think will be able to claim group rights under his liberal justification. This is because although some groups may appear to respect the basic civil and political liberties of women and girls and thus may not impose their beliefs or practices on others, many cultures do discriminate against women, particularly in the private sphere.

The problem with Kymlicka’s approach is that despite the argument that cultures that discriminate overtly and formally against women are not deserving of rights to practice such beliefs, he fails to register that the subordination of women is often far less overt and private. As Okin (1999) rightly recognises, in many cultures in which women’s basic civil rights and liberties are formally assured, discrimination practiced against women and girls within the private sphere not only severely constrains their choices, but seriously threatens their well-being and even their lives. And such sex discrimination—whether severe or more mild—often stems from very powerful cultural roots. Laurie Olsen’s research supports this notion. Her analysis found that the young immigrant women (in California) live in a limbo between their authentic and host cultures and what’s even more apparent is that the burden of cultural expectations from their parents fell on these young women, not their brothers (Olsen, 1997). Thus, their parents restrict their lives in so many ways so they will stay within cultural boundaries, often insisting on arranged marriages and placing significant responsibilities upon them.

Potential preconditions for the resolution of the cultural rights vs. women’s rights clash

Before I start discussing the potential recommendations for the resolutions of the clash between cultural rights and women’s rights I would like to acknowledge that this paper is critical of essentialist feminist arguments which seem to presume that minority cultures are more patriarchal than Western liberal cultures. In such analyses culture is often invoked to explain forms of violence against Third World or immigrant women while culture is not similarly invoked to explain forms of violence that affect mainstream Western women. Vollp’s (2001) and Narayan’s (1997) analysis of cultural comparison of dowry and domestic violence will be used to illustrate this phenomenon.

Dowry murders take place when, in connection to escalating dowry demands, a new wife is murdered usually burned to death (Vollp, 2001:1180). Dowry murders are often stereotyped as a peculiar indicator of the extreme misogyny of India. Theorists, like Uma Narayan (1997), have suggested that dowry murders are the cultural alternative to domestic violence murders in the United States. Narayan (1997:99) has calculated that death by domestic violence in the United States is numerically as significant a social problem as dowry murders in India. The problem with this cultural comparison is that it is only dowry murders that are used as an analogy signifying cultural backwardness. Yet domestic violence murders in the U.S. are just as much a part of American culture as dowry death is a part of Indian culture. However it is only for fatal violence in the Third World that the “cultural explanations” are given for fatal forms of violence thus incurring that Third world women suffer “death by culture” (Narayan, 1997:95).

The above analysis adds to my and like proposals outlining feminist arguments framing private discrimination as a problem for cultural theorists, flawed (see Vollp, 2001; Spinner-Halev, 2002). Private discrimination is a serious issue, yet it is not one particular to multiculturalism. In Spinner-Halev (2002) words:
Multicultural theorists do not simply allow immigrant groups to discriminate against their daughters. Rather, with standard liberal views of the private sphere, Kymlicka and others allow all families, immigrant and non-immigrant to do the same. Okin’s worry about private discrimination isn’t something particular to minority groups12 (Spinner-Halev, 2002:90).

Nevertheless, I also argue that it is of enormous importance for those who defend group rights on liberal grounds to not undermine the very private, culturally reinforced kinds of oppressive practices.13 Thus, I acknowledge the validity of Kymlicka’s argument through which he proposes that self-respect is a key liberal value and membership in a cultural structure is important for the self-respect of the members of those groups. However, we must not at same time ignore the feminist voices, like that of Okin, Shachar and Nussbaum, amongst others, when they question if the cultural structures, secured under multicultural accommodation, demean individuals within it. In other words, at least as important to the development of self respect and self-esteem, is not just the cultural membership, but also “one’s place within that cultural group” (Okin, 1998:682). Unless women are fully represented in negotiations about group rights, their interests may be harmed rather than promoted by the granting of such rights.14

When liberal arguments are made for the rights of groups, then, special care must be taken to look at intra-group inequalities. It is especially important to consider inequalities between the sexes, since they are likely to be less public, and less easily apparent. Moreover, policies aiming to respond to the needs and claims of cultural minority groups must take seriously the need for adequate representation of less powerful members of such groups. Since attention to the rights of minority cultural groups, if it is to be consistent with the fundamentals of liberalism, must be ultimately aimed at furthering the well-being of the members of these groups, there can be no justification for assuming that the groups' self-proclaimed leaders—invariably mainly composed of their older male members—represent the interests of all of the groups' members.

Finally, future emphasis must be placed on international human rights standards consisting of true cross-cultural universals (meaning the universal values deconstructed of their cultural and social constructions) to be incorporated in a culturally- and gender-sensitive manner not just within global but local settings in order to establish a framework that secures universal human rights for all. Any other way of approach to human rights will resemble its predecessor: the multiculturalist paradox where well-meaning policies designed to accommodate the practices of different minority cultures can actually serve to sanction the maltreatment of individuals within those groups.

References


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End Notes

1. Susan Moller Okin’s (1999) analysis of polygamy in France as well as Ayelet Shachar’s (2001) analysis of several other (multicultural contexts) including United States (pp.18-20) and Canada (p.152-54) as well as India (2001, pp.80-84), Kenya (2001, p.55) and Israel (2001, pp.79-80), supports this notion.

2. Thus we are seeing countries such as France, with traditions of strictly secular public education, struggling over whether the clothing required by minority religions may be worn in the public schools and England with established churches or state supported religious education, trying to accommodate the demands to extend state support to minority religious school.

3. Cultural rights are rights of any religious and ethnic minorities and indigenous societies that are in danger of disappearing. Cultural rights include a group’s ability to preserve its way of life, such as child rearing, continuation of language and security of its economic base in the nation, which it is located (International Covenant on Economic, Social and Cultural Rights, UN 2007). In their arguments about rights being provided under multicultural accommodation, number of multicultural theorists use terminology such as group rights, rights of minority groups, rights to self-determination or minority rights. Consequently the concept of cultural rights will be used interchangeably with these terms, yet encompassing in definition and as such representing one and the same concept.

4. Women’s rights are an inalienable part of human rights. The concept throughout this study will be understood as freedoms inherently possessed by women and girls of all ages, which may be institutionalized, ignored or illegitimately suppressed by law, custom, and behavior in a particular society.

5. The definition of culture that I will be referring to throughout this paper is borrowed from Kymlicka’s definition of societal culture, which is: “a culture which provides its members with meaningful ways of life across a wide range of human activities, including social, educational, religious, recreational and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language” (Kymlicka, 1995:76).

6. My emphasis.

7. My research includes an analysis of the impact that the communities have on the individual human rights of the newly arrived migrant women from non-Western cultures where the communal impact/relationship is still present. For this purpose women from Liberian and Afghani cultural background have been interviewed. I have conducted focus group interviews with ten Afghani and seventeen Liberian women. I have conducted also conducted nine individual interviews with Afghani and nine individual interviews with Liberian women. The research was be grounded on the premise that cultural rights impact on women’s rights as argued by some of the feminist theorists from American, French and Canadian multicultural settings.

8. The woman in a polygamous marriage is often the subject of disparaging commentary concerning her submission to this type of union, sexual arrangements with the husband and co-wives, and housing conditions. Currently, 33–75 percent of Malians in France are estimated to be in polygamous marriages (Quiminal and Bodin, 1993: 13; Timera, 1996: 105). Prior to the 1993 Pasqua law, polygamy was tacitly allowed; subsequent to 1993, and enforced more vigorously after 2000. Those in polygamous unions (with the exception of the first wife) risk loss of their legal migrant status and their work permit.

9. All cultures (especially religious ones and those that look to the past—to ancient texts or revered traditions—for guidelines or rules about how to live in the contemporary world) practice discrimination against and control of the freedom of females, to a greater or lesser extent (Okin, 1999).

10. Not treating women and girls with the same concern and respect as men and boys, or not allow them to enjoy the same freedoms.

11. Ideas, like that of Okin’s, that “other” women are subjected to extreme patriarchy are developed in relation to the vision of Western women as secular, liberated and in total control of their lives. I am aware that the assumption that Western women enjoy complete liberation is a product of discursive self-representation which contrasts Western women’s Enlightenment to the suffering of the “third world woman”. Thus I would like to accentuate that this paper is not based on the
assumption that women from minority communities require liberation into the ‘progressive’ social customs of the West.

12. Spinner-Halev (2001) rightfully highlights that there are other groups, such as some conservative religious groups, that we should be paying attention to, if we are to be concerned about gender discrimination within particular groups. For instance, groups such Protestant Fundamentalists employ gender discrimination through education, social activities, churches, as they shield themselves from the mainstream society. In comparison immigrants are more institutionalised within, and thus exposed to the policies of, the liberal society. “It is conservative religions, who have an institutional framework that protects them from the larger society that pose a threat to the autonomy of their daughters much more than immigrants, who are often influenced by the liberal community around them” (Spinner-Halev 2001:90-91).

13. This paper is concerned with oppressive cultural practices imbedded in ways of life of cultural minorities. Thus for instance, those who practice some of the most controversial such customs—clitoridectomy, the marriage of children or marriages that are otherwise coerced, or polygamy—sometimes explicitly defend them as necessary for controlling women, and openly acknowledge that the customs persist at men's insistence. Despite their controversial nature, the above mentioned practices by minority groups are reported as still occurring in multicultural countries.

14. Concerning evidence from my own research supports this notion. Throughout my research I have had a group of Uzbek women disintegrate and not attend their women’s groups at the non-governmental institution where they were provided space and time to discuss their life, their problems and where they received advice about governmental services that were there for their personal, legal or medical matters. Most of these women arrived on spouse sponsored visa and were, according to one of the workers that worked with the group, ‘at the mercy of their husbands’ who prevented them from attending the women’s groups’ meetings.
Conflicting justice systems and the search for peace, justice and reconciliation in northern Uganda

Stephen Oola,
Beyond Juba Project, and
Refugee Law Project, Makerere University

Abstract: The apparent collapse of the Juba peace talks signifies a serious challenge to achieving accountability and reconciliation in the context of northern Uganda. It also underscores the crucial role traditional justice mechanisms such as mato-oput and others may play towards achieving this goal. On multiple occasions, Joseph Kony stated that his reluctance to sign the Final Peace Agreement was based on his fear of prosecution and his distrust for the government of Uganda’s rhetoric of forgiveness and amnesty. In particular, the rebel group demanded specific operational clarifications on the implementation protocol of the Agreement on Accountability and Reconciliation (AAR), and how the proposed accountability mechanisms envisaged, that is to say the traditional justice mechanisms and national courts will interact with the International Criminal Court. Of importance has been the consistent declaration of willingness by the Lords Resistance Army (LRA) to subject themselves to the traditional justice mechanisms while calling for the suspension or the International Criminal Court indictment and arrest warrants. The situation is however, further complicated by international community’s skepticism of traditional justice mechanisms, often citing Uganda’s’ obligation to prevent impunity under the Rome Statute. Thus, while the Juba Peace Process (JPP) was until recently the most feasible and desirable attempt to negotiate a peaceful and just end to the northern Uganda conflict, the ICC indictments threatened to undermine that process.

This paper will give a brief overview of the juba peace process, critical summary of the proposed justice and reconciliation mechanisms. Discuss the existing justice mechanisms and their proposed roles and gaps. It will be argued that the codification and infusion of traditional justice mechanisms and practices into Uganda’s legal framework may help redress the violations committed in the course of the 22 year old conflict as well as help re-shape the legal terrain in the country as a whole.

Introduction

Since independence in 1962, Uganda has been plagued by what could be considered ethnically driven, politically manipulated violence and subsequent to that, a cycle of conflict, revenge and mistrust. Deep-rooted division and polarization orchestrated by the colonial policy of divide and rule as well as post-colonial misrule has now transformed what used to be referred to as the pearl of Africa into the 21st century’s harbinger of “bad tidings” and impunity. Throughout Uganda’s history, little attempt has been made to acknowledge and redress these violations, achieve closure, kick-start a healing process, and foster a national reconciliation which has for long been impeded by this horrific past legacy. While the peace
talks that started in southern Sudan have been viewed as the most commendable attempt to end this menace, its apparent collapse following the rebel chief’s failure to sign a final peace agreement signifies a serious challenge. Within Uganda, it is now being suggested that the codification and infusion of traditional justice mechanisms and practices into the national legal framework is a possible remedy for redressing the violations committed in the course of the 22-year old conflict, as well as help to reshape the entire legal terrain. In this paper, I will argue that to achieve such desired justice and reconciliation, there has to first be peace as a matter of practicality. This proposal would entail a temporary suspension of the international arrest warrant and indictment issued against the Joseph Kony and his commanders by the International Criminal Court (ICC), and realistically negotiating the Lord’s Resistance Army (LRA) out of rebellion.

The Conflict

The conflict in northern Uganda began in 1987 and has been fought between two parties, one in government and the other still in the bush, both armed and dangerous, both accused of committing gross atrocities and war crimes. Joseph Kony’s rebel movement, one of the parties to the conflict, has justified its efforts in terms of an attempt to empower the Acholi people and to establish a government based on the Bible’s Ten Commandments. By far, this rebellion is the longest-standing and most horrendous of the twenty-two different uprisings against the Museveni government. Like so many on today’s ‘dirty wars’, the conflict has displaced over three-quarters of the populace of northern Uganda. Its human rights and humanitarian consequences have been described as one of “social torture”, “typical genocide”, and certainly one of the “world’s worst forgotten humanitarian crisis”. As Barney Afako commented, the greatest casualty of this conflict was “…not the direct result of crimes during hostilities, but rather their oft-forgotten indirect consequences relating to disease and displacement.”

Justice in Acholiland: Traditional justice and reconciliation approaches

Most cultural groups in Uganda have values, norms and practices, which they hold for purpose of societal peace, unity, justice and tranquillity. Before colonialism, Uganda had these mechanisms and in many parts of the country, people continue to practice traditional dispute resolution, justice and reconciliation mechanisms. Traditional justice in this sense refers to the native regulations, norms and customs initiated by the fore fathers as means followed to correct the wrongs committed in the community. It is thus commonly believed that in order to achieve harmony and self-preservation, cultural leaders must respect these long-standing traditions. Within Acholi, *mato-oput* is still widely practiced. Literally translated, *mato-oput* which means “drinking bitter herb/roots from the oput tree”, and demands of victims and perpetrators of violence that they undergo a cleansing process to heal the community’s wounds and the individuals who have been victimized.

This Acholi rite of reconciliation is a long process of purification for psychological, moral and social re-integration. *Mato-oput* is a ritual of closure and is aimed at determining guilt, expression of remorse, payment of compensation and finally reconciliation. It does not just signify a superficial act of amnesty, but rather a comprehensive and staged accountability process. There may be variations in details of the Mato-oput as a reconciliation rite across clans but essentially the rite includes purification, making confession, making compensation and finally coming together in a joyful celebration which involves eating together from the same dish and drinking from the same calabash to reconcile former foes.
Within the context of the current reconciliation efforts in northern Uganda, traditional Acholi justice mechanisms have been popularly supported by the population as it has been deemed best suited for the daunting task of societal healing and reconstruction. The LRA leadership have expressed their willingness to subject themselves to this process, describing the mato-oput ritual as restorative. However, international involvement and insistence for a retributive solution has complicated these conflict resolution efforts. Attempting to satisfy what appears to be international standards of international justice is proving inappropriate and unacceptable.

The involvement of the International Criminal Court in northern Uganda came as a result of a state referral of the situation in northern Uganda to the court following Museveni frustration by his continued inability to end the long running and debilitating war. Shortly before that, the parliament of Uganda had, however, passed an Amnesty Act intended to lure LRA insurgents out of the bush. The gains promised by the amnesty have so far been limited. In a response to his request, the ICC agreed to conduct an investigation and in 2005 unsealed the controversial arrest warrants against the five top LRA commanders. The ICC’s involvement did initially help to bring the conflict of northern Uganda to the international stage and to compel Joseph Kony to negotiate. In addition, the indictments helped to diminish the Khartoum government’s support for the LRA and further prompted the Juba peace talks in 2006.

The punitive dimension of the ICC proceedings that advocated for the prosecution and punishment of top LRA commanders for their war crimes and crimes against humanity was meant to end impunity and further deter would-be perpetrators from committing further atrocities. Fearing these harsh retributions, Joseph Kony was forced to the negotiation table and finally agreed to be subjected to the traditional Acholi justice process. Kony however, refused on all counts to be tried through the ICC’s international criminal justice system furthering the dilemma. He repeatedly called for the lifting or suspension of the indictment and arrest warrants and thus far, he has refused to sign the final Comprehensive Peace Agreement unless his demands are met. This situation has brought the once promising Juba peace process into a stalemate.

The Juba Peace Process

The Juba talks officially began on July 16, 2006 and resulted in a ceasefire agreement that was signed in September of the same year. This milestone has been credited for ushering over two years of relative peace and stability for the people of northern Uganda. This accomplishment was marked by the substantial return of formerly displaced persons back to their villages of origin. Observers have commonly described the Juba process as the “best chance ever” for a negotiated end to this two decade war. The Juba talks, in an attempt to find a peaceful solution to the protracted conflict, were designed to be a series of negotiations between the government of Uganda and the LRA leadership. This peace talk initiative, which lasted over twenty months was led and mediated by Doctor Riek Machar, the current Vice-President of Southern Sudan. Five agenda items were identified and placed on the table for discussion (see http://www.beyondjuba.org/agreements):

1. Cessation of Hostilities (CoH),
2. Comprehensive Solutions to the Conflict (CSC),
3. Accountability and Reconciliation (AAR),
4. Disarmament, Demobilization, Resettlement and Reintegration (DDRR), and
The signing of several agreements surrounding the CoH, CSC and AAR, which was subsequently followed by a somewhat symbolic public consultation by both LRA and Government has made the peace process appear to be irreversible in nature. However, throughout the duration of the negotiation process, matters of accountability and the ICC remained contentious. As highlighted by the Chief Mediator’s comments, the Juba peace talks have been a “very difficult peace process with the ICC indictment hanging over one of the parties.”

The LRA leadership have continued to refuse to sign the final peace agreement citing personal safety and the ICC warrants as the main reasons. They have also demanded for further clarifications surrounding the operational linkages between traditional mato-oput systems, the newly created Special Division of the High Court which is to be Uganda’s domestic war crimes court and the International Criminal Court. Kony’s demand for further clarification on the agreed accountability mechanisms has brought into question the likelihood of achieving concurrent peace and justice in northern Uganda. Can peace and justice be achieved concurrently or does one have to give way to the other?

This peace versus justice debate is nowhere more pronounced than in northern Uganda. Retributivists argue that “prosecution by the ICC will not only fulfil the objective of removing the worst offenders from society, but also provide a moral vindication to victims because it will lead to public acknowledgement of wrongfulness of acts committed and send a clear signal that impunity will not be tolerated. Peace activists on the other hand, argue that e “involvement of the ICC and its insistence on trial would undermine the attempts at peaceful negotiation and current amnesty process and perpetrate the suffering by victims.”

Peace versus Justice

According to Moses Chrispus Okello this debate has led to the “false polarization of peace and justice in Uganda.” Okello has noted that in the course of an on going conflict, it is always tempting to look at peace and justice as mutually exclusive imperatives and to pursue either one or the other. According to the Refugee Law Project (RLP), the two aforementioned entities are complementary, but the realisation of either one has to be carefully sequenced. Nick Grono and Adam O’Brien have observed that pursuing a sequential approach to peace and justice can at times circumvent the potential clash between the two. The issue in northern Uganda is not so much about the prioritisation of the ‘traditional’ over the ‘formal criminal justice’, but rather how sustainable peace and justice can be achieved in a relatively short period of time. Many people are increasingly paying attention to the potential value of returning to age-old traditions such as mato-oput.

I suggest that the punitive approach to attempting to achieve justice while at the same time negotiating matters of peace is narrow-minded however well intended. The ICC’s unwillingness to retract arrest warrants in the interest of immediate peace has placed into question their motives. To illustrate this, one must simply turn to the words of Richard Goldstone, the former chief prosecutor for the Yugoslavia and Rwanda tribunals. He warned that, in the case of northern Uganda

...dropping the charges against Kony and his commanders would be fatally damaging to the credibility of the international court, a price which the international community could much less afford to pay than having the peace negotiations in Uganda grow sour.
**Juba Peace Talks: The Justice Dilemma**

The Juba agreement on Accountability and Reconciliation proposed a number of accountability mechanisms in a bid to satisfy international standards of justice. Some of the proposed mechanisms were clearly out of context and others were simply not practicable or even acceptable to the victims and parties to this conflict. In its preamble, the Juba Agreement on accountability and reconciliation declared that whereas the parties have engaged in protracted negotiations in Juba … conscious of the serious crimes, human rights violations and adverse socio-economic and political impacts of the conflict, and the need to honour the suffering of victims by promoting lasting peace with justice.

Both the government of Uganda and the LRA leadership have agreed to promote national legal arrangements, consisting of both formal and informal institutions and measures for ensuring justice and reconciliation. In principle, both parties have agreed that traditional justice mechanisms, such as *mato-oput*, which is practiced in the communities affected by the conflict, “shall be promoted with necessary modifications, as a central part of the framework for accountability and reconciliation.” Within this context, it was agreed that formal criminal and civil justice measures would be applied to all individuals who have allegedly committed serious crimes or human rights violations in the course of the twenty-two year conflict. These justice measures would only take place with the provision that state actors be subjected to existing criminal justice processes and not to special justice. However in practice, the existing criminal justice processes, both domestic and international, have failed to ensure the full accountability of state actors who have during the war committed countless and ruthless crimes against humanity. The negotiating party’s insistence on a two-track approach further demonstrates the difficulty of establishing the whole truth about the conflict and may not foster any genuine accountability and reconciliation or usher in a sustainable peace.

**Reconciling the Conflicting Justice Mechanisms in northern Uganda**

Despite marked differences between traditional and international justice practices, there exists relevant overlap. For instance, both systems seek to uphold universally acclaimed human rights and dignity of equality before and under the law. Both systems uphold the presumption of innocence and the need to be proven guilty. Both systems seek to make reparations for wrongdoing. This is invariably achieved either through the admission of guilt, expression of remorse and forgiveness or punishment. It is also clear that both systems do not support impunity. That is, those who commit crimes are held accountable.

However, there exist several critical areas which indicate a departure from local, domestic, and international justice systems, particularly in the case of Uganda. Systemic differences include the seeming lack of procedural safeguards, witness or victim protections, and severity of punishment. While traditional mechanisms are restorative by nature emphasising communal responsibility, formal international justice standards, as represented by the ICC, are punitive and retributive, emphasising individual criminal responsibility. However, the aforementioned are not irreconcilable differences if true justice –an open ended perception – is what we seek for in the northern Ugandan context.

When codified into the Ugandan legal system, traditional justice mechanisms may very well play a critical role in Uganda’s pursuit for sustainable peace, accountability and national reconciliation.
Proposed Traditional Justice Legislation

Currently under the Ugandan legal system, there is only a vague recognition of customary laws and practices in our constitution and other pieces of legislation. This of course is subjected to a number of tests like repugnancy and so on. There is equally a stipulated hierarchy of formal courts of law but there is no place for traditional courts. Some of these courts are tasked with administering customary laws albeit only on certain issues but the traditional institutions which natured these values have no place in our legal system.

When the traditional justice system is recognised (codified) by law, its institutionalisation (in terms of traditional courts, including their composition, jurisdiction, referral mechanisms) will have a place within our legal system (probably as first step for the resolution of certain disputes at the local level) Codification would identify crosscutting principles of traditional justice approaches across all tribes in Uganda and then codify them into law. In August 2007, traditional, cultural and religious leaders from the LRA conflict affected areas met, resolved and declared thus,

Traditional approaches to justice and reconciliation in northern and eastern Uganda such as mato-oput of Acholi, kayo cuk of Lango, ailuc of Teso and tonu ci koka of Madi, among others share similar principles. These similarities include truth telling, confession, mediation, and reparation and result in reconciliation and the restoration of relations. Such traditional mechanisms are therefore locally and culturally relevant to meeting the justice needs of victims of the Ugandan conflict.

Codification would thus be used to fill the apparent loopholes in the current traditional justice mechanisms to complement other domestic legal mechanisms comprehensively further satisfy the post-conflict situation in northern Uganda.

Conclusion

Traditional justice principles can be codified to inculcate international best practices, ensure uniformity, address impunity, adopt protective approaches towards minorities and vulnerable groups and above all, administer comprehensive justice. Had the Juba talks acknowledged the value and potential collaboration of both justice systems and taken the initiative to insist on the codification of traditional justice practices, perhaps a peace agreement could have been reached. What is apparent, however, remains that if the International Criminal Court wants to maintain its centrality in conflict resolution, members must begin to respect existing justice traditions that have survived decades of war and destabilization. In the case of northern Uganda, there exist very strong beliefs and processes for administering justice and reconciliation. Any future attempt at reaching a peace settlement in this region must without any doubt embrace the traditional justice approaches of the Acholi people. Peace, justice and reconciliation will only be achieved in northern Uganda through an inclusive process that involves a wide range of actors embracing victims, bystanders, perpetrators and all other stakeholders.23 The lesson learned from the collapsed Juba peace talks is clear. Peace and justice cannot be achieved concurrently in the case of northern Uganda.

End notes

1. Both the 1974 Commission of Inquiry into the Disappearance of Missing Persons (CIDMP) and the 1986 Commissions of Inquiry into the violations of human rights (CIVHR) had limited impact if any, in achieving closure and healing deep rooted violence along ethnic lines.
2. See “To Look Forward, we must first look back” Refugee Law Project, Press Release

4. Over 1.8 million civilians were displaced at the height of the conflict. The latest U.N Report adjusted the reported figure to 1.2 million displaced civilians. See “Uganda has 1.2 million IDPs”, U.N Survey 2007 Global Trends.” Saturday Vision, June 21, 2008.

5. Rape, mass murder, mutilation, sexual enslavement, sodomy, defilement, abduction, torture, enforced disappearance, displacement, lack of protection, massacre, were all reportedly committed by both UPDF and LRA during the conflict.

6. According to Dr. Chris Dolan, Director of RLP in his Keynote speech entitled “Is the PRDP a Three-Legged Table?” “…challenges for NGOs in Moving from Humanitarian and Short term interventions to longer term approaches in light of the PRDP and the conflict setting” Kampala, April 10, 2008. Document available at www.refugeelawproject.org or www.beyondjuba.org

7. In January 2006, Olara Otunu, former U.N under-Secretary General and Special Representative for Children in Armed Conflict described the so-called “protected villages” as “concentration camps”.

8. In 2004, Jan Egeland, then the U.N Secretary General’s Special Representative for Humanitarian Affairs made this explosive statement following his first visit to northern Uganda.


11. Latest Population Movement figures for April shows that only 55% of the displaced person are remaining in camps in Gulu, with 66% in Kitgum and 28% in Pader as majority have either returned to their original villages or decongestion/transit sites paving way for development interventions as opposed to humanitarian focus assistance.

12. The talks ended on March 26, 2008. Kony, fearing his safety due to the ICC arrest warrants was scheduled to sign from his hide out in Garamba forest in DRC on April 3 and Museveni to sign in Juba on April 5. However, there were several postponements dates back to May 10.


14. Head of Research and Advocacy Department, Refugee law Project, Kampala in “The False Polarisation of Justice” accessible at www.beyondjuba.org/papers


19. Agreement on Agenda Item 3 and its implementation Protocol referred to as the Annexure to Agreement on Accountability and Reconciliation. Accessible at www.beyondjuba.org

20. See Clause 2 and 3 of the AAR.

21. See Preamble to Agenda Item 3, Agreement on Accountability and Reconciliation (AAR), 29th June, 2007

22. See Clause 4 on Accountability in the Agreement on Accountability and Reconciliation signed on 29th July, 2007 between the LRA and GoU.

Connecting Women: NGOs and women’s activism in contemporary Japan

Dr Laura Dales
University of South Australia

Abstract: Non-government organisations that comprise only female members, or self-define as “women’s groups” have a long history in Japan. While the aims and methods of such groups are diverse, and participation in these groups may not be explicitly feminist, the non-government and not-for-profit “Third Sector” can nonetheless be seen as a space enabling individual women to effect social change. Through sharing, conflict and related intellectual engagement, the groups may explore and extend the agency of women, by developing what Ahearn calls “the socio-culturally mediated capacity to act” (2001: 112).

This paper draws on fieldwork conducted in Kansai (western Japan) between 2000 and 2002, as part of my doctoral research on feminist agency and praxis in contemporary Japan. Beginning with an overview of the development of NGOs in Japan, the paper examines the capacities and limitations of contemporary NGO groups, as well as individual members, as vehicles for feminist change. The paper will discuss the implications of women’s involvement in groups for individuals and for society.

Keywords: Japan, women’s NGOs, agency

Introduction

Japanese women have demonstrated their feminist engagement as individuals and in groups in diverse ways over the last century. Contextualising women’s groups within the civil society landscape, in this paper I examine one particular women’s group as a site of feminist agency and a source of critical discourse that connects into broader discussions of gender and womanhood in contemporary Japan.1

Non-government women’s groups are significant as sites of feminist engagement because women’s organisation into groups – with or without explicit feminist identification – has several political effects. Individual feminists may risk particular personal exposure through their activism, and in gaining public attention as individuals may be subsequently marginalised as extreme or exceptional. Organisation into groups increases the political effect of women’s activism by highlighting the breadth of impact of particular issues, underscoring the significance of ‘women’s issues’ to the broader society. In so doing, women’s groups can signal the potential ramifications of a failure to attend to concerns, and reflect the expectations of women in relation to government policy, cultural practices and beliefs and the social meanings attached to gender and gendered roles in Japan.

These expectations relate specifically to the capacity for women to be self-determining agents in the family, the workplace and the broader community. Feminism in Japan – as in other societies – is diverse and impossible to define in the singular, and divergence among feminist
scholars and activists has featured strongly in each wave of feminism. In contemporary Japan, I argue that agency can be seen as both the cause and effect of feminist engagement. If agency is manifest as a capacity to act, then feminism can be understood as the enabling of women to exercise agency. Non-government women’s groups can encourage and enable feminist engagement by opening a space for women to explore social issues and ‘women’s issues’ within a gender critical framework. Thus groups can act as sites at which women’s individual experiences articulate with broader discourses of human rights and gender equality, informing and being informed by social constructions of ideal femininity and civic participation.

The NGO context

Non-government or civil society organisations are by no means new to Japan: people’s protests and strikes occurred throughout Japan as early as 1868, although it was not until the 1960s that citizens’ groups galvanised in a systematic way as a force to challenge state and industry (Mason 1999: 188). The 1970s saw an upsurge in the number of citizens’ groups, including feminist activist groups involved in the women’s Liberation movement and environmental non-government organisations (NGOs), particularly those targeting pollution and connected with the industrial lawsuits arising from issues such as the mercury poisonings in Minamata and Niigata (Mason 1999: 188). Shifts in public attention from the environment to the economy and criticism of the welfare state saw a lull in citizens’ activist groups in the late 1970s and early 1980s. However, organisations of Japanese women, particularly married women not engaged in paid labour (and reflecting the “housewife feminist” movement) represented a “significant force in Japanese society” at this time (Mason 1999: 189; Takao 2001: 291; Eto 2001: 243). The sector began growing rapidly in the late 1980s, and in 1995 the Kobe earthquake saw a dramatic revival of citizens’ activism, when “nearly 1.3 million people participated in relief operations” (Takao 2001: 291).

In 1998 the government passed the Law for the Promotion of Specific Nonprofit activities (the NPO Law), recognising the economic imperative to delegate certain functions to the third sector (Takao 2001: 292). Currently NGOs in Japan are categorised as incorporated or unincorporated. The former designation entitles a tax-exempt status, but few of the estimated 500,000 NGOs in Japan qualify for this designation (Takao 2001: 293; Mason 1999: 197). To qualify, an NGO must be recognised as a “public-interest corporation” (kōeki höjin), which requires either capital assets of 300 million yen, or membership numbers deemed sufficiently large by the ministry with which the NGO is affiliated (Mason 1999: 197). By the end of 2001 5625 organisations had been certified under the NPO Law (Schwartz 2003: 16-7). Avenell (forthcoming) suggests that while most groups will not incorporate under the NPO Law, its symbolic significance is such that it remains a touchstone for popular understandings of civic activism in Japanese. The functions and political presence of NGOs are delineated and delimited by their size and funding. Takao observes that the rise in NGO numbers reflects the increase in individuals’ concerns about “specific social needs in their immediate environment”, reflecting what Hirata describes as an increased reliance on “informal channels of political activism” (Takao 2001: 308; Hirata 2004: 109).

Within this context, non-government women’s groups can serve both as a forum for information exchange and a platform for political and community action. As a site for the development of agency and feminist engagement among women, women’s NGOs can be compared to women-only unions in Japan, which according to Broadbent “prov(id)e training and education [and therefore have] significant implications for the form and configuration of social and welfare policies” (2005). The limitations of women’s groups are also similar to those of women-only unions: both are relatively small and consequently relatively limited in
their political strength. Nonetheless, the cumulative and potential flow-on impact of the act of organising by women suggests that both women-only unions and women’s groups represent sites of political significance. The significance of women political activists cannot be gauged solely by electoral success, but also by their increased political presence or voice, along with their bank of considerable local expertise (Gelb and Estevez-Abe 1998: 272).

Furthermore, the incorporation of women-as-actors into large organisations (such as unions) has a two-way effect. The authority of women who would otherwise be excluded from public or corporate power is legitimised, and organisations which would tend to be seen as hierarchical, impersonal and morally (or politically) corrupt are legitimised through the inclusions of women’s voices (Le Blanc 1999: 149). By organising around issues such as childcare, mothering and paid work, non-government women’s groups highlight the ways that individual experiences reflect broader social shifts, demographic changes and gendered inequalities. In the current Japanese context – where 10% of the population is aged 75 or over, and fertility is at an historic low of 1.23 – “women’s issues” develop a particular political salience. As social service and welfare demands related to the low birth-rate/ageing society increase, non-government organisations driven by women and centred on “women’s issues” are afforded both greater responsibility and greater purchase on policy-making (Eto 2001: 242). Women’s groups are therefore potentially sites of social education, discursive deconstruction and critical engagement for the women who create and control them.

My observations and interviews conducted in women’s groups revealed the subtle but distinct ways that group participation can engender agency among individuals. Members spoke of their group as a space in which they could question, learn, discuss and sometimes share. Beyond these explicit acknowledgements, the informal discussions and exchanges between members indicate the capacity of the group to extend and increase feminist knowledge, in the sense that such knowledge flows from critical examination of women’s lived experiences. This capacity was not uniform or constant across the three groups I examined, but I argue that organisation around “women’s issues”, that is, the issues flowing from women’s experiences, inherently offers the potential for producing feminist knowledge and praxis, and it is from this potential that agency can develop. Here I follow Parker’s definitions of “agency” as referring to “a capacity for pragmatism, for meaning and identity-making, which is not necessarily radical or revolutionary in intent” and of resistance as “more specifically reserved for intended, directed, radical or revolutionary practice” (Parker 2005:65).

Methodology

In this paper I focus on one of the groups, Women’s Projects, selected because it is both the longest-running and the most stable in composition and activities. Women’s Projects was and continues to be run out of the Kyoto home of its founder Tanaka-san, and has a long-term membership record and website. At the time of study, almost all regular members were married and aged from their late 30s to early 50s, and of the married women, all but two have children (See appended table), and it became apparent that the implications of this membership composition shaped the group’s activities and focus. The group requires membership fees, which fund the production and publication of the semi-regular Women’s Projects magazine. The magazine has about 600 subscribers globally, but at the time of study only seven to ten members regularly attended the weekly meetings, which comprised English language study and discussion, shared lunch and magazine-related work.

This paper draws on data from a larger project on feminist agency and praxis in contemporary Japan. The project included two years of ethnographic fieldwork conducted in non-
government women’s groups and government-funded women’s centres in western Japan from 2000 to 2002. Organisations encompassed in this study were not intended to be taken as a representative or random sample of women’s organisations in Japan, and in fact the overlap between groups was significant not only to my study and its findings, but to the way that these organisations continue to operate and evolve. All of the groups and activists studied in the broader project could be linked via one or more individuals, and these connections, formed before my own entry into the field, in turn shaped my location within the groups. My study of Women’s Projects specifically drew on interviews and participant observation in weekly meetings and English-language classes, and also analysis of the literature produce by the group, including the magazine and group’s promotional material. I also took notes on conversations with members that occurred outside meetings, and which I considered illuminating or significant to my research. These exchanges often flowed from more general conversation, appearing during social gatherings in spaces such as cafes and restaurants, and also in train stations and on trains at the end of such gatherings, reflecting the “inevitable slippages between language, assertion, contestation and avowed knowledge through long-term observation” (Weiner 1995:6). The value of these exchanges in terms of fieldwork cannot be denied, for it was in these conversations that I clarified, queried and built on information obtained and observations made during formal meetings.

While the group is limited in its capacity to address “women’s issues”, the boundaries of discussion are suggestive of particular forms of feminist praxis and its Japanese manifestations. As Cockburn has observed of women anti-war activists, “organising ‘as women’ implies a choice – choosing the context in which you think you can work best and be most effective” (Cockburn 2007: 156). The “comfort factor” implicit in this arrangement is critical for the women in the groups discussed here. Issues which receive less attention reflect both individual members’ beliefs or experiences, and the overall “flavour” of the group, as well as its management. The issues flagged as too difficult or inappropriate remain for some members silent markers of the group’s limitations, and can become sources of conflict between members.

**Connection and exclusion in Women’s Projects**

Khor notes that contemporary women’s groups in Japan tend to be organized around specific concerns, rather than broad concepts of “women’s issues” (1999:636). Extending on this, while groups may form officially to address particular topics or agendas, the incentive to participate draws on a broader understanding of “women’s issues”- the issues which affect women’s lives. Thus when asked for a definition of “women’s issues”, the founder of Women’s Projects Tanaka-san observed that “(i)ssues regarding nursing the elderly are women’s issues. Education issues are women’s issues. ‘Women’s issues’ covers pretty much everything!” (Women’s Projects, 27/07/01).

Membership in Women’s Projects reflected a range of commonalities. While the observable common elements among group members related mainly to age, marital status and employment, group members identified other bonds. One member, Sone-san, suggested that all or most of the women in Women’s Projects: have worked before marriage; identify as “not just a homemaker”; and are unable to get jobs after marriage (Women’s Projects, 25/07/00).

While English language-study is the official aim of weekly meetings, Women’s Projects members also emphasised the social element as an incentive to remain with the group.
For me, the first motivation was learning English, but after talking like this, (I felt) that here I could talk honestly about things that I couldn’t talk about in my other friendships, about what I think and in my own words. And afterwards it wouldn’t be a case of “Oh, so and so said that!” (Kano-san, Women’s Projects, 27.4.01)

It is not surprising that connections exist among women’s groups in particular geographical or thematic areas. Certainly in my doctoral research it was evident that personal connections underpin women’s networks to a large degree. The women’s groups, centres and businesses that I visited and engaged with were quite explicitly non-random, and the overlap between groups proved significant both to my study and its findings, and to the way that these organisations operate and continue to evolve. All of the groups and activists could be linked via one or more individuals, and these connections, formed before my own entry into the field, in turn shaped my location within the groups. The nexus of the groups included in this study is therefore greater than the study or its coordinator, and the mutual familiarity (if not collaboration) of groups and individuals suggests that the function and potential of women’s organisation extends beyond the boundaries of set meeting times, official policy and organised activity.

I was introduced to Women’s Projects by Akagi-san, a member of another women’s group WWW and a regular user of the Osaka Prefectural Women’s Centre, both of which became sites of research. The links between groups and individuals can be seen as evidence of an existing “feminist community”, comprising those interested in and critically engaged with women’s issues in contemporary Japan The linkages may also be understood as illustration of the ways that fieldwork creates a web within which the researcher constructs his/her conceptualisations of the field, and thereby shaping the world of the research. As Bestor observes, such network choices guide the research project by determining the perspective of questioning (2003:321).

The interconnectedness of women’s groups is fed by member’s personal engagements with the community, for example through schools, universities, women’s centres and the workplace, manifest within meetings as announcements, questions and discussion-starters. Members can gain access to new groups, sites and resources of (feminist) interest through the discussions, recommendations and sharing of information within group meetings and informally. Within these discussions, the personal interests and politics of individuals shape the flow of information. When the discussions occur within meeting time (rather than, for example, before the meeting begins) it is particularly clear that certain topics are less favoured and therefore less likely to be promoted or taken up by group members. The demarcation of acceptable and unacceptable topics is either self-imposed, or made by group members, often individually or in small groups following the discussion.

The Women’s Projects group demonstrated particular ambivalence on the topic of religion. This was made explicit to me when one member, an occasional participant in meetings, brought in flyers for an exhibition at a regional art museum. While the flyers were circulated during the meeting, the group looked interested and made comments about the beautiful location and the fascinating theme of the exhibition (ancient Japanese artefacts). However, following the official meeting when the member promoting the exhibition had left, remaining group members commented on the religious affiliation of the art museum (owned and operated by a particular Buddhist sect), and suggested that any promotion of religious beliefs or religiosity within the group is to be discouraged. Tanaka-san briskly noted that all religions were treated equally in the group, and certainly my observation of the group was that all religions were equally and politely ignored.
Sexuality was another implicitly proscribed topic in Women’s Projects, and its marginality was reflected in the self-censoring of one member. Akagi-san, told me that she would not discuss her own difficulties and circumstances (related to sexuality) in that group because the environment was not conducive to that topic, and she felt that the women might react negatively. Her disinclination to discuss sexuality meant that she did not discuss the personal reasons for her divorce with the group, despite their explicit and implicit questions. Akagi-san felt that the group would respond critically, or without empathy, based on the group’s conservative nature, in turn related to the general age-bracket of members, and the fact that most members were married.

The group’s reluctance to engage in discussions of sexuality and sex may thus reflect the generational and social backgrounds of the women, all of whom could be described as middle or upper-middle class. I suggest that the group’s avoidance of sexuality in discussion reflects not simply its conservatism or modesty, but also an attention to the accessibility and comfortableness of the group as a space for women of different backgrounds. Silence around issues does not necessarily imply disapproval or repudiation of these issues as significant for women, but it does reflect an awareness that such discussions may isolate and embarrass older and more reserved members. This inclusiveness, however, implicitly involves the exclusion of women such as the member described above, for whom sexuality is central in her engagement with women’s issues. It is in the silence around sexuality that Women’s Projects is most limited and limiting for these members, and its absence as a topic of address both refers to wider restrictions on the discussion of non-heterosexual sexuality and marks the line by which private and public are demarcated.

While sexuality represents a boundary of the group’s scope, even within “comfortable” topics there are degrees of inclusiveness. Significantly, the opportunity for women to participate is dependant on their fluency in the language of discussion. While all three sections of Women’s Projects meetings – study/discussion, lunch and editing – allowed (if not encouraged) Japanese discussion, discussion time reflected differences in members’ participation that were not visible in the lunch and editing times. Throughout the meeting, if one member began a discussion in English, generally the next speaker would continue in English, so that English fluency and confidence determined both who spoke, and of what they spoke, at varying times. For many members English practice and the development of language skills initially drew members to the group, and the building of confidence in these skills is not to be underestimated as an example of empowerment. I would argue that this represents agency explicitly linked to the group’s objectives. Beyond this, the translation and discussion of English language articles enabled members to articulate questions, concerns and criticism of Japanese (and non-Japanese) gendered practices, developing agency incidental to the group’s explicit aims.

**Agency and its expressions**

The potential for women’s groups to encourage agency among their members arguably depends upon a number of variables. Ideological underpinnings aside, the group’s size, activities and composition are salient to the ways that members are enabled, encouraged and empowered. Agency in this context should not be conflated with resistance, “a term that is best to describe actions that actors themselves describe as aiming to defy, subvert, undermine or oppose the power and repression of dominant forces” (Parker 2005: 87). While “resistance” may well describe the explicit work of some women’s groups, I argue that a subtler function of groups such as Women’s Projects is to challenge the boundaries of belief, knowledge and
action, and in so doing to create a critical foundation on which members might conduct their own forms of resistance.

One feature of this critical foundation is reflected in members’ discussions of politics and bureaucracy. The group often translated international and national government publications on women’s issues, encouraging members to learn related English vocabulary and also to critique the official perspective. While reading an article (“Strengthening of the National Machinery in Conjunction with Reforms, Including that of the Central Government”) in the Japanese National Women’s Education Council (NWEC) newsletter, Tanaka-san was critical that “you can tell that it’s written by Japanese. It sounds like they are doing a lot but… (it’s just words)” (Tanaka 5/10/01). Similarly, when I discussed attending a conference run by NWEC, members of the group suggested it would not be worth my time, implying that only the polished (read: unrealistic), official line would be put forward in presentations. In these cases it is not bureaucracy in itself that is problematised by the women rather, it is the response of bureaucracy, perceived as slow and ineffectual, with which the group members take issue. The concern is related to the capability of those in charge of women’s policy. At the opening of one city-level women’s centre, I asked Akagi-san her opinion of the director, a politician. Akagi-san replied, “Well she has a good reputation but some people think she is just a kind of mascot girl” (Fieldnotes, 17/11/00).

In these discussions, members expressed critical views of the limitations and realities of bureaucracy, drawing on experiences gained outside the group to shape the discussion within. While both Tanaka and Akagi are critical of aspects of women’s centres, the fact that the group uses material about these centres in their translation activities, and promotes discussions about female politicians and women’s centres in their meetings, suggests an attention to the significance of these themes in broader discourse on gender and gendered inequality.

Furthermore, it is important to acknowledge that the question of agency is one of degree rather than possibility. (Jeffery 1998:223). Members’ actions and discussions within the group were often critical of political and social norms, but the extent to which this criticism translated to changes in everyday life is difficult to gauge beyond the women’s own reporting. However, one aspect which members did note had changed through group participation was their understanding of feminism and the discourse of gender. This occurred through specific engagement with feminist or feminist-sympathetic literature (such as newspaper articles on working women or debates over child-care availability) but also through the discussions flowing from these articles.

Feminist Saitō Chiyo notes that while an intercultural flow in feminist information can influence the development of local feminism, “it is not so simple for a foreign feminism to take root as the basic ideology of a movement in another country” (in Buckley 1997:256). Setting aside questions of the origins and influences of non-Japanese feminisms, what is of significance is the way that these influences are perceived by women, and particularly those outside the academic sphere in which these issues circulate.

(C)oming here…(I’ve become aware) that you have to be careful with words, like saying “mailperson” instead of “mailman”. I’m doing this more and more but I’m the type who doesn’t really notice whether it’s “man” or whatever (laughter) (Taguchi-san, Women’s Projects, 13/04/01).

Taguchi-san identifies non-sexist language in English, as a signal of feminist consciousness. While the Japanese language offers a number of asexual words (such as hito, or mono) for
“person”, the association of feminism with this particular linguistic issue – of using “man” as a gloss for “human” – suggests that this issue has been absorbed from English-language feminists. In this sense, interpretation of the word “feminism” is a partially transforming process – it is an English word filtered through Japanese language but retaining its foreign accent. For some members of Women’s Projects, the group’s English language study extended beyond linguistics to sociological study of other cultures, and a reflexive examination of Japanese gendered norms.

The agency engendered by the group allowed the cultivation of informed criticism of popular ideals and expectations of women, even when it did not extend to eliciting practical changes among members. The conflict between ideal and practice is crystallised in the discussion of what it means to be “erai”, a word which translates to “great”, “excellent” or “admirable”. “Erai” was used regularly in discussions of women’s relationships with their husbands, and specifically in terms of the wifely care provided. In one discussion in the group, Nomura-san mentioned an acquaintance who used a savings plan, in which she placed her husband’s pay (in cash) into envelopes allotted for bills and loans. She allocated pocket money to her husband, and thus controlled the family finances. Nomura-san said she thought the woman was “erai” for her money-sense, but that “just thinking about it makes me tired!” (Fieldnotes 9/3/01).

Discussing the meaning of the term, Tanaka-san observed: “There are many people who believe that a good mother or wife is like a maid”. There was general agreement among other members that women who do all the cooking and housework in a family are praised as “erai”. It was then suggested that , “We need to reconsider – what ‘erai’ is?” (Fieldnotes 3/10/00). On another occasion, in a casual discussion of a local Australian woman married to a Japanese man, group members praised her as “great” for (inter alia) looking after her relatives when they come to visit. When Tanaka-san questioned “What is ‘erai’ anyway?”, Kano-san responded, “Well, that’s what we think you should do (caring for relatives, fulfilling family responsibilities etc), isn’t it”(Fieldnotes 6/10/00). For Kano-san, erai in this context reflects the ideal of domestic feminine duty. From Tanaka-san and other members’ responses however, there is contrast between this idea of a socially accepted “should”, and the more critically-informed and gender-equal construction of “should” – what is implied by Tanaka-san’s suggestion that “we need to reconsider – what is ‘erai’ ?” The ground between these two ideas is the site for some of the group’s most fruitful work, because it represents the convergence of socially-accepted and/or practised ideas of femininity, and the critical, feminist discourse which challenges these ideas and practices.

Conclusion

The activities and engagement of members in the non-government women’s group Women’s Projects demonstrates the potential functions of civil society organisations in a wealthy and highly-industrialised society. The explicit objectives of groups – in this case, English study and translation – reflect the values and interests of group members in developing particular skills. Less obviously, the group offers a site for the creation of critical feminist discourse, in which social issues and ‘women’s issues’ are connected to personal experiences of gendered inequalities. This connection foregrounds women’s rights to participate fully at all levels of society, and reflects the gaps that must be negotiated between ideal and reality in popular constructions of ideals relating to marriage and sexuality. While groups such as Women’s Projects should not be seen as unreconstructed oases of feminist enlightenment, they nonetheless offer an accessible (if bounded) space for the articulation of concerns and feminist criticism.
Setting discussion of personal issues within the framework of social issues, members expose the doublelayer to the group aim of information-exchange. As the women advise, question and encourage each other, they generate real knowledge of the ‘women’s issues’ that appear in the studied articles, and offer perspective gained from personal experience of these themes. It is this activity which represents the intersection of two main roads to women’s solidarity: the celebration or sharing of experiences as nurturers and/or childbearers, and the acknowledgment of a common oppression (Offen 1998: 154).

Members of the groups may come to the group for different reasons, and certainly bring with them differing interpretations of concepts such as feminism and women’s issues. The subtlety of members’ introductions to feminist critique varies according to the history and activities of the group, and the interests, politics and linguistic abilities of members. However I argue that within the group there is evidence of a broadening or enabling effect, manifested as learning, critique and discussion. It is this enabling – of action or inaction – that I find particularly interesting, and which most clearly characterises the feminist potential of the Japanese women’s groups examined in this research.
Appendix: Details of interviewed Women’s Projects members

This table shows the biographical information given by interviewees involved in Women’s Projects (not all members were interviewed). Boxes marked with X indicate where information was not provided.

<table>
<thead>
<tr>
<th>Name</th>
<th>Age (yrs)</th>
<th>Level of schooling</th>
<th>Occupation</th>
<th>Marital Status</th>
<th>No. of Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tanaka Mariko</td>
<td>50s</td>
<td>University graduate</td>
<td>Journalist, university lecturer</td>
<td>married</td>
<td>2</td>
</tr>
<tr>
<td>Akagi Kaori</td>
<td>35</td>
<td>University graduate</td>
<td>Tour planning, lecture coordination, interpreting/ translating</td>
<td>divorced</td>
<td>–</td>
</tr>
<tr>
<td>Konishi Aya</td>
<td>24</td>
<td>University graduate</td>
<td>Part-time worker</td>
<td>single</td>
<td>–</td>
</tr>
<tr>
<td>Nakane Yukie</td>
<td>40s</td>
<td>X</td>
<td>Housewife</td>
<td>married</td>
<td>2</td>
</tr>
<tr>
<td>Sone Kazue</td>
<td>50s</td>
<td>University graduate</td>
<td>Former junior-high school English teacher</td>
<td>married</td>
<td>2</td>
</tr>
<tr>
<td>Taguchi Chieko</td>
<td>50s</td>
<td>University graduate</td>
<td>Housewife</td>
<td>married</td>
<td>2</td>
</tr>
<tr>
<td>Itai Hanako</td>
<td>50s</td>
<td>X</td>
<td>Housewife</td>
<td>single</td>
<td>1</td>
</tr>
<tr>
<td>Haneda Satomi</td>
<td>40s</td>
<td>Junior college graduate</td>
<td>Housewife</td>
<td>married</td>
<td>–</td>
</tr>
<tr>
<td>Kano Yōko</td>
<td>40s</td>
<td>University graduate</td>
<td>Housewife</td>
<td>married</td>
<td>2</td>
</tr>
<tr>
<td>Koide Mami</td>
<td>40s</td>
<td>University graduate</td>
<td>Housewife</td>
<td>married</td>
<td>–</td>
</tr>
<tr>
<td>Nomura Tokiko</td>
<td>40s</td>
<td>University graduate</td>
<td>Teacher at cram-school</td>
<td>married</td>
<td>2</td>
</tr>
</tbody>
</table>

References


Endnotes

1. I am grateful to the anonymous reviewer of this paper for his/her constructive comments in the drafting of this article, and to Simon Avenell for sharing his work and suggestions on this topic.
2. The other two groups examined in my doctoral research were WWW, a small group comprising foreign and Japanese women, and Benkyō, a study group of young Japanese women that has since dissolved (See Dales, forthcoming).
3. Participants’ names used in this paper are pseudonyms.
4. The term used in this case was josei mondai, which is literally translated as “women’s problems”.
5. Akagi-san was later employed briefly as a part-time worker in the Center’s library.
6. As I have argued elsewhere, because of the particular socio-linguistic, historical and political implications of the term “feminist” women’s organization in Japan does not always involve explicit feminist identification (Dales 2005).
7. The English conversation classes held after proper meetings allowed a different, sometimes more open forum for the expression of opinions (Yano 2003:281). Members could attend these one-hour classes for an extra fee (to cover the hire of the room and the cost of the teacher), and the class discussions would build on issues raised in texts from the meeting, or from material prepared by the teacher especially for the class.
8. Representations of non-Japanese societies, particularly Western societies, as progressive and liberal to women appeared frequently in Women’s Projects discussions.
Dangerous Loopholes in Human Rights and the Care of the Elderly

Sue Ballyn
Universitat de Barcelona

Abstract: We live longer today, but do our elderly receive the respect, care and love that they are due? Are human rights for the elderly either living alone, with their families, or in residential/nursing homes actually upheld? In 2004, The British Medical Journal had a leader on the Commons report that exposed that “thousands of elderly people face abuse”. The article further reported that the taboo about talking about elderly abuse was finally being overcome. Four years later, how much has changed? The mission statement of the charity Action on Elder Abuse would suggest that the taboo, social marginalising and abuse of the elderly is still in place: “Action on Elder Abuse (AEA) works to protect, and prevent the abuse of, vulnerable older adults. We were the first charity to address these problems and are the only charity in the UK and in Ireland working exclusively on the issue today.” I propose to look at some of the issues that have come to the fore recently in the UK in terms of elderly abuse and the Denial of Human Rights for many sectors of the senior population.

Keywords: Elderly, abuse, law, reform.

The process of ageing is one that many, if not most people fear. The fear is rational and based on the experience of having watched family and friends age and the problems confronted in the process. Many have been directly involved in caring for a member of the family, not always an easy task and often traumatic. Fear of losing control of one's life, of prolonged illness, suffering and moving out of one's own home are only some issues that surface when talking to people about growing old. Fear is also attached to the recognition of finiteness, mortality and time running faster through the sand-clock. Death is a taboo subject both in society and among most young people, but with age it becomes daily fare and has to be confronted, and provisions made. There are some countries where "living wills" can be made and the terminally infirm can ensure that they will be allowed to die with dignity and following their own wishes. Dignity is the key word that most older/elderly people use when describing what life should be like for themselves. Dignity and respect among their peers, their family, their circle of friends and, perhaps most important of all, in society. Societies are changing rapidly and in so doing there are sectors that become marginalised or insignificant for the majority. It is ironic that the elderly are increasingly becoming the victims of society together with other vulnerable sectors such as children, female partners, the poor, to name only a few. It is unfortunate that in Western Societies the elderly seem to earn little respect or the right to dignity. Their ancestral societal role, the owners and dispensers of wisdom, is no longer deemed an important contribution to the community at large.

In 1998 Professor Luke Gormally, with whom I often find myself disagreeing but here share his point of view, began his presentation at a conference on bioethics saying:

Why begin a Conference on the elderly with a paper on “Human dignity and respect for the elderly”? For a variety of reasons there is a widespread questioning in our society of
what respect for the elderly requires, and even a questioning of whether certain sections of the elderly population are owed any respect at all. By respect in this context I mean, at a minimum, recognition of basic human rights. In view of this questioning the position of many elderly people in Western societies has become distinctly precarious. There is a need to reflect on this situation, to identify its roots, and to see at least in broad terms what response to it is called for.1

The news coverage given to child abuse and domestic violence is constant and campaigns to prevent such horrors against the rights of the individual are regularly screened and written about. How many, though, are directed at preventing the abuse wielded against the elderly who are just as much at risk in contemporary society as are women and children?

Unfortunately the elderly seem to have become an invisible sector of our communities. It would be unjust to say that help for the elderly is not on all national agendas in Europe with schemes to enable them remain a vital and necessary part of our society. The problem is what goes on behind the closed doors of the domestic sphere and residential homes. The elderly are vulnerable and yet their rights are being infringed upon time and again while they, like so many abused women and children, often choose to remain silent.

There are many definitions of what constitutes elderly abuse, but it is basically a generic term and in all domains comprises one or several of the following listed by the the British Institute of Human Rights:

- Physical or emotional abuse;
- Severe racial discrimination;
- Excessive force used to restrain a person;
- Compulsory treatment;
- Decisions about who sees or touches a person’s naked body;
- Intimate care, dressing practices and other practices involving a person’s naked body;
- Manual handling; and
- Accommodation on mixed wards against a person’s wishes.2

The invisibilisation of the elderly goes hand in hand with the increase of the loss of human and social values within our societies. Respect and dignity are the two cornerstones that should support the way elderly people are treated within our communities. Many elderly people when asked what they need actually emphasise both these factors as being paramount towards their well-being and self-esteem. The British Institute of Human Rights in one of its media briefs, “Dignity in Care”, defined dignity as consisting

[0]f many overlapping aspects, involving respect, privacy, autonomy and self-worth. Dictionary definitions often talk in terms of a state, manner worthy of esteem or respect; and (by extension) self-respect. Dignity in care, could therefore be taken to mean the kinds of care, in any setting, which support and promote, rather than undermining a person’s self-respect.

The BIHR also stressed: “[t]he link between dignity and human rights”:

Dignity is a core human rights principle. It was one of the motivating concerns for the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948 following the horrors of the Second World War. The Universal Declaration therefore opens with the words ‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” 3
In contrast, a photograph, used in a recent campaign in the United States, of a woman with a “bar code” stamped on her forehead visualises how the elderly are often conceptualised in a way which stigmatises the individual thus undermining their dignity: as human beings, they are past it.

This paper will discuss the lack of clarity about how legislation relating to older people in Great Britain is implemented. Forms of elder abuse and the problems of detection and prevention will then be considered. Two factors have motivated me to look more closely at the question of elderly abuse and the laws in place to protect this growing social group. On the one hand, my and my brother’s experiences in caring for an elderly mother with dementia and the case of YL vs the Birmingham County Council, the outcome of which I found profoundly disturbing and the case of YL vs the Birmingham County Council, the outcome of which I found profoundly disturbing.

In June 2007 the case of YL, a patient with Alzheimer, the plaintiff against Birmingham County Council came before the House of Lords. Summarising the case briefly YL had been placed in a private nursing home by the local authorities in 2006, her family also contributing to the costs with a top up all in accordance with the 1948 National Assistance Act. Some kind of fall out occurred between the relatives and the home who issued YL’s daughter with 28 days notice of termination of the agreement. There was evidence enough to suggest that if YL were removed from the home her condition would deteriorate quite considerably. YL took the case to court arguing that the notice issued by the home was “incompatible with her right to respect to her home under Article 8 of the European Convention on Human Rights and was therefore unlawful under section 6(1) of the Human Rights Act 1998”. The case finally came before the Lords and LY’s appeal was rejected by three votes against, to two in favour of YL.

As the joint statement issued by Justice, Liberty, The British Institute of Human Rights, Help the Aged, Age Concern and the Disability Rights Commission. pointed out on the 27th June 2007:

Of the five Lords who heard the case, two of the most senior decided in YL’s favour. Baroness Hale of Richmond returned to the original Parliamentary debates which made clear that private bodies would be covered when they were delivering services previously provided by the state. She explored the various factors for the courts to consider when determining whether a person is ‘performing functions of a public nature’ for the purposes of section 6(3)(b) of the Human Rights Act, and declared that in this case they ‘lead inexorably to the conclusion that the company, in providing accommodation, health and social care’ was performing a public function, and was thus bound by the Human Rights Act. Lord Bingham of Cornhill agreed.

The statement authors condemned the outcome of the case:

We are stunned by this decision. By exempting private care homes from the Human Rights Act when they house people under contract to a local authority, the House of Lords has undermined the fabric of human rights protection in the UK.

Hundreds of thousands of older people and disabled people are placed by their local authorities in private and voluntary sector care homes, and they all stand to lose from this decision. The highest court in the land has now confirmed that residents and their families are unable to use the Human Rights Act to challenge these care homes when basic human rights are denied.

The judgment caught the attention of associations for the elderly, Human Rights support groups and the press to the degree that it was posited on the 7th of February 2008 that the Joint
Committee on Human Rights would set up a “[f]resh plan to close the legal loophole which campaigners claim is leaving residents of independent care homes at risk of abuses including unjust evictions.”5 This is still very much in the pipeline and, indeed, will probably take a very long time before any such amendments are made. In the meantime the elderly living in independent care homes, even when placed there by local authorities, have no right of cause under the 1998 Human Rights Act. Some of the proposed amendments will include the right for every elderly person to a lawyer. Unless contained within very tight definition and control this amendment will result in another loophole. If the elderly person in care, either in a home or with relatives, is mentally incompetent, the lawyer may be chosen by the relatives. While this would appear to be a good idea in principle, the lawyer could be fed information by the relatives and thus be manipulated by his client’s family. Some kind of control/inspection or regulations regarding the lawyer’s field of action must be included in this provision. For example: the lawyer should be allowed access to medical records if required which, if handled properly would in no way breach the medical code of silence regarding patients. The lawyer should be able to interact with all parties concerned in the care and well being of his client. It is unreasonable to suggest that all relatives abuse and take advantage of the elderly members of their family, but statistics reveal that financial abuse, for example, is by no means infrequent.

Within the elderly person’s domestic sphere the problem can be much harder to detect. The association Help the Aged cite Joan’s case as just one of many in which abuse comes from volunteer workers.

He was a volunteer. He used to pick me up and take me to the local day centre every week. He was kind and I trusted him. I looked on him as a friend. “After about a year, he changed. He became quite nasty. He verbally abused me. He told me if it wasn’t for him nobody would look after me.

Then he said me he wanted power of attorney, but I didn’t know what that meant. So I put him down as next of kin and left him in charge of my money. But he took my pension. He had everything.

He had my front door key because he used to do my shopping for me. But then he started to come and go whenever he felt like it. He used to wait until I’d gone out and then let himself in and jump out at me. It was very upsetting.

Then he started to pester me, telling me I had to ‘do something for him.’ He put his hand on my breasts, and put his hand up my skirt. He tried to kiss me and put his tongue in my mouth. I felt so ashamed but I couldn’t stop him. I was helpless, I was scared of what he’d do next.

This went on for a number of years and there was nothing I could do to stop him. Until one day I broke down and told my friend what had been going on. She contacted a social worker straight away.

It turned out he’d done this to a number of women, but as nobody had reported him so he thought he could get away with it.6

He did. After 3 years of abuse, he was only fined £450.

Fear, shame and uncertainty as to whom to turn to, allow individuals like this volunteer worker to get away with abuse. In this case, as in many others, the sentence is ridiculously out
of proportion with the crime committed: why no prison sentence as with domestic and child abuse?

There is no typical profile that identifies an abuser, it can come from a child, a neighbour, friend, volunteer worker, a member of staff in a home, or even from somebody living in the same home. The exact reasons as to why abuse occurs, or the type of mistreatment, are not clear either. Some instances are one-off, others premeditated and carried out over a long period of time. Although help is available for relatives caring for a partner, parent etc, the day to day struggle can cause outbursts of intense frustration which find expression in verbal, psychological or physical abuse. Poor family relationships, especially between parents and children can also result in an elderly person being ill-treated. The problem lies in detecting it. The organisation Help the Aged has put out a list of things to watch for in order to detect abuse:

- withdrawing from usual activities
- talking and interacting less than before
- becoming angry or aggressive for little reason
- seeming depressed or very lethargic, tearful or sad
- being reluctant to be left on their own or with certain individuals, or
- being uncharacteristically jolly and inappropriately light-hearted.7

The problem then becomes one of corroborating suspected abuse by observing, or trying to draw the elderly person out in conversation. While one wants to protect a relative or friend an unfounded accusation will do more harm than good to all concerned.

To sum up: while the legislation regarding Human Rights and the elderly in private care must be dealt with as fast as possible, it is almost impossible to screen and observe all carers and voluntary workers in both the public and domestic domain. There is a clear need for more money to be put into the employing more staff in residential homes and for social workers caring for the elderly in their own homes. An increase in subsidies for relatives acting as carers is also required along with adequate respite time for the carer concerned. The raising of public awareness of the issues involved is crucial to any attempt to protect the elderly from abuse. Campaigns against elderly abuse vary from country to country across the EU. If campaigns against domestic violence and child abuse have received wide coverage in the media across Europe then so must abuse against the elderly who are just as vulnerable and at risk as women and children Statistics reveal that, just before Christmas and the summer break, there is an increase in the number of elderly people being taken to hospital emergency services, the intention being that they should be taken in so as to free up the family for holidays. The recent case of a daughter who abandoned her elderly mother at the entrance to a home could be due to any number of causes, but what statistics and individual cases do underline is the need for the elderly to be given the right to dignity and respect. Perhaps the answer as to how much can be done to prevent elderly abuse lies, for the greater part, in educating our children in familial responsibilities which have been undermined in contemporary society, while improving the conditions open to to carers on all levels.8

Endnotes


8. This paper has used articles by Help the Aged, the British Institute of Human Rights, Community Care UK, Age Concern etc. All of these agencies run extensive web pages where further reading can lead to a fuller understanding of what Abuse of the Elderly, Age Abuse is and how to help fight it.
Do Chimeras Dream of Elected Geep?

Nick Collyer

Abstract: After listing some cautionary historical examples of lawful but nevertheless unconscionable discrimination against particular classes of persons, I discuss chimeras and other forms of the transhuman. The transhuman in popular culture and the concept of the ‘yuk factor’ is then contrasted with legal definitions of the human. The probable establishment of property rights in artificially created humans could lead to a form of slavery. I critique Fukuyama’s notion of the ‘world’s most dangerous idea’ and the ‘natural’ human. Levinas’ ethic of alterity provides some guidance on the ontological status of the transhuman.

Keywords: biotechnology, chimeras, transhuman, person, constitution, yuk factor, patents, slavery, nature

Introduction

At the beginning of the Industrial Revolution Mary Shelley's Frankenstein brilliantly exposed the fear that techno-science would produce monsters, and that, as in the Prometheus myth, we would be collectively punished for that transgression. More prosaically, the public has long feared that the system dynamics of science and technology would outstrip our normative frameworks. The US Supreme Court's decision to allow the patenting of life forms in the landmark Diamond v. Chakrabarty (1980) not only sent Wall Street the ‘all clear’ message on biotech speculation: it also triggered a lot of well-intentioned ethical speculation about ‘the gruesome parade of horribles’ that would shortly lurch down our streets should we lose our footing on the slippery slope. Rather than ask ‘how do we stop the slide?’ I assume here that the parade of monsters is a fait accompli. I assume that at some time we will see the genetic intermixing of humans and other living things, but I will not assume that this is a state of affairs that could only come about through the blunting of our moral sensibilities; we may have no choice but to fundamentally rethink the ethical self-understanding of our species, and that rethinking may mean we will welcome the radically alien into our moral embrace. In the ‘Great Ape Project’ we already hear a plea for the extension of human rights to the non-human. In this paper I pragmatically ask ‘How might we alter our legal and cultural landscapes to include the non-human human?’ and, ‘What legal protections might be needed to avoid property/patent/slavery pitfalls or the emergence of disadvantaged Brave New World-style genetic minorities?’.

From the Untermensch to the Transhuman

The sub-human, that biologically seemingly complete similar creation of nature with hands, feet and a kind of brain, with eyes and a mouth, is nevertheless a completely different, dreadful creature. He is only a rough copy of a human being, with human-like facial traits but nonetheless morally and mentally lower than any animal. Within this creature there is a fearful chaos of wild, uninhibited passions, nameless destructiveness, the most primitive desires, the nakedest vulgarity. Sub-human, otherwise nothing. For all that bear a human face are not equal. Woe to him who forgets it.
German race scientists claimed that Jewish people were Untermenschen, or less than human, and the Nazis used their ideas to legitimize legislation that denaturalized Germans with three or four Jewish grandparents: the Reich’s Nuremberg Laws (Nürnberger Gesetze) of 1935. In a few short years people of Jewish descent were transported to work camps and concentration camps. One of them was Emmanuel Levinas, the philosopher and ethicist of compassion whose ideas I shall discuss later. From 1941 Jews, Romany, homosexuals and dissidents were murdered as part of the ‘Final Solution’.2

Why is this relevant to the ‘trans-human’? Well, given the right political climate it is certainly possible and even likely that particular classes of persons will be made political scapegoats and treated in a lawful but discriminatory manner. Here in Australia we had protective legislation that segregated, confined and stigmatized Aboriginal people until the late 1960s in ways not dissimilar to the German treatment of Jews until the late 1930s - and we trotted out the same pseudo-scientific theories of race in justification. We also had a ‘White Australia’ policy until 1973, and for much of this century the Federal Government’s ‘Pacific Solution’ - the incarceration on remote islands of incoming boat people. In South Africa Apartheid lasted until 1993; many southern states of the US had Jim Crow laws on their books until 1964.3 What, then, might the political and legal prospects be for human-like species we ourselves create? I will make a few suggestions here, but first, what is the transhuman?

Recent advances in molecular biology have allowed scientists to intermingle the genetic material of humans and animals. The techniques are varied, but they include some kinds of genetic engineering and the production of human-animal combinations known as chimeras.

There are a number of ways of transferring genes from one species to another. Gene therapy techniques involve the use of DNA or RNA which encode a normal gene product or a corrective gene product to ameliorate a disorder or to protect from future disease.4 Gene therapy can be done in vivo or ex vivo. Gene delivery methods include viral infection, liposomal techniques and a variety of other methods including micro-injection (Rothnagel, 2007; Rivard, 1991: passim). Chimeras are produced differently. In ancient mythology the chimera was a combination of two or more animals: in zoology it is an animal that has two or more different populations of genetically distinct cells originating in different zygotes. A geep, for example, is both goat and sheep. Portions of embryos from different species are joined and allowed to develop - a procedure that has been carried out with human cells and those of other animals (see note 8).

The Yuk Factor

Many of us are familiar with the general concept of the transhuman (and particularly the chimera) from science fiction. In H.G.Wells’ (1896) The Island of Dr. Moreau, the fourth Alien movie (Resurrection, 1997) and even The Simpsons (episode 292 includes a play on Wells’ Moreau) transhuman hybrids appear as sinister, unsettling and sometimes pitiable monsters. In Wells’ nightmare humans are surgically, not genetically, spliced with dogs and big cats and pigs. In Alien IV: Resurrection ( spoiler alert!) Ripley’s human DNA - Ripley is the central character who dies at the end of the third movie - is mixed with that of an alien. We do not know the circumstances under which she reaches hybrid maturity, but in one unforgettable scene the film’s anti-hero stumbles on a laboratory stocked with monsters - the company’s early botched attempts to engineer her. The sequence is classic both for its ‘yuk factor’5 and for its perhaps deliberate resonance with Haekel’s theory of recapitulation.6 The camera pans across a series of enormous specimen jars, each containing a human-alien hybrid - some reptilian, some amphibious but all displaying clearly human features. On a gurney
lies a morphologically twisted but nevertheless conscious and articulate version of Ripley herself. It pleads, “Kill me”. Ripley obliges, but throughout the film she is torn between her allegiance to her fellow humans and to the homicidal aliens from which they flee.

Monstrous half-human hybrids are exactly what early critics of genetic engineering conjured - the “gruesome parade of horribles”7 - in their Supreme Court amicus briefs to the appellant case against the first life patent. Chimeras are currently created only for therapy and research. Human-animal chimeric embryos are used as factories, with a view to the production of cells or organs for transplantation without the immune response problems usually associated with xeno-transplantation.8

Property and Person

They could be created for other purposes. The advent of such hybrids poses profound ethical and legal questions: When human genetic material and that of other organisms is mixed, at what point should a human be considered a ‘non-human’, and at what point should a non-human be considered a person, with all the legal and ethical implications of that status?

In Anglo-American law persons have all sorts of legal rights and protections. Natural persons are ends in themselves. Natural persons are inviolable. The law protects us from assault, battery, nuisance, search and seizure, defamation, self-incrimination and cruel and unusual punishment. We have freedom of religion, freedom of speech, the freedom to shape our inner lives and the freedom to control the face we present to the world. We (adult citizens) have legal standing that enables us to sue for the protection of these rights and freedoms and for compensation when they are denied us.

Current law in Australia and the US supports the patenting of genetically-engineered animals, but not of human beings. Patents are property rights. In the US the Thirteenth (anti-slavery) Amendment forbids any grant of property rights in a human being. In Australia s.18 (2) of the Commonwealth Patents Act 1990 prohibits the patenting of human beings and the processes for their generation. Our Commonwealth Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 s. 270.3 prohibits the possession of a slave, where slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised (s.270.1).

Non-human animals do not have these rights and freedoms. Non-human animals have some measure of legislative protection against cruelty, but think of zoos, think of battery cages, abattoirs, fish factories and whaling ships. Even anthropomorphised domestic pets are without rights. They and all non-human animals have no legal standing - and therefore cannot be party to a legal proceeding. A non-human can, however, be property, and that is exactly what chimeras and other transgenic organisms are now, and will be for the foreseeable future.

The fact that persons and human beings are not defined in legislation - and certainly not in either the Australian or US Constitutions - only serves to further complicate the issue. It may now be possible to patent - and to enslave - human-animal hybrids who think and feel like humans, but who lack constitutional or legislative protection because they are not ‘persons’ so protected. This may seem fanciful, more a matter for science fiction than sober legal and policy debate, but I think there are a couple of important reasons why the issue of transhuman rights ought to be considered now.
First, the technological means are already available to create hybrids. Bacterial hybrids were first engineered over thirty years ago and intellectual property rights in them were established in the landmark *Diamond v Chakrabarty* (1980). That patent, the first on a living thing, allowed biotech companies to claim exclusive property rights in artificial life and it underpins the US and now global biotech industry. The object of that first patent - it was awarded to a scientist at General Electric - was a genetically engineered bacterium; optimistically and as it transpired mistakenly thought to be capable of a chemical transformation allowing the breakdown of oil spills on the high seas. Within a decade of that ruling property rights had been established in higher organisms, including mammals such as mice and sheep.

There was no scientific reason why such rights could not extend to include humans, and indeed beyond the as yet untested 13th Amendment there is still no specific legal prohibition of such property rights. The only impediment in the US is a policy statement from the Patents and Trademarks Office, but subsequent judicial rulings could undermine the position of a mere administrative agency interpreting the 13th Amendment. Indeed, even Federal legislation that purports to prohibit property rights in human beings is vulnerable (Rivard, 1991: 1443). The crux is that there is no Constitutional or common law definition of a human being or a person. The prohibition of property rights begs the questions, ‘What is a human?’ and, ‘What is a person?’ and no ban could be effective without constitutional clarity around them. There is therefore no unassailable legal impediment to the establishment of property rights in transhumanoid species. Once proprietary rights are established it is difficult to undo them or to impose limitations upon them, and “vested property rights” argues Rivard (1991:1430) “will influence the objectivity of any debate”.

**The World’s Most Dangerous Idea**

The second argument I would like to make here for urgent discussion of the issue is that it is far too important to be left to ‘business as usual’ politics’. Property rights in transhuman beings are a human rights issue; potentially a question of slavery. Much of the emphasis in public debate of a posthuman future has been on what ‘they’ might do to ‘us’, or the erosion of that which we call human. The ‘singularity’, for example, is the time when intelligent machines are capable of designing and constructing ever more complex and powerful machines without mere human input. Spielberg/Kubrick’s *AI* (2001), for example, presents a future where intelligent machines inherit the Earth. MIT roboticist Hans Moravec details the case in *Robot: Mere Machine to Transcendent Mind* (1998). The posthuman danger, as Francis Fukuyama sees it, is the exacerbation of social divisions. Affluent consumers will purchase genetic distinction and the rest will fall further behind. Transhumanism is, “The world’s most dangerous idea”. That was his claim in 2004.

Transhumanism is implicit in much of the research agenda of contemporary biomedicine. The new procedures and technologies emerging from research laboratories and hospitals - whether mood-altering drugs, substances to boost muscle mass or selectively erase memory, prenatal genetic screening, or gene therapy—can as easily be used to “enhance” the species as to ease or ameliorate illness (Fukuyama, 2004: non pag.).

He is concerned about genetic changes of any kind that might threaten the ‘x factor’ that makes us human. He laments what he believes is a growing tendency towards the commodification of our fundamental human qualities and a growing division of the world into genetic have and have-nots.

I share Fukuyama’s fears of social division, but not his puritanical misgivings about the narcissistic consumption of genetic enhancements. Neither consumption nor body
commodification are new. The danger lies in a misplaced confidence that technological and moral progress are coextensive, and a shameful track record when it comes to the extension of fundamental legal rights to aliens, regardless of class, gender, ethnicity, ability and so on. The danger is not Extreme Makeover, but the likelihood that we will deny Frankenstein’s monster a place at the table.

There is a false dichotomy at the root of Fukuyama’s arguments. He juxtaposes perfection-obsessed consumers with natural humanity.

Nobody knows what technological possibilities will emerge for human self-modification. We can already see the stirrings of Promethean desires in how we prescribe drugs to alter the behavior and personalities of our children. The environmental movement has taught us humility and respect for the integrity of nonhuman nature. We need a similar humility concerning our human nature. If we do not develop it soon, we may unwittingly invite the transhumanists to deface humanity with their genetic bulldozers and psychotropic shopping malls (2004: non pag.).

Fukuyama worries about the genetic challenge to the integrity of non-human nature, and by implication the challenge to the integrity of human nature, moving seamlessly from ‘is’ to ‘ought’. Nature is this way, he argues, and therefore nature should be this way, humanity likewise. He is concerned about the hubris that will attend our technological proficiency. Like Victor Frankenstein we will lose everything important that makes us human.

Against Nature

Against that, I think the horse has bolted on natural humanity; that ‘natural humanity’ is a vexed concept itself I will discuss a little later. The passion for reality shows like Extreme Makeover suggests a radical dissatisfaction with the cards nature deals. If it is possible to stack the deck by tinkering with our genes I think consumers will go for it despite the prudential risks - let alone more philosophical reservations about violating nature and playing God. Fukuyama is concerned about genetic elitism: ordinary humans on the one hand and a privileged ‘super-human’ elite on the other. He builds his argument on a notion of an authentic and ‘natural’ humanness and I think, by implication, he wants to maintain a clear dividing line between humanity as it should be and nature.

I am wary of such arguments from ‘nature’. Nature is invariably used ideologically and indeed Raymond Williams called it “perhaps the most complex word in the English language” (Williams, 1983: 219). Until recently most people thought of homosexuality as ‘against nature’; arguments from nature justified the limitation of women’s participation in the workforce; and nature justified Aryan elitism and the extermination of minorities. But we don’t live in a ‘natural’ world. Everything around us is in some way compromised, if you like, by the human presence. Every dog, every pet, every domestic animal, every farm animal, everything we eat is a product of human breeding practices. That does not mean that they are less worthy of our consideration and protection.

I do not think the problem is human nature and its protection. I think of greater concern is the possibility of a genetic underclass, the creation of what the Nazis called the Untermensch, a category that could be regarded as sub-human.

Just like many non-human animals, it is likely that purpose-made genetically modified humanoids would be a form of property; they would be patented entities living outside constitutional, legislative or common law protection. The dividing line between the
treatment of people as property and the treatment of people as ends in themselves is not always clear, as the global black markets in adoption and human organs also suggest. We do not need to be particularly imaginative to see what that legal and moral landscape for transhumans might be. People as property are slaves, and slavery is alive and well. I tend to associate slavery with the ancient Greek and Roman worlds, or more recently with the southern states of America in the 18th and 19th centuries, but despite the Fall of Rome, despite Lord Mansfield’s grant of writ for *habeas corpus* in 1772, and despite the American Civil War, there are now more slaves in 2008 than at any time in the past.

And not just in poor countries: a Victorian woman was convicted last year of a number of slavery offences under the Commonwealth criminal code. Section 270.1 states that “slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person”. The defendant in the matter owned a Melbourne brothel, and the victims were five Thai women who had been encouraged to come to Australia under false pretences. In Thailand they had been approached by people who told them that they could make big money working as sex workers in Australia. On their arrival they were told they owed $45 000 – $50 000, and that in order to pay off the debt they had to work in a brothel. They were then sold to the defendant for $20 000 each and kept under lock and key while they earned their freedom (ABC Law Report, 13 May 2008). It is not unreasonable to conclude that there is a potential market for humanoid slaves: for menial work, for entertainment, or for pleasure.

**Posthuman Ethic**

At least some human – animal hybrids ought to be protected, ought to be granted at least some human rights, and ought to have legal standing to make their own legal claims. Some classes of non-human beings, whether natural or artificial, have an emotional and intellectual conscience that is qualitatively on a par with humans, and that we humans can no longer claim an ontological privilege: we are part of nature and nature is part of us.

It’s not about relative percentages of DNA. That tells us nothing. An argument for legal rights must be grounded in principles of Western law - the basics, such as liberty and autonomy. Kant argued that fully autonomous beings act rationally and should therefore be treated as legal persons, but the law currently recognizes that lesser autonomies exist: that a being can be autonomous if she has preferences and the ability to satisfy them; if she can make choices, even if wrong ones; and if she has desires and beliefs, and can make appropriate inferences from them. This is what the animal rights activist Steven Wise calls ‘practical autonomy’: something common both to many humans and many non-human animals. If we can recognize this in ourselves then surely we can recognize it in animals and potentially in transhumanoid species.

As I said earlier, Levinas was classed as a non-person and incarcerated against his will, but he survived the Holocaust. He was a philosopher of ethics who insisted that all human beings, whoever they may be, and he was thinking of Nazis, have a claim on our respect. For Levinas, our responsibility for the other is not a derivative feature of our subjectivity; instead, obligation founds our subjective being-in-the-world by giving it a meaningful direction and orientation. I think we can extend that ethic beyond the human, and I will leave end with this story.
When Levinas was in the Nazi work camp, a stray dog came in and adopted his work brigade, and they named the dog Bobby. Bobby barked and jumped up and down and said goodbye to them every morning when they went off into the forest to work - it was a forestry detail - and Bobby jumped up and down and greeted them when they returned. But their fellow human beings - not just the guards, but the ordinary people they walked past when they left the camp, and who they walked past when they came back - treated them as if they weren't even human, and the dog was the only one who treated them like human beings. Levinas referred to Bobby as the last Kantian in Nazi Germany (Deborah Bird Rose in ABC, 2006: non pag.). If a dog can be a Kantian - if a dog can treat humans as ends in themselves when no human would - then surely we who struggle to be ethical can recognize and respect the intrinsic worth of the non-human, be that non-human a dog, or a Great Ape, or a transhumanoid species.

References

Publications


Cinema


Radio


Television


Endnotes

1. From a pamphlet produced in 1942 by the German Head Office for Race and Settlement, quoted in Hillel and Henry, 1976: 26).


3. Indeed, the Nuremberg Laws just mentioned were partly inspired by America’s long established anti-miscegenation laws, and these too were only repealed in the late 1960s.

4. Gene therapy applications include the treatment of genetic diseases such as haemophilia, cystic fibrosis and psoriasis; the treatment of acquired disease including cancer, accidental trauma and AIDS and, lastly, vaccination against infectious disease (Rothnagel, 2007).

5. ‘Yuk Factor’ is a term used by Leon Kass, chairman (2001-2005) of the President's Council on Bioethics, in his *The New Republic* article "The Wisdom of Repugnance". He suggests that spontaneous revulsion towards a phenomenon is an indication of the wrongness or evil of that phenomenon.

6. Famous and controversial copies by Romanes of Ernst Haeckel’s illustrations of his theory of recapitulation depict stages of human embryonic growth. Some pictures represent embryos as part human, part reptilian or part amphibian. Haeckel, a German naturalist and scientist, famously argued that ‘ontogeny follows phylogeny’ i.e. the development of the human embryo in utero recapitulates our evolutionary past, including reptilian and amphibian stages.


8. Human embryonic stem cells, for example, have great therapeutic potential, but the problem has been how to create them without using discarded human embryos. It’s ironic that the current American moratorium on using discarded embryos from IVF is pushing research in the direction of chimera production. In August 2003, for example, researchers successfully fused human skin cells and dead rabbit eggs to create the first human chimeric embryos. The embryos were allowed to develop for several days in a laboratory setting, then destroyed to harvest the resulting stem cells. During November 2006, UK researchers from Newcastle University and King's College London applied to the Human Fertilisation and Embryology Authority for a three-year license to fuse human DNA with cow eggs. The proposal is to insert human DNA into a cow’s egg which has had its genetic material removed and then create an embryo by the same technique that produced Dolly the Sheep. The resulting embryo would be 99.9% human; the only bovine element would be DNA outside the nucleus of the cell. This research was attempted in the United States several years before and failed to yield such an embryo. In April 2008 the researchers from Newcastle University reported that their research had been successful. The resulting embryos lived for 3 days and the largest grew to a size of 32 cells. The researchers are aiming for embryos that live for 6 days so that embryonic stem cells can be harvested. In 2007, scientists at the University of Nevada School of Medicine created a sheep that has 15% human cells and 85% animal cells.

9. The Nazi’s loved nature and identified the Aryan race as powerfully natural, a nation of ‘blonde beasts’. The Nazi’s had the most progressive environmental and animal protection laws in the world. The 1933 laws were the first to protect the animal ‘for itself’ and not simply to secure supply for human purposes. On 16 August 1933, Hermann Göring as the prime minister of Germany announced legislation designed to end the "unbearable torture and suffering in animal experiments"; “a law to protect animals and to show sympathy with their pain” [ and a] “a law for humanity itself”. He announced that those who "still think they can continue to treat animals as inanimate property" would be sent to concentration camps. Aryan humans and wild beasts were at the top of the natural hierarchy, closely followed by domestic animals and non-Aryans. Jews, Romany, Arabs and homosexuals were at the bottom (Arluke and Sanders, 1996: 133).
10. See Margaret Radin (1987 and 1993) for thorough treatment of the legal debate over property rights in human beings. For Radin the treatment of persons as property is anathema to the Aristotelian notion of *eudaimonia* (‘human flourishing’) she advocates.

11. This assertion is made on the Free the Slaves site. [www.freetheslaves.org] Accessed 4 November 2008. FTS is an NGO committed to the ending of slavery.

12. 270.2 Slavery is unlawful: Slavery remains unlawful and its abolition is maintained, despite the repeal by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* of Imperial Acts relating to slavery.
Domestic Violence as Human Rights Abuse: Reframing Intra-Familial Violence against Women and Children

Jennifer Wilson
Southern Cross University

Abstract: While there have been advances in the recognition of the serious nature of global intra-familial violence against women and children in international law, in practice the issue is overwhelmingly perceived as belonging in the private domain, and different in nature and severity from public and state violence.

So-called ‘domestic’ violence is relegated both to the laws of the nation state, and within those laws, to the domestic environment in which the abuse is perpetrated. This is a double removal from the scrutiny of international human rights law. This creates a situation in which the rights of women and children in the private domain are separated out from the concept of human rights, implying that women and children are in a category that is distinct from the human. At the same time, it is a general belief that the domestic environment is constituted of the high ideals of love, respect and mutual interest, thus situating the private domain above and beyond the profane authority of the state.

In this paper I contest the adequacy of a human rights discourse that permits, directly or indirectly, the exclusion of the human rights of women and children in an intimate setting. Following the work of Bryan Turner and others, I argue for a system of universal rights based on the common vulnerability inherent in embodiment.

Keywords: Domestic Violence; Human Rights; Women and Children.


In 2006, Bryan Turner, Professor of Sociology at Singapore University, published his book Vulnerability and Human Rights. Turner’s stated intention towards the furtherment of the human rights discourse was ‘…to promote a sociological approach that starts with the idea of embodiment and vulnerability…’ and ‘…to make a contribution towards the development of the study of rights from the perspective of the sociology of the human body’ (2006: 5). In this, Turner made an original contribution to a considerable body of commentary on human rights, and introduced a perspective that invites a fresh approach to the subject. This perspective is based on the common vulnerability we experience by virtue of our embodiment, and the fact that in itself, embodiment presents occasions for suffering that are common to everyone. The perspective also challenges frequently unexamined and unspoken notions of the value of bodies, that is, assumptions that certain living bodies are of more value than others, and thus entitled to better protection from violence and abuse.

Our inherent embodied vulnerability is universal and uncontestable, and its acknowledgement is, as Turner argues, a sound starting point for a theory and practice of human rights. His notion also corresponds to the philosopher Emmanuel Levinas’s theory of the face-to-face
encounter with other, during which the first acknowledgement is of the other’s humanity, followed by the assumption of radical responsibility for the other’s well-being. For Levinas, the concern before all other concerns, the connection before all other connections, the similarity before all other similarities is our common experience of life itself, our shared experiential knowledge of the fragile and vulnerable state of embodiment. Levinas’s ethics precede every category such as race, religion, nationality and gender, and recognise primarily our shared humanity. That is, ‘…preexisting the plane of ontology is the ethical plane’ he writes (1969: 20). What we experience in our face-to-face encounter with the other is the recognition of the vulnerability we share: ‘The inter-human lies in a non-indifference to one another, in a responsibility of one for another’ (Levinas, in Bernasconi, 1988: 165). Our initial response to this recognition, Levinas claims, is an ethical responsibility to respect that vulnerability, and to do no harm. From this original recognition and responsibility, he argues that all ethical behaviour flows. He makes no distinctions about those whom we ought to regard in this ethical way: the requirement is that the other’s humanity is foregrounded before any other distinguishing factor.

These observations offer a starting point for a discussion about universal human rights based on a vision of the horizontal equality that comes with our common vulnerability. It is difficult to harm another if we recognise the common humanity we share. While this may appear to be a commonplace sentiment, in the private world of intimate family violence, the recognition of the vulnerability of those closest to one another seems seriously lacking, as violence against women and children within their families continues unabated, locally and globally.

Turner notes that human rights abuse ‘…is characteristically a product of state tyranny, dictatorship and state failure, as illustrated by civil war and anarchy’ (Turner, 2006: 4). This definition does not admit the configuration of human rights abuse as intra-familial. In its omission of the issues of global intra-familial violence towards women and children, and the particular consequences of our embodiment and vulnerability in the private sphere, Turner’s work confirms that intimate abuses against women and children are still not generally regarded as an abuse of human rights. This is despite the fact that ‘family violence conflicts with numerous fundamental human rights principles’ (Levesque, 2002: 8).

Although three United Nations Conventions: the Declarations of the Rights of the Child (1989); On the Elimination of Violence Against Women (1994), and the Beijing Declaration and Platform for Action (1995), all specifically address these matters, Levesque observes that ‘[c]ommentators and analysts of international law pervasively ignore the manner in which international human rights now deals with maltreatment within families’ (2002: 9). Turner’s recent work would seem to confirm Levesque’s allegation that family violence against women and children is still not regarded by academic and legal commentators as a matter of human rights abuse.

Intra-familial violence is conventionally perceived as doubly domestic. First, in the sense that it is perpetrated in the province of the domestic law of the sovereign state by non-state actors, and therefore outside the jurisdiction of international law. Second, because it is perpetrated in the traditionally sacrosanct privacy of the individual home. Intimate violence is therefore qualified violence. That is, the qualification domestic serves to make a privileging distinction between the gravity of public and state violence, and the notion of a lesser, somehow more deserved private violence, perpetrated by powerful family members upon less powerful family members. In other words: ‘…family violence still pervasively remains viewed as a domestic, private matter outside of the governmental control of individual Nation States’ (Levesque, 2002: 10). This privatisation of family violence results in a perception of
mitigating causes that is beneficial to the perpetrator, rather than a focus on the unmitigatable unacceptability of violence inflicted in the bosom of the family.

How can it be, one wonders, that domestic abuse can be omitted from any contemporary text on human rights and vulnerability? In an attempt to answer questions such as this, Levesque suggests that the ‘…basic obstacles to protection from [family] violence deal more with the cultural saliency of the practices and the contributing forces that remain culturally condoned’ (2002: 241). The omission of violent practices from global human rights discourses because they occur in the family signifies their unspeakability, their deeply entrenched nature, and a continuing and unexamined assumption that what happens to women and children in the home is not the business of human rights activists and commentators.

That the family is built on the love and concern of human beings for one another is a reasonable assumption, and currently a global belief as Western cultural norms become increasingly dominant in societies where once marriage might have been seen primarily in economic terms. ‘Traditionally, intimate partnerships have been viewed as exempt from considerations of justice because they were believed to emanate from higher virtues like romantic love, affection or natural unity of interest’ (Jory, et al, 1997: 1). When violence occurs within the family, it ruptures these powerful cultural fantasies of family life as a private and safe haven to which one may escape from the trials of the wider world. These fantasies are consistently and hopefully maintained: ‘The house protects the dreamer,’ Bachelard claims, ‘the house allows one to dream in peace…the house is a large cradle…it maintains him through the storms of the heavens and those of life’ (1994: 6). This hopeful fantasy is universally maintained, despite the reality that ‘[m]ost human suffering around the globe tends to occur by family members or because of family members’ (Levesque, 2002: 17). There is a deep cognitive dissonance between what human beings reasonably believe families ought to be, and what they frequently are in reality: ‘The reasonableness of those beliefs ensures the failure to recognise the extent of family violence,’ Levesque observes (2006: 3). The gap between theory and practice, the dream and the reality, is a wide one. To acknowledge the widespread nature of family violence in mainstream human rights discourse may threaten the cherished illusion of family as a place of safety in a difficult world. Powerful cultural forces work to silence the victims of domestic violence and many commentators as well, so that beliefs in the safety and happiness within the family may be maintained.

Because of these culturally imposed silences, intimate violence continues to be granted shelter under the umbrella of private domestic matters from the strength of opprobrium associated with public and state human rights abuses. I argue that it is ethically impossible to contend that romantic love, affection and natural unity of interest can genuinely exist without the just observation of the human rights of the individuals involved, that is, personal respect for a family member’s human rights, supported by enacted legislation.

For the child, who is subject to the arrangements of power dictated by the adults in his/her life, the family is often an environment from which s/he has faint hope of escape. There is little as bleak as the experience of the child whose home is the most dangerous place in her life: ‘For our house is our corner of the world,’ Bachelard continues, ‘…it is our first universe, a real cosmos in every sense of the word’ (1994: 4). What then, of the child whose cosmos consists of abuse and exploitation? What, then, of the child whose topoanalysis reveals primarily sites of torment and terror? On what grounds is the child ever, anywhere in the world, excluded from the practice of human rights that would, in theory, see him/her protected from the radical objectification of violence that situates him/her below the human?
As Isabel Marcus reminds us, ‘[n]aming and categorizing is not a neutral activity: it is a deeply political one’ (in Fineman, 1994: 25). Therefore the absence of an entire category of human rights abuses against women from much academic and legal commentary, abuses that are perpetrated on a category that in fact consists of some 53% of the planet’s population, serves to validate feminist allegations that human rights are, in reality, little more than men’s rights: ‘Male reality has become human rights principle, or at least the principle governing human rights practice’ (Mackinnon, 2006: 147). That the reality of women and children caught up in family violence is as valid as any other human reality is logically unquestionable: what gives cause for continuing alarm is the difficulty of enacting the internationally legislated protection of their human rights.

Amnesty International notes:

In the United States a woman is raped every six minutes, a woman is battered every fifteen seconds. Violence against women is rooted in a global culture of discrimination which denies women equal rights with men and which legitimises the appropriation of women’s bodies for individual gratification or political ends (2001).

Closer to home, in New South Wales, Australia, in 1996 (the most comprehensive figures available to date, perhaps in itself a comment on the attention of authorities to this matter), Researcher Alison Wallace observes:

More than one in three women reported experiencing violence at some point in their lives. Some 45% of sexual violence and some 55% of physical violence [against women] was committed by a current partner, a previous partner, or a boyfriend/girlfriend or date. Between 1989 and 1996, [Australia wide] 77% of spouse killings…were committed by men on their current or former partners (in Graycar, 2002: 304).

Common sense insists that human rights, whilst usually associated with the actions of states and nations as evidenced in the earlier quote from Turner, are equally destructively transgressed in the intimate sphere of life in the abusive family. Yet these private sites of human rights abuse are differently perceived, because of cherished notions about the assumed fundamental sanctity of the private domain, notions that generally remain unexamined. ‘[T]here are no essential properties for the public/private dyad. Rather, the dyad provides justification for particular political and economic practices and the legal doctrines which buttress them,’ Marcus observes (in Fineman, 1994: 26). That is, there is no inherent justification for the distinction between public and private life in the matter of violence. Such a distinction can and does profit only the perpetrators. As Mackinnon puts it: ‘The private [is] a space inside which power is left alone by public authorities’ (2006: 4). The global prevalence of domestic violence indicates that the nation-state refrains from intervening to varying degrees (in some cultures entirely), due in the main to the perception that domestic violence, being a private matter, is simultaneously less significant and more difficult for authorities to address. The state has no place interfering in family life. In a complex and dense paradigm, assumptions of family sanctity and privacy work to maintain a site of intimate violence that is utterly contrary to the stated ideals of the family as a safe haven. The human race stands severely and globally conflicted on this matter.

Foucault observes that ‘[f]or the State to function in the way that it does, there must be, between male and female or adult and child, quite specific relations of dominion which have their own configuration and relative autonomy’ (1980: 188). This observation reflects the dense interconnections between family life and the function of the State: the state, Foucault implies, is entirely dependent on these personal relations in order to function as it does. In this
sense, it can be argued that it is in the interests of the State that these intimate power relations remain unchallenged. If this is indeed the case it would go some way to explaining a general reluctance to address family violence in any meaningful way, particularly as human rights abuse. Can it be, one might speculate, that it is in the State’s interests to continue to regard, in practice if not in theory, women and children as outside the category human in terms of their rights?

While these observations refer to sociological, philosophical and legal perspectives on the public/private dyad, psychiatrist Judith Lewis Herman draws attention to the psychological similarities that argue for the abandonment of categories of violence in favour of the recognition of the commonality of its effects on human beings. Violence suffered by men in war, for example, can cause the same psychological effects as violence suffered by women in private, however men’s suffering is far more likely to be perceived as ‘heroic’ than is the suffering caused by domestic violence. In a human rights discourse based on our common vulnerability, Turner’s concept of ‘…the ubiquity of human misery and suffering…’ (2006: 43) would provide the sole basis for the determination of abuse. Suffering would not be subjected to a hierarchy determined by how the suffering was brought about, or by which gender it was primarily experienced, in a triage of trauma in which domestically violated women and children are situated at the lowest level.

The Personal Is…

‘[I]ssues of recognition – how to get human beings to recognise other human beings as creatures worthy of their respect, concern and care…’ (Turner, 2006: 41), are crucial issues in the ethics of the family. While most discussions on human rights revolve around the rights that are betrayed by public institutions, governments and their servants, military regimes and the like, the rights betrayed within the abusive family are the same rights, to which we are entitled for the same purpose, that is, ‘…human beings have rights that are designed to protect them from their vulnerability’ (2006: 36). It must be assumed that we are entitled to these rights in all the circumstances of our lives: there can be no qualification of the situations in which that vulnerability is entitled to respect, and protection from abuse. It defies common sense and reason to argue that human beings are entitled to refuse to tolerate violence in the public domain, then go home and endure, unprotected, it in the private.

The sufferings endured by victims of familial abuse and political abuse have in common the exploitation of that vulnerability by others. Vulnerability is an inescapable fact of embodiment, and is, as well, ‘…the underlying foundation of respect for others’ (Turner, 2006: 36). That is, vulnerability can be respected or abusively exploited within the family and in the wider world, and we are always dependent on the ability and preparedness of the other to respect that vulnerability, whether the other is known or unknown: ‘If right derives its force from ethics, postmodern human rights are linked with an individual and collective sense of vulnerability – my being hostage to the other…’ (Douzinas, 2002: 354). I am the other’s hostage to the degree that I am always dependent upon the other to respect my vulnerability and to refrain from harming me, as other is also dependent on me. It is a mutual obligation, in public and in private. Indeed, one would hope that in relationships based on intimate love and trust, relationships in which one becomes more vulnerable than in any other, mutual respect for mutual vulnerability would be a foundational necessity.

A societal refusal or unwillingness to acknowledge domestic violence as human rights abuse suggests an ambiguous attitude towards those victims, and the absence of a ‘collective sense of vulnerability’ in that society. Intra-familial violence is sovereign domination and repression.
at the micro level, and denies the universal concept of beings-in-common, as does both state and public violence. Lewis Herman observes that in the case of political prisoners, ‘…pair bonding may occur between victim and perpetrator, and this relationship may come to feel like the “basic unit of survival”…The same traumatic bonding may occur between a battered woman and her abuser’ (1992: 92). And as one famous survivor of childhood abuse noted, ‘…the public and private worlds are inseparably connected…the tyrannies and servilities of one are the tyrannies and servilities of the other…’ (Woolf, 1938: 147). While it is understandable that authorities are reluctant to become involved in the emotional complexities of tormented relationships, this does not explain why the abuses inflicted and suffered in those relationships are not regarded in the same way as other abuses. Abuse is abuse.

Lewis Herman points out the commonalities in the psychological repercussions experienced by both sexually abused women and people kept in political captivity, that is, between all those who experience extreme situations in which their vulnerability is exploited, either by governments or a family member. She quotes a Vietnam veteran’s description of his trauma: ‘…it was like this deep, dark secret I’d never told anybody…’, an incest survivor uses almost the same language’ Lewis Herman observes (1992: 215). Turner expresses it thus: ‘…misery is common and uniform…there is a unity of human misery’ (2006: 9, 22). Victims of trauma of all kinds ‘…suffer predictable psychological harm. There is a spectrum of traumatic disorders, ranging from the effects of a single overwhelming event to the more complicated effects of prolonged and repeated abuse’ (Lewis Herman, 1992: 3). There is also the human rights issue of intergenerational trauma. If we replace the word trauma with the phrase human rights abuses then the connection between public and private suffering becomes apparent. If we share a common vulnerability then we must also share common reactions to the exploitations of our vulnerability. Our human rights are transgressed by any form of violence against us, public or private. This proposition is the starting point for including domestic violence in the human rights discourse.

While there are frequent eruptions of accounts of intimate human rights abuses into public consciousness via media reports, they are soon forgotten: ‘Denial, repression and dissociation operate on a social as well as an individual level’ (Herman 1992: 2). People caught up in domestic turmoil are inevitably cast as other by the media: their stories are told as scandals from which the reader is invited to distance herself. As an outstanding example of this invitation to distance, in 2007 the Australian Coalition government initiated an intervention into child sexual assault and familial neglect in Northern Territory Aboriginal communities. (Scrymgour, 2007). No mention was made of the occurrence of child sexual assault and familial neglect in the white community across Australia, and no radical intervention has ever been launched to address it. The message conveyed by this action led to, among other things, the racialisation of child sexual assault and familial neglect; in effect a denial that the problem exists in white Australia and needs to be equally urgently addressed. Denial, that is, of these matters as issues of human rights, undetermined by race or class.

‘Child sexual abuse, as conceptualised in Western countries, provides a powerful example of a form of maltreatment subjected to numerous legal and policy responses fueled by intense public concern. Yet the sexual abuse of children continues essentially unabated (my emphasis) in every Western country studied by researchers’ (Levesque, 2002: 239).

This observation serves to indicate the prevalence of child sexual abuse in Western culture as well as Indigenous societies, and the continuing reluctance of Western communities to seriously address its prevention within its own milieu.
Domestic violence against women and children creates a radical objectification of them by those with whom they are most intimate. This objectification situates its victims as non-human. This dehumanising objectification is furthered by a human rights discourse that continues to exclude their suffering from its commentaries and actions. It is my contention that there can be no categories of suffering such as public and private: suffering is universal, it is a condition of embodiment that Turner quite rightly states renders us vulnerable to one another for as long as we are alive. Levinas also insists on the ethics of respecting the humanity of other, based solely on the recognition that we are beings-in-common. Women and children cannot continue to be excluded from this category of beings-in-common, by virtue of the maintenance of the public/private dyad that protects the perpetrators of domestic violence.

Suffering is always a negation of the human and the human’s rights, whether it is caused by the state, or by a member of the family within the privacy of the home. It is entirely unacceptable that issues surrounding global domestic violence against women and children continue to be excluded from significant human rights commentary. The question that must be asked is, how can any human rights discourse be viewed as credible and effective, if the global suffering of women and children in the domestic sphere is further silenced by its glaring omission from that discourse?

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Engineering Human Rights in the Israel/Palestine Conflict

Michael Barker
Griffith University

Abstract: Since the 1960s the nonprofit sector has grown rapidly, and now the activities of non-governmental organizations (NGOs) permeate most aspects of the lives of the world’s citizens. With major financial backing provided by some of America’s largest liberal foundations in the 1970s (e.g. the Ford Foundation), the discourse of human rights has grown ever stronger, and worldwide there are now tens of thousands of human rights NGOs working to protect human rights. Israel and Palestine are no different, and presently a multitude of human rights organizations are industriously working to help resolve their horrific conflict. This work is not however without problems, and there is a growing academic literature that suggests that the funding providing by liberal foundations to progressive groups ultimately works to co-opt or channel dissent into avenues that are harmless to the status quo. To add to this little talked about problem, regressive funding bodies like the US-based National Endowment for Democracy (NED) also provide financial support to human rights groups in both Israel and Palestine. This paper sheds some light on this vexing issue by firstly documenting the Ford Foundation and the NED’s support of human rights’ groups in the Israel/Palestine conflict, and then providing a critical reflection on how this funding has (and is) shaping the evolution of the conflict.

Keywords: Imperialism, Philanthropy, Polyarchy

The concept of human rights is now widely conflated with the promotion of fundamental democratic rights, and its associated discourses permeate the work of both alternative and mainstream global media outlets. Human rights, for all intents and purposes, is presented as an idea that can only possibly promote equity and justice, and the political ramifications of its promotion are rarely questioned. Yet like many progressive ideas that attract elite support there is always a danger that its moral underpinning may become inverted so that it serves pragmatic political ambitions rather than radical emancipatory ideals. In this regard, the abuse of human rights is no different to that of any other progressive concept, and the discourse of human rights is regularly instrumentalised to support and launch imperial conquests (Barker, 2008a; Sellars, 2002). Bricmont (2006) has fittingly referred to the cynical manipulation of human rights as Humanitarian Imperialism, and the intellectual foot soldiers of this cause have been described by Herman and Peterson (2005) as “The New Humanitarians”. Questions must be asked as to whose human rights are really being protected when the discourse of human rights is drawn upon to justify military interventions into sovereign states: furthermore, it is critical that concerned citizens seek to understand how political rights and political institutions might be undermined by such so-called humanitarian activities (for a useful discussion of this subject, see Chandler, 2006).

The Israel-Palestine conflict provides a useful lens through which to interrogate the broader implications of the elite deployment of human rights in the service of imperialism. In this case, in particularly, the funding issue is all the more pressing given that: “Western actors (governments, media, organisations) have become the primary constituencies for local human
rights activism” (Hajjar, 2001: 31). Such a reliance on external donors causes genuine problems for sustaining progressive activism, however, this is not to say, or imply, that the human rights groups examined within this paper are not comprised of dedicated progressive activists who wish to bring an end to suffering and injustice. In fact, if anything, I have only admiration for their bravery and commitment to documenting the horrifying human rights abuses that are a daily occurrence in this brutal conflict. But this admiration does not, and in my mind should not, exempt their work from critical enquiry. Consequently, it is hoped that the critique presented in this paper will invigorate and sustain the work of progressive actors in a manner that will help bring an end to the ongoing injustices perpetrated daily against the Palestinian people.

By exploring the philanthropic activities of the US-based quasi nongovernmental organisation, the National Endowment for Democracy (NED), and a key liberal foundation, the Ford Foundation, this paper locates the discussion of Palestinian human rights within the discursive field of philanthropic cultural imperialism (Arnove, 1980). While the philanthropic activities of the former group, the NED, are little known, nonetheless it serves as one of the US government’s most important democracy promoting organisations: although as this paper will argue, a strong case can be made that the NED is a key agent of imperialism that promotes a limited form of democracy otherwise known as polyarchy. The Ford Foundation, on the other hand, is one of the US's most influential liberal foundations, and they too have longstanding ties to US imperial elites, and particularly during the 1950s and 1960s the Ford Foundation was a central player in the CIA-backed cultural cold war (Saunders, 1999). Despite their poor democratic track records, both the NED and the Ford Foundation presently support some of the most influential human rights groups based in Israel and Palestine. Therefore, this paper aims to highlight the extent of these funding relationships, and then reflect upon how elitist funding bodies might have negatively influenced the discourse of human rights in the Israel/Palestine conflict. Although the main part of this paper documents the philanthropic colonisation of human rights groups in Israel/Palestine, initially the paper will provide a brief overview of the integral role that liberal philanthropy, and now the NED, has had in facilitating the rise of human rights, and in deradicalising all manner of progressive social movements.

**Progressive Activism, Philanthropy, and Human Rights**

Philanthropy is a big business in the US, and presently there are some 70,000 foundations – technically speaking nonprofit corporations – that distribute some $40 billion a year. One of the most influential liberal foundations is the Ford Foundation, and in 2005 it was considered to be the fourth largest foundation, distributing just over $0.5 billion (in that year alone) to various groups around the world. Formed in 1936, and relaunched in 1951 with the former Marshall Plan administrator Paul Hoffman at its helm, the Ford Foundation along with the Rockefeller Foundation and the Carnegie Corporation were long considered to be the big three foundations of the philanthropic world (Berman, 1983). With their massive combined financial resources, and political connections, it is not an overstatement to suggest that these three foundations have played a critical role as global level extra-constitutional planners. However, despite the scale of their international activities, the philanthropic work of these liberal foundations has been most influential in the US where they provided a key, if often overlooked, role in the evolution of many progressive social movements.

Given the Ford Foundation’s longstanding intimate ties to corporate and political elites, their involvement in funding progressive social change is (or at least should be considered) highly problematic. Indeed, over the years a number of critical writers have suggested that the
ultimate role of their philanthropy has been to sustain capitalism and to diffuse the relative power individuals and groups who are proponents of radical social change (Arnove, 1980; Berman, 1983; Roelofs, 2003). On one level this point may seem obvious, as one would hardly expect the world’s leading capitalists to play a major role in undermining capitalism; nevertheless the paradoxical situation exists whereby powerful capitalists bankroll the work of many of the progressive activists who regularly challenge their legitimacy. Thereby creating a funding relationship which may help explain why the problems associated with liberal philanthropy are rarely openly discussed in progressive circles. Consequently, most progressive activists remain unaware of the academic literature that demonstrates how liberal foundations have worked to strengthen capitalist hegemony by co-opting (or at the very least deradicalising) the civil rights movement (Allen, 1969), the peace movement (Wright et al., 1985), the population control and environmental movement (Barker, 2008b), and even the university system itself (Barker, 2008c; Smith, 1974). This lack of a critical historical perspective on the widespread social engineering practices of liberal foundations – which has created what INCITE! (2007) have referred to as the nonprofit-industrial complex – helps explain why so few writers have broached this subject with regard to the rise of the human rights movement.

In response to the increasing disillusionment of the global populous with the US's antidemocratic role in the world – which amongst other things has seen them replace foreign governments with puppet dictatorships, and support covert operations to undermine the work of domestic activists (Blum, 2004) – the historical record demonstrates that liberal political elites recognised the utility of at least being seen to promote human rights. Thus in addition to facilitating the “Berkeley Mafia's meteoric rise to power in Indonesia after Suharto's bloody coup” in 1965, and providing the “leading source of funding for the dissemination of the Chicago School ideology throughout Latin America” during the 1960s (Klein, 2007: 145-6) the Ford Foundation went on to play an important role in promoting the discourse of human rights. Moreover, the most prominent group that was supported by liberal foundations like Ford, that pioneered this new human rights approach to politics is a popular group known as Human Rights Watch (Sellars, 2002: 139).

The contradictions evident in Human Rights Watch’s global activities have been widely reported in the alternative media, especially in relation to their activities in Venezuela (Emersberger, 2008; Grandin, 2007), and with respect to their reporting on the Israel-Palestine conflict (Cook, 2006; Flounders, 2002). The fact that such critical analyses exist should hardly be surprising given the elitist roots of Human Rights Watch, as the intellectual founders of Human Rights Watch were closely linked to the elite planning group, the Council on Foreign Relations. Consequently it is fitting that the Council on Foreign Relations has been described as an Imperial Brains Trust (Shoup and Minter, 1977), and has received longstanding support from leading liberal foundations like the Ford Foundation (Barker, 2008d). Moreover, the Council on Foreign Relations work is intimately entwined with that of the CIA, which is interesting given the close links that exist between Human Rights Watch and the NED (Barker, 2007): this confluence of interests makes more sense however when it is known that a large part of the NED's work involves overtly carrying on the cultural cold war that was previously waged covertly by the CIA (Barker, 2008e; Ignatius, 1991).

Despite the aforementioned resources (and many others), for the most part criticisms of the NED’s imperialist funding strategies have eluded the mainstream media, although its work has been relatively well covered within dissident literature. This lack of critical mainstream media attention has led to the unfortunate situation where many humanitarian organisations have entered into funding relationships with the NED without perhaps comprehending the
underlying motives of their imperial benefactor. Indeed, as Robinson (1996) observed in his seminal book *Promoting Polyarchy*, the NED has played a key role in manipulating the dynamics of social change in foreign countries to ensure ‘democratic’ transitions (he used the case studies presented by Nicaragua, Chile, Haiti, and the Philippines) that led to the promotion of low-intensity forms of democracy: that is, a form of democracy far weaker than the more participatory variants being promoted by many of the progressive groups involved in initiating such transitions.

By providing a partial overview of the influence of both liberal foundations and the NED on the contours of democracy, this section of the paper has indicated that their involvement in funding human rights groups in both Israel and Palestine is not simply due to altruism. Given the scarcity of contemporary critiques of liberal foundations it is predictable, albeit worrisome, that some of the Palestine’s leading dissidents obtain funding from such elitist foundations, yet it is less clear why progressive groups might accept NED grants. Therefore, in order to understand the depth of this problem the next section of the paper will focus on Palestinian human rights groups that have been funded by the NED and/or the Ford Foundation.

**Palestinian Human Rights Organisations**

The measure of a human rights organisation is to be found not just in the strides it takes to seek justice for the oppressed and victimised but also in the compromises it makes to keep itself out of trouble. Because of the business that human rights defenders are in, they must be held to a standard higher than we demand of others. (Cook, 2006)

Awad (1997: 59) observes that the first Arab non-governmental organisations (NGOs) working to defend and promote human rights were established in the 1970s, but that the formation of the Arab Organization for Human Rights (AOHR), in 1983, served as a “watershed” event as it went on to become a “driving force that encouraged a number of citizens, from different Arab countries, to engage in committed action in the field of human rights.” Awad (1997: 74) acknowledges that initially there was much hostility to international human rights networks, but over time these feeling dissipated as even Marxist activists “evolved toward Liberal positions under the influence of shifts in the international system.” This evolution toward the acceptance of western pluralist values by Arab NGOs should not be considered to be a natural progression given the history of philanthropic interventions in progressive social movements: thus controversially two of the four NGOs examined in Awad’s article have obtained funding from the NED – these were the Egyptian Organization for Human Rights, and the Cairo Institute for Human Rights Studies – however, critically, to date this funding has not been problematised. Likewise, the founder of the aforementioned AOHR, Saad Eddin Ibrahim, is presently well connected to the work of the NED, as he serves on the international advisory board of the NED’s Journal of Democracy, and is a director of the Rights and Democracy (which is the Canadian version of the NED). Finally, the fourth Arab NGO profiled in Awad’s (1997) article is a human rights organisation called al-Haq, a group that was set up under “extreme government opposition” in the West Bank city of Ramallah in 1979, and then “received its funding almost exclusively from Western Foundation grants” (Awad, 1997: 65). Given the importance of al-Haq in promoting human rights in Palestine, the following section of this paper will now provide a critical exploration of this influential group’s history.

Set up in 1979 by Palestinian lawyers – most notably Raja Shehadeh and Jonathan Kuttab – al-Haq (formerly known as Law in the Service of Man) was created as the West Bank affiliate of the International Commission of Jurists. Al-Haq’s link to the latter groups is important as
the International Commission of Jurists was founded in the early 1950s “by elite US lawyers identified with the Council of Foreign Relations” and secretly financed by the CIA to “mount a counterattack against a rival [Leftist] organization, the International Association of Democratic Jurists” (Dezalay and Garth, 2002: 62). The high esteem with which al-Haq was (and is) held by the international community probably owes much to the fact that while previous Palestinian groups had used Israel’s human rights abuses to support their political objectives, “al-Haq sought to isolate the human rights debate from its political context altogether” (Rabbani, 1994). This conscious ploy to de-politicise their work, has if “only subconsciously… translated into an emphasis on micro-violations to the detriment of the bigger picture and a reluctance to actively engage the points of intersection between human and national rights” (Rabbani, 1994).

As noted already, while al-Haq has not received NED funding, their work has been well supported by Western donors, and al-Haq currently obtain financial aid from the Ford Foundation, George Soros’ Open Society Institute, and various foreign governments. That said, it is important to note that one of al-Haq’s cofounders, Jonathan Kuttab, has been involved in launching a number of other Palestinian human rights groups, some of whose work can be linked to the NED’s activities. For example, in 1985 Kuttab helped set up the Palestinian Center for the Study of Nonviolence with the Center’s primary founder, Mubarak Awad. This is noteworthy because Mubarak Awad went on to serve as an advisor to the NED-linked Albert Einstein Institution (Barker, In Press), and in 1989 he founded a network of resource centres known as Nonviolence International. Nonviolence International subsequently received grants from the NED in 1994, 1995, 1996 and 1999 to carry out its Palestinian Center for Democracy and Elections project: a project which can, in turn, be linked to the Bethlehem-based group, Holy Land Trust – an organisation that was set up in 1998 to promote respect for human rights and help promote nonviolent approaches to responding to ending the Occupation, continuing the work originally undertaken by the Palestinian Center for the Study of Nonviolence. The Holy Land Trust’s board of directors is presently chaired by Jonathan Kuttab, and their Executive Director is Sami Awad (Mubarak Awad’s nephew), who in 1998 at least was affiliated to the Palestinian Center for Democracy and Elections. On top of these links, in 2006 the Holy Land Trust received a grant from the NED to “promote nonviolence and conflict resolution in the West Bank”.

In addition to Jonathan Kuttab’s indirect NED links he has played an important role in founding the “global capacity-building network” known as Human Rights Information and Documentation Systems (HURIDOCS). Although HURIDOCS was officially created in 1982, their website notes that the idea for the group was born in 1979 when the Ford Foundation organised a meeting near Paris of various leading human rights organisations. Moreover, Kuttab currently serves on HURIDOCS’s international council, a council that is presently chaired by Kofi Kumado, an individual who served as a member of the executive committee of the International Commission of Jurists from 1992 until 2001, and has now been made an honorary member of the Commission.

Returning to al-Haq, in 1985 this influential organisation helped found another human rights group called the Gaza Centre for Rights and Law, which was the International Commission of Jurists’ affiliate for the Gaza Strip. In 2001, the Gaza Centre for Rights and Law received an NED grant, but prior to this, in 1993, they received a single grant from Canada’s version of the NED, Rights and Democracy. Here it is worth observing that from 1991 until 1995 the head of the Gaza Centre for Rights and Law was Gaza’s most famous human rights lawyer, Raji Sourani. Sourani in turn, is connected to many human rights groups, some of which are funded by the NED, and so it is fitting that he should also be a board member of the
Palestinian Council on Foreign Relations, a group that was formed in 1998 and has a “special focus on a wide range of issues including peace, security, economic development and cooperation, civil society, democracy and human rights.” The president of this Council is Ziad Abu-Amr, a political scientist who serves as a trustee of the Palestinian Initiative for the Promotion of Global Dialogue and Democracy (otherwise referred to as MIFTAH) – a group that receives support from both the Ford Foundation and the NED, the latter in 2000, 2001, and 2006, and Abu-Amr also serves as a board member of AMAN.3 The latter group, AMAN, describes itself as “Palestine’s first coalition of Civil Society Organizations”, and works in partnership with the well known democracy-manipulator, Transparency International (Tucker, 2008).

Al-Haq board member, Dalal Salameh, serves as a trustee of the Palestinian Center for Policy and Survey Research – a Center (headed by Khalil Shikaki) which is a member of the NED’s World Movement for Democracy, and received a grant from the NED in 2006. Likewise another noteworthy member of al-Haq’s board of directors is Camille Mansour, who since September 2004 has worked as a United Nations Development Programme advisor on Palestinian judicial reform, and in 2003, at least, served as a trustee of the Center for Palestine Research and Studies. Mansour’s link to the latter organisation is significant because the Center was set up in 1993 by al-Haq cofounder Raja Shehadeh, who formerly served as the Center’s president (in 2003 at least). Other notable cofounders of the Center for Palestine Research and Studies include Hisham Awartani (who presently serves on the academic council of the pro-free-market Fund for American Studies), Rashid Khalidi (who is the Vice President of the American Task Force on Palestine, and serves on the national advisory council of the US Interreligious Committee for Peace in the Middle East), and Khalil Shikaki (who was the initial head of the Center, and since 2000 has headed the Palestinian Center for Policy and Survey Research). Between 1996 and 2000, the Center for Palestine Research and Studies received fours grants from the NED, all via one of the NED's four core grantees, that is, the Center for International Private Enterprise (CIPE), and fittingly the Center is also a member of the CIPE Reform Network. Prior to obtaining these CIPE grants the Center also obtained a grant from the NED in 1995 (via the Jerusalem Fund), while since its creation the Center has obtained funding from the Ford Foundation. Also worth pointing out is this Center’s other link to al-Haq through Jameel Hilal who presently serves on the general assembly of al-Haq, and in 2003 (at least), served as a senior fellow at the Center for Palestine Research and Studies: Hilal also sits on the Integrity Award evaluation committee for AMAN.

Finally, Fateh Azzam, the former Director of al-Haq (1988-1995), is currently the program officer for human rights at the Ford Foundation’s office for the Middle East and North Africa, Cairo. Furthermore, Azzam is a board member of the US-based nonprofit organisation, Virtual Activism, whose present interim treasurer is Barbara Ibrahim – an individual who has formerly served as the Ford Foundations Middle East program officer for urban poverty and women’s studies programs, and is married to the aforementioned NED-linked democracy activist Saad Eddin Ibrahim.

Generally speaking the philanthropic colonisation of Arab human rights groups’ is problematic for the following reasons. Firstly such a process of colonisation has channelled dissent into legalistic discourses and solutions, which serves to isolate concerned citizens (especially those without law degrees) from acting to protect their own interests, a process also known as social movement professionalisation. Secondly, external funding acts to mould research priorities in directions that are guided by external actors, be they funding bodies or intellectuals. Finally, civil society groups become dependent on external resources which act to separate movement activists from their grassroots constituents: groups may then begin to
define their success more by their ability to mobilise external support than through actually
promoting the protection of Palestinian human rights. These problems can of course be
heaped on top of the fact that all groups that receive aid from agents of imperialism act to
legitimise such funders’ broader polyarchal agendas, even if the work they carry out appears
to be countering imperialism. US-based Palestinian rights activist Hetem Bazian observes that
foundation-supported…

NGOs control the purse strings. Through this funding or through the staff they hire, they
assert their political agenda. For example, the largest diversment coalition of
organizations that work on Palestine do not insist on US divestment from Israel or devote
organizing resources into achieving this agenda. (cited in Smith, 2007: 173)

Bazian (2007: 174) goes on to point out that as foreign funded NGOs see it, “the problem is
not Israeli colonisation and occupation; the problem is that Palestinians need to be trained to
develop ‘civil society’ and learn to cooperate with Israel.” He adds that even the most
‘progressive’ foundations working in Palestine start from the basic premise that the solution
to the conflict requires Palestinians “adapt to their colonial situation” (Smith, 2007: 174). Likewise, Zeina Zaatari (who works for the NED-linked Global Fund for Women) suggests
that groups that obtain more foundation support, like for example United for Peace and
Justice (UFPJ), fail to address critical issues like Zionism or historic Palestine, while other
coalitions which are less reliant on foundation support, like Act Now to Stop War and
Racism, have incorporated Arab groups that have a “clear political view” into their leadership
(cited in Smith, 2007: 174). Solutions to such a problematic state of affairs are at once simple
yet difficult at the same time. For example, some parts of the Egyptian solidarity movement
have explicitly rejected foreign aid: indeed, Atef Said notes: “Our sentiment is that one
Egyptian pound from a poor Egyptian for Palestine is more honorable and appreciated (for the
movement) than one million dollars or pounds from a corrupt Egyptian business or foreign

This paper has not attempted to analyse or critique the output of any Palestinian human rights
groups’; instead it has simply demonstrated the problems associated with their elite funding
relations. Considering the evidently important role played by both liberal foundations and
NED philanthropy in the Middle East, it is critical that progressive activists attempt to
imagine the form that Palestinian human rights groups might have taken had such elitist
funding not been available (or had not been accepted). Questions that need to be constantly
posed to progressive activists both inside and outside of Palestine include: what groups obtain
no external funding, how do they fund their work, and is their work widely reported?; why
have certain groups/individuals obtained international support?; what caused progressive
activists to begin to accept support from external donors?; and what sort of debates take place
within Arab NGOs concerning their funding relations with groups like the Ford Foundation
and the NED? These questions are rarely, if ever, publicly raised and it is for this reason that
imperial funders have been able to manipulate the discourse of human rights in Palestine. This
situation is problematic, and it is hoped that his paper will help launch further critical
enquiries into this phenomena.

Conclusion

Given the daily horrors of the ethnic cleansing being perpetrated by the Israeli military and
so-called ‘environmental’ groups (like the Jewish National Fund, see Pappe 2006, p.17, 228)
upon Palestinians it is little surprise that few critical writers have focused on the problems
associated with those Palestinian groups that are working to document these human rights
abuses. It is also a natural reaction for progressives to assume that directing criticism towards
Palestinian human rights groups will make life harder for ordinary people trying to survive under the brutal Israeli occupation: yet this is not necessarily the case. As this paper has argued, good intentions do not always lead to progressive outcomes, and NGOs often act (wittingly or not) in the service of imperialism (Petras, 1999).

There is nothing stopping human rights groups from acting in the service of the oppressed without acting to facilitate imperial domination, but if activists do not acknowledge that NGOs can, and have been, coopted by political elites, then there is little hope that their imperialist activities can be countered. Consequently, the first step that must be taken to remedy this situation is for progressive activists to reflect upon all the possible ways by which elites may attempt to coopt their work. This does not simply mean looking for obvious signs of elite manipulation, that is, in countries like Venezuela where the NED has actively supported opposition groups to help oust President Chavez’s democratically elected government (Scipes, 2006), but it means focusing on the places where elite interference is least expected. Here the example of elite interference of Palestinian NGOs provides the perfect test case, as despite undertaking important work that works to draw attention to US-supported human rights abuses in Palestine, these NGOs are still reliant upon support from US foreign policy elites whose broader agendas are closely tied to those of Israel.

Exposing the social engineering of elite funders and the problems generated by Palestinian groups’ reliance upon external aid are two issues that this paper has aimed to generate a greater awareness of. By no means should this paper be considered to be an exhaustive analysis of the human rights NGO-funder nexus, but it is vital that activist’s intent on combating imperialism and promoting sustainable peaceful solutions to some of the world’s most vexing injustices should consider the implications of some of the ideas presented within this paper. Ultimately one might disagree with my gloomy diagnosis regarding the evident elite manipulation of Palestinian human rights groups, but until this issue is seriously investigated by the global community then it advisable to adopt the precautionary principle and assume that elite funding of progressive groups will not promote sustainable solutions that adequately deal with the destructive power of imperial hegemons like the US.

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**Endnotes**

1. In later years, particularly after the organizations work became more overtly political
(progressive), and military repression of their human rights activities escalated, the Anti-
Defamation League/B'nai B'rith even targeted al-Haq staff visiting the United States as part of its
wide-ranging program of espionage” (Rabbani, 1994).

2. The Center was formerly headed by Lucy Nusseibeh who is the founding director of Middle East
Nonviolence and Democracy (MEND). In 2001 and 2001, MEND received NED grants to
promote nonviolence and democracy in Palestine, and MEND UK’s Participatory Video Project is
run in conjunction with the Ford Foundation. In 2004, MEND "provided the translation and
printing" costs for an Arabic translation of Gene Sharp's Albert Einstein Insitution publication
*There Are Realistic Alternatives*. MEND trustee, Mohammad Shtayyeh, serves as a trustee of the
NED-funded Palestinian Center for Policy and Survey Research (see later).

3. The other directors of the Palestinian Council on Foreign Relations include Munib R Masri (who
is a member of the US-based Council on Foreign Relations), Hanan Ashrawi (who founded
MIFTA, and is a former trustee of the Institute for Palestine Studies), Samir Shawa (who is a
member of the Aspen Institute / Middle East Strategy Group), and Samer Said Khoury (who is
honorary chair of the Aspen Institute / Middle East Strategy Group).
‘Equal but different’: deconstructing universal motherhood and the potential for Human Rights and Equal Opportunity Commission to promote women’s rights discourses in Australia

Sarah Hattam
University of South Australia

Abstract: This paper examines the possibilities for the Australian Federal Human Rights and Equal Opportunity Commission (HREOC) to contribute to women’s equality in Australia. These possibilities are identified in HREOC’s three main functions: mediate international human rights law (specifically the Convention on the Elimination of all forms of Discrimination Against Women); advocate human rights discourses; and mediate national anti-discrimination legislation (specifically the Sex Discrimination Act 1984).

The examination of these functions converges on how HREOC contributes to the meaning-making process of the category ‘woman’ – and the essentialist, universal category of ‘woman as mother’ – which continues to disadvantage women in social, political and economic life in 21st Century Australia. This paper explores two aspects of my research: the first is a discourse analysis (Foucault 1972; Bacchi 2000) of public texts produced by HREOC and its Sex Discrimination Commissioners, which emphasises their contribution to the discursive meanings of the ‘good’ mother.

The second part investigates how the possibilities for HREOC to contribute to effective material and social change for women are shaped by the discursive meanings of ‘equality’ and ‘rights’ within a liberal theory framework. This framework relies on the binary opposition of public/private, masculine/feminine and man/woman which constrains the pursuit for ‘women’s rights’ and ‘women’s equality’. This paper addresses the following questions: What form of equality would be best pursued to achieve social and cultural changes to women’s lives; and what form of equality does the Human Rights Commission intend to achieve? Could the method(ology) of ‘deconstruction’ (Derrida 1984) offer an alternative to the constraints created by the equality/difference framing of the problem?

Keywords: Women’s equality; Human Rights and Equal Opportunity Commission; motherhood.

At a time when ‘human rights discourses’ are being called upon and attached to various efforts for social and political change for women (Walby 2002; Cody & Pettit 2007), there is a gap in knowledge of the labours being exerted in Australia by human rights agencies and organisations. Fergus’ (2006) analysis of ‘Amnesty International’ explores the efforts of the advocacy group in relation to domestic violence against women in Australia; however, this stands as a lone contemporary investigation. There is little analysis of who is addressing human rights abuses nationally, neither government nor non-government organisations (NGO).
My research aims to contribute to filling this gap in knowledge by investigating the potential for the Australian Federal Human Rights and Equal Opportunity Commission (HREOC) to contribute to women’s human rights and equal opportunity. Research shows women’s and men’s opportunities in public life and experiences of private life are not equal. Australian women: earn 84 cents to the male dollar (Office for Women 2007), are significantly under represented in upper management across all industries (McGraw & Mackisack 2008) and are retiring with pitiful superannuation contributions (Olsberg 2005). As well as this, women are doing a majority of the unpaid caring and house work, despite their attachment to the work force (Office for Women 2007) and 1 in 3 Australian women will suffer some form of family or domestic violence (Evans 2007).

An impediment to women’s equality in Australia, and similar liberal Western cultures, is the cultural construction of essentialist renderings of ‘womanhood’, which reinforces the dominant assumptions about women’s biological functions, and limits their choices, opportunities and economic gain (DiQuinzio 2005; Hays 1996; Maher & Saugeres 2007; Berry 1993). In other words, the dominant discourses of womanhood centre on a woman’s role as ‘mother’, prescribing that all women should mother, all women should want to mother and all women should aspire to be ‘good’ mothers. In this paper, I use the concept of ‘discourse’ to refer to dominant, shared assumptions which have developed historically and are intricately embedded in the meaning we make of social practices and identities.

This paper aims to do four things. Firstly, I will outline the specific ‘tools’ HREOC preserve to contribute to the pursuit of women’s human rights; Secondly, I will explain the conceptualisation of universal ‘motherhood’ & the impact this has on women’s equality in Australia; Thirdly, drawing on the paid maternity leave campaign, I will outline how HREOC negotiate the discourses of ‘womanhood’ and ‘motherhood’. I analyse the language – as an intrinsic part of the meaning-making system - which HREOC uses to describe women’s lives and the role motherhood plays. Lastly, the paper considers whether HREOC can pursue a form of equality which moves beyond the equality/difference dichotomy.

The ‘tools’ of HREOC

The Human Rights and Equal Opportunity Commission is an independent statutory authority established by the Human Rights and Equal Opportunity Act (1986). The ‘tools’ of HREOC can be grouped into three functions or categories. The first is to examine enactments of the federal government to ascertain whether they are consistent with the human rights commitments and to prepare and publish guidelines for avoidance of such acts or practices. The second is the mediation of national and international law, specifically for my project, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Sex Discrimination Act (1984). The third function, which is the focus of this paper, is the power HREOC is endowed with to provide public comment, inform, and educate Australians by using available media and educational resources and to contribute to a greater awareness of women’s differential social location (Bacchi 1990).

‘Universal’ Motherhood?

Political theorist Carol Bacchi’s (1990) conception of the way the discourses (Foucault 1972) of the category ‘woman’ are shaped by socialised and historical meanings, and are linked to the notion women possess a ‘female essence’, is useful in explaining the dominance of motherhood discourses. This ‘essence’ is often attributed to biological differences and used to
women’s disadvantage, as it has long been argued a woman’s ‘natural’ role is to be a ‘mother’ (de Beauvoir 1949) which influences women’s identities and practices in contemporary times.

In Australian life, it is still primarily the mother who has to make the choice between having a career and caring for children. These choices are made in the context of the dominant discourses about the ‘good’ mother (Cannold 2005) which imposes the key attributes of ‘selflessness’ and ‘all encompassing commitment to motherhood’ (Maher & Saugeres 2007), which all women are encouraged to adopt on becoming mothers. This instruction represents a ‘universal’ and ‘essentialist’ rendering of ‘motherhood’ activity and identity, which when combined with the discourses – and demands - of the public sphere of work produces a detrimental clash (Grimshaw, Murphy & Probert 2005; Poole 2005). Research shows that women who try to be ‘good’ mothers while pursuing other aspirations - such as having attachments to the work force, friendships, study, any other activities outside of the family which they find fulfilling – report being stressed, unhappy, face discrimination in the workplace on becoming pregnant or returning from maternity leave, and develop ‘motherguilt’ (Hochshchild 1990; 1997; 2003, Pocock 2001; 2005 & 2006).

Have we developed an equivalent conceptualisation of ‘fatherguilt’: do fathers feel guilty in the same way as mothers do? I guess they do, they just aren’t encouraged to share their feelings in the same ways as women, as displays of hegemonic forms of masculinity are greatly rewarded in the current gender order (Connell 2005a; 2005b). As well as this, the meanings of being a ‘good’ mother are developed in conjunction with the meanings of being a good ‘male’ provider. We do not have one category without the other and both women and men are restricted by these ‘essentialist’ gendered identities. In other words: male and female are natural and universal categories. This is a problem for women as the dichotomy of feminine/masculine provides greater opportunities for those on the masculine side: masculinity is attributed with a greater value and has had greater links to the public sphere of work, economics, politics, and power than the feminine side of the dichotomy (Gatens 1991; Pateman 1983).

How do HREOC construct ‘motherhood’ discourses in the paid maternity leave campaign?

This paper draws on the endorsed paid-maternity leave campaign as an example of how HREOC can, or does, contribute to women’s equality and equal ‘women’s rights’ in Australia for two reasons. Firstly, paid-maternity leave is endorsed for in Article 11(2) of CEDAW, which states that in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances (CEDAW 1979); Secondly, because paid-maternity leave has been an on-going campaign by HREOC and it demonstrates the different ways the Sex Discrimination Commissioners have conceptualised ‘womanhood’. Does HREOC argue a national scheme would support women’s human rights and ‘their effective right to work’? Or, does it reinforce ‘essentialist’ constructions of womanhood which link to notions of the ‘good’ mother?

When Australia signed CEDAW in 1980, it did so with the reservation’ of a national scheme of paid-maternity leave. From 1999 onwards, HREOC has made recommendations in various reports to the government to retract this reservation and introduce a federally funded-paid maternity leave scheme (see reference list for reports). None of these reports have led to paid-maternity leave; although one led to the increase of the Maternity Payment (otherwise known
This produces the question: how do past and present Sex Discrimination Commissioners represent motherhood? This paper will focus only on the different ways three Sex Discrimination Commissioner’s construct ‘womanhood’ and ‘motherhood’: former Commissioner Susan Halliday, former Commissioner Pru Goward and current Commissioner Elizabeth Broderick.

In the 1999 Inquiry ‘Pregnant and Productive: It’s a right not a privilege to work while pregnant’, Halliday explored the causes of discrimination against pregnant women (and potentially pregnant women) in the workplace. Halliday identified the lack of a federally funded scheme for working women contributed to the discrimination in the workplace and recommended the reservation to article 11(2)(b) of CEDAW be removed by the federal government (1999: 244). In relation to how Halliday constitutes the discourses of womanhood in the report, there is an effort to challenge the notion of a female ‘essence’ with links to ‘good’ mothering as she details the ‘changes in attitudes of women, with many asserting their right to economic independence’ (1999: 10). Hence, the need for economic independence is a dominant discourse, which competes with marginal discourses of the ‘good’ mother for these women. There is also a challenge to essentialist renderings of ‘womanhood’ in the suggestion that ‘factors which define and separate men and women are the different constructions of their sexuality and their relationship to home and family’ (1999: 11). This identifies the signification of meanings of womanhood with the home and family life in ways that meanings of being a ‘man’ are not, which constitutes the discourses of motherhood.

Halliday identifies the dominating discourses which have impeded women’s equal access to the workplace in her labelling of the workplace as a ‘masculine construct’ (1999: 13). She also argues for the need for ‘policies and laws that promote the harmonisation of work, pregnancy and family responsibilities must apply and be seen as applying equally to men and women. In the context of pregnancy and work, it is essential that policies and laws treat pregnancy and family responsibilities as neither a disability nor a liability, rather as part of the normal life cycle encountered by many workforce participants’ (1999: 13). There is an emphasis in this statement on the gender neutrality which should apply to policies, in reference to ‘workforce participants’ and not ‘women’ or ‘mothers’. For Halliday, womanhood is not defined by an ‘essence’ as she supports CEDAW’s article for women’s effective right to work and human rights. There is evidence from this report that this former Sex Discrimination Commissioner aimed to challenge the patriarchal discourses of motherhood during her time working for HREOC.

Both Pru Goward (2002) and Elizabeth Broderick (2008) have argued for the provision of paid-maternity leave on the grounds of health and well-being of mothers and babies, economic security of women, addressing workplace disadvantage and even ‘equality’. However, investigation of Goward’s speeches and media articles reveals worrying contradictions. In 2002 at a community consultation, she referred to motherhood as a ‘woman’s basic social function’; in various speeches she described mothers as the ‘centre-piece of the family’ (16 August 2005; 14 March 2006 23 June 2005); and that ‘every little girl progresses from dolls to boyfriends and then onto real life babies…’ (23 June 2005). Here Goward’s argument is: women are biologically ‘destined’ to become mothers, they will form their whole lives around it; and maybe the state should support this activity. Goward also assumes all ‘women’ are heterosexual and will pursue a life with a long term male partner. These constructions of ‘womanhood’ reinforce biological meanings which signify motherhood. I suggest Goward’s conceptualisation of ‘woman’ in these public documents is as ‘straight, married and a mother’ and exclusive of women who do not fit this rendering of...
womanhood. Where does this position lesbians, sole-parents or women who do not have children?

By contrast, Commissioner Broderick has publicly argued that ‘paid-maternity leave is not about being nice to working women, it is about addressing the inequality experienced by women workers relative to men as a result of childbirth’ (April 8 2008). Later she said ‘This is especially important for women in lesser paid jobs or casual employment who don’t have access to any paid maternity leave’ (3 June 2008). Commissioner Broderick’s construction of ‘womanhood’ provides a more inclusive approach to women’s gendered identities. Broderick argues for the rights of women from lower socio-economic groups, and positions ‘womanhood’ within the public sphere of work directly. Commissioner Broderick’s response to the suggestion that the government should increase the Baby Bonus, instead of creating a new policy, demonstrates this: ‘You will decrease some of that financial pressure but what about keeping the woman attached to the labour market, because the fact is, we met so many older women as we went on our listening tour who talked about the fear of living in poverty later on in their life, and when you unpacked what that is, that was about not being attached to the labour market for a significant proportion of their life’ (2008: 420). We are yet to see how Commissioner Broderick plans to use her time as Sex Discrimination Commissioner – this is being released on collation of the report from her national listening tour – but already she is offering a more hopeful construction of womanhood, one which represents women as workers, as well as mothers, which could produce better results for women’s equality in Australia.

The pursuit of being ‘equal’, but ‘different’?

HREOC, and the Sex Discrimination Commissioners are limited by political constraints and its relationship with the federal government is complicated. The relationship between the state and HREOC has been formed on the basis of liberal principles (Franzway et al 1989), and informs the discourses it constitutes. I argue that the discourses it uses in promotion of women’s rights discourse has an influence on Australian culture and politics and the reproduction of restrictive gendered identities. It is possible for HREOC to promote inclusive discourses of womanhood which do not reproduce patriarchal discourses of motherhood, if its pursuit for equality moved beyond the limits of liberal principles of equality.

This is not to discredit the gains liberalism has produced for women’s lives, as Franzway et al (1989) and Porter (1991) both suggest liberal feminism has produced significant legislative achievements for Australian women (in equal opportunity policies and anti-discrimination legislation). However, there are limitations to liberal theory in regards to what it can contribute to social and cultural changes for women. The pursuit for ‘equality’ or recognition of ‘difference’ has been paralysed by the dichotomy it creates; as women’s differences have either been used against them, or women have had to deny their differences to compete for equal worth on men’s terms (Pateman 1992). The pursuit of ‘equality’ has been founded on liberal conceptions of the ‘rational, autonomous, individual’ (Wollstonecraft 1972; Mill 1869); which are characteristics associated with masculinity and the public world. Hence, to compete in the public world of politics and economics, women have had to adopt these traits. On the other side of the binary, if ‘equality’ is fought for on the grounds of recognising women’s ‘differences’; in the special contribution women make as citizens in reproducing the race, it has been used to exclude women from other forms of citizenship (DiQuinzio 2006). The implementation of Ruddick’s ‘maternal citizenship’ (1983; 1989) into the dominant discourses of public life fails to challenge patriarchal conceptions of womanhood and reinforces the assumptions around women’s natural – and universal - role to mother. I agree
with Bacchi (1990) that the language used in the framing of the debate in ‘equality’/‘difference’ positions women as the problem; where as the problem is the limited understanding of ‘equality’.

The Human Rights and Equal Opportunity Commission could challenge this way of framing women, by recognising that the problem resides with the construction of the restrictive binaries. ‘Deconstructing’ (Derrida 1984) the binaries of the private/public spheres and masculine/feminine is useful for contemporary feminism. It produces a displacement of gender identities and a consideration of other sociological categories – such as class, race and sexuality. Significantly, it also unsettles the dominance of white-middle-class feminism (Elam 1994). A deconstructive analysis of gender or the universal, essentialist categories of ‘man’ and ‘woman’ would produce a freedom for all genders and sexualities as Caputo argues ‘deconstruction wants to let ‘straight’ men get in touch with their feminine side and ‘straight’ women with their masculine side’ (1997: 105); and re-arrange the hetero-normativity embedded in our understanding of gender (Butler 1999). A Derridean deconstructive analysis of gender would be the ‘dissemination of the idea that the construction of ‘masculine’ and ‘feminine’ norms are narrow, contingent, constraining ‘straightjackets’ (in Caputo 1997: 105). Hence, my research proposes for an alternative to the liberal conceptions of equality in ‘deconstructive equality’ (Scott 1997; Nash 2002) as the aim is to move beyond the dichotomous thinking which has restricted our understanding of gender relations. This could be pursued by HREOC in considering the way it constructs the category ‘woman’. I borrow from feminist writer Joan Scott in her argument for thinking beyond absolute qualities for women,

> there are moments when it makes sense for mothers to demand consideration of their social role, and contexts within which motherhood is irrelevant to women’s behaviour; but to maintain that womanhood is motherhood is to obscure the differences that make choice possible (1997: 767).

‘Deconstructive equality’ proposes a vision of equality which rejects the essentialist categories of femininity and masculinity, created by the public and private spheres, and the pursuit of a multiple and fluid approach to gendered identities. Then, women could have equitable choices about their material and social lives.

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**Endnote**

1. This paper is developed from on-going research for a PhD study of a sociological analysis of HREOC and its relationship to the state. It should be noted the researcher does not have a background in and does not draw extensively on the discipline of law or legal studies, hence the language adopted in this paper reflects this.

In the final days of producing this paper, current Sex Discrimination Commission, Elizabeth Broderick, released her report from her National Listening Tour titled ‘Gender Equality: What matters to Australian men and women’ (22 July 2008). This will be included in future work published by the researcher on HREOC.
Found in Translation: Differences, Tolerance and Enriching Diversity

Soenke Biermann
Southern Cross University

Abstract: In her insightful book *Ornament of the World*, Maria Rosa Menocal describes medieval Andalusia where Jews, Muslims and Christians lived and thrived together as a ‘culture of translation, [that was] perforce a culture of tolerance’ (2002, p. 197). The collective act of translating, Menocal implies, necessitates tolerance towards the ideas and the bodies of the other culture, even if there are deep disagreements on existential religious or political questions.

Beginning from an understanding of human rights in terms of the quality of people’s lived realities, this paper argues that developing a culture of translation leads to a more tolerant society and that multilingualism is a vital part of such a project. Taking that idea as a starting point, this paper will present an inquiry into the possibilities a dialogical cultural translation process may offer in terms of a human rights-oriented and decolonising approach to education in a contemporary multicultural Western society such as Australia. As part of this process, it will consider the tension between multicultural realities and monocultural educational traditions and discuss the possibilities and constraints of developing a culture of translation.

Keywords: Translation; Cultural Diversity; Human Rights

Introduction

As Offord (2006) has previously argued, human rights are also highly relevant in and need to be inserted into discourses other than law. They prompt us to think about what it means to be human and to live a dignified life free from discrimination in all spheres of society: in our homes, workplaces and in institutions such as schools, hospitals and prisons. Recent publications (Offord & Porter 2006; Newell & Offord 2008) have further highlighted the need to consider and activate human rights in a variety of contexts and fields, particularly education, and instigated discussions as to how this might be achieved. Unsurprisingly, greater awareness, self-critical examination of privilege and the need for dialogue with other people, especially those whose voices have been marginalised by the dominant culture, were named as key requirements for a more human rights-oriented approach to education. While there are many dimensions to exclusion, marginalisation and dominance, this paper will focus on the role of language and in particular, how valuing multilingualism and translation could inform such a human rights-oriented and decolonising approach to education in contemporary Australia. As part of this discussion, the following two related arguments will be made: that the creation of a ‘culture of translation’ (Menocal 2002, p. 197) can have profound human rights implications in everyday life, and that a concerted effort to support multilingualism and foreign language competency is necessary in order to achieve this.

In the following sections, this paper will proceed by considering medieval Andalusia as an unlikely example of such a culture of translation. After elucidating some of the key themes
and lessons from its history, notions of cross-cultural interaction, tolerance and translation will be problematised more generally in terms of their relationship to colonial epistemologies. The focus of the paper will then shift onto contemporary Australia, a multicultural Western country with an unresolved colonial heritage, to assess how well the current state of multilingualism and foreign language competency might provide a foundation for such a societal project. Having established a disturbing trend of decreasing second language learning in schools and universities, the paper will discuss the limitations this development might place on a collaborative cultural translation project and on a culturally pluralist society more generally. Finally, this paper will outline some opportunities for reversing this trend and engaging in a concerted capacity building program towards developing a culture of translation.

Andalusia (El-Andalus), 9th – 15th century

Before discussing the importance of medieval Andalusia, I want to acknowledge the profound impact the historical research undertaken by Maria Rosa Menocal (2002) has had on me in terms of bringing to life its complex, contradictory and contested terrains. In popular Western culture, the mention of “medieval Europe” readily conjures up ideas of widespread superstition, suppression and intolerance. This is an obvious expression of the self-legitimisation of the Western ideal of linear progress, whereby a past with which there has since been a radical break is associated reflexively with negative images. However, probing of the historical record can reveal alternate historical realities, dispelling assumptions about the distant past as useful contrast, rather than congruent reality. As Menocal has convincingly shown, one such example is the cultural and political composition of the Iberian peninsula, of El-Andalus.

For more than seven centuries, from the ninth to the fifteenth century, Jews, Muslims and Christians lived and thrived in El-Andalus within a complex culture of tolerance. According to Menocal, this coexistence was based on two core premises, the first of which was the intelligent acceptance of internal contradictions, which confirmed F. Scott Fitzgerald’s formula that “the test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time” (cited in Menocal 2002, p. 10-11). On the other hand, Menocal argues that “a culture of translation [is] perforce a culture of tolerance” (2002, p. 197) as the collaborative engagement of different cultural perspectives requires a basic level of mutual respect and valuing of other philosophical standpoints. Under various rulers and in diverse political contexts, the Iberian peninsula retained its penchant for appreciating, contrasting and blending diverse cultural understandings in architecture, literature, music, the arts and all areas of secular knowledge. The cities of Toledo and Granada became hotbeds of translation and developed a reputation throughout Europe for introducing new ideas, and reintroducing long forgotten ones, into medieval society. Most of the Greek classics, transcribed and preserved in Arabic, were translated back into Latin in these cities, along with the works of Hebrew poets and Muslim astronomers.

All of this is not to give the impression of a conflict-free medieval love-in; on the contrary, conflict, struggle and conquest did ensue in numerous instances and instigated by various parties. However, even in the face of political and ideological strife, there developed a kind of artistic and intellectual prosperity that enabled civil society to create spaces for tolerance and interaction. This tolerant and, by the standards of the day, cosmopolitan enclave was heavily opposed by other forces, who attempted to invoke religious or national affiliations to prevent the development of a more nuanced, less pliable local society. From the beginning and despite its robustness in weathering several storms, the Andalusian project was therefore under
continuous existential threat, and ultimately it was destroyed by the forces of extremism on Muslim and Christian sides in favour of religious and national purity. Menocal (2002, p. 252) concludes that, by creating the new entity, Spain, under one crown, religion and language in 1492, ‘the old age of translators was at an end; at hand was the new age of empire, with a new language to replace all the old ones’.

**Theoretical Implications**

There are three key themes that emerge from Menocal’s reading of El-Andalus – human rights as lived reality, the problematic nature of tolerance and the complex power relations embedded in the translation process – which will be explored below. Firstly, while the Andalusian project might today be unfavourably contrasted with particular contemporary Western understandings of democratic progress, codified rights and legal process, we nevertheless cannot fail to recognise the fundamental elements of human rights as lived reality. Looking beyond the codification of rights and their enforcement through the state or international organisations, it is important to recognise the substantive role played by civil society in enabling and maintaining human rights. In other words, it is instructive in helping us develop answers to the perennial question of how autonomous but interrelated (Martin 2006) individuals and groups of different backgrounds may live and thrive with one another, whether in medieval Andalusia or in a contemporary multicultural society such as Australia.

Secondly, while Menocal puts forth tolerance as a positive quality, this has to be problematised in the context of communal relations. It might very well be a first necessary step towards achieving understanding and equality, but tolerance does imply a negative view of “the other”. Saying “I tolerate you” assumes the power to grant such tolerance and, by implication, also withdraw it should circumstances change. Offord (2007) discusses such ‘pathologies of tolerance’, where certain identities are declared aberrant from and by the dominant norm, which then puts on display its supposed magnanimity, benevolence and generosity in being able to tolerate those. In opposition to this concept of tolerance, the appreciation of diversity as an enriching dimension of all aspects of life might be a more useful way of approaching difference in a given setting. This appreciation requires a suspension of immediate judgment and a fundamental respect for a diversity of viewpoints that does not recognise an a priori ontological hierarchy, but ponders the implications of particular sets of values, ethics and their consequences. This takes up Rigney, Rigney and Worby’s (2001) notion of intellectual sovereignty, which takes the sacredness and a priori right of using one’s own language and philosophy to express one’s own realities as the starting point for exploring contact between groups and individuals.

Finally, the importance of translation in creating a more tolerant society cannot be underestimated. As shown by Menocal, the process of translation makes foreign ideas accessible, opens up vaults of other knowledges and challenges the hegemony of unilateral thinking. Despite competing interests within each sphere, the contrast between the age of translators and the age of empire in terms of the big picture is pertinent here. Whereas translation necessitates interdependency, contingency and relational epistemologies, empire is built on colonial ways of knowing others and projects its will onto other lands and peoples. Having drawn these distinctions, however, it must be said that translation cannot simply be equated with a straightforward process of knowledge transfer from one language to the other, either. As Pannikar (cited in Offord 2003, p.) notes, ‘[t]ranslations are more delicate than heart transplants’ since particular meanings are dependent on context and place, losing their relational quality when generalised and abstracted.
If the cultural processes of translation, even where these are well-intended, are singularly embedded in colonial ways of knowing, ‘epistemic violence’ (McConaghy 2000) that colonises knowledge instead of sharing it will characterise the process. Walker (2003, p. 37) is highly critical of many such processes, particularly within the academy, since they seek to bring about the inclusion of non-Europeans and/or non-European achievements in canonical subject matters, while leaving the methodological and conceptual parameters of the canon itself essentially intact.

In order to proceed ethically, then, we need to not only consider a collaborative and equitable approach to translation more generally, but attempt to establish conceptual and methodological relationships between the various philosophical bases that inform the languages and cultures involved. Importantly, it also means realising that pluralist engagement facilitates changes in each participating entity. As Homi Bhabha (1994, p. 36) put it,

[t]he pact of interpretation is never simply an act of communication between the I and the You designated in the statement. The production of meaning requires that these two places be mobilized in the passage through a Third Space, which represents both the general conditions of language and the specific implication of the utterance in a performative and institutional strategy of which it cannot “in itself” be conscious … And by exploring this Third Space, we may elude the politics of polarity and emerge as the others of ourselves.

Australia, 21st century

How, then, might these considerations be applied to a contemporary multicultural society such as Australia? At the end of the first decade of the twenty-first century, Australia is relatively affluent, although there are extreme socioeconomic inequalities, particularly those faced by many Indigenous people. Culturally, Australia is a diverse nation, home to many migrant communities and boasting a large-scale, skills-based immigration program. This was, of course, not always so. After an openly discriminatory and racist foundation and first half-century of nationhood, which ignored Indigenous sovereignty, denied Indigenous people status as equal citizens and barred non-European migration, it took more than six decades to begin to dismantle the stranglehold of whiteness on Australian society. Particularly through changes in the immigration program post-WWII, migrants from continental Europe and, later, from Asia, Africa and America added to the original Indigenous multiculture and helped to create the extensive cultural diversity found in Australia today.

One of the many ways in which this diversity manifests itself is through language. At the last census, notwithstanding a fairly monolingual colonial history, there were over two hundred languages being spoken in the community (ABS 2008). A sizeable proportion of the population – sixteen per cent or 3.1 million people – spoke a language other than English at home. This is a considerable increase on figures from 1989 (DIAC 1989) which stated that 90 per cent of the Australian adult population only spoke English. As a whole, this linguistic diversity speaks to a vibrant multicultural reality in many parts of the Australian community. However, contrasting this positive trend and clearly underlining the ongoing destructive effects of colonisation, less than one per cent of the population – or about 55,000 people – spoke one of sixty active Indigenous languages (ABS 2008). This figure is a stark reminder of the acute level of Indigenous language deaths and the immediate need for substantial revitalisation programs as part of the reconciliation process.
The overwhelming presence of English

While we may find such an incredible cultural diversity in the community, the Australian education system engages the diverse realities of students in the classroom through a largely monocultural and monolingual school structure, curriculum and pedagogy. What Sleeter (2001) observes in terms of whiteness is equally applicable to linguistic background, where ‘the overwhelming presence’ of English also marginalises other languages and experiences. These visibly “other” experiences are viewed through the lens of a deficit paradigm, which frames them in remedial terms of educational access and participation, rather than valuing and seeking to benefit from the challenges posed and contributions made by LOTE (Language Other Than English) speakers. I suggest that there are three primary reasons why this might be the case.

Firstly and most obviously, Australia colonial history as an outpost of the British Empire meant that English was regarded and enforced as the superior language, while early immigration was directed at maintaining a distinct British identity in the antipodes. The self-image of a European island continent encircled by hostile foreign hordes further contributed to the view that European languages, and in particular English, were the only necessary and “civilised” means of communication.

Secondly, English has become, by way of global colonial history and the recent expansion of global capitalism, the lingua mundi of globalisation. While this continues to cause widespread social, cultural and economic changes for the rest of the world, it also has the profound effect on foreign language capacity in English-speaking countries. Simply speaking, it means that if everyone else is learning your language why bother learning someone else’s? A consequence of this development is a particular blindness towards other worldviews and philosophies, indeed, towards the possibility of there being other valuable systems of thought.

Thirdly and finally, there has also been a particular political neglect of foreign language teaching in Australian schools over the past decade, and perhaps even longer. For example, a recent report from the Department of Education, Employment and Workplace Relations (2007) noted a drop in the percentages of students studying foreign languages Australia-wide from 50.9 per cent in 2001 to 47.5 per cent in 2005, while in New South Wales the numbers dropped from 27.6 per cent to 23 per cent in the same timeframe. In Year 12, the same report notes that only 13 per cent of students studied a foreign language (DEEWR 2007). Looking further afield to tertiary education, the Group of Eight research intensive universities in Australia recently released a report (cited in Rowbotham 2008) which also reports a sharp drop over the past eight years in the number of languages offered at Australian universities from sixty-six to twenty-nine. Overall, the DEEWR report concluded that ‘the rapid decline in language study must be addressed’ (DEEWR 2007, p. 41).

Consequences for developing a culture of translation

What we are faced with, then, is a discrepancy between a growing number of people who speak languages other than English and, at the same time, declining numbers of students learning foreign languages at schools and universities. Without available data on overall foreign language proficiency, we are left to speculate that the 84 per cent of the population that speak English at home are less likely than ten years ago to also speak another language. Why is this important, though, and how is it related to human rights concerns? What is at stake here is the ability to literally hear the other and have conversations across cultures and diverse systems of thought and meaning-making. Having one language instead of many is the hangover of the age of empire, not the foundation for more independent nationhood.
Australia’s lived reality at the intersection of Asia and the Pacific, of Indigenous multicultural and British imperialism, means that the nation is in a complex but fascinating position to potentially transform its monocultural education system to build an integrated, distinctively Australian future.

Conclusion

In order for such a transformation of the Australian education system to happen, we need to rethink language education as a key modality to opening up spaces and practices for human interaction. This goes beyond an instrumentalist view that views foreign language capacity in terms of competitive economic advantage and human capital development. An important human-rights related aspect of learning to speak another language is having to go outside of one’s comfort zone, making oneself vulnerable and being open to different ways of seeing and thinking about life. The element of translation brings to light the peculiarity of the otherwise invisible elements of one’s own language and ways of thinking. As such, it is as important a tool for self-reflection as it is for communication.

With a large part of the population lacking in multilingual ability, a national history characterised by imperial oppression and exclusion, and an imbalanced colonial power structure that privileges particular cultural traditions, the project of developing a culture of translation faces steep hurdles. Not only must a growth in funding for second language programs be accompanied by Indigenous language revitalisation programs as a matter of urgency, but there is also a requirement to consider the methodology and conceptual starting points of such initiatives in order to prevent further epistemic violence. Furthermore, these are just the necessary pre-requisites in order to develop the bigger project, facilitating and nurturing a culture of translation in society more generally.

If the stark logistical reality, including summoning the necessary political will, makes the chances of success for such a project seem remote, it is perhaps instructive to not only consider the example of medieval Andalusia, but also that of pre-invasion Australia. Here, too, we find a manifestation of the age of translators, with hundreds of languages, multilingual inhabitants and autonomous but interrelated peoples. With all of the resources at our disposal today, supporting second language learning and multilingualism, developing innovative educational methodologies, and cultivating respectful translation processes accompanied by power-sharing mechanisms are surely not impossible.

References


Human Rights and Transitional Societies: Contemporary Challenges

Thomas Obel Hansen
Aarhus University

Abstract: This paper will assess how alternative approaches to transitional justice have the potential for overcoming tensions in between human rights standards. A rule in international law prescribing that states have a duty to prosecute gross human rights violations has emerged. Accordingly, transitional societies are said to have an obligation to apply criminal justice in dealing with such past violations. In Rwanda, the transitional government decided to prosecute the perpetrators of the 1994 genocide. As a result of widespread participation in the genocide and a devastated legal sector, difficulties in respecting the rights of the accused arose. A group of paralegals known as the “Corps of Judicial Defenders” was thus relied upon as to provide legal assistance for genocide suspects, but also for civil parties. This paper describes the work of these paralegals relating to the transitional trials, and, more generally, asserts how Judicial Defenders may have contributed to justice in other ways in post conflict Rwanda. The author argues that an efficient transitional justice policy must take sufficiently into account the context of the society in question, and aim at establishing linkages between justice in transitions and justice in the long-term.

Keywords: Transitional justice; Rwanda; Paralegals.

1. Introduction

According to international law there is a duty for states to investigate, prosecute and punish certain grave human rights violations. This duty flows not only from specific treaty law, including the Genocide Convention and the UN Convention against Torture, but also from general human rights conventions, such as the ICCPR, and may be required according to an emerging – or perhaps already existing – rule of customary law. It is the state on which the violations have occurred that is the primary subject of this obligation.

Case law from human rights bodies implies that the duty to prosecute is applicable also to transitional societies emerging out of conflict or authoritarian rule. Even if some scholars argue that the duty to prosecute can be satisfied with procedures that are delayed until the society in question has stabilized, and that there cannot be a duty to prosecute all human rights perpetrators in transitional settings, most agree the obligation is at least in principle applicable (Orentlicher, D.F. (1991) Settling Accounts: The Duty To Prosecute Human Rights Violations of a Prior Regime. The Yale Law Journal, 100 (8), pp. 2537-2615).

On the other hand, transitional societies are according to international law obliged to conduct fair trials and to respect the rights of the accused. Part of that obligation is to provide the defendant with legal counsel.

Obligations to prosecute and obligations to ensure a fair trial may be in tension with one and another in transitional societies. How is it for example possible to provide the defendant with...
legal counsel when alleged perpetrators of the most serious human rights violations are to be count by thousands, or even hundred of thousands? International law seems to offer no easy solutions to this tension.

In Rwanda, observes disagree on the extent of popular participation in the 1994 genocide, but it seems reasonable to hold that a significant proportion of the Hutu majority committed crimes that are punishable with the Genocide Convention. In the aftermath of the genocide virtually no Rwandan lawyers remained in the country. Besides that, the judicial infrastructure was almost completely destroyed. The transitional government, nonetheless, made clear that perpetrators of the genocide were to be prosecuted in Rwandan courts, and prisons were packed with alleged “genocidaires” (Schabas, W.A. (2002) The Rwandan Case: Sometimes It’s Impossible. In Bassiouni, M.C. (ed), Post-Conflict Justice. Transnational Publishers: New York, pp. 499-520). Given these facts, alternatives had to be assessed. A unique solution saw daylight: Paralegals with only limited legal training undertook the task of representing persons accused of participating in the genocide in Rwandan courts.

In this paper I present an overview of the work of these paralegals – the “Judicial Defenders” – and discuss how the creation of a “Corps” not only helped to overcome the above mentioned tension, but also has contributed to justice in other ways.

2. The Corps of Judicial Defenders

2.1. Establishment of the Corps and information campaigns

The Corps of Judicial Defenders (the Corps) was established with Law No. 02/97 of 7/2/1997. According to Article 95 of the law, Judicial Defenders can enter the profession by fulfilling one of the following requirements:

1. Being a former Judicial Defender,
2. Being a former magistrate who do not hold a university degree in law,
3. By holding a bachelors degree in law,
4. By holding a degree in humanities (law and administration), and
5. By holding a six-month training certificate in law.

Judicial Defenders have a wide variety of backgrounds. Some had worked in the legal system before, others were former school teachers, and others again came from the Diaspora. These are merely examples of the diversity that characterizes Judicial Defenders’ background.

Judicial Defenders were only allowed to represent clients in what was then known as “Canton Courts” and “Tribunals of First Instance”. As evident from this limitation, and the entry requirements, Judicial Defenders represent a fusion between the non-professional and the professional lawyer.

The motivations for entering the Corps seem to differ much. Yet, two main reasons are recurring. First, and perhaps most important, the profession of Judicial Defender offered an opportunity to ensure an income. Unemployment was high, and with the support of the Danish Centre for Human Rights (DCHR), Judicial Defenders could maintain an income that was not only relatively high according to Rwandan standards, but one that was also perceived fairly stable. For example a prominent Judicial Defender, who for a period of time was the Syndic of the Corps (the president), recalled: “Frankly speaking, being a student at university, I didn’t have any income, and I had to pay for my family and my graduation fees. I needed some income generation; that is the reason why I joined the Corps” (Interview with
Judicial Defender, Kigali, Rwanda, April 2, 2008). Secondly, many joined the Corps because they felt that this would give them the opportunity to contribute to justice in a country so devastated by years of conflict. Many of the Judicial Defenders I interviewed revealed that they felt justice and peace in Rwanda could only be established if genocide cases were undertaken in a way where both defendants and victims would observe the process as fair and impartial.

The objectives of establishing the Corps and the profession of Judicial Defenders do not follow directly from the law. According to the law, there are no limitations in terms of areas of law with which Judicial Defenders can practice, but – at least with the involvement of the DCHR in the beginning of 1998 – it seems clear that the main purpose of establishing a Corps was to provide legal assistance and representation for genocide defendants and victims of the genocide (The Danish Centre for Human Rights (1999) Information Paper: Legal Counsellors / Judicial Defenders. Copenhagen, p. 3).

The DCHR provided the 6-months’ training programme that would make eligible persons to call themselves Judicial Defenders and enter the Corps. The training was offered to applicants who successfully completed a test. Out of more than 1,000 applicants, 102 students were selected to commence the training programme (The Danish Centre for Human Rights (2000) Mid-Term Evaluation: Judicial Defenders in Rwanda. Copenhagen, p. 5-8). The training consisted of several elements, but there was an emphasis on genocide justice (The Danish Centre for Human Rights (1999) Information Paper: Legal Counsellors / Judicial Defenders. Copenhagen, p. 5-6). As of early 1999, 87 Judicial Defenders had successfully completed the training. Thus, the majority of Judicial Defenders entered the Corps by completing this training programme.11 Due to resistance from a number of stakeholders in the Rwandan legal system, only in late December 1999 did the Judicial Defenders who had received training take their oath that enabled them to represent clients before the courts.

While awaiting this, Judicial Defenders undertook the task of conducting so-called information campaigns. Detainees awaiting their genocide trial were informed of their rights and victims of the genocide were informed of their right to legal representation and compensation. The Organic Law dealing with the genocide was constructed so as defendants received a significant lower sentence if they pleaded guilty and informed the court of co-perpetrators. Some Judicial Defenders explained that they observed it as their main function to inform the accused of these benefits, and to encourage them to come forward and “reveal secrets” (Among others; Interview with Judicial Defender, Kigali, Rwanda, April 24, 2008). That being said, it must be kept in mind that information relating to the forthcoming judicial process was much needed. Many accused were reluctant to accept legal assistance. One Judicial Defender notes: “even the accused, in the beginning, they did not want to get involved in their cases, because … they were somehow closed in their mind, saying that…they are going to kill us all…The DCHR, with the Corps, organized the campaigns, to sensitize both the accused in prisons and the victims, because even the victims were reluctant” (Interview with Judicial Defender, Kigali, Rwanda, March 20, 2008).

Judicial Defenders often observed these information campaigns as serving a dual purpose. Besides informing the public – and in particular, the persons most affected – of legal questions related to genocide justice (awareness raising), it was also perceived as a way of solving a “problem of association”. This problem relates to the circumstance that many Rwandans tended to associate alleged perpetrators or victims with the person representing him or her. So, many Judicial Defenders expressed concern that they were being associated, especially, with the perpetrators of the genocide. One Judicial Defender explains: “As for the
victims…They considered Judicial Defenders as co-perpetrators. There was a need to explain to the communities that the legal assistance in favour of the detainees is fair justice… That is the reason why we had also to carry out information campaigns, sensitization, in the communities; to make people understand that there is also a need to intervene on the side of the accused” (Interview with Judicial Defender, Kigali, Rwanda, April 24, 2008).

2.2. Genocide trials

Judicial Defenders have provided legal representation in 332 genocide trials in Rwanda. More than 5,000 accused and 15,000 victims have been represented by Judicial Defenders (The Danish Centre for Human Rights (2006) Judicial Defenders in Rwanda: Evaluation of the projects. Copenhagen, p. 3). This amounts to the majority of genocide cases before the ordinary courts. In the remaining cases defendants and victims were sometimes represented by foreign lawyers related to Avocats Sans Frontières, or not provided with any legal representation at all. Barristers in Rwanda were generally reluctant to engage themselves in genocide cases, most likely out of fear of the consequences from being involved in this sensitive judicial process.¹²

However, also Judicial Defenders, despite the efforts to solve the problem of association, experienced that providing legal assistance in genocide cases could be a dangerous task. A number of Judicial Defenders explained that they received threats, and were being intimidated because supporters of the genocide ideology were still present in many communities. Also the families of victims of the genocide sometimes proved unwilling to accept that Judicial Defenders “helped the perpetrators”.

Not only did Judicial Defenders experience this resistance towards their work, Judicial Defenders also found the task of representing accused and victims in complicated legal proceedings difficult and confusing. Many had never worked with law before and facing a genocide tribunal was a challenging task. One Judicial Defender says: “in the beginning [of the genocide trials] we didn’t know where and how to start” (Interview with Judicial Defender, Kigali, Rwanda, April 2, 2008).

As no specific surveys of the quality of legal aid in genocide cases have been carried out it is difficult to say anything conclusive about the extent to which Judicial Defenders provided effective defence for accused genocidaires and legal representation for civil parties. The DCHR, in its “end of project evaluation”, concludes that the legal assistance rendered by Judicial Defenders cannot have been poor as “virtually no complaints” were received by the grassroots organization working in the field of genocide justice (The Danish Centre for Human Rights (2006) Judicial Defenders in Rwanda: Evaluation of the projects. Copenhagen, p. 15).

From my interviews with various stakeholders in the Rwandan legal system – including judges; prosecutors; and a representative from the Ministry of Justice – the general view emerges that Judicial Defenders made huge efforts to secure the rights of both accused genocidares and civil parties. One judge from a “Higher Instance Court”, asked what he thought of the quality of legal service in genocide cases, explained that the combination of Judicial Defenders being young; new actors in the legal system; energetic; and poor made them fight to “have a market for themselves”. Efforts to establish such a “market”, he explained, made Judicial Defenders “very serious about their work”. The judge concludes that Judicial Defenders “did more than a good job” providing legal assistance in the genocide cases (Interview with Judge at a Higher Instance Court, Rwanda, April 21, 2008).
Yet, assessing the quality of legal assistance, as such, in the genocide cases is missing the point that the quality of legal assistance is unlikely to have been static. Initially, given the limited legal training of Judicial Defenders – and for a number of Judicial Defenders; the lack of any practical experience in legal proceedings – legal assistance must have been of poorer quality than in later periods where the paralegals had gained experience in working with these cases. Some Judicial Defenders that I interviewed noted that they felt insufficiently trained when the genocide cases started, but with the increasing experience they felt more and more confident doing their job. They also felt that they gained considerable expertise in the field of genocide justice. Some Judicial Defenders held that they were eventually more skilled than barristers holding a law degree (Interview with Judicial Defender, Kigali, Rwanda, March 17, 2008). Interestingly, a representative of the Ministry of Justice shared that view (Interview with representative from the Ministry of Justice, Kigali, Rwanda, March 25, 2008).

Given the different backgrounds of Judicial Defenders, it is, nonetheless, clear that the above observations are merely a general picture, and that significant variations have been present. A prosecutor in Cyangugu was of the opinion that 60-70 % of the Judicial Defenders did “a very good job in the genocide cases”. From that also follows that the remaining 30-40 % were perceived as providing legal representation that was “not very good” (Interview with Prosecutor at Cyangugu Higher Instance Court, Cyangugu, Rwanda, April 23).

The notion of quality is, I believe, relative: What is deemed “good” or “bad” is not determined according to some universal standard. Rather it is ascertained from the context in which the assistance is delivered. So, if stakeholders in the Rwandan legal system are generally positive towards the performance of Judicial Defenders in the Rwandan courts, it does not from that follow that a defendant in a Danish or Australian courtroom would find the assistance sufficient. Nor does it, however, follow that a defendant in a Rwandan court would prefer a foreign lawyer with the finest education to a Judicial Defender. Quality of legal assistance is contextual and depends not only on theoretical training, but also on knowledge of the society in which justice functions. Perhaps it makes more sense to reframe the question of quality to one of satisfaction?

2.3. Access to justice for the poor rural population?

With the suspension of all genocide trials in Rwandan national courts in late 2007, the Judicial Defenders needed to focus on other areas of law if they wished to continue to provide legal assistance – and maintain an income. However, already from the outset – and especially with the temporary stalling of genocide cases in 2003 – many Judicial Defenders worked with “ordinary criminal cases” and civil cases.

Judicial Defenders that I interviewed often observed this as a gradual change in their work that was a natural consequence of the experiences gained in legal proceedings. It was perceived as a way of ensuring income, but also as a way of providing legal assistance to especially the poor rural population. Most Judicial Defenders that I interviewed considered themselves as being sufficiently qualified in other areas of law. This is despite the fact that those who had received training by the DCHR had only obtained little theoretical training in law not relating to genocide justice. Even if many Judicial Defenders have preferences for criminal law – which for obvious reasons is closer related to genocide justice than for example inheritance law – it is clear that Judicial Defenders today work with a wide variety of cases.

In order to understand the present contribution of Judicial Defenders to justice in Rwanda, it is useful briefly to compare the work of these paralegals with the work of barristers. Whereas
both barristers and Judicial Defenders can, in principle, work with all areas of law, only barristers are allowed to plead before the High Court and the Supreme Court. What is more, barristers tend to require a salary that is significantly higher than that of Judicial Defenders. A main difference is also that whereas barristers are mostly based in the capital of Kigali, Judicial Defenders are present all over the country. As of today, Judicial Defenders have cabinets in 12 major towns, covering all provinces of the country. They are in other words familiar with local communities, and of equal importance; the local communities are familiar with the Judicial Defenders.

These two facts support the argument often put forward by Judicial Defenders themselves: They provide affordable access to (formal) justice among poor rural communities. Rwanda is a densely populated country, and the population is mainly agriculturists. A large number – and proportion – of conflicts relate to “land issues”. That is for example disputes between neighbours over ownership of land or inheritance of land. Typically, the rural population cannot afford to pay the fees barristers require for bringing a case to court. Moreover, this poor rural population often lacks knowledge about legal proceedings and their rights.

Judicial Defenders that I interviewed often revealed interest in working with such smaller cases. It seems that some Judicial Defenders provide legal assistance in these cases not only to ensure income, but also because many of them are idealistic (“poor people should also have access to legal assistance”). Sometimes when a Judicial Defender deemed that the client in question had “a good case”, but insufficient means to provide for any meaningful payment, the Judicial Defender would nevertheless take the case. Of course such idealism cannot be generalized to all Judicial Defenders, but from those I interviewed, a significant proportion revealed a rights-orientation that I find rather outstanding.

The above comments could lead to the assumption that the paralegals only work with “small land cases”. It is not so. Many Judicial Defenders compete with barristers for cases that relate to tort law, contract law, criminal law, and so on. My argument is simply that for the large number of conflicts that relate to land issues, Judicial Defenders play an exceptional role, as parties to these conflicts only seldom is in a position to access the formal legal system without the assistance of these paralegals.

2.4. Other contributions to justice in post genocide Rwanda?

Besides providing access to justice for the poor rural population in present day Rwanda, and the enormous task undertaken with assisting and presenting genocide accused and victims before jurisdictions, Judicial Defenders have been involved in a number of other initiatives that have contributed to justice in Rwanda.

With the establishment of community level courts – Gacaca – to which all remaining genocide cases except for those relating to category 1 accused were handed over, the Corps was faced with the question of how to respond to this fundamental change in genocide justice. Judicial Defenders had participated in the drafting of the Organic Law establishing Gacaca, and were therefore familiar with the rules governing the community level justice process to come. The lay judges of Gacaca needed training in essential legal principles and the Organic Law itself. Judicial Defenders agreed in large numbers to provide that. Apparently, the training was deemed “too legal” or too theoretical by Gacaca officials, and the setup was hence modified: Instead of training the lay judges, Judicial Defenders started to train Gacaca instructors, who then were responsible for the training of judges.
In 2003, Rwanda amended its Constitution. *Komite y’Abunzi* – mediation committees at the community level – were introduced. According to the law implementing the constitutional provision, parties to all “smaller” civil and criminal cases are bound to seek mediation before the case can be brought before ordinary courts, and even if the parties cannot reach a settlement, the mediation committees are empowered to make a decision that is binding for the parties.15

Many Judicial Defenders volunteered to undertake the training of mediators. The mediators are people from local communities, mostly not holding any knowledge of legal matters. The training consisted of short seminars, offering the mediators an introduction to basic legal principles and conflict resolution.

Some of the Judicial Defenders I interviewed revealed great enthusiasm for participating in this initiative. One Judicial Defender notes: “I felt that by providing this training, I could contribute to justice in my local community” (Interview with Judicial Defender, Gisenyi, Rwanda, April 28, 2008).

2.5. Sustainability of the efforts?

Already in 2004 it was proposed by the Ministry of Justice to close the Corps. The proposal would seem to have been influenced by the Bar. The Bar had since the establishment of the Corps been opposed to its very existence. It was – and is – argued that Rwanda should have only one bar association. That should be, it is held, a fully professional one. In the opinion of the Bar there is no need for having paralegals working in the justice sector. They are not sufficiently trained – and skilled – to provide legal assistance and representation it is contended. The suggested closure is, according to these arguments, a natural consequence of the professionalization of the justice sector that was commenced in 2003.

The closure of the Corps is, nevertheless, not yet a reality. A law is still being drafted in the Ministry of Justice, and most likely the law will allow for a “transitional period” before Judicial Defenders can no longer represent clients in court.

Some Judicial Defenders have already obtained their law degree and have subsequently joined the Bar. Many are, however, still enrolled at law schools in Rwanda, and if a transitional period of 4-5 years is allowed for – which would seem to be the most likely outcome – most Judicial Defenders would have the possibility of joining the Bar after having obtained their degree.

There is fundamental disagreement as to whether the Corps should be closed. Even given the expected transitional period where the Corps would be “incorporated” into the Bar, the question seems to be: Is Rwanda better served by having only one type of lawyers (fully professional ones), or is there still a need for paralegals to provide legal assistance and representation? Judicial Defenders themselves have different opinions: Some – and for obvious reasons that is mostly those not enrolled at law schools – argue that access to justice will suffer with the closure of the Corps. The argument is first and foremost that those Judicial Defenders who for one reason or another do not obtain a law degree will be excluded from practicing, thus limiting the number of persons eligible to provide legal representation. Another argument is that by “turning the paralegals into barristers”, the ability and willingness to work with small land cases may decrease. That is: Can we expect that a Judicial Defender who has obtained his law degree is willing to continue taking low income cases when he observes his colleagues working with business cases in Kigali living in a comfortable house and driving his own car? It would, in other words, make sense for a
(former) Judicial Defender who has obtained his degree to change his focus of work from small and low income cases to cases that may generate higher income. In my opinion, the legal system in Rwanda – and more importantly; poor Rwandans – are better served with the continued existence of a group of paralegals that can offer inexpensive access to justice.

3. Conclusions

I remain sceptical towards the notion that requirements in international law – for example to prosecute perpetrators of international crimes, and adhere to the full set of fair trial standards – can blindly be transferred to transitional societies dealing with mass atrocities. However, if transitional trials are undertaken, they must aim at providing fair and impartial justice, both to the accused, and to victims of the crimes.

This paper presents a unique approach to legal representation in transitional trials: Paralegals with only limited legal training filled a gap in a devastated legal system, and despite the sensitive nature of the trials they have seemingly been relatively effective in ensuring fundamental rights of their clients. What is more, these paralegals have, I believe, in a number of ways significantly contributed to awareness raising and capacity building of Rwandan justice institutions.

That leads to two key arguments. First, approaches to transitional justice must be contextual. It is necessary to assess the society in question and discuss how different approaches can best fulfil the needs for justice in that particular society. In other words, I think the notion that standards in international law can dictate how transitional societies best deal with past injustices overlooks the fact that we are speaking of societies with different legacies of abuses; different traditions; different political possibilities; and different institutions. Therefore the needs for justice may differ significantly. Relying on paralegals in transitional trials in Rwanda was not only necessary because so few barristers remained in the country, it was also an effective approach to protect fundamental rights and has had positive effects on justice, besides that of genocide justice.

The latter observation supports my second argument. It makes little sense to perceive transitional justice as something isolated from “ordinary justice”. If justice in transitions does not also lead to more sustainable justice it has limited value. That is, transitional justice must have as one of its main objectives to establish sustainable justice. We must examine further how transitional justice can foster justice in the long-term. Although a number of obstacles to the sustainability of the Corps exist, I believe these paralegals illustrate that institutions set up in the context of a transition may serve justice in a manner that reaches beyond that of transitional.

Endnotes

1. Extracts from chapters of the author’s PhD dissertation found the basis of this paper. It is based on field research in Rwanda throughout March-June, 2008.

2. As for general human rights conventions, the ICCPR has been interpreted by the Human Rights Committee to entail an obligation to investigate, prosecute and punish persons found guilty of having committed violations of certain fundamental rights laid down in ICCPR. See UN Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant. 26/05/2004, CCPR/C/21/Rev.1/Add.13, 2004, para. 18. Some scholars argue that the mentioned obligation does also flow from a rule in customary international law. See for example Bassiouni, M.C. (2002). Accountability for Violations of International
Humanitarian Law and Other Serious Violations of Human Rights. In Bassiouni, M. C. (ed), Post-

3. See for example ICCPR, article 14, 3. Derogations may, nonetheless, be made from this provision
"in time of public emergency which threatens the life of the nation and the existence of which is
officially proclaimed, the States Parties to the present Covenant may take measures derogating
from their obligations under the present Covenant to the extent strictly required by the exigencies
of the situation, provided that such measures are not inconsistent with their other obligations
under international law and do not involve discrimination solely on the ground of race, colour,
sex, language, religion or social origin."

4. It is the same law that established the Bar Association in Rwanda.

5. Before the passing of Law No. 02/97 a limited number of Judicial Defenders were already
practicing.

6. Prior to the 2003 reform of the judiciary there was no requirement that magistrates should hold a
university degree.

7. The degree referred to is a secondary school degree.

8. Most Judicial Defenders entered the Corps through this training.

9. After the judicial reform in 2003 the Rwandan judiciary consists of 1) The Supreme Court; 2) The
High Court; 3) Higher Instance Courts; and 4) Lower Instance Courts. Judicial Defenders may
practice in only the latter two levels of the judiciary.

10. The Danish Centre for Human Rights got involved as the main sponsor of the Corps in 1998.

11. Currently 106 Judicial Defenders are members of the Corps. As some Judicial Defenders have
entered the Bar, and others have found jobs in different places of the legal sector or otherwise, the
current number is somewhat smaller than when the Corps was at its peak (131 Judicial
Defenders).

12. This argument is supported by many stakeholders in the Rwandan legal system. For example a
representative from the Ministry of Justice said that often barristers refused to provide
representation in genocide cases, because they were “afraid of risking their lives” (Interview with
representative from the Ministry of Justice, Kigali, Rwanda, March 25, 2008).

13. It is difficult to generalize on how big the difference is: The salary of a Judicial Defender in a
specific case may depend on a number of factors, not least the means of the client. One Judicial
Defender (in Gisenyi) held that the barristers would sometimes charge 5 times the amount of a
Judicial Defender (Interview with Judicial Defender, Gisenyi, Rwanda, April 28, 2008). The more
experienced, or already graduated, Judicial Defenders may, however, (according to themselves)
require salaries similar to those of barristers.

14. Category 1 accused are “The person whose criminal acts or criminal participation place among
planners, organisers, incitators, supervisors and ringleaders of the crime of genocide or crimes
against humanity, together with his or her accomplices”.

15. The expression “smaller” is relative. As a matter of fact, around 70 – 80 % of all cases fall under
the competence of Komit y’Abunzi. For a detailed description of the committees, see my
Jurist – og Økonomforbundets Forlag: Copenhagen (In English: Komite y’Abunzi: Mediation and
access to justice in post conflict Rwanda).
Human rights-based analysis: What, why and how?

Olivia Ball
Monash University

Abstract: However we define a rights-based approach, it’s hard to conceive of it without an analysis of the problem from a human rights perspective. This paper proposes a method of human rights analysis with broad applicability. It incorporates human rights education, identifies the rights, rights values and the actors involved, makes use of indicators and benchmarks, recommends political and budget analysis and risk assessment. Such an analysis should contribute to a well-planned, evidence-based action strategy and assist with evaluation and institutional learning, leading to better outcomes for human rights.

Keywords: Rights-based approaches, indicators, progressive realisation

At first glance, human rights analysis may appear to be an intellectual exercise, a luxury even, but it is a first step to sound and effective human rights practice. A rights-based approach, and therefore human rights analysis, can be applied to almost any social problem (Landman 2006, 130) and the skills involved are an asset to almost any social change movement.

There is no single definition or one way of doing it, but at its heart, a rights-based approach re-frames issues of perceived need, private charity or governmental largesse, to one of entitlement. A needs-based approach alleviates symptoms; a rights-based approach addresses causes, apportions responsibility, builds capacity, operationalizes solutions and monitors outcomes.

In 2005 I co-authored a book on rights-based approaches to development called Reinventing Development? (Gready & Ensor 2005). Chapters were contributed by development practitioners around the world – people from UNICEF, CARE, Oxfam, Save the Children, ActionAid, UNDP, etc.: my role was to draw conclusions from their experience trying to apply rights-based approaches in the field. A common theme that emerged in Reinventing Development? was that a rights-based approach must begin with rights-based analysis. Unfortunately, none of the authors specified what they meant by rights-based analysis or how they did it. This paper proposes a number of features of rights analysis, though not all may be applicable in every situation.

Participation and education

The first consideration when going about a rights analysis is perhaps the hardest part. “It is critical to ask who is performing the analysis, and to strive for genuine participation of affected groups” (Ball 2005, 297). At the very least, the problem should be defined by those affected. The more marginalised the affected groups are, the harder it can be to ensure their effective participation. If, for example, you are defending the rights of people with mental illness, then people with mental illness should perform – or at least participate in – the analysis of their situation. If you work for an organisation that assists homeless people, they need to be involved in the analysis. To forget or exclude those affected is contrary to human rights principles, and potentially patronising, ineffectual and even harmful.
Given this assumption, the first step in performing a human rights analysis may well be human rights education: informing ourselves and others involved in understanding and claiming our human rights. Human rights education is itself a human right and is not widely enjoyed in Australia. Our culture of rights is generally weak and most of us have only a vague idea (or worse, a misconception) of what our rights are and how they work.

**Identifying the rights and values involved**

With or without the aid of human rights education, participants may already have an idea of which particular rights are germane to their situation. Consulting the ten major human rights treaties and their optional protocols, and possibly other norms and jurisdictions, may expand and clarify thinking about applicable rights. For example, considering people with disability and their access to the internet, perhaps the most obvious right is the right to information. On examination of the new *Convention on the Rights of Persons with Disabilities*, it becomes evident that the right to leisure is also at stake, given the leisure uses of the internet; and also the right to work, if one can’t use online employment pages, or if one’s job requires use of the internet, and so forth.

It’s important to think of rights not just as a series of goals or outcomes, however. There are a number of what one might call human rights values or principles that should inform the way we do things. As Ball & Gready (2006, 43) have argued,

“The means by which human rights goals are pursued are just as important as the desired ends. The way an NGO works, or a system of democracy is established, or a trial is conducted will have an impact on the desirability, durability and the legitimacy (and, perhaps, morality) of the outcome. Process and outcome must be congruent. There are a number of human rights values or principles . . . Not a fixed list, these principles include: equality, justice, [freedom], non-discrimination, participation, accountability, transparency, diversity and peace.”

The principle of non-discrimination, for instance, means our analysis should always consider the impact of such things as gender, age, disability, race, religion, sexual orientation, caste and class. Thinking in terms of rights values should aid our analysis of what’s going wrong, as well as inform how we go about effecting social change.

**Indicators & benchmarks**

Having whittled down international law into a list of rights and rights values that have bearing on your situation, their usefulness may be enhanced by corresponding indicators and benchmarks. Human rights indicators offer a snapshot of current human rights performance in a given area. Benchmarks map out a route for improvement.

Indicators are “specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards” (Chairpersons of the UN human rights treaty bodies 2006, para. 7). Indicators rely on the collection of qualitative and quantitative data, which must be disaggregated to reveal variations in human rights performance across such dimensions as gender, class, caste, race and religion. Benchmarks are specific human rights goals with a predetermined value. For example, an indicator might be the proportion of one-year-olds immunized against a particular disease. A benchmark on this indicator may require raising the proportion to ninety percent, or improving the existing coverage by ten percent (Chairpersons of the UN human rights treaty bodies 2006, para. 12). Setting benchmarks
enables planning for progressive realisation of rights and enhances the transparency and accountability of the process.

Depending on what rights you’re looking at, there may be useful indicators already devised by specialized agencies of the UN such as indicators of the right to health (WHO), education (UNESCO), poverty (UNDP), food security (World Food Programme), gender equality (UN Development Fund for Women) and the right to housing (UN Centre for Human Settlements or ‘Habitat’). For example, UN-HABITAT has proposed fifteen indicators of the right to housing (WHO 2004), such as

- number per 1,000 households with potable water
- number per 1,000 households with sanitation facilities
- legislation forbidding discrimination in housing
- legislation recognizing the right to housing

Note that some are quantitative, while others are qualitative. Most often applied to economic, social and cultural rights, indicators are also useful for the progressive realisation of civil and political rights. Civil and political indicators might be: qualitative measures of democratic institutions and popular participation; the administration of justice; the existence and effectiveness of remedies for rights violations; or the number of people in arbitrary detention (Chairpersons of the UN human rights treaty bodies 2000, paras 26 & 27).

Without indicators, benchmarks and monitoring, it is hard to assess whether rights are being met beyond individual cases, or where and how they are being violated. Indicators and benchmarks are useful both in planning and evaluation. They offer guidelines to public policy, a framework for budget analysis, and a way of evaluating our effectiveness.

**Identifying the actors involved**

Identifying victims of rights violations is often straightforward. Pin-pointing those responsible for the abuses may be harder. For every right, there are rights-bearers and duty-holders. Traditionally, the government was viewed as having responsibility to fulfill human rights. Governments retain primary responsibility, but there are many other actors involved, including individuals, non-governmental organisations and the business sector. Human rights analysis will assist us to identify who is responsible for particular violations in any specific situation. They must be identified if rights are to be made meaningful and made real.

For example, the UN Special Rapporteur on the Right to Health, Paul Hunt, makes an impassioned plea for an end to avoidable maternal deaths. “The scale of maternal mortality,” he says, “is catastrophic.”

Every minute a woman dies in childbirth or from complications of pregnancy... well over 500,000 women a year. 95% are in Africa and Asia... This is global health inequality on a shocking scale. For every woman who dies, as many as 30 others suffer chronic illness or disability...

[If] avoidable mortality is a violation of the right to health, who is the violator? This is an important question raising important issues... [T]here might be many with some responsibility for avoidable maternal mortality. Perhaps the family or community who discouraged the woman from seeking timely and appropriate medical help. Perhaps the health facility for not having the necessary care package, because of its own mismanagement, even corruption. Perhaps the government for providing insufficient funds. Perhaps the international community for providing a developing country with inadequate technical or financial assistance. And so on.
Beyond rights-bearers and duty-holders, there will inevitably be other actors relevant to our analysis. They might be stakeholders with an interest in change or the status quo. They might be in control of funds or other resources (see ‘political analysis’ below). We should consider the entire landscape of actors with a bearing on the situation.

**Political analysis**

The interdependence and indivisibility of human rights describe the complex web of interconnections between rights in the real world. A violation may be caused by – or the cause of – other violations. Duty-holders may be impeded in fulfilling their obligations because of shortfalls in their own enjoyment of rights. For example, teachers may not show up for class if they have not been paid. They are failing in their obligations to their students’ right to education, because their labour rights are being abused. We could then ask, why are they not being paid? Is the school lacking in capacity or are there failures further up the line? To gain an accurate picture of a human rights issue, we must consider underlying causes of rights violations and what other rights issues may form part of this web.

Having identified all the actors involved – state, non-state, individuals and corporate entities – and apportioned their roles as rights-bearers, duty-holders, both or perhaps neither, it will become evident that unequal power relations connect the different parties in our analysis. A human rights-based approach will acknowledge the rights of all parties while siding with the victims. A human rights stance is therefore inevitably political and, in this sense, partial. A human rights analysis will attempt to map how resources and power are allocated and used (Ball & Gready 2006, 108). It asks, who has a vested interest in change versus the status-quo? It may uncover existing accountability structures and seek to identify political processes available for claiming rights, in contrast or perhaps in addition to legal processes such as international human rights mechanisms and domestic remedies.

**Budget analysis**

Further, “we need to be able to analyze budgets and to identify which trade-offs are permissible and impermissible in international human rights law” (Hunt 2004). State and non-state entities (including, perhaps, one’s own organisation) may be made more accountable and more effective by means of budget analysis. It is a tool for advocacy, policy-making and evaluation.

It is an oft repeated falsehood that only economic, social and cultural rights are resource-intensive and require progressive realisation. All rights have components that require progressive realisation and all impose positive and negative obligations (Leckie 1998, 89). The formula requiring the state to respect, protect and fulfil our rights encapsulates these dimensions: governments must refrain from actively violating our rights (the immediate, negative aspect); they must act to prevent violations by third parties (say, by regulating the activities of trans-national corporations); and they must “take appropriate legislative, administrative, budgetary, judicial and other measures” to attain the most rapid enjoyment of rights for all (Maastricht Guidelines 1997, para. 6). Even negative obligations – say, to refrain from torture – may have budget implications, since torture is prevented through training and monitoring.
The doctrine of progressive realisation obliges states to “take steps . . . to the maximum of [their] available resources, with a view to achieving progressively the full realisation of the rights” (ICESCR Art 2(1), emphasis added). As a consequence, those of us holding governments to account might undertake budget analysis to determine the resources of a given government and, moreover, to advocate for how public funds ought to be spent.

To give an example: in 1997 the Constitutional Court of South Africa found in favour of a hospital that refused dialysis treatment to a man with chronic renal failure. He claimed the hospital was violating his right to life, but the Court felt that to provide dialysis in this instance would make it impossible for the state to fulfil its other right-to-health obligations. The appellant, Mr Soobramoney, died two days after the ruling, aged 41. The Court evidently assessed this ‘trade-off’ as permissible. The president of the Court said, “The hard and unpalatable fact is that if the appellant were a wealthy man, he would be able to procure such treatment from private sources; he is not, and has to look to the state to provide him with treatment.” (Constitutional Court of South Africa 1997, para. 31)

There is a moral and legal obligation on every state to apportion its budget with due consideration to human rights. I would like to think that instead of having to choose between treating this patient or that patient, we can assess a nation’s budget as a whole, and determine that more should be spent on health and less on, say, cluster bombs.

Budget analysis is one way of assessing progressive realisation. Indicators and benchmarks are another. The social sciences offer a further suite of techniques to assist with the often complex task of ‘measuring’ human rights performance (see, for example, Landman 2006).

Assessing risk, taking action

Because human rights challenge power-holders of various kinds, they ruffle feathers. It is both prudent and responsible to consider what risks a rights-based approach may pose to yourself, your staff, the rights-bearers in question, third parties, and potential risks to your future income and viability, perhaps, if donors are put off-side. These risks must then be compared with the risks involved in taking no action, or perhaps some different approach.

Time constraints limit this paper to a discussion of rights analysis only, and cannot examine advocacy methods and strategy. However, a considered rights analysis can form the basis for well-planned, evidence-based action strategy, and a baseline for its evaluation, that will ultimately provide for better outcomes.

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Human Rights, Indigenous Rights and Reconciliation in Australia

Andrew Gunstone
Monash University

Abstract: In this paper, I analyse the formal documents of reconciliation produced by the Council for Aboriginal Reconciliation at the conclusion of the formal Australian reconciliation process in 2000. These documents were the Australian Declaration towards Reconciliation and the Roadmap for Reconciliation. In particular, I argue that these documents of reconciliation largely failed to substantially recognise and address Indigenous people’s Indigenous rights. Unlike human rights, which are universal for all human beings, Indigenous rights are those rights possessed by Indigenous peoples in Australia by virtue of them being the original inhabitants and continuing sovereign owners of this continent. I conclude this paper by arguing the need for formal documents of reconciliation and a substantial reconciliation process that genuinely recognises, addresses and protects both the human rights and the Indigenous rights of Indigenous peoples in Australia.

Keywords: Human rights, Indigenous rights, reconciliation

Introduction

In 1991, the Australian Parliament unanimously passed the Council for Aboriginal Reconciliation Act 1991 (CAR Act) which instituted a ten-year process of reconciliation. The aim of this process was to reconcile Indigenous and non-Indigenous peoples by the centenary of Australia’s federation in 2001. The process was facilitated by the Council for Aboriginal Reconciliation (CAR). One of the main goals of this process was to investigate the desirability of developing a formal document of reconciliation, and, if considered desirable, to advise on the content of the document (CAR Act 1991: 3-4).

In this paper, I examine the formal documents of reconciliation produced by CAR and presented to the Australian community at Corroboree 2000. These documents were the Australian Declaration towards Reconciliation and the Roadmap for Reconciliation. I argue that these documents of reconciliation generally did not substantially recognise and address the Indigenous rights of Indigenous people. In discussing these documents, it is important to note that there is a fundamental difference in the meanings of human rights and Indigenous rights. Although there are many different definitions and interpretations of human rights, a common element is that human rights are universal to all human beings. Bailey (1990: 2) argues the “universality of human rights”. Behrendt (2001: 4) states “we all hold these rights by virtue of being human”. Similarly, Piotrowicz and Kaye (2000: 3) argue that “all individuals receive the benefit of human rights, simply by virtue of their membership of the human species”. In contrast, Indigenous rights – such as sovereignty, a treaty, self-determination and land rights – are applicable only to Indigenous people because of their status as the original and continuing sovereign owners of this continent. After discussing the documents, I conclude this paper by arguing that a genuinely substantive reconciliation process needs to occur in Australia that would produce documents of reconciliation that
would recognise, address and protect both the human rights and the Indigenous rights of Indigenous peoples.

Documents of reconciliation and Indigenous rights

On 3 June 1999, CAR released its Draft Document for Reconciliation (CAR 1999). This contained the Draft Declaration for Reconciliation and the National Strategies to Advance Reconciliation. CAR stated that it would widely consult with the Australian community about their documents and would incorporate any feedback into a final document for reconciliation that would be presented to the Australian peoples in May 2000 (CAR 1999: 4).

Several Indigenous leaders were concerned at the failure of the Draft Document for Reconciliation to specifically mention Indigenous rights. Geoff Clark, then Chairperson of the Aboriginal and Torres Strait Islander Commission (ATSIC), argued that any document of reconciliation should be a formal agreement between Indigenous people and Australian Governments at the Commonwealth and State levels (Clark 2000: 233). Clark argued that such an agreement should address several key issues such as the structural relationship between Indigenous people and the Australian state, self-determination, land issues, stolen generations (including an apology and compensation), protection from racial discrimination, customary law, the provision of an independent economic base for Indigenous people and a treaty (Clark 2000: 233). Similarly, Pat Dodson, previous Chairperson of CAR, argued that there needed to be a “formal document that recognises and guarantees the rights of indigenous Australians within the Australian Constitution” (Dodson 2000: 269). Dodson envisaged this document would “provide substantial reconciliation” by addressing issues such as: equal human rights and specific Indigenous rights; rights of Indigenous people to maintain their distinct characteristics, identities, laws, cultures, spiritual traditions and languages; the right of Indigenous self-determination; Indigenous control over economic and social development; Indigenous ownership of land and resources and just compensation for land that can not be returned; the right of Indigenous self-government; constitutional recognition; and the enacting of treaties (Dodson 2000: 270-273). In 1999, Gatjil Djerrkura, then Chairperson of ATSIC, also expressed his concerns with the Draft Document for Reconciliation:

I am pessimistic about the prospects of any document which fails squarely to recognise the principle of self-determination gaining support amongst indigenous constituencies. Further, a significant proportion of Aboriginal people in my country continue to assert our unextinguished sovereignty. It is reasonably clear that indigenous people will not agree to any document or documents of reconciliation which compromise these assertions of sovereignty … indigenous Australians are unlikely to conclude that the Draft Declaration represents an accurate reflection of our actual aspirations and entitlements (Djerrkura 1999: 6-7).

This concern amongst several Indigenous leaders that any document of reconciliation should incorporate Indigenous rights was again illustrated following the release of the proposed Constitutional Preamble by the Howard Government as part of the November 6, 1999 Constitutional Referendum. Although CAR saw this proposed Preamble as a possibility for a document of reconciliation and “a definite step forward for reconciliation” (CAR 1997: 4; Scott 1999: 17), a number of Indigenous leaders argued that the Preamble “fails to recognise the inherent and distinct rights of the first nations which have been recognised by the High Court” (Agius et al. 1999: 15; see also Mansell 1999: 18). Consequently, a meeting of Indigenous leaders unanimously recommended that the “question on the draft preamble to the Australian Constitution should be dropped from the forthcoming Republic referendum” (Agius et al. 1999: 15). Pat Dodson, who was involved in this meeting, later argued that “all
Australians should reject any preamble to our national Constitution that denies the true status of indigenous Australians as the custodians and owners of the land, and suggests that we are nothing more than gardeners at the station homestead” (Dodson 2000: 270).

It is important to note that these arguments from Indigenous leaders were not simply a specific rejection of the proposed Preamble, but were also articulating their concern about the type of content contained in the Preamble. The criticism from Indigenous leaders concerning the absence of discussion of Indigenous rights in the Preamble strongly illustrated that these leaders would want any document of reconciliation developed by CAR to incorporate Indigenous rights.

At the end of their nine-month process of consultation concerning the Draft Document for Reconciliation, CAR developed their final document of reconciliation. To commemorate the occasion, a two-day event entitled Corroboree 2000 was held from 27 to 28 May 2000 at the Sydney Opera House. On the first day of Corroboree 2000, CAR unveiled their Documents for Reconciliation to the Australian public. These documents consisted of the Australian Declaration towards Reconciliation and the Roadmap for Reconciliation (CAR 2000c; CAR 2000b).

CAR intended the Australian Declaration towards Reconciliation to be an “aspirational statement” which would be embraced by non-Indigenous and Indigenous people (CAR 2000a: 71). The word ‘towards’ was included in the title of this final version as CAR acknowledged that “reconciliation had to be an ongoing process” (Sanders 2002: 10; CAR 2000c: 2). The wording of this final version (CAR 2000c: 3) was:

**Australian Declaration towards Reconciliation**

We, the peoples of Australia, of many origins as we are, make a commitment to go on together in a spirit of reconciliation.

We value the unique status of Aboriginal and Torres Strait Islander peoples as the original owners and custodians of lands and waters.

We recognise this land and its waters were settled as colonies without treaty or consent.

Reaffirming the human rights of all Australians, we respect and recognise continuing customary laws, beliefs and traditions.

Through understanding the spiritual relationship between the land and its first peoples, we share our future and live in harmony.

Our nation must have the courage to own the truth, to heal the wounds of its past so that we can move on together at peace with ourselves.

Reconciliation must live in the hearts and minds of all Australians. Many steps have been taken, many steps remain as we learn our shared histories.

As we walk the journey of healing, one part of the nation apologises and expresses its sorrow and sincere regret for the injustices of the past, so the other part accepts the apologies and forgives.

We desire a future where all Australians enjoy their rights, accept their responsibilities, and have the opportunity to achieve their full potential.

And so, we pledge ourselves to stop injustice, overcome disadvantage, and respect that Aboriginal and Torres Strait Islander peoples have the right to self-determination within the life of the nation.

Our hope is for a united Australia that respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all.

The Australian Declaration towards Reconciliation contained no substantive commitments to address Indigenous rights, such as land rights, a treaty or sovereignty, despite the arguments of a number of Indigenous leaders, including Dodson, Clark and Djerrkura, that were
articulated following the release of the Draft Document for Reconciliation (Nettheim 2000: 63). Further, the Australian Declaration towards Reconciliation was nationalist, containing phrases such as “we, the peoples of Australia”, “go on together”, “we share our future and live in harmony”, “move on together” and “united Australia” (CAR 2000c: 3). Also, while the term “self-determination” was used in the Australian Declaration towards Reconciliation, it was coupled with the phrase “within the life of the nation” (CAR 2000c: 3). As Monk (2001: 22) argued, the term “self-determination, whilst upheld in the Declaration Towards Reconciliation, was not part of the process of arriving at a document, and has largely been included as a political catch-phrase”. Finally, the Australian Declaration towards Reconciliation contained a conditional apology. Rather than unambiguously and unconditionally offering an apology to Indigenous people, it merely stated that as “one part” of the nation apologises, another “part accepts the apologies and forgives” (CAR 2000c: 3). This conditional apology does not belong to a substantial reconciliation process; it fell well short of a genuine apology offered with no conditional expectations that the offended party shall automatically forgive the offender (see Gaita 2000: 286). Overall, the Australian Declaration towards Reconciliation was far removed from what Indigenous people were advocating both before and during the reconciliation process.

As well as the Australian Declaration towards Reconciliation, CAR presented another document at Corroboree 2000 entitled the Roadmap for Reconciliation. The Roadmap for Reconciliation outlined four national strategies “identifying ways governments, community groups, organisations and individuals can implement the principles of the Declaration to help improve the lives of Aboriginal and Torres Strait Islander peoples and achieve reconciliation” (CAR 2000a: 71). These strategies were: the National Strategy to Sustain the Reconciliation Process, the National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights, the National Strategy to Overcome Disadvantage and the National Strategy for Economic Independence (CAR 2000b). As with the Australian Declaration towards Reconciliation, the Roadmap for Reconciliation also failed to address many of the Indigenous rights that Indigenous people had long been advocating, both from within and from outside the formal reconciliation process.

The National Strategy to Sustain the Reconciliation Process proposed a number of actions. These included: encouraging leadership from governments, businesses, community groups and reconciliation groups for the Australian reconciliation process; establishing a foundation, Reconciliation Australia, to continue CAR’s national leadership of the reconciliation process; addressing the “low level” of Indigenous representation in State, Territory and Commonwealth Parliaments; educating the Australian community about racism and the history of race relations; establishing and promoting symbols of reconciliation; and passing formal motions of support for the Documents for Reconciliation by all levels of Government (CAR 2000b: 2). Of all the actions listed in this Strategy, the only one that looked at Indigenous rights and power relationships, rather than simply focussing on educating people and improving relationships, was the action that called on political parties and parliaments to address the low numbers of Indigenous people in Australian Parliaments (CAR 2000b: 2). However, even this action was inadequate as it did not discuss several possibilities for achieving this increased representation, such as reserving seats for Indigenous people. Nor were these issues outlined in the strategy on Indigenous rights, despite an earlier draft on Indigenous rights stating that the final form “will propose strategies for increased representation in all parliaments” (CAR 1999a: 4).

The National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights also proposed a number of actions. These included: encouraging governments, media
and Indigenous organisations to foster awareness amongst the Australian community of the distinct “cultures, rights and status” of Indigenous peoples as the “first peoples”; governments recognising and protecting Indigenous intellectual property rights and observing Australia’s international Indigenous and human rights obligations; governments consider incorporating Indigenous customary laws in sentencing; governments enacting legislation on “Indigenous rights, self-determination within the life of the nation and constitutional reform”, including preparing a new preamble to the Constitution acknowledging the status “of the first Australians”, removing section 25 of the Constitution and introducing a new section that prohibits racial discrimination (CAR 2000b: 3). Although the emphasis in this strategy was on educating the Australian community about Indigenous rights and developing legislation for Indigenous rights, the only rights the strategy articulated were intellectual property, the possible recognition of customary laws and a limited notion of self-determination. Indigenous rights that Indigenous people had long been advocating, such as sovereignty, genuine self-determination, land rights and a treaty, were all ignored in this strategy.

The National Strategy to Overcome Disadvantage argued socio-economic conditions for Indigenous people in education, employment, health, housing and law needed to be “similar” to the wider Australian community and Indigenous people should not lose their cultural identity in this process (CAR 2000b: 5). Further, the strategy argued that actions to achieve this should include: the Council of Australian Governments (COAG) establishing national benchmarks for addressing Indigenous socio-economic disadvantage and reporting annually on these; the Human Rights and Equal Opportunity Commission and ATSIC reporting every five years on Indigenous socio-economic disadvantage; peak business and community organisations committing to reduce disadvantage; local Indigenous people developing and delivering services; service providers, ATSIC, governments and the wider community eliminating systemic racism; governments developing flexible and appropriate funding arrangements; and increasing responsibility for Indigenous individuals and communities to address Indigenous conditions (CAR 2000b: 5). These suggested actions predominately focussed on addressing Indigenous socio-economic disadvantage and ignored issues such as Indigenous rights and power relationships. Further, the analysis of Indigenous disadvantage concentrated on socio-economic conditions of health, education, housing, employment and law, rather than looking at broader issues of justice such as land rights.

The National Strategy for Economic Independence promoted the need for Indigenous people to “have the same levels of economic independence as the wider community” (CAR 2000b: 6). This was to be achieved through such actions as: employers developing strategies to employ and train more Indigenous people; financial institutions initiating “culturally-responsive” banking systems; governments recognising Indigenous intellectual property; ATSIC, governments and businesses developing appropriate business opportunities through partnerships and research; developing partnerships between Indigenous families and education providers to improve Indigenous people’s education and employment opportunities; and implementing partnerships between Indigenous communities, education providers and financial institutions to assist the financial skills of Indigenous people (CAR 2000b: 6). As with the previous strategy, this strategy was mainly concerned with improving Indigenous socio-economic conditions. It proposed actions in the areas of employment, education, banking and business. However, with two exceptions, there were no references amongst these actions to issues such as power relationships, specific Indigenous rights and racism within the business, education and employment sectors. These exceptions were the suggestion to protect Indigenous intellectual property and an acknowledgement that one strategy would not be appropriate for all Indigenous peoples, as some communities would prefer their own traditional economy.
Conclusion

In this paper, I examined the formal documents of reconciliation – the *Australian Declaration towards Reconciliation* and the *Roadmap for Reconciliation* – that were developed by CAR and presented at Corroboree 2000. I argued that neither of these documents of reconciliation substantially recognised and addressed many Indigenous rights – such as sovereignty, a treaty, self-determination and land rights – that had long been advocated by Indigenous people, both prior to and during the formal ten-year reconciliation process. Further, any rights that were discussed in the formal documents of reconciliation predominantly focussed on human rights that all Australian citizens would be entitled to. Thus, in discussing the development of the *Australian Declaration towards Reconciliation*, the Deputy Chairperson of CAR, Gustav Nossal, restricted his comments on Indigenous rights to simply arguing for “the principle that all Australians should share equal rights and responsibilities as citizens” (Nossal 2000: 301). This view illustrated Gale’s (2001: 129) argument that “the main characteristics of the discourse on reconciliation is that there is an emphasis on the rights of Aboriginal and Torres Strait Islander people as Australian citizens”.

The failure of CAR to adequately recognise and address Indigenous rights ensured that their overall goal of developing a document of reconciliation was less successful than it could have been as CAR generally failed to listen to the concerns of a number of Indigenous leaders (Gunstone 2007: 300). Further, this failure to address Indigenous rights ensured that the documents of reconciliation did not contribute to a substantive reconciliation process. Such a process would address, recognise and protect Indigenous rights and address existing power relationships, such as the low Indigenous representation in Australian parliaments and the lack of a national Indigenous representative body. This process needs to occur in Australia in order for Indigenous people to finally have not only their human rights but also their Indigenous rights recognised, addressed and protected. Despite Prime Minister Rudd’s apology to the stolen generations on 13 February 2008, the current approach to Indigenous Affairs by the Rudd Government, which includes refusing to compensate the stolen generations, maintaining the Northern Territory Intervention and failing to ratify the *United Nations Declaration on the Rights of Indigenous Peoples*, does not provide much hope that such a substantive reconciliation process will occur in the near future.

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Impact of Human Rights Protection in India and Lessons for Australia

Satyaveer Singh
NALSAR University of Law, Hyderabad

Abstract: The Constitution of India is arguably one of the most rights-based constitutions in the world. Drafted around the same time as the Universal Declaration of Human Rights (1948), the Indian Constitution captures the essence of human rights in its Preamble, and the sections on Fundamental Rights and the Directive Principles of State Policy. In India most of the human rights have been incorporated in the Constitution as Fundamental Rights. Fundamental Rights are justiciable and can be enforced through courts. Fundamental rights, then, are above all other laws.

The purpose of this research paper is to bring out the main aspects of human rights protection available in India followed by historical background of such legal protection. An analysis of how these protections have made an impact on the Indian political and legal system follows, and then finally suggestions are made of what, if anything, Australia can learn from the Indian system.

Keywords: Constitutional Protection, Human Rights, Comparative Analysis

The Main Aspects of Human Rights Legal Protection Found In India

Articles 12 to 35 of the Indian Constitution pertain to the fundamental rights of the people. The Fundamental Rights are embodied in Part III of the constitution, and guarantee civil liberties such that all Indians can lead their lives in peace as citizens of India. The six fundamental rights are: the right to equality comprising Articles 14 to 18, the right to freedom comprising Articles 19 to 22, the right against exploitation comprising Articles 23 and 24, the right to freedom of religion is guaranteed by Articles 25 to 28, cultural and educational rights are guaranteed by Articles 29 and 30, and the right to constitutional remedies is secured by Articles 32 to 35.

The right to equality is one of the magnificent corner stones of Indian democracy. Article 14 outlaws discrimination in a general way and guarantees equality before law to all persons. Article 15 prohibits discrimination against citizens on such specific grounds as religion, race, caste, sex or place of birth. Article 16 guarantees equality of opportunity in matters of public employment and Article 17 abolishes untouchability. The right to equality has been declared by the Supreme Court as the basic structure of the constitution. This means neither parliament nor any state can transgress the principle of equality. This principle was recently reiterated by the Supreme Court in Badappanavar v. State of Karnataka in the following words:

Equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be a violation of the basic structure of the Constitution of India.”
The Right to freedom is stated in Articles 19, 20, 21 and 22 with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. Clause (a) to (g) of Article 19 guarantees the citizens of India six freedoms. The right to freedom encompasses the freedom of expression, the freedom to assemble peacefully without arms, the freedom to form associations and unions, the freedom to move freely and settle in any part of the territory of India and the freedom to practice any profession. However these freedoms are not absolute and restrictions can be imposed on all these freedoms in the interest of security, decency and morality. Article 20 of the Constitution of India deals with protection in respect of conviction for offences. Article 20(1) provides the necessary protection against an *ex post facto law*; meaning that a law enacted after an act and which was not an offence when the act was done, will not make the person liable for being convicted under it. Article 20(2) incorporates within its scope the plea of *autrefois convict*, as it is known to British jurisprudence, or double jeopardy as it is known to the American Constitution.

Article 21 of the Constitution of India says that no person shall be deprived of his life and personal liberty except by procedures established by law. It would not be inappropriate to say that Article 21 is the heart of the Fundamental Rights and the scope of Article 21 has been extended to a great extent as the Supreme Court has continued to read many other rights into the ambit of Article 21. This expanded scope of Article 21 has been explained by the Apex Court in the case of *Unni Krishnan v. State of Andhra Pradesh* with the Apex Court itself providing a list of some of the rights covered under Article 21: the right to go abroad, the right to privacy, the right against solitary confinement, the right against hand cufing, the right against delayed execution, the right to shelter, the right against custodial death, the right against public hanging, and the right to doctors assistance. Apart from these mentioned rights, there are more rights which have been included in Article 21 by the Supreme Court after this case such as the right to a livelihood amongst others. Article 22 of the Indian Constitution guarantees the minimum rights which any person who is arrested will enjoy, including information about the grounds of arrest, the right to consult a lawyer, the production of the arrested person in front of magistrate, and that no person may be detained in the custody beyond 24 hours without the authority of the magistrate.

The right against exploitation, given in Articles 23 and 24 provides for the abolition of human trafficking and the abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. The right to freedom of religion is covered in Articles 25, 26, 27 and 28 which provides religious freedom to all citizens and preserves the principle of secularism in India. According to the constitution, all religions are equal before the State. Citizens are free to preach, practice and propagate any religion of their choice. Articles 29 and 30 protect and guarantee certain cultural and educational rights to various cultural, religious and linguistic minorities located in India. Article 32 to 35 provides the right to constitutional remedies which empowers the citizens to approach a court of law to appeal against any denial of the Fundamental Rights. The Fundamental Rights would have been worth nothing had the constitution not provided an effective mechanism for their enforcement under these articles.

Apart from all these rights the right to property was also originally included in the Fundamental Rights, however, the Forty-fourth Amendment passed in 1978, revised the status of property rights by stating that "[n]o person shall be deprived of his property save by authority of law." So what was a fundamental right now only has the status of a legal right under Article 300A of Constitution.
Historical Background and Reasons For the development of the Fundamental Rights

The idea of guaranteeing human rights to Indians did not sprout in the minds of the founding fathers on the eve of independence. Indeed, a great patriot, Lokmanya B. Tilak, declared in 1895 to the British government, “freedom is my birthright and I shall have it”. Since then the demand for fundamental rights, in freedom struggles, became an important issue.

A few good reasons made the enunciation of the Fundamental Rights in the Constitution of India rather inevitable. The first reason was that the main political party, the Congress Party, had been demanding these rights against the British rule for a long time. Therefore, the framers of the Constitution, many of whom have suffered long incarceration during the British regime, had a very positive attitude towards these rights. Secondly, Indian society was fragmented into many religious, cultural and linguistic groups and it was necessary to declare Fundamental Rights to give to the people a sense of security and confidence. Thirdly, it was thought necessary that people should have some rights which may be enforced against the government which may at times act arbitrarily and outside the law. Though democracy was being introduced in India, democratic traditions were lacking, and there was a danger that the majority in the legislature may enact laws which may be oppressive to individuals or minority groups. Such a danger could be minimized by having a Bill of Rights in the Constitution.

The freedom struggle itself was informed by the many movements for social reform, against oppressive social practices such as sati (the practice of the wife following her dead husband onto the funeral pyre), child marriage, and untouchability. Thus by the mid-1920s, the Indian National Congress Party had already adopted most of the civil and political rights in its agenda. Apart from above mentioned reasons, the development of constitutional rights in India was also inspired by historical documents such as England's Bill of Rights (1689), the United States Bill of Rights (1791) and France's Declaration of the Rights of Man (1789) and most importantly by the Universal Declaration of Human Rights (1948).

All these events and reasons inspired the Constitution makers to include the most cherished rights in the Constitution, so as to minimize social historical wrongs and to give assured protection to all citizens of India.

Impact of the Fundamental Rights on the Indian Legal System

The Fundamental Rights contained in the Part III of the Constitution have had a profound impact on the legal and political system in India. The presence of the amending power in Article 368 became a source of continuing conflict between the Parliament and the Supreme Court. In the first phase of Constitutional interpretation from 1950 to 1967, the Supreme Court advocated an unlimited amending power of the Parliament, which included even the fundamental rights. In 1967, the Supreme Court in \textit{I.C. Golak Nath v. State of Punjab} reversed the law and held that Article 368 only provides a procedure and not a power to amend. Furthermore, the Court held that the fundamental rights are unamendable. Jurists criticized the decision in Golak Nath as a political decision not based on the true interpretation of the Constitution. The tussle between the Parliament and the Supreme Court with respect to fundamental rights came to a conclusive finale with the decision of a 13-judge bench in \textit{Keshavananda Bharati v. State of Kerala} wherein the Supreme Court overruled \textit{Golak Nath} and held that even the fundamental rights could be amended subject to the basic structure of the Constitution. The determination of what exactly constitutes basic structure is something for the Supreme Court to decide but certain features of the Indian Constitution
such as secularism, parliamentary democracy, and the separation of powers have been held to constitute the basic structure. According to Professor B. Errabbi, the basic structure doctrine is one of the most powerful tools of modern constitutionalism in the world, which guarantees that the fundamental rights of the citizens would not be trampled over by the political system. The doctrine of basic structure has not only become a firm component of Indian jurisprudence but has also been adopted in the constitutional law of other South Asian countries such as Bangladesh, Pakistan and Nepal. The advent of the human rights protection has made the legal and political system in India stronger than ever before.

Lessons Which Australia Can Learn From the Indian Constitution

The protection of the human person and its fundamental rights is the ultimate purpose of all law, national and international. The Supreme Court of India once observed that the purpose of enumerating Fundamental Rights in the Constitution

is to safeguard the basic human rights from the impacts of political controversy and to place them beyond the reach of the political parties who, by virtue of their majority, may come to form the government at the centre or in the state.”

Hence, in a democracy these rights are a political technique of placing certain civilisational values as restrictions on majoritarian whims and fancies. A democracy without respect for pluralism, based on majoritarianism is bound to collapse into elective despotism. Hence, fundamental rights are adopted by certain nations in their constitutions to place certain basic, inalienable and inherent individual rights beyond the reach of an amoral majority. The Fundamental Rights in India, apart from guaranteeing certain basic civil rights and freedoms to all, also fulfill the important function of giving a few safeguards to minorities, outlawing discrimination and protecting religious freedom and cultural rights. These fundamental rights are meant to be the safeguards of basic human rights protection to all. To ensure this basic protection, the Supreme Court of India, in the case of *S P Gupta v Union of India* came up with a concept of Public Interest Litigation, where any bonafide citizen of the country can go to the court where there is a case of violation of the Fundamental Rights, even though he or she is not a party to the violation of rights. This has been admired by the Australian Justice Michael Kirby in a recent article, in which he expressed a desire to have such a provision in the Australian Constitution which is not as advanced in this area.

On the other hand, Australia is the only western country which does not have a Bill of Rights. However, it has signed all five international treaties that make up the International Bill of Human Rights, but none of these treaties are legally binding in Australia. This means that the fundamental rights and freedoms of everyone living in Australia are not protected by the law. For example, the law does not fully protect freedom of religion or freedom of speech and it has also been found by the United Nations Human Rights Committee that since 1990 Australia has breached fundamental human rights of the people who live in Australia in seventeen cases.

While Australia does not have a concept of fundamental rights, some rights have been provided in Constitution. The scheme of these rights, however, is neither clear nor satisfactory because it is largely unknown to Australian citizens. Therefore it is definitely worth having a particular set of fundamental rights, like India, so that people would be aware about these rights.
In Australia, those who are opposed to a Bill of Rights primarily rely on Australia’s tradition of parliamentary responsible government and the common law, its British inheritance. The argument related to common law traditions is that Britain has deep-rooted democratic traditions. These conditions do not prevail in Australia which is diverse and multicultural and hence faces different problems from those of Britain. Moreover, customs and traditions do not provide fundamental rights the same protection as their importance deserves. Hence, the British model cannot be duplicated blindly in Australia. Even in Britain, there is an ever-growing realization of the utility of a Bill of Rights.

In support of my argument that Australia should have a charter of rights, I would like to quote Justice Michael Kirby: “such a charter is needed not to diminish our parliaments but to make them more responsive to the basic wrongs that today are ignored or neglected”.15

Endnotes

3. Article 19(2), Constitution of India
5. AIR 1993 SC 2178
Inner Sentence: Denying Identity through Vision and Voice

Natasha Carrington
Monash University

Abstract: In our society we recognise that prisons function as institutions capable of safely detaining people for punishment and rehabilitation. This research asked if this is how prisoners experience it and how art can expose their subjective condition? I have undertaken a number of interviews of high security prisoners discussing their experiences of incarceration. These interviews have been filmed and address issues of boredom, fear, personal space, relationships and their views on society. A significant aspect of the research deals with methods of coping and reveals the tactics, customs and languages invented by prisoners to obtain some form of individual autonomy. They include passive measures that use the body as a site of pleasure, through to contraband activities like making alcohol, or devices as weapons and even gambling. These strategies that undermine the objectives of imprisonment, also see the formation of alter-identities through which prisoners resist a sense of helplessness and despair. In this paper I will reflect on my own experience working in the correctional setting to highlight issues of ethics and artistic agency. I will also address the dialectics surrounding freedom of expression and censorship within the prison setting.

I have always been interested in how people transform their environments and how their environments transform them. As an artist my approach has been to look between the effects of surface order and human behaviour, so in a sense my work is about environmental psychology. For some time I have used film to expose this relationship in hospitals, psychiatric institutions and public housing. Prisons are undoubtedly one of the most totalising spaces that humans encounter. When I read the newspaper or watch prison dramas I often wonder if the characters or environments bear any resemblance to the real. Rarely do we get to see them as they are. When I documented Pentridge prison in 2002 I was extremely affected by the conditions that have incarcerated prisoners until the mid 1990s. Inside cells, the traces of human existence were chilling. The question I asked myself was how do you maintain a sense of your own identity in this environment?

With that I set out to reveal prisoners’ relationship to correctional space from their point of view. I created a project that aimed to reveal how current prisoners in a modern correctional facility experience loss of freedom and their response to disciplinary authority. It considers how art can engage with these issues. In so doing, the project addresses issues of representation to determine how art might represent prisoners from an ethical and critical perspective.

Before I could enter a prison I had to gain approval for the project from The Victorian Department of Justice Human Research Ethics Committee. There was also the requirement that a prison provide consent to be the host facility. I wanted a maximum security facility which narrowed down my options. In a remote district 70 km out of Melbourne HM Prison Barwon indicated its willingness to allow me to conduct my project there.
Why have I chosen this topic? The reason is twofold. The first is institutional. It’s about power and the negotiation that takes place between individuals and their environment. The second is concerned with aesthetic justification. In general, depictions of prison culture continue to use aesthetic structures that seek to inscribe criminals as ‘other’. I considered that there must be alternative ways of thinking about prisoners that open up diverse or conflicting discussions around criminality rather than embellish the fantasy or at least lead in that direction.

It can present a challenge to think of prisoners - particularly those in maximum security who have been incarcerated for serious crimes - as people who are worthy of consideration for their rights or for the conditions in which they exist. After all they have been found guilty and their hardship may be justified as part of the punishment.

It can also be confronting to think of criminals as having normal emotions when stereotypes constructed in the tabloids and popular culture filter out individual complexities that surround criminal behaviour. Clinical studies tend be objective and offer expert opinion. I imagined that the way fully to explore identity and individual behaviour within the correctional setting was to link this with art. By taking an organic approach, art allows us to explore the emotional and social connections to prison space.

The aim to give prisoners a voice was not new. Foucault initiated a similar idea with the Group of Information on Prisons (GIP) with its intention to create “conditions that permit the prisoners themselves to speak”.¹ As well as this the GIP was about erasing the distinction between the ‘criminal type’ and the normal person. I wanted to build on this approach. I also wanted to find a method that could individualise prisoners and allow their different characters to emerge.

I decided to use two modes of expression one filmed interview and the other a visual art journal. The reason for having two options is that people express themselves in different ways. Some people feel more comfortable expressing their ideas in visual images and others in verbal conversation.

In interviews there is a performative aspect and poetry in the slippage between what is being said and the awkwardness of the voice, body and gesture. By using film - a real time method that can authentically record and represent prisoners by allowing them to appear directly - this could also be revealed. I wanted to represent the prisoners and at the same time acknowledge them by allowing them the opportunity to express their ideas about imprisonment. I began with an anti-aesthetic focus. By operating at the level of abstraction, media and increasingly popular culture have undermined our faith in the real. Boris Grois however, in his essay ‘Art in the Age of Biopolitics’ has argued that Art documentation “establishes itself on the level of the sign” a process that returns art to a state of purity akin to science.² By faithfully recording reality, art documentation acts as a non-art form likened to life itself.³ In investigations where some sort of representation is required, the use of documentation is unarguably desirable.

The journals took a different approach. Taking the form of drawings, poems, doodles and lists they aimed at providing glimpses into the quotidian aspects of prison life. They also included therapeutic exercises to help free up and inspire self-expression.

Putting theory into practise threw up a paradoxical set of conditions. The Committee considered that conceptualising alternative representations that are both informative and recognise differences in character could be unethical. In particular the aim to give prisoners a
voice and to represent them naturalistically rather than use visual languages such as pixilation that stereotype and dehumanise could conversely put the prisoner at risk. The camera becomes a powerful instrument in this because the naturalistically filmed prisoner may later be recognised by other prisoners, or prison officers placing him in danger of retribution. In other circumstances the prisoner’s ability to reintegrate back into society may also be affected if he should be recognised once released. The Committee questioned whether the faces of prisoners should be shown and voices altered to prevent identification. They sought the advice of Corrections Victoria who set the condition that prisoners be filmed in such a manner that he cannot be identified either visually or through voice recognition.

In order to meet both the stipulations of Corrections and my own aim to record the prisoners authentically I decided to film the prisoners from the shoulders down, avoiding the face, and to alter the voice pitch, yet still maintain a human sound.

The issue of ‘consent’ presented a similarly complex set of conditions. The Ethics Committee required that participants volunteer and be fully informed of the aims and the associated risks. They were to sign consent forms. In recognition as co-authors they were allowed to specify whether they would like to be known by a nickname or their own first name. While ethics required that I honour the prisoners’ ‘rights’ with consent forms to give them the power to make choices about their name, Corrections prison directorate remained insistent that participants should not be permitted to choose to be identified in any way, in their own long-term best interests. From my observation of the prisoners’ response to this, while many were enthusiastic about the project and the opportunity to be heard, they also appeared confused and concerned about the degree to which they were denied choice over their identity. Depriving prisoners of the right to choose or partially giving them that choice and then taking it away would seem to imply that prisoners are seen as incapable of making their own decisions and would do little to break down the prejudice created by stereotypes.

Ethics were also concerned to show how the prisoners would benefit from participation. It is abundantly documented that art as well as being therapeutic can be educational and contribute to self-esteem. I believed that by creating an opportunity with the consent of all parties, including Corrections, Justice Ethics and the prisoners, this would create a safe environment where prisoners could freely express themselves and in turn allow us to understand further, concepts behind the exercise of power and control in the correctional environment and identity.

In a further effort to benefit the participants the intention was that they would be able to keep their own journals but allow documentation of the contents. They would also receive a copy of their own interview.

Despite this, it was difficult to foresee all of the possible pitfalls. Art becomes a powerful instrument in this because it allows us to consider the difficulties faced by prisoners in finding acceptable forms of self-expression as well as appreciate the challenges faced by Correctional authorities whose purpose it is to administrate the day-to-day operations of a gaol. It also enables us to question whether the suppression of freedoms in particular ‘freedom of expression’ bares itself in the prison setting and to consider what affect this has on the cultivation of self, for the prisoner.

Gaining the prisoners’ trust and encouraging them to be themselves was only one of the challenges I had to contend with. During the interviews some prisoners became concerned that officers were listening to the interviews, or would later watch the tape of their interview.
and they began to scrutinize their own comments. “Are these cunts going to see this? I’m just trying to think whether I’ve said anything that I shouldn’t have”\textsuperscript{4}. Other prisoners considered that the project might have been instigated by Corrections and even speculated that the interview room might be bugged. Just as fear is contagious so is paranoia; we get it from one another, or so I thought. It was only later when the article ‘Prisoners bugged – jail claim’ appeared in the \textit{Herald-Sun} a Melbourne tabloid that I would come to doubt this. The article claimed that “secret listening devices have been illegally installed in Victorian jails to record private conversations” and that these “devices were allegedly hidden in interview rooms where prisoners met with their lawyers, friends and families”\textsuperscript{5}.\textsuperscript{6}

Along with the interviews the ‘journal project’ left no doubt about the obstacles retarding self-expression in the prison. ‘Prisoners know what they can and cannot draw’, was the official line from prison authorities. The workshops were held in the Visit centre where the constant patrol of prison officers and cameras kept the room under heavy surveillance. Images created with even the slightest sexual reference were condemned, while in prison cells the TV broadcast \textit{Big Brother ‘Uncut’} and \textit{New Weekly} magazines with celebrity babes in bikinis lay about the programs room as entertaining reading. Similarly books or images illustrating tattoos were considered contraband, while the bodies of many officers posed a canvas of ideas. Beyond these confusing standards, prisoners had to overcome the challenge of confronting a blank page faced with low self-esteem, illiteracy, anxiety and even mental illness. Despite having these and other constraints I sensed that the prisoners were desperate to connect with their feelings and emotions. But with that came the recognition that by being yourself, expressing yourself, you became vulnerable.

On the day of the final journal class, without warning, several prison officers entered the visit centre. The prisoners were lined up and strip-searched. The journals were collected and examined. I was summoned to justify the images, many of which I had not seen. Some images were removed. The officers informed me that there would be a full report, however, no official report was ever made. Sometime later, I discovered that instead of being given back to the participants, all of the journals had been destroyed for reasons of sensitivity and issues relating to privacy.

For me, this was a shocking experience. Besieged with anxiety and beleaguered by feelings of conflict and concern over my responsibilities to the prisoners, to the prison and my own project, I concluded that the only way to prevent placing anyone at additional risk was to not further my involvement.

The interviews raised other matters concerning the struggle for identity in the correctional environment in the form of adaptive behaviours and prison personas.

Author: There must be a lot of adaptation?
Michael: Um, yeah there is a lot of adaptation. Guys um, a lot of, I’d say a fair percentage of guys develop a prison persona, person that they are in here.
Author: Because it’s a survival mechanism?
Michael: Yeah, people that can survive physically, people that can fight, that can defend themselves and take it too whatever degree are probably held in, yeah, are held in high regard.
Author: So they gain status?
Michael: Yeah, but also status is probably more acquired through adherence to criminal code. Someone who has probably earned money from his crime um and definitely adheres to um the rest of the code, which will, you know, that doesn’t speak to police,
doesn’t speak out of school, um has a certain level of respect, but at the same time, the moment someone else crosses that line they’ll make them know about it sort of thing.  

Studies such as *Ultramasculine Prison Environments and Inmates Adjustment* recognise gender as one of the fundamental determinants of behaviour. Franklin argues that forms of masculinity are “established not at the individual level but within a larger social group or network. Masculinities therefore are constructed, maintained and restructured according to the relationships that exist within various social networks in a given environment”.

Author: If you were a young bloke coming into jail, what sort of things would you be contemplating?

Bill: Oh, probably spearing into somebody, stabbing bloody, you know, get some stripes so called. You know, a lot of the younger ones I’ve seen, as long as they’ve done something well they’re in. So you know, instead of being on their own or with a couple of other blokes they say, well at least I’m in with a big crew here so, were ok!

Prisoners cope in the comfort of groups or gangs. Here their vulnerability is transformed into solidarity through aggressive expressions of resistance. Acts to this effect were reported in an article in the *Herald-Sun* “Crackdown begins on prisoner gang” after a group of Barwon prisoners inscribed their own bodies with POW. “The letters stand for ‘Prisoner of War’ and some have gone to the extreme of using electrical appliances to burn the mark into their skin.” Just as correctional environments attempt to punish and rehabilitate prisoners whose histories include violence, inadvertently they also reinforce it. Even acts of despair; ‘slashing up’ in order to break solitary confinement and receive hospital care, hunger strikes and escape attempts advance the idea that violent resistance is present if contradictory.

In prison the hold of determining operational structures in the form of movement control, surveillance and constraint is unarguably a disabling consideration against individual action. Yet there is evidence to show just how adaptive behaviour can be. Cultural theorist Michel de Certeau is of interest here. In *The Practise of Everyday Life* de Certeau writes,”The space of the tactic is the space of the other”. Identifying specifically the ‘clandestine’ approaches used by marginalised groups de Certeau recognises these as attempts not to gain control, but rather, to ‘make over’ forces of discipline. Contraband forms of activity such as making alcohol, creating makeshift devices as weapons or for entertainment in the form of gambling or exercise, can be widely seen in the prison and are considered victorious among prisoners.

Barry: That’s another good thing about prisoners they can improvise they can fuck’n, I don’t know, turn a knife into anything. They’re cluey people like, even though they’re considered the scum bags of society, they’ve had to learn how to, I don’t know, how to live with what they have and what they don’t have. And usually, you tend to live without, more than live with, so they’re always finding ways to improvise, making up as they go along, what ever it is.

Adam: Now they’ve said you can’t have too many oranges, you’re only allowed to have three.

Author: Why?

Adam: Make alcohol

Author: How?

Adam: Put the juice with a bit of bread, let the bread ferment and its basically cask wine. Tastes horrible, but it gets you smashed.
insubordination and lead to Governors Court. Although they may be small and only temporary they facilitate a dynamic of self and successfully liberate the individual from the drudgery and invisibility of prison life.

For others incarceration results in a complex and somewhat contradictory range of behaviours that still subvert correctional objectives.

Author: What’s a Black Book?
Mitch: Black book’s where you get told off and they write you in the black book. That’s where you get your fines, if you’re not on muster on time, or staying in bed when there’s a muster on. That’s called a black book. You might loose your TV.
Author: Really?
Mitch: Yep. They don’t want to play mind games like that with me. I’ll just yeah; I’ll unplug the TV and just put it out side my door. Just take it, you know.17

Jilzy: I’ve always had mates that have been in jail; in and out so, I always said you know, it’d be grouse just to go in for six months, a year to see what its like.18

These comments demonstrate that prisoners are characterised by mindsets that can be acquiescent or transforming. Both can lead to the expression of resistance strategies: tactics and codes of behaviour that subvert corrective determinism. Another form of ‘subject’ restructuring can be likened to the notion of jouissance that Barthes sets up in The Pleasure of the Text. Barthes constructs the idea of the body as a site of pleasure. Almost essentialist in its nature the individual body is independent of being ‘a subject’ determined by ideology or discourse.19 Demonstrating that you are in good form through exercise regimes, diet and a focus on self-image by shaving body hair and muscle hypertrophy become part of a self-maintenance that signifies ideological resistance.

Michael: I’ve never noticed to the extent in prison how fastidious males can be about their bodies, like, a lot of us shave legs um and I also think it’s a time thing cos when you’ve got so much time on your hands, your sitting in your cell for hours a night looking at your legs going, that will take up some time.20

Author: You say you do a lot of exercise?
Grant: Yeah, well most blokes train in here, it gives you something to do, get fit, get big or whatever. I never trained until I came to jail.
Author: Is it because you were fairly small that you wanted to train?
Grant: Yeah. I wanted to get muscles. I’ve put on I think 12kg since I’ve come to jail. Yeah just train. It gives you something to do, it makes you tired at night; it’s good! !21

Grooming and leisure become pursuits that also help to pass the time when prisoners are locked in their cells. Rather than resenting being locked up prisoners often view it as a safe space where they can be alone.

These practices and behaviours of rebellion consumption and improvisation form aesthetic languages through which the body is an object of self-examination and control. Symptoms of pleasure are also a part of an agency of survival that manifests itself as a distortion or reconfiguring of identity rather than an improvement.

“If I read this sentence, this story or this word with pleasure, it is because they were written in pleasure (such pleasure does not contradict the writer’s complaints) but the opposite.”22 Barthes Pleasure of the Text allows me to construct a semiology of language systems that
operate through the vehicle of the body. These languages act as a resistance to totalising frameworks.

Bill spent 10 years at Barwon Prison in solitary confinement (slot) where he was subject to severe deprivation. Alone with himself John’s resilience and mental toughness defied the totalising operational and environmental structure of solitary confinement. By the formation of practices and tactics the relations of oneself to ones own body manifest as strength or satisfaction and preservation.

Bill: I was shackled there for a long time its ah, they had us shackled around our belt around our waist and handcuffs around our legs and um. The time we were out in the yard we had to have them on as well and you know. Left on at night times.

Bill: I used to do a lot of push-ups that’s what sort of got me through all the years.23

For Bill surviving the most extreme punishment regime is a victory that he has come out stronger for. It perplexed authorities and earned him social status and respect amongst other prisoners.

Bill: You know they sent people in from head office to see me, it’s probably about 6-7 years since they came to see how I was. Well, they couldn’t believe how easy, well not easy but ah, I seemed to be handling it OK. I didn’t um!

Author: So what do you take from an experience like that?

Bill: Well I just take it as ah, I try to put it as a positive and try to come out stronger from it.24

Taking satisfaction in his ability to tolerate extreme levels of deprivation does not contradict his complaint. As Barthes notes, “we arrive at this paradox,” in order to be kept sane we must become neurotic.25

Author: So not everyone can really survive that sort of an environment?

Bill: Well you have too, otherwise you know, you’ll go crazy you know. I mean you know, I’ve done things. I’ve put little bits of sugar on the floor watch the…… I used to have a couple of spiders come down pick them up, take them up. Just little things like that, its just to pass the time because you in a cell, you know it’s a……you know your bed its just a little concrete thing that’s on the floor, I’m talking about the Lop’s (loss of privileges cells) and that’s all you’ve got you know, and a sink and a toilet. So you’ve got to do these little things to amuse yourself. I bloody look for it, passing an hour or two. So that’s just, you’ve got to do the best you can with the situation your in.26

“By the co-habitation of languages working side by side: the text of pleasure is a sanctioned Babel”.27 By taking pleasure in his body, doing countless pushups, by enduring the silence of his isolation, tolerating the incompatible force of prison officers he makes a mockery of the system. He becomes like Barthes ‘Monseiur Teste in reverse’, a kind of ‘anti hero’.28

The moment he takes pleasure, imprisonment is no longer a punishment.

Art has shown that in the correctional environment freedom of expression is heavily restricted. Individual identity is subordinated to the collective identity as ‘prisoner’. Not allowing the prisoner to rise above the construct of ‘criminal type’ or ‘other’ is one of the ways of administering discipline and control. Despite this, prisoners find strategies that separate them from subjects constructed through corrections ideology. We have seen how this can lead to the formation of ‘ultramasculine’ behaviours and maladaptive practises.
Michael: The stripping of freedom is probably another reason that I like prison, because with freedom there comes so much responsibility and obviously, I’m here because I don’t like responsibility…

Michael: I’ll have no problems at all to go out and continue doing things that could jeopardize my freedom, purely because I’m comfortable in here.

We might ponder the paradox that for some imprisonment is not a deterrent but rather it’s a means of survival. Statistics show that over the last ten years the prison population has increased by 42%. Added to the discovery that increasingly young men make up these prison numbers is the finding that 57% of prisoners currently serving a sentence have previously been incarcerated.

Which brings me to the point that if rehabilitation is a genuine objective within corrections ideology, then freedom of expression and its association to self-determination and identity become key issues.

In 2003 a Report to the Correctional Services Commissioner, into prison discipline provisions, sanctions and privileges that looked into the entitlement of convicted criminals to human rights argued that, “Although ‘Human Rights’ is a modern term, it invokes a long-standing principle that certain rights and freedoms are fundamental to human existence”.

To this extent ‘art’ has shown that freedom of expression is being denied to prisoners in the correctional setting. I would contend that being able to speak and express ones ideas freely is essential for individuals seeking to be rehabilitated and reintegrated back into society. It is also integral to tolerance and understanding in our society.

Reflecting on my own experience working with prisoners I found that they were enthusiastic and behaved impeccably. I understand that in strip-searching the prisoners the authorities believed that they acted to ensure the safety and security of the prison. I find it difficult to comprehend how this was not seen as traumatic and how despite Ethics requirements that I show how the prisoners would benefit, the journals, intended as a keepsake, were later destroyed.

On the one hand I understand that Corrections Victoria has a duty of care to protect its prisoners. On the other hand, it seems strange to me that they would deny prisoners the right to determine for themselves how they are represented, and allow them the opportunity to be acknowledged as co-authors in this project. Not only does this result in censorship and a limitation in the discovery of truth, it gives me cause to question whether the effacement of individual identity via the trajectory of ‘ethics’ is another way of attempting to reduce the prisoner to ‘a subject’ that is superficially constructed through ideology and rhetoric.

**Endnotes**

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21. Grant interviewed by Natasha Carrington, conducted at Barwon Prison 16/1/2006
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Is Your Web Site Violating Human Rights?

Olivia Ball
Monash University

Damian Sweeney
University of Melbourne

Abstract: The new UN Convention on the Rights of Persons with Disabilities guarantees equal enjoyment of all human rights by all persons with disabilities. Freedom of expression includes the right to seek and receive, as well as impart, information in the medium of your choice. Most web sites distort or hide information from people with visual, motor and other impairments. This need not be the case.

Creating web sites that are accessible to all users can be complex. Even conscientious web designers can feel frustrated creating accessible online forms or videos. While the current HTML version (4.01) makes content richer than plain text for all users, it is an aging technology in the fast-paced world of the Internet. After nearly a decade of expansion in the content, reach and purposes of the world wide web, its core syntax is being upgraded.

The new version of HTML (5.0) contains many features which, if implemented by browser manufacturers, will significantly improve equality of access to information on the web. This paper explores some of these features and critiques current web authoring practice.

Keywords: disability rights, accessibility, Internet

HTML

The World Wide Web Consortium (W3C) is the custodian of the Hypertext Markup Language (HTML). The version currently in use is version 4.01 and has been since 1999. It describes the syntax and uses for the various elements and attributes that make up the language. It describes what constitutes a well-formed and valid document.

HTML provides a rich vocabulary for describing the content of a document. It is more accessible than plain text because the structure of the document can convey the meaning of a section of text. A heading can be distinguished from a quote, while parts of a sentence can be emphasised. HTML, when combined with its sibling technologies, cascading stylesheets (CSS) and EcmaScript (JavaScript), is very good at transforming information for the benefit of the user. A properly constructed site can be presented in a multitude of ways to cater for different audiences, devices and user preferences.

The importance of this cannot be overstated. If we tried to imagine the transformative power of HTML applied to print, it would mean that anyone purchasing a book from their local bookshop could have the pages and the format mould in their hands into their personal preference. Any text size or font, page colour, size and orientation, or even a Braille version
would be instantly available to the reader. No effort would be required on the part of the reader or the store for this transformation to take place. It would happen automatically. A well-designed web site gives persons with disability this kind of access – equality of access – to online content.

Beyond documents, HTML also provides a mechanism for users to interact with web pages. Through the use of forms, a user can purchase goods and services with their credit card, fill out a survey, comment on an article, do their banking or apply for a job. All of this can occur on a level playing field with the information provided in the same way regardless of any impairment the user might have.

**Article 21**

Inequality of access to the Internet is a rights violation. It is discriminatory and exclusionary. Increasingly, access to the Internet means access to other human rights. Poor web access hampers access to other human rights such as the right to work, education, leisure and participation.

The right to web accessibility is made explicit in the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) which entered into force in 2008. The Convention consists of a preamble and 50 articles. Of particular interest for this paper are Articles 9 and 21, headed ‘Accessibility’ and ‘Freedom of expression and opinion, and access to information’, respectively. To quote the latter in full:

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

e) Recognizing and promoting the use of sign languages.

HTML does not handle automatic language translation well (including sign languages – Article 21(e)), but most of the other formats mentioned in Article 21 are accessible by user agents (browsers) when processing HTML. We’ll now deal with the remaining paragraphs in turn.

Article 21(a) deals with accessible formats. There are a number of these in existence. HTML itself is merely the most common of a number of languages that derive from the Dexter Hypertext Reference Model (commonly called the Dexter Model). In providing information (in documents), HTML does very well at the moment. Even for complex documents and representations, there are modern techniques that allow accessible rendering of most static
information. For HTML 5 to meet its promise in the realm of multimedia, however, it needs to allow users access to a format that meets their needs (Dodd, 2008).

Article 21(b) refers to communication of choice. When paired with appropriate assistive technology (e.g., screen readers, Braille displays), an HTML document can be readily transformed into Braille and speech and provide extra information about the document itself, but it is not well suited to sign languages. While HTML is good at rendering many languages, it does not provide for automatic translation between them. Also, sign languages have no real text equivalent as they rely heavily on expression.

Article 21(c) mentions the Internet. The Internet comprises many technologies, transportation mechanisms and formats. The World Wide Web is a subset of the Internet and uses the Hypertext Transfer Protocol (HTTP) to transfer data between computers connected to the Internet. Although Hypertext is in the title of this transport mechanism, many other formats can be transferred using HTTP. In particular, Adobe Flash and Portable Document Format (PDF) are very popular. These formats are improving in terms of accessibility, but cannot currently be considered a viable accessible alternative to HTML. As such, the content of any Flash movie or PDF would need to be available in another format to meet human rights standards. The obligation to provide ‘accessible and usable’ formats means web developers should use HTML as it was intended.

Mass media delivery as covered by Article 21(d) is slightly more complex. For newspapers and radio, making their services accessible to persons with disabilities is not too much of a burden. Radio interviews can be transcribed and most newspapers already provide their articles online in some form, although sometimes as subscription-based services. For television and film producers, Article 21(d) ‘encourages’ them to provide subtitles and audio description for their products, most of which can then be provided in an online format. The larger issue here, though, is the use of proprietary (not open) formats that are often used in the delivery of these media. This is increasingly common as movie studios in particular worry about theft of their works as digitised versions of their movies can be readily copied without loss of quality. Assistive technology often relies on access to the underlying content, however, in order to customise it. Proprietary formats often require specific media players to display the content. If your assistive technology doesn’t integrate with this specialised software then you may have no way to access the ‘accessible’ alternative if it is provided. Version 4.01 of HTML does not adequately address this situation.

All human rights have components that are immediately actionable and others that must be realised progressively. With the exception of multimedia content, current HTML technology permits immediate realisation of the rights provided in Article 21. New developments in HTML 5 should accelerate access to multimedia content as well.

The Inaccessible Web

HTML is a remarkable technology that can advance human rights for people with disabilities, but how accessible are existing web pages in reality? Unfortunately, people with disabilities still experience frustration and confusion. This is partly because of the limitations of the existing version of HTML and partly because content authors don’t follow principles of accessible web design.

The W3C has a set of standards to help assess the accessibility of pages. The Web Content Accessibility Guidelines (WCAG 1.0) were first accepted in 1999. A subset of these
guidelines became the basis of legislation in the USA known as Section 508, while in Australia, the Human Rights and Equal Opportunity Commission (HREOC) requires web authors to conform to WCAG 1.0 in its entirety. These guidelines are written in clear language with techniques provided to help authors.

Alexander (2003) conducted a survey of the accessibility of Australian university web sites. She analysed four common pages from University web sites: the home page, an accommodation page, a transition page and a prospective student page. Only one university passed the lowest level of accessibility for all four pages. As damning as this statistic is, the situation is actually worsening. In 2007, Alexander and Rippon repeated the study and no university passed. The most common deficiency is something easy to recognise, understand and correct – missing alternative text for images (Guideline 1.1).

As in the physical world, barriers to web accessibility are built. A content author who writes with only one browser in mind or uses a bandwidth-intensive technology or creates page content using a browser-specific technology is creating barriers to their content for users of that page. In these cases it is the technology choices that are disabling, not any characteristic of the user. A rural user with an old computer can have problems accessing information that is readily available to a vision-impaired user with a screen reader.

The obligation on states to “take appropriate measures to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public” (CRPD Article 9(2)a) makes WCAG 1.0 a tool for the advancement of human rights.

**Limitations of HTML 4.01**

One of the first steps in creating an accessible HTML document is to check that it is well formed. Is the structure correct? Are the pieces of the page in the correct order and properly nested? Are all the required attributes and elements of these structures in place? To perform this check, one needs only to visit a web site provided by the W3C (http://validator.w3.org/). However, because of the limitations of the current version of HTML and the way browsers have implemented extra features, the results of such a check are not always informative.

One striking example of this is the `embed` element, used to include video or multimedia content. It is supported by the major browser manufacturers, but is not part of the HTML specification. To create a valid HTML document that includes a video and works in most browsers is much more difficult than it needs to be. Faced with jumping through a number of hoops to pass validation, many web authors have simply given up. They ask themselves, ‘If it works in most browsers, what’s wrong with it?’

This perception becomes more entrenched when it is impossible to create a web page as you would intend. One common example of such a structure is a table with many interactive forms within it. This is how you might create a set of data that is organised in rows (such as personal details of registered users) and want to change the data in one row. However, this is not possible in valid HTML. A table and a form occupy a similar position in the HTML hierarchy and mixing them together creates an invalid ‘nesting’ of elements. They become intertwined like two vines choking each other as they grow. Once again, because browsers are forgiving in their attempts to render the HTML served to them, valid or not, web authors can ask, ‘If it works in most browsers, what’s wrong with it?’
Part of the power of HTML is the ability to mark up sections of a document and give meaning to those sections. However, as documents evolved into web pages with navigation and functionality, gaps in the existing version became evident. A very common feature of a web page these days is site navigation directing you to various parts of the web site. Despite the near ubiquity of this feature, there is no consistent way to create this structure within HTML. This tends not to be an issue for sighted users, as web authors can create the links with appropriate colours and effects to show them as clearly being site navigation. So, ‘If it works in most browsers, what’s wrong with it?’

The answer to what’s wrong is that it tramples the rights of users with disabilities. A well-structured document is important for assistive technologies because it allows them to render accurately the structure of the document to the user. A page that looks OK in a browser may be a mess in a screen reader. Or a navigation section will be indistinguishable from a shopping list on a page, or it may just be an incoherent string of words. Either way, confusion and frustration remain for many users with disabilities.

**Changes in HTML 5**

The W3C is currently reviewing HTML and the result will be a new version of HTML (in draft stage at the time of writing). It will be greatly expanded and provide much greater clarity on how browsers should behave when presented with an HTML document.

Proposed new elements in HTML 5 will improve navigation within and between pages in a site. Previously, navigation, menus and sections had to be implied using semantically neutral elements. HTML 5 deals with this by adding new elements that can carry this meaning. So, a new schema defines how a section is described within a page and these can be explicitly designated using a section, header or footer element. Also, navigation is aided by the addition of a nav element which designates which links are primary navigation for a page.

Once browsers and assistive technology can implement these features there will be greater enjoyment of rights for people with disabilities in dealing with the Web. Foremost among these will be the ability to understand quickly how a page is constructed. Currently many pages suffer from an affliction know as ‘divitis’. This is where a document is divided into meaningless sections using the div element. By replacing divs with meaningful elements, web authors will be providing richer information for users.

As well as page structure, there will also be benefits within a page. New article and aside elements will allow authors to designate different sections of content as having different weight. This will allow devices to choose whether or not, or in what context to render the information to the user. This automation of tasks is paramount in the mind of the authors of the new HTML as they seek to provide a framework that will be useful to all authors, not just the conscientious ones.

For multimedia content there are two new elements in particular that could prove interesting: video and audio. For web authors to include video and audio currently requires all sorts of arcane implementations in order to invoke the correct system for some operating systems. The new HTML is moving towards a system where many of these decisions are made automatically by the browser, deciding what it can support and how to display the multimedia. There are also plans for more integrated support for alternate streams of data, including captions and audio descriptions making this process part of the production of the media, rather than the function of the web author.
There remains a number concerns for accessibility advocates in the new HTML drafting process. These include the *alt* attribute being optional, the *summary* attribute for tables being removed, the *headers* attribute being removed for table cells and the integration of the Web Accessibility Initiative’s ARIA (Accessible Rich Internet Applications) attributes (2008). Each of these concerns refers to existing functionality, beneficial to people with disabilities, that may be dropped from HTML 5. Currently these attributes are added by conscientious web authors or by those constrained by their authoring environment to create these features. In the case of ARIA attributes, the evolution of the web as a platform for applications (such as Gmail) requires methods that allow assistive technologies to access the application.

Many web authors do not currently provide these attributes in the pages they create. The HTML working group seems keen to avoid the situation where functionality like this needs to be added. They would prefer that accessibility features ‘just worked’. This approach, however, is fundamentally flawed. While many of the changes in HTML will have significant benefits for users with disabilities because of this philosophy, explicitly removing helpful attributes will hinder rights in situations where accessibility features are additions. Whether providing captions for a movie, describing a complex image or table or translating a speech into sign language, there is no escaping that some content needs time and effort to be presented in an accessible way. Reducing what is possible in HTML in the hope of producing accessible content from lazy or ignorant developers will not improve the Web.

**Conclusion**

HTML is a remarkable technology with potential to advance the rights of users with disabilities. However, many of its current features are not in use in web pages today. A new version of HTML seeks to remove barriers to accessibility by codifying existing practice and encouraging browser manufacturers to develop their products to meet the needs of the majority of web users. These changes, if implemented, will make the Internet more accessible for people with disabilities.

Some proposed changes may be detrimental. Removing features that are essential for the accessibility of web content will make it impossible to create accessible content within well-formed HTML. Ideally all web authors will be able to check the validity of their document easily and therefore be assured that it is accessible. In reality, human-checking of accessibility will always be required for some content.

Article 21 of the CRPD reinforces in international law the rights of persons with disabilities to equality of access to information and the ability to impart information. Much of the Internet is presently inaccessible due to author ignorance or complacency. Advocacy, regulation and training are needed to realise the rights of persons with disabilities. States are obliged to provide such training and to promote web accessibility (CRPD Art. 9(2)). State and non-state duty-holders can use HTML as one of the accessible formats when preparing documents for publication. There is much at stake in the development of the new version of HTML and the human rights community ought to pay close attention.

**References**


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“It’s about protocols and decorums”: governing queer student sexualities in schools as a human rights issue

Angela Dwyer
Queensland University of Technology

Abstract: This paper will explore schools’ governance of queer student sexualities as a human rights issue in relation to how romantic relationships are heterosexualised in schools. Even though schools are typically spaces in which romantic desires are ‘properly’ expunged, heterosexual relationships are so taken for granted that they are situated as a normal, basic human right. School staff consider them as a more proper way of doing romantic relationships in schooling contexts than same sex relationships. The paper argues that in doing this, schools perpetuate the idea that same sex relationships are abnormal and in need of ‘proper’ control and regulation. It explores how heterosexual relationships have become so normalised that, although illegal, some schools discriminate against same sex couples and deny same sex attracted young people their human rights and continue to reinforce school spaces as necessarily heterosexual spaces. As an exemplar, the paper will engage with the decision by a private boys school in Brisbane, Queensland, to disallow gay students to bring their male partners to a school formal in April 2008. The paper concludes with a call for more explicit school staff training and further research on how these forms of discrimination are enacted in schools.

Keywords: queer youth, heteronormative schooling, human rights

Introduction: “the school decides what is appropriate behaviour”

The quote that constitutes part of the title above was uttered by the principal of “one of Queensland’s most prestigious boys schools” (Ironside 2008: 1) in relation to the schools’ senior dinner dance in June 2008. The ‘appropriate behaviour’ was, in this case, students being escorted by opposite sex partners at the dinner dance. The schools’ decision explicitly disallowed gay male students to bring their same sex partners to the dance. This decision sparked controversy as it clearly breached not only anti-discrimination law in Queensland but also international human rights covenants protecting the rights of the young people involved. This brought about an extended discussion and public commentary (with over 1,000 public comments posted on the website for The Courier Mail as at May 1, 2008) in the media about the issue of discrimination against queer sexualities in school settings. The rights of the school to shape schooling practices in line with narrow understandings of what they consider to be ‘appropriate behaviour’ were unquestioned. I follow the work of Marshall (2008, 95) in how queer refers to “those young people who do not conform to prevailing expectations regarding gender and sexual identity and behaviours, those young people who may be lesbian, gay, bisexual, transgender, intersexual, [questioning]”.

This paper examines this issue in further detail in relation to human rights. It will not, however, engage in an extended discussion of the different human rights and anti-discrimination instruments that this decision breaches. Rather, it explores how human rights
and discrimination have come to be read in terms of heteronormativity (Butler 1990). It argues specifically that heterosexuality has become so taken for granted in schooling spaces that it is now implicitly assumed as a normal, basic human right. Even though schools are explicitly regulated as sexless spaces, heterosexual ways of doing sexual desire are more acceptable than queer sexual desire. Indeed, heterosexual desire is held up as more normal than homosexual desire, and in doing this, queer sexualities and desires are further marginalised as abnormal and in need of proper regulation and control by schooling stakeholders. More importantly, however, this paper will suggest that heterosexuality is so normalised in schooling spaces that schools can openly discriminate against same sex couples without fear of reprisal. To demonstrate this argument more fully, the paper will initially discuss the sexualities and schooling literature which explore the extent to which schooling spaces have become heterosexualised. The paper will then draw on human rights literature to demonstrate how, in schooling spaces, the right to protection in terms of sexuality is assumed to be heterosexuality. Following this, the paper will engage in more detail with the case introduced above as evidence that schools read human rights in heteronormative ways that exclude queer sexualities. Finally, the paper will suggest that further research needs to interrogate these forms of discrimination being enacted in schools, particularly given the damaging consequences that these forms of discrimination and exclusion can produce in the lives of queer young people.

Schools as asexual: properly expunging desire in schooling spaces

There is little doubt that schools are expected to be asexual spaces; that is, they are to be properly devoid of anything remotely related to sexual desire. They must be sexless spaces. Both teachers and students behaviours in and out of the classroom, and even before and after school hours, are tightly regulated in line with the idea that schools are spaces for pedagogy, not pleasure. This is in spite of literature suggesting that sexual desire constitutes a fundamental part of youthful identity that ought to be supported rather than stymied (Rasmussen 2004b). Mellor and Epstein (2006: 378) demonstrate how schools are shaped as desire-free spaces in a case of a British school headmaster that banned ‘canoodling’ (kissing, holding hands, hugging), as ‘canoodling’ was considered by this headmaster “to be disturbing and inappropriate in the educational context”. Michelle Fine (1988) has earlier argued that sexual desire is completely expunged from sex education in schools, a move that she notes is counterproductive. Fine suggests that students are taught only about the biology of sex and not about the processes and logistics of sexual desire and doing romantic relationships that are imperative in establishing a relationship in which to put the biological knowledge in practice. Marshall’s (1996: 113) analysis of the representation of sexuality in Australia’s national curriculum demonstrates that “teacher and student texts were mainly about having sex (or not) and having babies”. This is even despite the academic critique of the insistence on schools as asexual spaces, with researchers like McWilliam (1995) arguing that a yearning for learning can be better enabled through a desire to learn in the classroom.

However, to this point, the literature on good, proper teaching and learning insists that sexual desire and romantic attachment be appropriately expelled from classroom environments. The key concern for these theorists is that by focusing on sex and sexual desire in education, we are moving to a focus on the body, and the body interferes with the productive activities of the mind in the classroom (Watkins 2005). Working through a mind/body split, classrooms are shaped and governed as disembodied spaces in which neither teachers nor students should be focusing on issues regarding the messiness and voluptuousness of sexual desire and embodiment (McWilliam 1996). This is nowhere more obvious than in the demonisation and criminalisation of female teachers that establish romantic relationships with their students,
even if these relationships are consensual for both parties involved. These teachers that dare to bring sexual desire into the ‘good’ space of classroom relationships are depicted as predatory sex monsters and are usually subject to heavy penalties in the criminal courts, including prison.

More importantly, however, the mind/body split informs classroom relationships to the point that certain groups of people may be more aligned with the body while others are aligned with the mind. This is noted by O’Flynn and Epstein (2005: 189) who suggest that that the mind/body split so explicitly shapes the formation of identities in schooling contexts that “[m]arginalised identities, such as those of queer or ethnic minority students, represent the body and desire…while dominant identity groups, especially those that are white, male and middle class, represent the mind and reason”. According to most best pedagogical practice literature then, it is the mind not the body that constitutes the fundamental tool for educational success (see for example Kincheloe 2005). Even educational theory like that of Gardner’s multiple intelligences specifies only one form of intelligence (‘body smart’) that insists on the importance of learning through the body (Armstrong 2000), and anything even partly related to desire or pleasure is properly eschewed. The propagation and development of active minds and intelligences is of key importance.

For the most part, social schooling spaces are similarly organised and regulated according to these ways of thinking. Despite the recognition that occasions such as discos, graduations, dinner dances, and school formals are social occasions in which social relationships are forged, the expression of sexual desire in the form of holding hands, hugging, and kissing is tightly regulated by schooling stakeholders. Even spaces like the primary school playground (Wallis and VanEvery 2000) are governed in ways that attempt to ensure that all behaviour is properly sexless in character. This is especially evidenced in the recent controversy in the United States where a school student was expelled from her school ‘prom’ and arrested by police for indecent exposure because the dress she chose to wear was considered far too revealing and inappropriate for a school social engagement (Frock and horror over tiny dress 2008).

Despite schools’ attempts to expunge desire from schooling practices, it would be erroneous to suggest that schools were sexless spaces. Mellor and Epstein (2006) argue that even though schools work to construct asexual teaching and learning spaces, desire is certainly not absent from these settings: “Sexualities are never completely stifled or removed from educational contexts” (Mellor and Epstein 2006: 379). Romantic relationships and sexual desire between young people thrive in more implicit ways in school space. Sexuality and sexual desire are performed in many different ways in these spaces, including “all the cultural practices adopted by people…from childhood games like ‘kiss-chase’, through dating and dumping practices, romantic ideals and stories” (Ibid). Renold (2000: 310) describes how primary school aged girls in England produced their bodies as “heterosexually desirable commodities” which involved “checking and regulating arms, legs, hips and thighs, position their bodies and others’ as ‘too fat’ or ‘too thin’ and advocating the need to diet”. Even so, there appears to be very specific ways that students are enabled to do these types of relationships. That is, they are urged to do this in very explicitly heterosexual ways.

The assumption of heterosexuality: the normalisation of heterosexual desire in school spaces

For some time now, sexuality and education literature has noted that schools are thoroughly heterosexual spaces (Blount and Anahita 2004). The assumption is that, if sexual desire and
romantic relationships are to be enacted in school spaces, heterosexual desires and relationships are more appropriate than same sex desire and relationships. Research indicates that even though we assume that ‘innocence’ abounds in the primary years of school (Renold 2005), these years also implicitly reinforce heterosexual desire: “heterosexuality in one form or another is the pervasive imagined future for children” (Epstein, O’Flynn and Telford 2003: 30). Schools implicitly reinforce this in many different ways through what Mellor and Epstein (2006: 381) call a “heterosexual economy”, where many “educational, cultural, gendered, and other discourses collude (and collide) in assembling a particularly narrow interpretation of (hetero)sexuality as ‘natural’”.

The assumption of heterosexuality informs most areas of schooling practice and process (Kehily 2002). General schooling curriculum is heterosexualised in its depiction of ‘normal’ relationships as a relationship between a man and a woman (Atkinson 2002; Evans and Davies 2000). Teacher talk in the classroom and the staffroom reinforces this as these conversations with students and other staff commonly draw on relationships with families outside of school. Kehily (2002: 223-224) found the talk of teachers in her UK study suggested “that everyone was heterosexual and sexual banter among teachers served to sustain and regulate this view”. This assumption is reinforced and policed when teachers disclose their queer sexuality to students in the classroom. Rasmussen (2005: 51) explains a common outcome to this process: “A lesbian identified student teacher was summarily expelled from the primary school in which she was doing her practicum after she discussed gay and lesbian identity with her students”. Sex education, while lacking the logistics of developing relationships, thoroughly involves the discussion of heterosexual procreation, and the biology of a relationship between a man and a woman (Whatley 1988). Same sex desire and relationships are marginalised almost completely in sex education curriculum in international (Bay-Cheng 2003; Buston and Hart 2001) and Australian (Hillier and Mitchell 2008) contexts, with one queer young person noting in Hillier and Mitchell’s (2008: 220) work that sex education was “as useful as a chocolate kettle”.

All these elements evidence the ‘heterosexual economy’ at work. While this may appear to be quite innocuous, it is the unchallenged and uncritical character of this ‘economy’ which further marginalises queer sexualities in schooling spaces. These practices “presuppose heterosexuality” (Mellor and Epstein 2006: 382) in such implicit ways that there is no space for ‘other’ sexualities. In fact, I would suggest that heterosexuality has become so normalised and taken for granted in schooling contexts that it is entirely assumed and unquestioned in every element of schooling. Heterosexual desire, although improperly situated in schooling spaces, is still more normal than same sex desire.

**More normal than queer: heterosexual desire as an assumed human right in schools**

I am arguing in this paper that heterosexuality has become so implicitly assumed and normalised in schooling spaces that these forms of desire are situated as a ‘natural’ human right. That is, it is a “right and freedom to which every human being is entitled…so fundamental that they form part of natural law” (Kennedy 2007). Heterosexuality is always already compulsory in schooling contexts, and is presented as a more appropriate way of desiring than queer desire. Heterosexuality has become so normalised in these spaces as to be rendered entirely invisible (Robinson 2005) and, as such, unquestioned and unchallenged. I am suggesting in this paper that this has happened to the point that schools currently think about human rights and discrimination as heterosexual and exclude queer sexualities from these understandings. Stychin (2006: 47) poignantly notes that questions about sexual
orientation and human rights “have largely ceased to be asked, as sexuality has permeated human rights consciousness”. I would suggest, however, that this is not the case in schools, as schools continue to think about human rights and discrimination in thoroughly heteronormative ways. In this heteronormative interpretation of these types of legal instruments, the law works to “normalize and discipline the sexual subject” (Stychin 1997: vii). For those queer students whose sexualities fall outside normative heterosexuality, the legal instruments designed to protect and assist them become useless in school spaces. That is, in assuming that heterosexuality is a basic, natural human right, all ‘other’ sexualities are always already unquestionably excluded from this understanding of human rights and discrimination.

A key concern in this is the far reaching consequences produced for queer young people given the extensive and perpetual victimisation that they experience in schooling contexts. The work of Hillier, Turner and Mitchell (2005) highlights how school is the most dangerous place for queer young people in Australia, with 74% of 1619 young people experiencing some form of victimisation in school spaces. Victimisation reported by queer young people in Australia aged 14-21 years in this study included verbal abuse (44%) and physical abuse (16%). This study goes on to report the different outcomes these young people experience as a result of this victimisation. Those queer young people (Hillier, Turner and Mitchell 2005: 44)

who had suffered abuse were significantly more likely to drink alcohol at least weekly, to smoke tobacco daily, to use marijuana weekly, party drugs monthly and to have ever used heroin. They were also more likely to have ever injected drugs.

In thinking about human rights and discrimination in heteronormative ways, school stakeholders continue to render these experiences and outcomes invisible and unimportant.

For most schools then, human rights are “grounded in the particular and unique contribution of heterosexuals (and their reproduction) to the common good” (Stychin 2006: 59). The human rights of young people are “located in the heteronormative private sphere of the nuclear family” (ibid), with all other ways of doing sexuality being marginalised and ignored in schooling contexts. This appears to be especially the case with schools undergirded by religious doctrine who commonly make the argument that, based on this doctrine, it is somehow acceptable to think about (and I would argue completely overlook) young people’s human rights in heteronormative ways. The following will explore an example of how school stakeholders can make a choice that elevates heterosexual desire to the level of a ‘natural’, ‘normal’ human right enforced with all students in schools.

“An opportunity for our young men to escort a young woman”: ‘decorously’ denying human rights as ‘appropriate’ in a Queensland school

On the 12th April 2008, the principal of Anglican Church Grammar School in Brisbane, Queensland, announced that the school would not allow gay students at the school to bring their gay partners to the schools’ senior dinner dance in June 2008. In this decision, the principal of the school noted that such an occasion was “an opportunity for our young men to escort a young woman” (Ironside 2008). This stance was also supported by other religious schools, with the Executive Director of Queensland Catholic Education noting that “we would not see it as appropriate for couples in a same-sex relationship to attend an event such as a school formal” (Ironside 2008). The central assumption evidenced in these statements, and implied more generally in the decision made by the school, is that heterosexual desire is a
more normal way of doing romantic relationships and sexual desire than queer sexualities. Even though school spaces are supposedly places in which sexual desire and romantic relationships are discouraged, it is heterosexual relationships that are considered more ‘natural’ than queer sexualities and desires. Evidenced clearly here is the saturation of the schooling space within the heterosexual economy that Mellor and Epstein (2006) discuss. Queer sexualities are aligned explicitly with ‘inappropriateness’; that is, they do not ‘fit’ and are not ‘suitable’ for school social occasions.

Even more concerning was the support that this decision received from Anglican Archbishop Phillip Aspinall who stated that (Wordsworth 2008)

I understand in this particular instance the school has decided that its approach is to emphasise the interaction of young men and young women and providing them with an opportunity to do that in this kind of formal setting. And I have no objection to that either. I think that’s a reasonable and legitimate approach.

This statement demonstrates significant discursive power. With the full support of an authority like Archbishop Aspinall, the decision of the school is made legitimate. In turn, discrimination is rendered legitimate against those who are not heterosexual in Anglican schools, marginalising and ‘disciplining’ (Foucault 1977) queer sexual subjectivities. This is particularly demonstrated in the assumption that excluding queer young people is ‘a reasonable and legitimate approach’. The stakeholders involved with this school clearly feel that they are secure and supported in their decision to the point that no one would question their decision regardless of how it breaches anti-discrimination law and human rights covenants and principles. The school insists that heterosexual ways of doing relationships are of paramount importance and that the schools’ role is to teach their ‘young men’ about how best to do this in terms of relating only with a ‘young woman’.

Clearly this schools’ decision breached a number of legal instruments that protect and support the rights and liberties of queer young people. This was explicitly noted by commentators in the media. Firstly, the decision breached The Anti-Discrimination Act 1991 (Qld) that prohibits discrimination against any person on the basis of sexuality. Secondly, it denied young people their right to freedom from discrimination based on sex in breach of the UN Convention on the Rights of the Child and the UN Universal Declaration of Human Rights. Finally, the decision breached the recently ratified Yogyakarta Principles that seek to “address a broad range of human rights standards and their application to issues of sexual orientation and gender identity” (United Nations 2006). Despite the blatant breaches of all these legal instruments, the principal insisted that “We don’t intend to change our practice. As well as being a social occasion, it’s an education forum and to that end the school decides what is appropriate behaviour and what is not” (Ironside 2008).

In the apparent breach of these legal instruments, the principal assumes that only heterosexual students are imbued with the right to enjoy a social school occasion with their opposite sex partners. Human rights and discrimination are heterosexualised in the schools’ assumption that these instruments only apply to heterosexual students. Heterosexuality is aligned with naturalness, and the right to take a partner to a school formal is interpreted through this heteronormative framework. Queer sexualities are aligned with ‘unnaturalness’ in this decision by the principal, and are assumed to fall outside the gambit of standard human rights. Indeed, heterosexuality has come to be thought of so extensively as a natural human right that denying queer young people their rights and discriminating against this group is endorsed as ‘reasonable and legitimate’ by key stakeholders in both the Anglican Church and Queensland Catholic Education. These religious and educational figureheads are suggesting that the only
legitimate way of expressing sexual desire is as a heterosexual person, and that human rights and discrimination only apply to heterosexual young people.

Heterosexual relationships are considered here to be so normal as to be a better, more appropriate alternative than same sex relationships at school functions. Queer student sexualities are outwardly marginalised as abnormal and ‘inappropriate’ ways of doing sexual desire in schooling environments, even if this environment is a social one. It is not just about schools denying young people their human rights and discriminating against young people indiscriminately. This instance demonstrates a very well organised, thoroughly thought out approach to excluding queer sexualities from schools and directly discriminating against these young people. Under the guise of ‘protocols and decorums’, the already marginalised position of queer sexualities is reinforced and crystallised in schooling spaces. In addition to this, all students at the school, including queer students, are taught a lesson about the ‘abnormality’, ‘inappropriateness’, and ‘illegitimacy’ of being queer in contemporary Western culture.

Conclusion

This paper has shown that school spaces are deeply embedded in a heterosexual economy of desire. The implication of this is that schools like the Anglican Church Grammar School in Queensland can make decisions about queer young people that breach human rights instruments and anti-discrimination legislation without any hesitation. Despite the push for schools to be regulated as sexless spaces, heterosexual desire is assumed in this decision to be a more normal and more acceptable way of doing sexuality in schooling spaces than queer sexualities. This paper has demonstrated how the assumption of heterosexuality is so invisible in school spaces that schools are now spaces in which human rights and discrimination are almost inherently heterosexualised and heteronormative. That is, it is not discrimination if it happens to queer young people. The most disturbing part of this decision is that it teaches other young people at this and other schools that it is ‘acceptable and legitimate’ to discriminate against queer young people. This would undoubtedly perpetuate the already extensive victimisation that these young people are subjected to in schooling spaces. The inequity of this situation is even more heightened by the fact that most school students may lack the capacity to have these types of school decisions reviewed by bodies such as the Human Rights and Equal Opportunities Commission.

The case that briefly informs this paper suggests that we have a long way to go to make the lives of queer young people more equitable and socially just in schooling spaces. A key future point of concern is how this and other schools make the argument that religious doctrine makes their decision legitimate, even though this type of discrimination is completely unacceptable in other social and work related contexts. It ignores the idea that all students need to be inclusive workers when they leave school to go into further education and the workforce. The lack of school staff training on the impact of homophobia, victimisation and social exclusion is also highlighted in this case. As people charged with the authority to shape students as future workers, it is vital that school staff are aware of their role in disallowing discrimination and protecting the human rights of queer young people. Even though we have been working to raise the profile of these issues for some time now, there appears to be a lot more work to do in overcoming these forms of discrimination and victimisation that may be entrenched in schooling processes (Rasmussen 2004a).

This also indicates that we need to examine more closely the types of diversity education that pre-service teachers are doing prior to going into the workplace. Tertiary education for teachers needs to be targeted as a major area of concern for issues like these. In addition,
further research is required in school spaces that highlight and interrogate the implicit character of homophobia and social exclusion that often make the schooling lives of queer young people untenable. More of a focus is needed on the different forms of discrimination and breaches of human rights that are being enacted in these school spaces and the types of victimisation that are enabled as a result. Furthermore, the practices of teachers and other staff in schools need to be interrogated in terms of the extent to which they are implicitly perpetuating homophobic ideas in the classroom. This paper has shown this to be especially important if all schools are to produce socially just students that will become diverse (not just tolerant of differences) and inclusive workers.

References


Litigating with human rights: The significance of human rights in Australian litigation in the absence of a charter of rights

Brook Hely1
Australian Human Rights Commission

Abstract: Without a bill of rights in one form or another, much of the Australian legal landscape lacks a clear role for human rights in litigation. This paper outlines the scope of protection of human rights under our current legal system, as well as explaining the role played by the Australian Human Rights Commission in investigating and reporting on complaints of human rights violations. The paper will then explore the significant and often untapped role of human rights as a tool of statutory interpretation, noting the impact this has had both domestically and overseas.

Keywords: Human rights - Statutory construction – Statutory interpretation - Australian Human Rights Commission - HREOC – Charter of rights – Bill of rights

Introduction

In a nation without a bill or charter of rights, many legal practitioners might understandably regard human rights as irrelevant to their litigation practice. The purpose of this paper is to dispel that misconception and provide a practical guide to practitioners for drawing on human rights in litigation.

The paper will first provide a cursory overview of how human rights are currently protected in Australia’s legal system. It will then explain the unique role played by the Australian Human Rights Commission (formerly known as the Human Rights and Equal Opportunity Commission, or HREOC, hereinafter ‘the Commission’) within that system of rights protection, focusing on its role in investigating and reporting on individual complaints of human rights violations.

The paper will then highlight the important – and often untapped – role of human rights as a tool of statutory construction, as well as making some observations about developments in the United Kingdom, Victoria and the ACT, where the enactment of statutory charters of rights has injected a rights-based analysis into virtually all areas of litigation.

Whilst the jury is still out as to whether Australia will, or should, enact a federal bill or charter of rights, this paper submits that, in the meantime, human rights continue to offer a significant role to play in litigation.

Overview of human rights protection

Australia is party to the two main international human rights instruments - the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the several thematic human rights conventions that elaborate on certain rights within those two Covenants. However, as
the Australian courts have confirmed many times, entry into an international treaty is an executive act which does not give rise to domestic rights and obligations until incorporated by legislation. This sometimes leads to a significant disconnect between the picture of Australia’s protection of human rights on the international treaty books and at home.

A great deal has been written about the relative merits of Australia enacting a bill or charter of rights. For some, our existing legal landscape provides sufficient rights protection to render a bill of rights in Australia unnecessary. For others, the existing picture is decried as overly haphazard, ad hoc and ill-defined, creating a minefield of gaps and pitfalls, particularly for the more vulnerable minorities within our society.

Whatever one’s view, the picture of rights protection in Australia is certainly hard to pin down. The Constitution provides a number of express rights, although they are relatively scarce and relatively obscure. The High Court has also recognised an implied Constitutional right to free political expression, although the right is widely acknowledged to be a poor cousin to the much broader right to free speech recognised elsewhere.

Some rights are protected directly through legislation, such as under the four Federal anti-discrimination statutes, the Race, Sex, Disability and Age Discrimination Acts, which seek to implement the right to equality. Other rights are protected under a hybrid blend of legislation and common law. The right to a fair trial, for example, is dealt with in Australia under the rules of evidence and procedure, as well as the wide gamut of common law rules on the fair and just conduct of a trial. Likewise, the right to privacy is provided a narrow sphere of protection under the Privacy Act 1998 (Cth), which is supplemented by a variety of common law actions, such as defamation or breach of confidence, and other pieces of legislation that indirectly protect against invasions of privacy. The rest of our rights are said, to varying degrees of opinion, to be protected somewhere or other under the various bushels of the common law.

In the final analysis, however, it is clear that rights protection in Australia is relatively uneven. Whilst some rights enjoy very strong protection with an accompanying right to commence an action in the courts and seek a remedy, others do not.

An example commonly cited of the alleged inadequacy of the existing system of rights protection is the Al-Kateb case. In that case the High Court controversially concluded that the executive had the right to detain a person in administrative detention indefinitely, potentially for the rest of their life, even in the absence of any finding of criminal culpability.

By contrast, when the issue of indefinite executive detention arose before the House of Lords, in relation to the detention of non-British nationals suspected of being involved in terrorism, a markedly different approach was taken. In stark contrast to the position held permissible under Australian law, the House of Lords held that indefinite executive detention was inconsistent with the obligations imposed under the newly enacted Human Rights Act 1998 (UK). Baroness Hale, for example, observed:

It is not for the executive to decide who should be locked up for any length of time, let alone indefinitely. Only the courts can do that and, except as a preliminary step before trial, only after the grounds for detaining someone have been proved. Executive detention is the antithesis of the right to liberty and security of the person.
However, the purpose of this paper is not to critically assess the level of protection of human rights under our existing system. My point is simply that the coverage of protection is relatively ad hoc and diffuse. It is also to note that rights protection comes in various forms and guises, under legislation, the Constitution and the common law. This means that it is often packaged in a different language to equivalent, or partially equivalent, rights under international human rights law.

Role of the Australian Human Rights Commission in the protection of human rights

The ICCPR is scheduled to the Human Rights and Equal Opportunity Commission Act 1986 (Cth) (‘HREOC Act’). This has tricked many an unwary lawyer into thinking that the ICCPR had therefore been incorporated into domestic law. Not true. However, it is important to note that the HREOC Act does provide a limited avenue for victims of human rights violations. The Act provides a right to lodge a complaint with the Commission in relation to an act or practice by or on behalf of the Commonwealth that is alleged to be inconsistent with the person’s human rights. Upon receipt of that complaint, the Commission investigates the complaint and seeks to conciliate a resolution.

The process up until this point is essentially identical to the way complaints of unlawful discrimination are pursued. So far, so good. The sting in the tail, however, comes if the complaint cannot be resolved through conciliation. An aggrieved person does not have a right to then commence proceedings in the courts, as they do with discrimination complaints. However, the HREOC Act does provide a limited measure of redress. If satisfied that the complaint is made out, the Commission then prepares a report. That report reads very much like a judgement of a court, with the exception that the Commission does not have the power to make any orders, only recommendations. The Commonwealth is not bound to follow those recommendations, although the report, including a summary of the Commonwealth’s response, must be tabled in Parliament. In this respect, the HREOC Act provides essentially a ‘name and shame’ mechanism for victims of human rights violations by or on behalf of the Commonwealth.

This is not to suggest that the Commission’s reporting function is not often effective. Numerous such reports have resulted in significant changes or even payments of compensation. For example, the Commission recently found that the Commonwealth and GSL (Australia) Pty Ltd breached the human rights of five immigration detainees in relation to their transfer between Maribyrnong and Baxter detention centres. The detainees were locked in cramped, separated steel compartments in the back of an overheated van for almost seven hours without food, water or toilet facilities. The report also found that the drivers of the van had ignored repeated pleas for water or a break, resulting in the detainees having to urinate in their compartments and one detainee drinking his own urine to relieve his excessive thirst. The Commonwealth accepted the Commission’s recommendations to make payments of compensation to the detainees and has acted upon the wide range of recommendations in the report aimed at improving immigration policies and procedures relating to the transfer of detainees between facilities.

It is therefore worth remembering that a mechanism is available, albeit a limited and unenforceable mechanism, for victims of human rights violations by or on behalf of the Commonwealth to seek a form of redress.
Human rights in litigation

As the above discussion highlights, whilst avenues of enforcement are sprinkled through various pieces of legislation and common law principles, and an unenforceable remedy is available in relation to human rights complaints, Australia is unique in the common law world in lacking a single instrument for providing human rights protection and an avenue of enforcement through the courts. However, it does not follow that human rights are therefore entirely absent from, or irrelevant to, litigation in Australia.

Many lawyers are involved in human rights litigation even when they might not realise it. A community legal service acting for a family challenging their wrongful eviction from their rented home, for example, may well be asserting a wide range of that family’s civil and political rights, including the right to freedom of movement,27 the right to privacy,28 freedom from arbitrary interference with their home and family,29 and the right to protection of the family unit.30 Likewise, defamation cases frequently involve a clash between the competing rights of freedom of speech,31 the right to privacy32 and freedom from unlawful attacks on one’s honour and reputation.33 Similarly, native title litigation invariably involves a rich minefield of rights, including the right to equality before the law,34 self-determination,35 freedom of movement,36 freedom of spiritual belief,37 interference with family38 and the rights of minorities to enjoy their culture,39 not to mention a wide array of economic, social and cultural rights.

However, in the absence of a charter of rights, some lawyers may not appreciate the potential force of human rights-based submissions to bolster their case, premised on a well settled body of law regarding human rights as an aide to statutory construction.

Human rights in statutory construction

It has long been recognised that, when interpreting a statute, Parliament is presumed not to infringe basic rights except by clear and unambiguous language. As long ago as 1908, O’Connor J observed in Potter v Minahan:40

> It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness; and to give any such effect to general words, simply because they have that meaning in their widest, or usual, or natural sense, would be to give them a meaning in which they were not really used.

More famously, in Coco v The Queen,41 Mason CJ, Brennan, Gaudron and McHugh JJ observed:

> The courts should not impute to the legislature an intention to interfere with fundamental rights. Such an intention must be clearly manifested by unmistakable and unambiguous language.42

Likewise, in the case of Plaintiff S157,43 Gleeson CJ summed up the principle as follows:

> [C]ourts do not impute to the legislature an intention to abrogate or curtail fundamental rights or freedoms unless such an intention is clearly manifested by unmistakable and unambiguous language. General words will rarely be sufficient for that purpose. What courts will look for is a clear indication that the legislature has directed its attention to the rights or freedoms in question, and has consciously decided upon abrogation or curtailment.44
It is also a well settled principle of statutory construction that legislation should be construed, as far as its language permits, to be consistent with Australia’s international obligations, including in relation to human rights. In Australia, that principle was recognised as least as far back as 1906, where it was again O’Connor J who observed in the *Jumbunna Coal Mine* case:

> ...every Statute is to be so interpreted and applied as far as its language admits as not to be inconsistent with the comity of nations or with the established rules of international law.

Whilst the principle has obvious application where a domestic statute purports to implement Australia’s obligations under an international convention, the principle is not so limited. As Pearce and Geddes note in their authoritative textbook on statutory interpretation:

> More recently, the courts have also taken international agreements into consideration in the process of interpreting legislation with which those agreements have no explicit connection.

For example, in *Lim’s* case, Brennan, Deane and Dawson JJ observed:

> We accept the proposition that the court should, in a case of ambiguity, favour a construction of a Commonwealth statute which accords with the obligations of Australia under an international treaty.

Similarly, in *Teoh’s* case, Mason CJ and Deane J held:

> Where a statute or subordinate legislation is ambiguous, the courts should favour that construction which accords with Australia’s obligations under a treaty or international convention to which Australia is a party. ... That is because Parliament, prima facie, intends to give effect to Australia’s obligations under international law.

It is also worth noting that it is not only before the courts that arguments based on consistency with human rights are relevant. Wherever a decision-maker is required to interpret and apply legislation, such as administrative decision-makers, tribunals or the Coroner, there is scope to argue that the legislation should be applied consistently with human rights based on these principles.

Furthermore, it is not only statutory construction where human rights principles become relevant. Courts have also recognised that human rights are a legitimate influence on the development of the common law. In *Queensland v Mabo (No 2)*, for example, Brennan J observed:

> The common law does not necessarily conform with international law, but international law is a legitimate and important influence on the development of the common law, especially when international law declares the existence of universal human rights.

Similarly, the President of the Victorian Court of Appeal recently observed that:

> the provisions of an international convention to which Australia is a party can also serve as an indication of the value placed by Australia on the rights provided for in the convention and, therefore, as indicative of contemporary values.
Accordingly, even in cases involving the application or development of common law principles, there is well settled authority for the proposition that human rights are an important and legitimate influence. In Teoh’s case, for example, the High Court accepted in relation to common law procedural fairness that ratification of an international treaty gives rise to a legitimate expectation that the executive would not depart from the obligations under that treaty without giving due warning to a person concerned and an opportunity to be heard on the matter.57

The Queen v Wei Tang

An example of the above principles of statutory construction being put into practice is the recent High Court case of The Queen v Wei Tang.58 This involved an appeal against the first conviction under Australia’s slavery laws that were introduced into the Commonwealth Criminal Code in 1999.59

The facts in Wei Tang60 involved allegations that the accused, Ms Tang, operated a brothel in Melbourne in which five women, all Thai nationals, worked as sex slaves. Each woman had entered an agreement with a broker in Thailand whereby travel expenses, accommodation and food were provided and the women incurred a debt of between $40,000 and $45,000, which they were required to pay off in Ms Tang’s brothel. Under the agreement, the women worked six days per week, serving up to 900 customers over four to six months to pay off the debt. The women were allowed to voluntarily work on the seventh ‘free’ day, and could keep $50 per customer serviced on that day.

Return airline tickets and passports were taken from the women upon arrival and secured in a locker at the brothel. The prosecution contended that they were retained so the women could not run away. The prosecution also contended that the women were controlled as to when and where they worked and on what shifts.

At first instance, Ms Tang was convicted of five counts of possessing and using five women of Thai nationality as slaves. On appeal to the Victorian Court of Appeal,61 however, the conviction was overturned on the ground that the trial judge had incorrectly directed the jury on the mental element of the slavery offence. The court relevantly held:

Wei Tang must be proved to have acted with the knowledge that she was dealing with the victim as though she was mere property over whom Wei Tang could exercise the rights an owner would have over property...62

The Commission was granted leave to intervene in the appeal before the High Court. Its submissions focused entirely on the points of statutory construction mentioned above and their application to the Commonwealth Criminal Code.

The Commission submitted that the Court of Appeal’s approach to the mental element of the slavery offence was too narrow, as it focused too closely on the historical notion of full ‘chattel slavery’; reminiscent of 19th century horror stories of slave markets and slave trading, where human beings were bought and sold as mere chattels. Instead, the Commission submitted, the term slavery should be interpreted and applied consistently with how the understanding of slavery has developed and evolved under international law, rather than being frozen in a snapshot of the more narrow conception of slavery in days gone by. Drawing on international jurisprudence and materials, such as the International Criminal Tribunal for the former Yugoslavia, the European Court of Human Rights, reports of the UN High Commissioner for Human Rights and the complex drafting history of the Slavery Convention,
the Commission submitted that slavery should be read to encompass the more modern and diverse forms of slavery recognised under international law today, which may include circumstances where a person asserts any of the powers attaching to the rights of ownership.63

The appeal was upheld by a majority of the High Court.64 Much of the reasoning of the majority was closely consistent with the submissions of the Commission about the need to interpret the Criminal Code consistently with international law, as well as the relevant international jurisprudence on the meaning of slavery.65

**United Kingdom**

Overseas, the role of human rights in statutory construction has taken on a significance that would have been once thought unimaginable. In the United Kingdom (UK), for example, the Human Rights Act 1998 (UK) requires that all legislation must be interpreted as far as possible to be consistent with human rights.66 In some respects this merely restates the principles discussed earlier. However, the application of the section has gone considerably further in practice, largely because it is framed in mandatory terms and is not limited to situations where a provision is ambiguous.67

In the leading case of Ghaidan v Godin-Mendoza (‘Ghaidan’),68 the definition of ‘spouse’ under the Rent Act 1977 (UK) (‘Rent Act’) was defined as a person living with another as his or her wife or husband. The House of Lords extended that definition to include a homosexual partner. It held that such a reading was possible, notwithstanding that it was contrary to the ordinary meaning and apparent intent of the Rent Act, because it ensured compatibility with the rights of homosexual partners without undermining the fundamental features of the Rent Act. Lord Nicholls observed that:

> Section 3 may require a court to depart from the unambiguous meaning the legislation would otherwise bear. ... [It] may [also] require the court to depart from the intention of the Parliament which enacted the legislation.69

And further:

> [T]o an extent bounded only by what is ‘possible’, a court can modify the meaning, and hence the effect, of primary and secondary legislation.70

Likewise Lord Millett, although dissenting on the facts, agreed that the scope of s 3 was wide-reaching, stating that:

> ...the court must take the language of the statute as it finds it and give it a meaning which, however unnatural or unreasonable, is intellectually defensible. It can read in and read down; it can supply missing words, so long as they are consistent with the fundamental features of the legislative scheme; it can do considerable violence to the language and stretch it almost (but not quite) to breaking point.71

**Victoria and the ACT**

A similar interpretive provision now operates in Victoria and the ACT under their respective charters of rights.72 For example, pursuant to s 32 of the Charter of Human Rights and Responsibilities Act 2006 (Vic):

> So far as is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.
The Victorian and ACT courts are only beginning to fully explore the implications of these interpretative provisions. However, early signs suggest that the provisions are likely to prove significant. In one case, the Victorian Mental Health Review Board appeared to consider the UK decision in *Ghaidan* as relevant authority for the considerable breadth of s 32, noting:

> The Board’s understanding of this important interpretive function of courts and tribunals [imposed by s 32] is that, irrespective of there being any ambiguity in the language of a statutory provision in the Act, it is required to make every reasonable effort to interpret the Act's provisions in a way which is compatible with Charter rights (see *Ghaidan v Godin-Mendoza* [2004] UKHL 30, paragraphs 32-33, 44-50, 59-76, and 106-124).73

Similarly, in *R v Upton*,74 the ACT Supreme Court ordered a permanent stay of criminal proceedings due to excessive trial delays.75 The court noted that its power under the *Supreme Court Act 1933* (ACT) to permanently stay a proceeding must now be interpreted in light of the human rights interpretive provision of the *Human Rights Act 2004* (ACT), which the court held ‘may confer a greater power on this Court than the common law position.’76 The court also applied human rights jurisprudence from the United Kingdom and New Zealand in arriving at its orders.77

Commentators have also observed that the interpretative provisions in the Victorian and ACT charters carry a significant capacity to re-shape the way legislation is interpreted and applied. For example, in relation to s 32 of the Victorian Charter, Priyanga Hettiarachi observes:

> Whilst giving a purposive construction of statutes is already a requirement of Victorian law, when coupled with the muscle of a rights oriented approach, there is substantial scope for departing from the ordinary or settled meaning of the words, provided that it can be done consistently with the statute’s purpose.78

Similarly, Alistair Pound writes:

> As the majority of powers exercised by public authorities in Victoria are statutory powers, the interpretative obligation will potentially be a very powerful tool for the protection of human rights under the Charter because it can be used to confine the scope of the statutory authority given to public authorities by reference to human rights considerations.79

Indeed, in a speech in early 2008 the Chief Justice of the NSW Supreme Court described the statutory interpretation provisions in human rights Acts as ‘the most significant change to the law of statutory construction’.80

**Conclusion**

The experience in the United Kingdom, as well as in other jurisdictions with a statutory charter of rights such as Victoria and the ACT, highlights the strong potential of human rights as a tool of statutory construction. Admittedly, in those jurisdictions the relevant statutory charters explicitly direct courts and others to apply legislation consistently with human rights irrespective of whether the legislation is ambiguous. A rights-based analysis is therefore mandatory in each case.

Nevertheless, it should not be thought that the significance in Australia of this newly emerging jurisprudence is confined to Victoria and the ACT. As discussed above, the armoury is already in place for litigants to argue that ordinary rules of statutory construction require courts to interpret legislation, as well as the common law, in a manner consistent with
human rights. To date, there has been a relative lack of jurisprudence on what this actually means in practice, particularly outside areas of law commonly associated with human rights such as discrimination. The explicit direction in statutory charters of rights to give effect to these principles promises to inject a greater explication of these principles in everyday litigation in those jurisdictions. These developments should therefore be watched closely by all Australian lawyers, regardless of jurisdiction, for judicial guidance on how to practically apply human rights principles in a wide variety of legislative contexts.

When I studied human rights at university it was widely known as a thoroughly fascinating but basically useless subject for an Australian lawyer. However, with courts and lawyers around the world now grappling with how to interpret all types of legislation consistently with human rights, I am pleased to say that that statement is only half correct today.

Endnotes

1. BA (Hons), LLB (Hons), LLM (Human Rights), Senior Lawyers, Human Rights and Equal Opportunity Commission. The views expressed are my own and do not necessarily reflect the views of the Commission. This article is a revised version of a paper delivered at the Paper delivered at the Activating Human Rights & Peace Conference, Byron Bay, 4 July 2008.


14. For example, telecommunications and surveillance legislation (such as the Telecommunications (Interception) Act 1979 (Cth)) or criminal legislation (such as the offence of peeping or prying: Crimes Act 1900 (NSW) s 547C).
17. A (FC) v Secretary of State for the Home Department [2005] 2 AC 68.
18. Ibid [222].
20. HREOC Act, Part II, Div 3.
21. Ibid.
23. HREOC Act, s 46PO.
27. ICCPR, Art 12.
28. ICCPR, Art 17.
29. ICCPR, Art 17.
30. ICCPR, Art 23.
31. ICCPR, Art 19.
32. ICCPR, Art 17.
33. ICCPR, Art 17.
34. ICCPR, Art 26.
35. ICCPR, Art 1.
36. ICCPR, Art 12.
37. ICCPR, Art 19.
38. ICCPR, Art 17.
39. ICCPR, Art 27.
40. 7 CLR 277 at 304.
41. 173 CLR 427.
42. Ibid 437
44. Ibid 492 [30]. See also, Evans v NSW [2008] FCAFC 130 at [68]f (French, Branson and Stone JJ) regarding restrictions on World Youth Day protestors.
45. See, eg, Dietrich v R (1992) 177 CLR 292 at 321 (Brennan J), 360 (Toohey J); Minister for Immigration and Ethnic Affairs v Teoh (1995) 183 CLR 273 at 286-7 (Mason CJ and Deane J)
46. Jumbunna Coal Mine NL v Victorian Coal Miners’ Association (1908) 6 CLR 309.
47. Ibid 363. See also Polites v Commonwealth (1945) 70 CLR 60 at 68-9, 77, 80-1.
51. Ibid 38.
53. Ibid 287. Note that the concept of ‘ambiguity’ in this context is construed broadly: Ibid 287.
55. Ibid 42.
56. Royal Women’s Hospital v Medical Practitioners Board of Victoria (2006) 15 VR 22 at [77] (Maxwell P).
57. Note, however, that the significance of this finding was subsequently thrown into question by the issuing of ‘anti-Teoh’ statements by the government designed to neutralise its effect, seeking to rely on the comment in the judgment of Mason CJ and Deane J (at 291) that the act of ratification generates a legitimate expectation ‘absent statutory or executive indications to the contrary’. See further M Allars, ‘Human Rights, UKASES and Merits Review Tribunals: The Impact of Teoh’s case on the Administrative Appeals Tribunal in Australia’ in M Harris and M Partington (eds), Administrative Justice in the 21st Century (1999) pp 337-75. Note also that the approach taken by the majority in Teoh was subsequently queried by the High Court in Minister for Immigration and Multicultural Affairs; Ex parte Lam (2003) 214 CLR 1, esp at [83], [97]-[102] (McHugh and Gummow JJ), [122] (Hayne J), [145]-[152] (Callinan J).
59. The offence, together with the offence of sexual servitude, was introduced under the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (Cth).
62. Ibid [113] (Eames JA, Maxwell P and Buchanan JA agreeing).
68. Ibid 571 [30].
69. Ibid 571-2 [32].
70. Ibid [585] [67].
72. 009-003 [2008] VMHRB 1.
73. [2005] ACTSC 52.
The order, however, was subject to the Director of Prosecutions being able to seek a contrary order within a specified period if it agreed to indemnify the defendant for all his legal costs incurred to date.


Ibid [19]-[22].


Mediation, human rights and peacebuilding in the Asia-Pacific

Dale Bagshaw
University of South Australia

Mediation has been made the primary dispute resolution process in family law in Australia and is increasingly being promoted in other legal contexts. Basic national accreditation standards for mediators have recently been developed and mediation is on its way to becoming a profession in its own right. Mediators are drawn from many different professional backgrounds bringing with them different values and approaches to intervention. My professional background is in social work which places a high value on social justice and human rights. From this perspective I challenge dominant Western constructs of mediation which have been imported into many countries (including Australia) from the United States and discuss the issues involved in building culturally fluent models of mediation, which acknowledge traditional ways of resolving conflict but also redress power imbalances and challenge structural inequalities to ensure just outcomes for all involved. In this process I will also examine the links between mediation, social justice, human rights, peacemaking and peace building.

Globalization and the introduction of information technology have altered the boundaries of our conflicts and our practices, and have fostered the domination of Western ways of knowing. In particular, North American cultural assumptions about conflict and how to resolve it are embedded in the rational, individually-oriented, interest-based mediation models which have emanated from the United States and dominate mediation practices in many Western countries, including Australia. Courts in other countries in the Asia-Pacific region are currently adopting Western styles of mediating and are engaging Western trainers to educate their judiciary and others who will practice as mediators. However, Western mediation trainers can engage in a ‘residue of imperialism when they attempt to transfer Western models to other cultures as the right way to resolve conflict’ [1: 3]. This paper explores this issue and examines the influence of culture and the cultural context on mediation and emphasises the need to appreciate non-Western values and approaches to dispute resolution.

My basic argument is that it is essential that mediators design models of mediation to fit the cultural, individual and collective conflict resolution needs of the participants, rather than force the participants to follow a particular model imposed by the mediator, regardless of culture, context, the background of the participants or the nature of the dispute. In doing so, however, mediators also need to be concerned with issues of justice and human rights or mediation will be discredited as a fair dispute resolution approach.

Mediation in the Asia Pacific region

Mediation has a long history, the practice of which falls along a spectrum that defies strict definition. Though formal forms of mediation are now widely accepted in the West, informal forms of mediation have permeated all cultures to varying degrees for centuries [2], possibly since there were more than two people on earth [3].
In some generic form, mediation has been practised for at least two millennia in Eastern nations, such as China, Japan, Korea and Sri Lanka, under the influence of Confucianism. It also had roots in Judaism, was evidenced in early Quakerism, and the African ‘moot’ court [3, 4] and has always been present in the teachings of the Holy Qu’ran, ‘which extols the virtues of forgiveness and negotiated settlement’ [5: 4].

Over the past two decades we have witnessed the establishment of many centres and associations for conflict resolution and mediation in Western liberal democratic countries. In the last few years, there has also been a burgeoning interest in Western approaches to mediation in the Asia-Pacific which has led to a marked increase in mediation training programs being conducted overseas by Australians and other Westerners and in the number of postgraduate students from various countries in the region enrolling in mediation and conflict resolution programs in Universities in Australia1.

There are a number of factors contributing to the increased interest in mediation in various Asian and Pacific countries today, including the inability of the civil justice systems to deal with the increasing load of cases, leading to long delays, scarce resources (such as legal aid), the rising costs of litigation and the uncertainty of outcomes where the dispute is not based on a clear legal principle. Democratic and market-based trends are generating too many legal disputes for courts to handle and many judicial systems in the region have not kept pace with the problem. Many suffer from insufficient institutional resources and outdated procedures, and litigants and lawyers complain of excessively adversarial, lengthy and costly trials, unenforceable judgments and court backlogs [6]. Western approaches to court-annexed mediation have recently been viewed by some Courts and Governments in the Asia-Pacific region as one possible solution to the problem, for example in Japan, Papua New Guinea, Singapore, Malaysia, Thailand, the Philippines and Indonesia [7]. Western trainers, such as myself, have been invited to train relevant people to be mediators in most of these countries.

Given this trend, there is an urgent need to develop more inclusive models of mediation in Asian and Pacific countries than those imported from the West – models that build on the strengths of local, traditional practices - and to locate them within a broader social justice and human rights framework. [8].

In the past two decades, theorists have raised awareness of the impact of culture on the mediation process and the culturally complex systems of meaning that third parties and parties in conflict bring to mediation [1, 9-11]. However, many Western definitions of mediation still refer to the need for the third party to be ‘neutral’, ignoring the potential for mediation to ‘perpetuate racism and privilege’ if practitioners do not have ‘a complex appreciation of culture’ and the skills and flexibility to respond to difference [12: 2].

**Western approaches to mediation**

There is not one Western model of mediation – there are many. However, problem solving or interest-based approaches dominate the Western mediation literature and mediation training programs [2, 13]. These stem from early theorists such as Morton Deutsch who defined a conflict as existing ‘whenever incompatible activities occur’ [14: 10]. From this perspective, conflict and disputes are assumed to occur because individuals do not always share similar interests, understandings and resources. It also assumes that constructive confrontation between parties in dispute, using a problem solving approach, can lead to productive, creative solutions/outcomes that lead to more positive system functioning. This approach is reflected
in the following definition of mediation developed by the Australian National Alternative Dispute Resolution Advisory Council (NADRAC):

Mediation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavor to reach an agreement. [15: 9]

A problem-solving approach to mediation, however, rarely occurs in a linear, staged fashion. A mediator often has to take a more circular approach to assist people to deal with their conflicts and their related emotions.

Western approaches to mediation tend to emphasize the ‘impartiality’, ‘neutrality’ and ‘objectivity’ of the mediator, and are often individually-oriented, confrontational and solution-focused. However, Australian indigenous communities and many other indigenous groups in the Asia-Pacific are more likely to value the involvement of the broader extended family or community, indirect or circular communication, harmony, holistic and community-oriented approaches with an emphasis on face-saving and the restoration of relationships. The ‘objectivity’ and ‘impartiality’ of the mediator may be prized in some cultural groups, or with some kinds of disputes; however respected, well-known elders may be preferred in others, although it is important not to stereotype individuals or groups within an Indigenous culture, or to generalise within and across Indigenous groups [16-22]. As the various authors cited point out there needs to be a recognition of Indigenous values and perspectives on conflicts and disputes and their transformation or resolution which in Australia involves: consultation with Indigenous people at the local level - recognising and acknowledging local differences, respecting both new and traditional approaches to conflict and the preferred use of terms, such as ‘peace-making’; the delivery of flexible and adaptable services which allow for a modification of practices to take account of Indigenous needs; and the development and evaluation of accredited training programs and networks for both indigenous and non-Indigenous practitioners [19].

Many critics have questioned the primacy of the interest-based problem-solving approach in the West, including feminists, critical theorists, rights-based practitioners and those who give priority to the transformation of relationships [23, 24], or the importance of deconstructing dominant narratives [25], over the reconciling of individual interests. A focus on individual interests or needs does not take into account the needs and interests of the collective, or the structural inequities in the broader social context, which may need to be challenged or changed for lasting peace to occur [26]. In addition, it may not be possible for parties to share world views or find common interests where there are conflicts involving differing values – for example those related to human rights, philosophical or political views or religion – however the parties may have to continue in a relationship and therefore need to find ways to tolerate or respect each other’s views or ‘agree to disagree’. The interest-based approach to mediation may not be suitable where there are imbalances of power (unless explicit conditions are put in place) as it requires parties to be competent and willing to negotiate for themselves and to cooperate.

Bush and Folger’s model of transformative mediation, focuses on the ‘empowerment’ of the parties and their ‘recognition’ of each other and on the opportunities for personal growth that unfold at every moment of the mediation process [23, 24]. This approach is more relationship and process-oriented and fits more closely with the idea that mediation can be a transformative peacemaking activity, although this particular approach does not explicitly address the issue of power, or structural inequities in the broader context.
Language plays a powerful role in how concepts of ‘normality’ are fashioned and subjectivities or identities are positioned [27]. Mediators can fall into the trap of categorising or labeling their clients and their problems (for example, as ‘normal’ or ‘dysfunctional’) in ways that reify and reinforce the power and knowledge of the mediator and the dominant cultural view. Winslade and Monk in their book, *Narrative Mediation* [25: 35] critically analyse the premises underlying the problem solving approach to conflict, which generate and apply ‘universal cultural truths’. They view problem-solving as only one conceptualisation of mediation practice - a ‘plausible story’ of how conflict occurs and can be resolved, which has a particular historical and cultural slant. A narrative mediator focuses on the deconstruction and reconstruction of the dominant societal and cultural discourses reflected in conflict narratives or stories about conflict that the parties bring to the mediator. From the narrative perspective there is no universal truth - there are many ‘truths’; dominant stories mediate, shape, and create our ‘truths’ or realities. Stories or narratives are viewed as cultural creations constituted in a particular historical time and place. In mediation all parties and others involved (such as lawyers), will have their own stories or versions of the ‘truth’. The mediator works with the parties to create an alternative but plausible story in a way that makes sense to the participants.

The so-called ‘neutrality’ or ‘objectivity’ of our professional practices are being questioned [28: 579]. It is now recognised that professional practices can manufacture a colonising discourse of the ‘other’ under the veil or guise of ‘neutrality’ or ‘objectivity’, without acknowledging that representations of ‘self’ and ‘other’ are always situated politically [29: 72, 30]. Lang and Taylor’s [31] reflective, artistic approach to mediation and a reflexive approach to mediation that I have promoted in various papers [32-36], stress the importance of mediators engaging in self-reflexivity, so they can make visible the personal biases and the cultural, political and social influences which impact on their neutrality, and using an elicitive approach to practice and training.

Steier [37] variously describes self-reflexivity as: ‘turning-back of one’s experience upon oneself’ [33: 2] and ‘being conscious of ourselves as we see ourselves’ [33: 5]. Self-reflexivity recognises that our practices are culturally specific [38], not neutral, and requires the mediator to be ‘explicit about the operation of power’ [39: 162] and to be mindful of their power position in the mediation process. The reflexive mediator assumes a non-hierarchical position (‘bottom up’ rather than ‘top down’) and works collaboratively with clients in a more collegial, partnership role, sometimes described as engaging in conversation rather than as intervention. It is the participants’ knowledge that is privileged, and the participants who supply the interpretive context for determining the meanings of events. The mediator is primarily interested in their different world views, as expressed through their stories about the conflict, and assists them to open up to alternative views or stories that might be more useful to their situation and to the resolution of the conflict.

Michelle LeBaron sees culture as being integral to conflict and advocates the need for mediators to engage in ‘cultural fluency’ through a process of what she calls ‘mindful awareness’ by reflecting ‘on our own cultural ways of knowing and being’ [40: 12] which is similar to reflexivity. She also stresses that when conflict is interrelated with culture it is important to challenge processes that institutionalise, bureaucratise and homogenise mediation processes.

Recognizing that cultures are constructed from deeply shared meanings, that each individual is a part of multiple cultures, and there is wide variation within cultures, the aspiration to design culturally appropriate processes is seen in its true complexity. [12: 2]
Increased knowledge of customary dispute resolution practices can contribute to the development of more culturally fluent mediation practices in various institutions in the region. Priority needs to be given to retrieving and reclaiming local epistemologies, customary or ‘folk’ knowledge, with regard to conflict and its resolution, that is, ‘knowledge that ordinary people have about causes and ways to deal with conflict in their particular cultural setting … not just empirical observation, theoretical research, and systematic testing of methodologies, but also personal experience, intuition, and imagination’ [41: 1]. However, in this process, we also need to pay close attention to issues of power, justice and human rights.

The issues of power, justice and human rights

Taking a culturally relativistic approach to mediation has its limitations - it should not mean that ‘anything goes’. Mediators must pay attention to broader structural issues of power, justice and human rights when assisting people to resolve their disputes. If these issues are ignored, mediators are in danger of mediating agreements which are individually or socially unjust and which may never come under public scrutiny or be challenged, thereby maintaining the status quo [42].

Some Western mediators have become far too concerned with definitions, process and outcome and have neglected the issue of justice, in particular where there are imbalances of power and concerns of injustice or human rights. The issue of power should always be a major consideration in mediation, both within the mediation process and within the culture, context and structures within which mediation takes place. Dominant Western models of mediation presuppose that there is a roughly equal balance of power between the parties, and the mediator will work to balance the power where there is not, however models of mediation as outlined in the texts rarely address the power inherent in the dominant discourses in a culture (with the exception of narrative mediation), nor the structural (e.g. political, economic, gendered) inequities in the broader social context, which sociologists and feminists draw our attention to [32, 33].

One facet of power, which narrative mediation addresses, is overlooked in other Western approaches. Michelle Foucault, the French philosopher, highlighted how dominant discourses in a culture have the power to determine what counts as knowledge or ‘truth’ and what does not, whose voices are dominant and whose voices are marginalised, subordinated or silenced [43]. For example, the colonial legacy in many countries in the Asia-Pacific region, including Australia, has tended to ignore, marginalise or subordinate indigenous knowledges and has privileged Western ways of knowing. This has led to a process of ‘othering’ of minority groups, in particular in colonised countries [44] [30].

Because mediation focuses on building cooperation, critics have worried, justifiably, about the possibility that effective negotiators may ignore structural inequities and violate the rights of weaker parties, or that a supposedly ‘neutral’ mediator may press the weaker party to settle. For the outcomes of mediation to be fair and just, the issue of the use and abuse of power must therefore be addressed, in particular as mediation is a private process. When mediators are not aware of, or fail to deal with, imbalances or abuses of power these imbalances and abuses are sanctioned and reproduced: ‘… dominant narratives will colonise alternative narratives and mediation becomes a method of entrenching dominant power structures, not a forum in which diverse voices can be heard’ [45: 226].
At another level, the question of whether a conflict is asymmetrical or symmetrical is often difficult to answer and has cultural connotations. In Western cultures, egalitarian individualism influences how we view power, whereas in non-Western cultures collectivism and vertical power relations are often seen as ‘natural’ and therefore power imbalance is not viewed as a problem in itself, only the abuse of power [46]. However, regardless of these different world views, constructs of mediation must enable the mediator to recognise and explicitly address abuses of power and human rights abuses, or mediation could easily become another process which marginalizes and subordinates women and other disadvantaged groups, in particular those who are subjected to violence and abuse in patriarchal, hierarchical cultures. It is also essential for constructs of mediation to address issues of human rights and social justice for long-term peacebuilding to occur.

Feminist scholars have pointed out that the effect of ignoring the social and cultural context of mediation where there is domestic violence, for example, is to ignore those responsible for violence and to leave violence unchallenged [47-50]. The tendency of Western mediators to focus on individual interests and needs, rather than on the social context, and to try to be ‘neutral’ and ‘impartial’ in their role as facilitators, may lead to compromises that imply that the victims of violence are blameworthy and need to change in some way. We need to be mindful that some traditional conflict resolution practices may produce agreements that are unjust for one party; in patriarchal cultures, for example, the victims are often women.

**Mediation as transformative peacemaking**

The language we use to describe what we do as mediators is important. For example, John Paul Lederach points out that popular conceptions of the term ‘conflict resolution’ promote the idea that conflict may be undesirable and should be stopped at the expense of justice, whereas in ongoing relationships, conflict remains. The term ‘conflict management’ is too ‘narrow’ and ‘technical’, suggesting that we can control conflict [1: 16]. Conflict ‘transformation’, however, is more closely linked to peacemaking [51, 52] than conflict ‘resolution’ or ‘management’. The term ‘transformation’ addresses the ongoing, longer term conflicts and the potential need for structural changes. To quote Lederach:

Social conflict is a … phenomenon that transforms events, the relationships in which conflict occurs, and indeed its very creators. It is a necessary element in transformative human construction and reconstruction of social organization and realities … in other words conflict is seen as a transforming agent for systemic change. [1: 17-18]

I am attracted to Lederach’s concept of conflict transformation as a framework for building healthy relationships and communities, both locally and globally, and which requires fundamental changes in mediators’ thinking. He highlights that conflict impacts on people personally, relationally, structurally and culturally and conflict transformation focuses the mediator’s attention on the context of conflict and the cultural meanings attached to the complex web and system of relational patterns. In addition, he suggests that mediation must be ‘understood and integrated into an overall peace-building framework, oriented toward social empowerment and change’ [1: 119].

In 1971, Adam Curle described mediation as a peacemaking function, along with education and advocacy. He noted that these approaches shared a vision of justice which enabled less powerful groups to attain a voice. Successful mediations can facilitate the articulation of the legitimate needs and interests of each of the parties and enable relationships to be restructured so that substantive and procedural issues contributing to conflicts can be dealt with in a
mutually acceptable way, thereby contributing to building peace [52, 53]. However, Lederach argues that in order to build lasting peace, mediation should not just address the resolution of interpersonal and relationship issues, it should also be concerned with transforming conflicts, which may involve the need for structural change [1]. He suggests that: ‘transformative peacemaking is based on understanding fair, respectful, and inclusive process as a way of life and envisions outcome as a commitment to increasing justice, seeking truth, and healing relationships’ [1: 22]. He describes mediation and peacebuilding as ‘two broad camps, that of non-violent social change, the “revolutionary” camp, and that of mediation, the “resolutionary” camp’ [1: 11].

Lederach [1] and Adam Curle [53] both argue that mediators can be peacemakers if they work to empower people to be active participants in transforming conflict and making decisions that affect their lives. Lederach states that ‘[t]ransformative peace making … empowers individuals and nurtures mutuality and community’ [1: 21]. Catherine Morris also suggests that peacebuilding also includes an emphasis on human rights. She notes that: ‘[p]eacebuilding includes building legal and human rights institutions as well as fair and effective governance and dispute resolution processes and systems’ [54:1]. Instilling notions of peacebuilding into our dispute resolution systems requires us to move beyond the dominant, narrow models of mediation that are currently in favour.

**Conclusions**

In order to transform conflicts and build a just peace, mediators need to ask the right questions to uncover the nature of social relations, in particular from the perspective of those who are ‘othered’, marginalized or relatively disempowered in a culture. Culturally fluent mediators are interested in the lived experience of people and place emphasis on allowing people to construct their own identity, process and outcomes within the mediation process. However, if mediators blindly promote cultural relativism and do not accept that there are some universal principles, such as those enshrined in human rights, then the process and outcomes of mediation may not be just [32] and they cannot claim to be peacemakers.

Mediators need communication competence in the knowledge that their clients supply the interpretive framework that is necessary for determining appropriate interventions. They must be client-centred, use enabling and empowering ways of working and strive to be inclusive, especially ensuring the inclusion of previously excluded or ‘othered’ voices, such as those of Indigenous people. For example, Indigenous values, world views and traditions need to be explored, understood and built into approaches to dispute resolution if the processes are to be effective in dealing with conflict within Indigenous communities and between Indigenous communities and other stakeholders. Structural issues may also need to be addressed to ensure that the outcomes of dispute resolution processes are fair and just for all concerned.

Culturally competent mediators need to accept that tensions and conflicts will be associated with recognition of diverse values and difference and avoid defining themselves and their role as ‘neutral’. Most importantly, it is essential for mediators to engage in self-reflexivity (which demands awareness and control of one’s own professional, personal and cultural biases in order to understand the standpoint of the other) and allow for a relativity of client needs, but this must occur within an explicit framework which addresses issues of social justice and human rights.

It is impossible for mediators to be value-free and the human rights of oppressed individuals and groups in a society can easily be ignored by mediators in the guise of ‘neutrality’. As
more and more groups define identity as being a human right so we become aware of the ways in which social policies are embedded within relations of cultural oppression [27]. The language of ‘rights’ should include the right to define one’s situation and experience across a broad range of cultures, social situations and institutions [55]. As the papers from a previous conference on Indigenous Human Rights demonstrated, we all hold the concept of rights by virtue of being human, even if we have a different cultural construct of what those rights might mean in practice [56].

References


Endnote

1. The postgraduate Master of Mediation and Conflict Resolution programs and the associated PhD program at the University of South Australia are attracting increasing numbers of students from the Asia Pacific region, including from Indonesia, the Philippines, Malaysia, Vietnam, Cambodia, Thailand, Japan, China, India, Nepal, Sri Lanka, Singapore and New Zealand.
Of Intimate Others: More-than Human Rights for a More-than Human World

Kim Satchell
Southern Cross University

Abstract: In the interest of activating human rights and peace, toward a realisation of universal responsibilities for 21st Century challenges, notions concerning the more-than human world offer a critical ethical framework. This paper acts as a poetic intervention, on the premise that human rights underpinned by anthropocentrist assumptions, are impoverished and ultimately pressed into service of the structured inequalities they intend to depose. Therefore, a relational understanding of the integrated weave between considerations of human rights, social justice, cultural diversity and ecological sensibility, are imperative to any discussion of human rights, particularly at the nexus of social and environmental justice. The new ecology rearticulates a synergistic view of the more-than human world as a whole which is greater than the sum of the parts (Rose 2008).

‘The new ecology’ according to Deborah Bird Rose (2004) ‘starts with this fundamental assertion: that the unit of survival is not the individual or species, but is the organism-and-its-environment.’ The more-than humanist activates a politics of hope, flowing in the poetics of ecological sensibilities, attuned to the unfolding of more-than human complexity. This paper uses quotidian examples in dialogue with the more-than human world; commiserate with the relational ontology of a shared home-place, upon which all life depends. Creative research methodologies, representations and performative modes of inquiry, animate the sentient archives of place, to articulate some of the imaginative and material possibilities, the more-than human world is beckoning for.

Keywords: Surf Culture, More-than Human World, Ecological Humanities, Pedagogy of Place

Blinking but mesmerised

I went for a walk over the dunes again this morning

to the sea,
then turned right along
the surf

rounded a naked headland
and returned
along the inlet shore:...

…I see narrow orders, limited tightness, but will
not run to that easy victory:

still around the looser, wider forces work:
I will try
to fasten into order enlarging grasps of disorder, widening
scope, but enjoying the freedom that
Scope eludes my grasp, that there is no finality of vision,
that I have perceived nothing completely,
that tomorrow a new walk is a new walk.

(A.R Ammons – Corsons Inlet 1988)
I walk down the familiar track at the north end of Sandy Beach. Under the canopy of the trees and bushland that buffer the streetscape from the foreshore. The clearing weather offers respite after several days of blustery conditions, heavy cloud and wind from the south. The lively mood mimics the dappled light which filters through the leaves overhead and bends with soft geometry, around the surface of contorting tree trunks. Away to the left, the scene could be mistaken for the ‘magic dancing wood’ of the John Martyn (1967) lyric, carpeted with fallen leaves, among the grasses shimmering incandescent in the dew. Birds enliven the space with sound and movement in response to the more agreeable conditions. Today they are more vocal and visible. As if coming out of hiding. The soft breeze is crisp and cool upon my clothes and skin. The track opens out upon the beach; I walk into the warming brilliance of an early morning in late July. Blinking but mesmerised. The sea woos me.

Like a shag on a rock

Contemplating writing this paper I find myself further along the beach. I am now facing the rocky protrusion which acts as the centrepiece for the rock pools that front the headland, at the intersection joining the curve of two beaches. The rock is known as Witches (Hat) because of a certain resemblance from some angles. At this particular moment the sun is screened by the shape of the rock darkly silhouetted in the morning light. On the pinnacle of the solid mass a cormorant stands drying outstretched wings back to the sun. The bird appears majestic, serene, knowing…eyeing me calmly as we encounter shared presence. This is not the first time I have observed such behaviour but am struck with the personal nature of the closeness brooking mere proximity.

I look up in wonder…musing upon Deborah Bird Rose’s (2006) evocation ‘If the Angel of History were a Dog it would be howling?’ On Benjamin’s (1992) interpretation of the Klee painting Angelus Novus, he at one time possessed. I muse…If the Angel of History were a cormorant it would be drying its wings, waiting, benignly on a witches hat…not to ‘awaken the dead and make whole what has been smashed’ (Benjamin 1992: 249) but for the living to arouse and embrace more-than human complexity. Taking account of what might hopefully emerge, in the shift from the destruction of human striving for dominance, to the relational ethics of the new ecology which reconsiders the basic unit of survival or life, as inextricably linked with the webs of organisms and the environment.

A destruction on par with Benjamin’s (1992: 249) notion, ‘This storm is what we call progress.’ as he states in Theses on the Philosophy of History. In this sense the cormorant offers an apt metaphor, for the way in which the Angel of History might be viewed in relation to the wilful and thoughtless destruction of the environment, the hegemony of development and so-called economic growth in contemporary Australia. I argue, that in a time heralded as unparalleled in prosperity and wealth, but burdened with environmental and concurrently financial crisis, that Thoreau’s (1987: 335) insight ‘for man [sic] is rich in proportion to the number of things which he can afford to let alone’ stands in contradiction and acts as a stinging rebuke. In light of what impoverishment, not leaving things alone has visited upon the biological diversity of the earth; a return to leaving things alone appears to be impossible, nonetheless imperative.

Leaving things alone according to the meaning I am striving for, refers to a particular sensitivity toward the underlying integrity between living organisms and the environs that support them. I prefer to call such sensitivity an ecological sensibility, a term which resonates with an affirmation of the inherent value of life and the myriad of interactions that supports life (Rodman 1998, Harding 2006). This does not preclude contact but rather involves
encounter, engagement and closeness. In the effort to experience, know, understand and enter fully into relations of care. This requires becoming attuned to the unfolding of living organisms in a particular environment, complimentary to the pedagogy of place and bioregionality. Where human and non-human actors continuously learn the lay of the land and are taught accordingly about co-existence and adaptation (Somerville 2007).

Living in the care of place in mutuality and hoped for reciprocity does not mean inaction. This may include both restrained use of land and sea, with an active reconfiguration, restoration and renewal, predicated upon the importance of generative micro-environments and bioregions. This would therefore necessitate from a human standpoint, greater respect and appreciation for the more-than human world (Snyder 1990). Leaving things alone, acknowledges the necessity of more-than human rights for the more-than human world, in accord with trans-species networks and renewed kinships with living organisms and the environment. Leaving things alone is predicated upon the generative and regenerative action of ethical relationships that affirm life and peace.

This activation of rights discourse is intended as a provocation for the argument of ethical considerability of the more-than human world which so often flounders in the hubris of human exceptionalism at the core of anthropocentrism. The human rights work of eco-philosopher Rebecca Garcia Lucas Rose (2006: 144) offers some key theoretical framing, she argues against the ‘epistemology of hyperseperation’ of human and non-human relations based on the binaries of the Western Cultural tradition, for example mind/body, human/animal, culture/nature and so on. She proposes an ‘Earth-based ethics’ from an eco-philosophical perspective stating the ‘foundation for human life’ should be based upon human-non-human relationships and the environment. This challenges the notion of ‘human rights’ as the foundation for both human relations and non-human rights, on the contrary positing ‘non-human rights independent of human interest lays a true foundation for human rights’ (Rose 2006: 143). The contribution of eco-philosophy and environmental ethics to discussions of human rights and peace studies offers both critical insight and creative possibility.

Rebecca Rose (2006) questions the disconnect between an extensive definitional consensus (among ordinary citizens, government and public institutions) in regard to the concepts of human rights and the inability of these theoretical understandings to stem the flow of human rights abuse. Her argument proposes that human rights abuse is a consequence of the abuse of non-humans and the environment predicated on the ‘epistemic hyperseperation’ between human-non-human relations in which non-human and the environment are considered as ‘radically other’ (Rose 2006: 146). This radical otherisation and situational denial of ethical considerability, in terms of non-human others and the environment, enables a morally lax expediency that works as an implicit justification for all manner of abuse toward ‘others’. Against which from varied perspectives, feminist, post-colonial and queer critiques are at pains to redress, in the face of interlocking systems of abuse, which hooks (1990) defines as White Supremacist Patriarchal Capitalism. In this context Rose’s (2006) discussion of war and terrorism contends that the fault-line of epistemic hyperseperation between human and non-human-environment is at the axis of the injustice and ineptitude that bedevils ethical relations and peace. The war and terrorism of human to human relations are indicative of a deep seated hostility, combatant and disrespectful, attitude toward the earth.

Despite the limitations of a rationalist discourse of rights (extensively critiqued by a number of prominent eco-feminists), Rose (2006: 140) skilfully argues for the necessity to regard rights discourse (given its ‘global currency and shape’) in dialogue and informed by
ecosophy and environmental ethics. I agree with Rebecca Rose (2006) that human-nonhuman relations are a key; however, I am trying to talk of more-than human rights as opposed to human and non-human rights, as a tactic to decenter and embed the ‘human’ in the ecological complexity of a living whole which Deborah Bird Rose (2008) suggests characterises the new ecology. Lived experiences of encounter with the more-than human world, which I argue are integral (with the more-than human condition), are pervasive, suppressed and too often disregarded (in the dominant epistemology of hyperseparation) but nonetheless of inestimable potential for engaging (re-engaging people) in the creative work of enchantment. This is to propose ethical consideration and inherent value to living entitites and living systems in the context of place, relationship and encounter, starting from a situated and embodied standpoint.

The idealism of such landmark documents as the Universal Declaration of Human Rights 1948 and the Earth Charter 1997 taken together in concert, suggest rethinking all manner of human rights in the context of a living Earth community which is inextricably linked and interdependent. From the more basic rights, to more complex ones including the right to water, food, shelter, education, employment, development, political asylum, peaceful international and trans-national relations to name a few. However as Rose (Earth Charter History cited in 2006: 141) points out ‘the mechanisms and instruments required to implement [their] ethical and strategic vision’ do not exist. She considers at this point, ‘the contribution of a perspective based in ecosophy and environmental ethics’ for a practical outworking of the universal responsibilities for the collective realities of a ‘plurality of subjects’ (Rose 2006: 141).

My modest hope drawing upon approaches in the ecological humanities and eco-cultural studies is to consider the role of lived experience and narrative in the context of place, as a dialogue towards adapting everyday practice in line with the new ecology. This pedagogy of place attendant to the more-than human world would therefore require a humility and willingness to learn. The idea of intimate-others moves counter to the ‘radical otherisation’ of which Rose (2006: 146) speaks and flags concern for a situated ethics with closer and deeper relationships between organisms in their environment that are emplaced and entangled in webs of life.

‘Left, like a, shag on a rock’ in the Australian vernacular expresses feelings of abandonment, isolation, to be deserted, left out because of unpopularity, a figure of loneliness. Marginality projected, ironically, toward the figure of the cormorant, but in many respects descriptive of the estrangement with which society so often positions itself, in relation to the natural world, strangely, as if in a separate category of culture. Based on the misleading assumption of human superiority and moral certainty, perhaps a crisis of conscience is necessary. Particularly concerning the value of human life, compared with all other organisms and life forms (Plumwood 2008). In the following sections of the paper I will consider the tentative possibilities for more-than human rights; from my personal location speaking a situated knowledge, the call to a republic of conscience, the search for a sense of home-place, quotidian transformations brought about by intimate-others and a final summation of thoughts.

**Coordinates of my location**

‘The new ecology’ according to Deborah Bird Rose (2004) ‘starts with this fundamental assertion: that the unit of survival is not the individual or species, but is the organism-and-its-environment.’ My aim is to discuss relational ontology (meaning the subjective inter-
relationships of living organisms in shared haunts and habitats) in a vernacular and organic way. By using the immediacy of everyday images, descriptions and stories, as creative research practice. This involves the self-reflexive empiricism of the phenomenology of moments, days, seasons, space, place and ecology, with the further implications of a situated knowledge and experimental philosophy. I want to support an argument for the value of thinking doing communication (photography, writing, speaking) and everyday practice, as complimentary forms of creative research, in an open-ended and dialogical mode of inquiry. This is to pursue knowledge production in the eco-humanities for an ecological literacy more broadly.

My research responds to Deborah Bird Rose’s (2004) ‘Invitation to the Eco-humanities’ as a poetics to multiply ecological readings of place and to study and theorise human encounter with more-than human complexity. I am following Offord’s (2003: 43) explication of ‘conscious mapping’ considering the confluence of space, place and ecology in specific sites. By using a research methodology which is ‘multi-sited and multi-voiced’ to consider and activate key coordinates of my sense of belonging and the more-than human condition (Saukko 1998). As such this work arises out of the social, cultural and political context of the Mid North Coast and the 21st Century in Australia. However more acutely a longing (I argue) in and of the sentient environment itself.

What informs the ideas I want to discuss in this paper, are questions bound up in lived experience and the places they occur. Thoughts concerning coming to terms with an ethos of belonging in regards to space, place and ecology. In this instance with a focus upon encounters with non-human others and trans-species networks in the context of particular life-worlds and sentient places. The ecology of care this recognises, I propose is unidirectional, in that such relationships provide human actors with ‘care for’ their well-being and in turn engender ‘care about’ the integrity of the life-world they share and enjoy (Macnaghten 2003).

This is an interest germinating in the space, place and everyday life of surfing and beach culture. I am conducting two specific case studies on the Mid North Coast of New South Wales. These respond to questions concerning notions of belonging and home toward ‘the pedagogy of place’ as a site for the eco-humanities and eco-cultural studies. I am trying to think through intersubjective encounters with intimate-others and place, from self-reflexive, critical and ‘place-sensitive’ perspectives (Somerville 2007, Mathews 2005, Offord 2003). My academic interest in culture, space, place and ecology stems from the intersection of my engagement with surf and beach culture, community activism (in opposition to a proposed Sewage Outfall at Look At Me Now Headland at Emerald Beach and over-development of the coast), adult education and academic work (my involvement with the Community Services-Welfare section of the North Coast Institute of TAFE and Cultural Studies at Southern Cross University).

In the tradition of Henry David Thoreau (1987: 592) ‘I wish to speak a word for Nature, for absolute freedom and wildness…’ a wish, though laudable and in Thoreau’s case ground-breaking, nonetheless problematic for me in terms of presumption and generality. However this does introduce the desire to communicate with, and of, what is often relegated to the ineffable and desiously written off as esoteric. The resort to terms such as more-than human world and more-than human complexity, therefore are not intended as a deliberate stumbling-block per se, but as an attempt to think differently about living organisms, the environment and the relationships they rely upon.
Republican of Conscience

I want further locate myself, after the Seamus Heaney (1998: 300, 301) poem, as speaking and coming… ‘From the Republic of Conscience’ with direct reference to the concluding stanzas.

The old man rose and gazed into my face
and said that was official recognition
that I was now a dual citizen.

He therefore desired when I got home
to consider myself a representative
and to speak on their behalf in my own tongue.

Their embassies he said are everywhere
but operated independently
and no ambassador would ever be relieved.

I find it of great interest, the way Heaney (1998: 300) introduces the Republic of Conscience, with a keen sense of personal experience in the opening stanza;

When I landed in the republic of conscience
it was so noiseless when the engines stopped
I could hear a curlew high above the runway,

The significance of the call of the curlew is steeped in Irish mythology, geography and poetry. It appeals to me more directly, as an acknowledgement of the profound resonance, the non-human voice holds for human connection with place. As a provocation to become alert to the more-than world, the difference between noise and sound is suggestive. While as a point of departure for an invitation to whet the conscience, recognition of the non-human world is a salutary start.

In my own experience, the appeals of the more-than human world are accumulated, in the mixed emotiveness of delight and guilt. I embarked on a self-initiated journey to live by the sea, which drew distinction between my birthplace and the search for home-place, as a quest beyond the familial home of origins. Activating ‘the future coordinates of my belonging’ (Offord 2003: 42) and return home, in the fuller sense to a place in the world where I felt kinship, required the dual citizenship (country and conscience) of which Ambassador Heaney (1998) generously speaks. This likewise involves activating the coordinates of a return to the more-than human world. I set off in search of a map of the present. Drawing ideas and actions closer together in sympathy with social and environmental justice, caught in the tension of colonisation and capitalism both the aftermath and the continued avarice. As a kid I was often taken aback at what I considered to be the environmental vandalism which was part and parcel of the city of Sydney.

One recurring scene drawn from a daily commute through my high school years gave me pause for thought. This particular strip of track and the accompanying scene has come to epitomise for me, the colonial encounter as an unresolved act of violence toward the environment. From Bardwell Park station to Tempe via Turrella the railway line follows the Wolli Creek Reserve, the largest uninterrupted bushland area in South Western Sydney. Wolli Creek flows into Cooks River which feeds into Botany Bay. Before a train reaches Tempe Station linking up with the Illawarra line heading towards the city centre, the view from the
eastern side of the train catches an extended glimpse along the Cooks River towards Mascot and Botany Bay. It is apparent even at a glance that the river here is heavily polluted.

The history of Cooks River, post-invasion, confirms this and reads as a litany of environmental disasters, decade upon decade of fish kills from heavy industrial pollution. The site is marked with the pall of death. In more recent times, nearby at Botany Bay close to the site of the international airport has been identified as having the largest toxic plume in the Southern Hemisphere, leeched into the watertable from the British multinational ICI since named Orica. This is a telling and damning dilemma, analogous with the unreconstructed modernism, at the core of Australian polity and business.

In his Nobel Lecture, 1995 ‘Crediting Poetry’ Seamus Heaney (1998: 456) concludes one of the stories he tells drawn from the conflict in Ireland, with this comment ‘It is difficult at times to repress the thought that history is about as instructive as an abattoir…’ I am reminded of Benjamin’s dictum (1992: 248) ‘There is no document of civilisation which is not at the same time a document of barbarism’. I stumble upon Lisa Robertson’s (2003:145) line of lyrical prose ‘Through gluttony we come to resemble history. Through gluttony we are indexical and imagine a continuum from survival to greed. The challenge of survival for the human species therefore, shifts from the quest to meet basic needs to the quest to limit excesses. Mistakes people and societies seem to stubbornly repeat. Rebecca Rose (2006: 144) opines ‘history is a chronicle of human mistreatment of the ‘other’ predominantly identified as non-human nature’. Ironically, the abattoir figuratively and as a real practice, does become instructive, in terms of the barbarity institutionalised at the behest of insatiable desires. The slaughter takes on a far more devastating and far-reaching apogee in relation to the environment more broadly.

Jeanette Winterson (2007) makes this point in the The Stone Gods, by posing the contrast of three planets. The White denuded of all life through human excess, the Red in terminal decline and the Blue supportive of human life but as yet untouched, suggestive of the perils of climate change and the effects of human exploitation. In the words of one of the characters, she describes the situation of the Red Planet-Orbus.

Well I don’t know what you call it, but a planet that has collapsing ice-caps, encroaching desert, no virgin forest and no eco-species left reads like gutted to me. The place is just throwing up and, I tell you, it’s not the first time. (Winterson, 2007: 68)

The image she offers is more grotesque than an abattoir, the earth being gutted as if disembowelled by the relentless drive of extractive economies and the form of consumption they fuel. ‘Civilised, crying: how to be human again; this will tell you how. Turn outward, love things, not men, turn right away from humanity,’ eliding the misanthropic extreme, but taking here the kernel of Jeffers’ (1989 p418) poem Sign-post, the notion of falling in love outwards. I want to contrast the gravity and seriousness of these thoughts with some lighter, more hopeful thoughts in the final sections of the paper. These following encounters are offered therefore, as a politics of hope flowing from the poetics of an ecological sensibility.

**Home-place the earth**

What good is living if no one ever enchants the world? How and where to live if there is no enchanted place in the middle of these destructions? What if we had survived, in those times and those unliveable places, only thanks to such utopias? (Serres, 1997: 160)
I moved from Sydney to Coffs Harbour in 1982 and settled in Sandy Beach in 1990. By this time married with a family. I developed a strong attachment to the coastal strip north of Coffs Harbour through surfing, further galvanised in community opposition to a proposed Sewage Outfall, the outcome of which resulted in a Coastal Marine Park and Nature Reserve being gazetted by the NSW Government. I continued to develop this deeper relationship with place through surfing, cultural studies and interests in the eco-humanities. This included a growing affinity with the non-human inhabitants and the apparent sentience of place, which I experienced through my everyday encounters walking, surfing and observing the surrounding land and seascape. I want to offer some brief stories and reflections upon encounters with intimate-others, in the hope of activating, what I call more-than human rights, in the context of notions of the more-than human world. These are by no means conclusive but are intended to be suggestive of different perspectives, which are relational and illustrative of the shift such encounters effect in thinking about place and ecology.

Transformations

Once I, Chuang Tzu, dreamed I was a butterfly and was happy as a butterfly. I was conscious that I was quite pleased with myself, but I did not know that I was Tzu. Suddenly I awoke, and there was I, visibly Tzu. I do not know whether it was Tzu dreaming that he was a butterfly or the butterfly dreaming that he was Tzu. Between Tzu and the butterfly there must be some distinction. [But one may be the other.] This is called the transformation of things. (Chuang Tzu)

Last spring over a period of several weeks, I enjoyed some chance meetings with a butterfly. I have come to think that these encounters were with the same Blue Emperor. It began in my small backyard surrounded and overshadowed by trees. I live near a stand of paperbark trees and have two quite large ones at the back corner of the block which adjoins a green corridor, separating vacant coastal frontage (land once a farm) and the suburban village. When my partner and I purchased the land, we had a small dwelling built for our young family. We decided to plant a native garden at the front, side and back, intentionally, to restore habitat for the native birds in particular. In this respect our efforts have been successful and rewarded with a rich variety of birdlife frequenting the garden.

On the days when I encountered my butterfly friend, the light as I remember always had a brilliant hue. The wind so light as to be breathless, wafting gently with the softest touch of fresh air. In first instance I stood at the clothes line hanging out clothes when this delightful creature wheeled around me, gliding into my vision seemingly to court my attention. It was if I had never seen a butterfly propel itself before, or at least, not with such elegance and grace. I moved forward, closer and the butterfly responded, rising up above my head and drifting closer to eye level. I slowly raised my hands and the butterfly pirouetted around them several times dancing back and forth through the air. The performance though improvised was being auto-choreographed (not unlike surfing), not just a random pattern of flight but an artful display of skill.

There were several encounters which happened completely unanticipated; nonetheless my interest was thoroughly piqued. One morning I walked into the backyard to fetch my surfboard to go surfing. On the way along the side path, the butterfly appeared with a flourish of manoeuvres, rising and falling with staccato propulsions up and lilting drifts and falls down. I followed in the direction ahead, out the gate to get to the car adjacent to the front garden. All the while, with the butterfly leading the way and doubling back toward me and then leading on again. As I stood out the front, the butterfly hovered and then deftly, floated down onto the lower branch of a grevillea. I had my surfboard under my arm but with the free
hand, reached for my camera in my coat pocket to get a picture. In a split second, a
neighbourhood cat, lurking in the bushes, lunged out from the bordering clump of grass and
snatched the butterfly into its paws. Instinctively I thrust the nose of the board into the cat’s
ribs and the feline let go of the prize which flew off, winding slowly high into the air.

As I stood there for a moment, stunned, I was grateful my friend had survived the ordeal.
Then strangely, I thought with Chuang Tzu’s meditation at the corner of my mind. Perhaps
this butterfly after all was the reason we built here and the garden we had planted and tended,
was after all, for this butterfly to enjoy for a few weeks in spring. I shrugged off the thought
as foolish, but entertained a deeper reverie of the relational transformation of my ontology.
This garden though I tended it, did not just belong to me, but belonged to a wider relational
field of meaning and purpose, and I all the more, to it.

In these same months in spring, I went surfing at Look-at-me-now Headland on many
occasions, at a surf spot known as Shelleys. One particular day, mid week and middle of the
morning, the day gleamed like a polished gem. When I arrived at the beach I knew the surf
was going to be small. There were not many people but the conditions were pristine, smooth
waves but tiny. I was riding a board purpose-built for such days, a quad-fin Fish. Within
fifteen minutes I was the only one left in the water. Not a soul to be seen. The emerald green
water, shimmered on the surface, but looking down to the bottom appeared bottle green,
crystal with high visibility. Pods of dolphins are common in these waters and on this day, they
had been moving up and down beyond the break, playing amongst themselves in a group
catching the infrequent swells.

The waves though small had flawless shape and I was getting long rides both left and right. I
noticed a pod of dolphins heading towards me and pushed out beyond the break to observe
them as they moved past. As they got closer, they seemed to slow in pace, they began to swim
alongside me and there must have been over twenty in the pod. I talked to them and hummed
some sort of melody, before long they had encircled me. Some had lifted their heads out of
the water, giving me their attention; quite often they can be indifferent to your presence in the
water, but not this day. Dolphins inhabit the ocean but in a stricter sense they live amongst the
network of their own relations and those of other species. I felt, in quite a significant and
symbolic way, to have been brought closer into their circle. Again, the relational aspect of this
encounter had for me a palpable ontological dimension. The co-presence of these particular
non-human others, had an intimacy and a closeness, which cannot not be measured in terms
of proximity. What I find is important on a deeper level are the broader relations of living
organisms, in an environment which offers an ecology of care. This home-place, for me
illustrates what Stephen Harding (2006: 44) calls, after James Lovelock’s hypothesis, a ‘Gaia
Place’, a place that promotes a connection with ‘the great living being of the planet’.

The more-than human world offers humanity, more than humanity could ever give in return.
However, there is need for humanity to accord more-than human rights to the living and
animate earth. This would include all that people hold dear as human rights (the affirmation
and dignity of shared life) and then some further consideration, for the complex living
systems which biodiversity depends upon for perpetuity beyond the rational comprehension
of humans (including the role of death leading to life and the sheer complexity of the webs of
living organisms-in-environments) (Rose 2006). Anything less is a violation of human rights
by fiat. Why? This is because tenuously and inconclusively it is within ‘our’ collective power
to make decisions which are implicated with the gravity of such interdependence (ironically,
the result of wilful ignorance and greed on the part of humans) and not on the preservation of
human independence. The apparent global dimensions of anthropogenic climate change are a
uniquely 21st Century challenges. This presents a stark universal responsibility accorded to humans for the remains of a systemic integrity of Earth life, within which generative and regenerative potential shimmers on the wane. For humans this age of diminishing biological diversity should be of utmost concern. The need for synchronicity with more-than-human complexity could not be clearer.

**Outstretched wings and an open heart**

There is a poem and a story that Heaney (1998) writes of, drawn from the Irish legend about St. Kevin of Glendalough. The monk with outstretched arms, deep prayer, is mistaken by a bird as a suitable place to nest. Not wanting to disturb the bird St. Kevin remains still, only to become further implicated when the bird lays eggs and he feels their warmth on his person. He decides after all to remain prostrate in this position ‘until the young are hatched, and fledged and flown’ (Heaney 1998: 410). According to the legend in this selfless act he loses himself but becomes one with all that surrounds, serving as ‘signpost and a reminder’ of the sanctity of life in all its forms (Heaney 1998: 459). If the Angel of History were a Cormorant it would be drying its wings, waiting for them to…well dry, but surely for such a time as to bring the living and the dead under their fold. However, thinking of St. Kevin stuck not unlike, a shag on a rock. I wonder if in the waiting, the attention to the fecundity of life and the integrity of place, that this might not teach us, in different ways about ecologies of care, transformational pedagogy and relational ontology (toward the realisation of more-than human rights). To dream of intimate-others and falling in love outwards, of open hearts and an animate earth. The sea woos me.

**References**


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Peace promoting schools: Educating literate and numerate peacemakers

Sharon LaPere
CQ University

Abstract: Everyone is a stakeholder when it comes to education. We all went to school, have children going to school, or have a school in our neighbourhood. Popular media can even make direct links between the ills of society and the school curriculum, the behaviour management policies employed, and the dedication of individual teachers. But what if education was equally the responsibility of governments, parents, school and community? What if we were to implement an approach to educating students that was holistic in nature, promoted peaceful pedagogy and modelled peaceful practices? Whilst we might predict that our graduates would be less violent, could our peace-loving students read and write?

The development of a Peace Promoting School model would aim to incorporate strategies that explicitly teach the skills of conflict resolution while modelling peaceful practices. Such an approach lays the responsibility for the education of contemporary youth, and the future we wish to create, firmly in the hands of the governments, carers, school and community. Could such an approach create a less violent society in addition to students with desirable twenty-first century academic skills? This paper explores the possibilities offered by a holistic approach to peace education that values both the academic and humane development of students.

Keywords: Curriculum, pedagogy, peace

Introduction

Individuals such as Nelson Mandela, Martin Luther King Jnr, Mahatma Gandhi and others have been responsible for significant systemic change in the past century. These peace makers utilised a range of highly effective skills to mobilise nations, empower individuals and unite governments. What are these skills? How did the peacemakers gain such skills? Was it their upbringing, their education, their environment, or was it their individual or collective experiences? Which of these skills were enhanced or even created through formal education? As we enter a new millennium characterised by wholesale changes to our systems of education in Australia, we must consider if it is possible for our schools through the curriculum, pedagogy, structures and engagement with community to develop similar skills for peace in current Australian students? Is it time to consider developing a contemporary model for twenty-first century Peace Promoting Schools?

The core business of schools is to develop knowledge, skills and attributes that prepare the individual to transfer, reinforce and add to such imperatives. In addition, schools also facilitate a journey of self-discovery, socialisation and the gaining of understandings. When we consider the collective skills of peacemakers the likes of Nelson Mandela, Martin Luther
King Jnr and Mahatma Gandhi we can clearly identify attributes such as a passion for social justice, determination, an ability to overcome adversity, respect for human difference and a propensity for forgiveness. Perhaps the time is right for Australia to consider how we might ensure that the development of such skills and attributes form a significant component of the educational experience of Australian youth.

Peace education is defined and delivered in markedly different ways. Perhaps the most comprehensive definition is presented by Harris and Synott (2002, p. 4) who wrote:

> By ‘peace education’, we mean teaching encounters that draw out from people their desires for peace and provide them with nonviolent alternatives for managing conflicts, as well as the skills for critical analysis of the structural arrangements that legitimate and produce injustice and inequality.

Peace education in schools has primarily focused on ‘…conflict resolution, peer mediation, and violence prevention…’ (Groff, 2002, p. 9). Regardless of the aims, peace education is often characterised by its delivery at pre-determined points in an educational journey. Whilst many stand-alone peace education programs experience degrees of success in regards to developing youth as skilled, knowledgeable advocates for peace in specific contexts, (Ardizzone, 2003; Eckhardt, 1984; Fountain, 1999) the ongoing evidence of conflict in our society raises questions in regards to the effectiveness of the transfer and application of such skills to new contexts. An alternative to isolated peace education programs is to develop peace promoting schools. This holistic approach is characterized by three primary domains which include the curriculum, school organisation and community engagement. Curriculum focuses on the teaching approaches and learning experiences whilst the school organisation incorporates issues such as school leadership, ethos and functional structure. The final domain, community engagement deals with the essential role played by the wider society in advocating and modeling peaceful practices.

A Peace Promoting School model provides a holistic approach to peace education which ensures that as the inevitable national and state curriculum priorities change, the creation of peacemakers who are literate and numerate, culturally intelligent global citizens adequately equipped to preserve and create peace in the twenty-first century is not lost in the scramble to meet predetermined outcomes. Distinct pedagogical approaches offer effective platforms from which to launch a holistic approach to peace education that maintains the teaching of peace knowledge and skills through the curriculum. Additionally, it models conflict resolution strategies, peaceful policies and practices in both the organisation of the educational institution and its engagement with the wider community. A peace promoting school would be characterized by a wide range of educational imperatives and may incorporate curriculum, pedagogy, professional development, pastoral care, behaviour management and evaluation procedures. This paper will deal briefly with the potential to create literate and numerate peacemakers as a result of aspects from all three domains; curriculum, school organisation and community engagement.

**Peace: A Holistic approach**

In the current political and educational environment it is no longer enough to argue for the inclusion of an area of study in the curriculum simply because it is a noble pursuit or because it may, optimistically lead to a more peaceful society in the future. To expect a place in the contemporary, congested curriculum, an area of study must do this and more. It must contribute to the achievement of benchmark literacy and numeracy levels, develop higher order thinking skills, cultivate the attributes of both a lifelong learner and a culturally
intelligent global citizen and contribute directly to academic results. Without these characteristics, any area of study will struggle to justify its place in the contemporary curriculum. A holistic approach to peace education which incorporates more than a single domain offers greater opportunity to meet these criteria than explicit, stand-alone peace education programs.

The curriculum, school organization and community domains that characterize a holistic approach contribute collaboratively to the development of students both as individuals and as members of a global community. Such an approach makes every attempt for a more peaceful future but also meets the academic, social and cultural needs of governments, educational institutions, communities, society and most importantly the students we teach. A holistic approach to educating peacefully incorporates pedagogies that explicitly teach skills such as reflective practice and critical self-awareness. Candy (et al., 1994, p. 128) suggests that such approaches to teaching are most likely to build foundations on which lifelong learning skills can be built. In addition, such a methodology teaches ways of approaching, transferring and interpreting knowledge that allows for learning to take place between different environments and over time thus allowing skilled students to learn and develop new and appropriate approaches and understandings as their world inevitably changes. The added exposure to models of organizational and societal practices through the school and community domains further exemplify peaceful ways and challenge accepted practices. This collaborative approach may include teachers as curriculum designers and facilitators, democratic structures within the school and classroom and appropriate community engagement.

**Curriculum Designers**

In order to educate peacefully, curriculum design must be underpinned by shared values and created in part by those that teach it. Educators must also be given adequate time to develop innovative pedagogy and to hone skills with which to reflect upon, evaluate and renew curriculum. Eisner (1985, p. vi) recalls that:

> There was a period in American Education when curricula developed by educational laboratories and commercial publishing houses were to be “installed” in schools. One engaged in curriculum installation, often in the same way that one installed carpeting or a new air filter in one’s car. Nothing could have been further from the truth. Teachers need to have a stake in what they teach. They are not merely passive tubes or mechanical conveyers of someone else’s ambitions and interests.

When teachers are fully involved in the development of curriculum, its implementation, evaluation and modification; peaceful, democratic and just approaches are being modelled and genuinely valued in educational institutions. We should not imagine for a moment that students are oblivious to the disenchantment of teachers who, in a climate of external review, deliver prescribed curriculum in which they are minor stakeholders and have little sense of ownership. The relationship between teacher and student is paramount to quality education. If teachers are involved in institutions where peaceful approaches are given priority then the opportunity exists for them to feel part of a just, democratic, and peaceful organization. Educating peacefully is not restricted to students; a holistic approach demands that those that teach be respected, valued and empowered members of the education profession. MacBeath (1997, as cited in McGhie and Barr, 2000, p. 61) suggests that,

> Schools do not improve in a climate of threat and sanctions. The metaphor of leveraging standards from the outside is a deeply misguided one. Schools improve, just as pupils do,
when they are secure and confident enough to be self-critical and when they have the
tools and the expertise to evaluate themselves.

Secure, confident, self-critical administrators and teachers offer their students insights into
peaceful ways of managing complex organisations. Such models allow students to apply and
transfer these practices to their own personal and professional dealings throughout life. In
practice it means that students continue to learn, reflect and critique both skills and
understandings in a range of contexts over time.

**Pedagogy**

‘Perhaps the greatest of all pedagogical fallacies is the notion that a person learns only the
particular thing he is studying at the time.’ (Dewey, as cited in Eisner, 1985, p. 87). A
holistic approach to peace education embraces pedagogical methodology that is just, models
democratic processes and attempts to create a peaceful environment in which to learn. Harris
(1990, p. 255) argues that ‘peace pedagogy’, characterized by dialogue, cooperation, problem
solving, affirmation and democratic boundary setting needs to take the place of outmoded
educational practices. Such practices present the teacher as the font of all knowledge, create
competitive classrooms, allow and create passive, powerless students and use force as a
means of control. A peaceful environment does not mean a quiet classroom, in fact, quite
possibly the opposite. What it does mean is that each participant in the learning environment
feels valued, respected and empowered whilst simultaneously learning skills and developing
understandings for the present and future. One cannot realistically expect students to
comprehend and apply democratic processes to their personal interactions after spending their
days in a dictatorial classroom. It would be unlikely that a future business owner, employer
or dutiful worker would approach problem solving in a just and peaceful manner if their
school learning environment had not allowed for fair and equitable processes. Burns (1990, as
cited in Hall, 1993) asserts that student-centred learning is critical to successful peace
education. There is nothing new in claims that student-centred learning is beneficial to the
gaining of skills, knowledge and attributes, however it is critical to the aims of a holistic
approach to peace education because it models the skills that culturally intelligent, global
citizens must have, and that is the consideration and valuing of others, the skills to contribute
effectively to a group environment and an understanding of the balance between roles and
responsibilities. Pedagogical methodology that is peaceful in its application is crucial to a
holistic approach as it models learning, problem solving and human interaction that enable the
lifelong learner to apply such skills to both their present and future learning environments.

Pastoral care initiatives and a multitude of subject areas deal in part with complex issues
relating to conflict and disadvantage and are effective vehicles through which to teach about
peace. Vriens (1997) proposes that teachers create a learning environment in which hope for
the future is seen as realistic, where skills are developed through experiential learning and
where debate and analysis form part of the culture of the classroom. In order for any
curriculum area to contribute to the goal of educating peacefully, the pedagogical approach is
critical. McGhie and Barr (2000, p. 49) argue that pedagogical methodology requires
‘…collaborative learning and a focus on meaning-making and knowledge building rather than
simply information processing.’ Students who are exposed to cursory, stand-alone studies of
conflict, social injustices and anti-democratic practices focusing primarily on a pessimistic
chronological journey miss the opportunity to make a real connection between themselves,
the invaluable experience of their predecessors and their own peaceful futures. A critical
inquiry approach that considers perspectives and evidence models a methodology that
demands inquiry rather than blind acceptance. In addition, such an approach allows for
empathy and the emotions that accompany it to be investigated, ensuring that students see
clearly, for example, that the characteristics of anti-Semitic attitudes in Europe prior to World War Two differ little from the attitudes often shown towards the weak, quiet or just plain different in school grounds every day. We need to ensure that we genuinely investigate events through a critical inquiry approach so that the essential, peaceful lessons of history are not lost in the struggle for a place in an outcomes driven curriculum that may be propelled by changeable political agendas. It is imperative that we instil in our students the willingness to investigate issues whilst equipping them with the skills to make informed meaning of their world and pursue knowledge and understanding rather than information both now and in the future. Only then will the way we teach impact positively on the creation of future generations with an eye for social justice, peace and democratic practices.

**Peaceful School organisation**

Some would argue that the constraints of timetabling, specifically the coordination of enrolled students, able teachers and available teaching spaces restrict the ease at which a school might employ appropriate pedagogical methodology to support a holistic approach to peace education. What is often easier is to use a range of test instruments to ‘stream’, ‘journey’ or ‘ability group’ students so that teachers can better direct their instruction to the level of their cohort. Such methods do not necessarily extinguish the opportunity for student-centred learning, and may in fact be suitable for developmental subjects; however, an approach such as this does little for ensuring inclusive education where students and teachers experience socially just, democratic and peaceful modeling of processes and policies. Firstly, a school would need to be absolutely confident that their initial testing was just. Assessment is complex and multi-faceted, as are the students it tests. Secondly, the social implications of streaming can be far from peaceful as students, their peers and parents very quickly identify the academically capable group as well as those less so inclined. This grouping of students, suggest Feiler and Gibson (1999, p. 148) ‘…can be limiting or harmful to those unlucky enough to be assigned to a ‘low ability’ group’. Finally, the global citizen in the new millennium will rarely be expected to work in isolation or in a group characterized by like minded approaches. Mixed ability groupings, provided they are supported by adequate and increased staffing, model life itself; a blend of attitudes, styles, problem solving techniques, proficiency at skills and varying approaches to communication. Harris (2002, p. 30) puts forward the suggestion that in our enthusiasm to teach students highly developed academic skills we have neglected the essential ‘human relations skills’. If the future we wish to contribute to includes current students who show aptitude for both academic and relational skills then, as Rubinstein and Stoneman (1972, p. 143) propose, outdated understandings must be discarded.

It is now held that a child’s intellectual skills and abilities, instead of being fixed by heredity, are formed in the process of his life and experiences – in particular through his interaction with adults through the use of language. It follows clearly that the group of which a child forms part is itself a crucial factor in his development, providing him with stimulation in many different ways. The modern theory of intelligence makes it clear that to group children in different streams, A, B and C (and even down to N, O, P in a very large school) according to a prediction about future intellectual development, is no longer a viable procedure. The child’s development will be determined, to some extent, by the specific group of which he forms part.

From a purely self-seeking perspective, we as educators need to model the attributes of the society in which we wish to retire. Present day students will manage our superannuation funds, operate the facilities we use and perform the medical procedures we require in our future. We need to ensure that they develop appropriate skills that prepare them to deal with
the multiplicity that characterises human nature as well as the attributes that allow them to continue to foster new knowledge, skills and understandings. The way in which we group students in our classrooms may well be mirrored in the way our future students group patient access to medical procedures or distribute dividends; we need to ensure that we model just, peaceful and democratic processes in every action being viewed and experienced by our students.

Community Engagement

In the current climate of an obesity epidemic and related health issues, we cringe at the very thought of Australian schools going the way of some of our American colleagues and allowing fast food outlets to control the tuckshops at our schools. Yet we seem to lose little sleep over the impact of multi-national companies with questionable environmental and industrial relations records sponsoring our football team or providing donations as part of an advertising agreement that has their logo on the school newsletter. Everything we do sends a clear message to our students. By allowing such partnerships to not only exist but be promoted, we clearly indicate to students, staff and the community that the educational institution involved not only supports organisations with questionable justice, peace and democratic process records, but that we are willing advocates for them. According to Claxton (2000, p. 28) ‘Adults induct young people into the views of their culture through their actions as well as their words.’ The hidden curriculum, the gaps and silences, the advocacy and prominence of events, people and practices send strong and clear messages to students about what it is we value and respect. There is little doubt that if we use our mission statements, school ethos and underlying values as a marketing tool rather than a genuine system of shared beliefs then we as educators and administrators are deceiving and misleading our parents, guardians and communities. We also risk missing the opportunity to play a more substantive role in shaping a just society and perhaps more importantly, modeling appropriate action to students through educating peacefully.

Schools are in a remarkably unique position that is rarely utilized. The opportunity for industry, business and the community to access and possibly influence the very future is both precious and highly sought after. Schools seem to miss the significance of their captive audiences. School based traineeships, apprenticeships and industry related programs are vital components of any business or community that plans to remain viable in the twenty-first century. If schools were to set benchmarks and specific requirements that must be met in order for a business or organisation to enter into a professional educational relationship with any school or individual student then the ‘balance of power’ shifts. Schools have students, lots of them. Why not set the standards and set them high rather than bend to the fluctuating needs, wishes and desires of business? Schools are in a powerful and unique position to lead societal change rather than contribute to or be willing advocates for societal dysfunction characterised by unacceptable environmental and industrial relations records that are sometimes found in industry. Appropriate community engagement is the tenuous thread that connects peace education and peaceful models with real world applications. The significance of the role of community in the transfer of skills and knowledge cannot be underestimated.

Conclusion

Whilst the traditional caretakers of stand-alone peace education programs in schools struggle to maintain the prominence of a curriculum that directly investigates issues of social justice, peace and democratic practices in a crowded curriculum, a more holistic approach to peace education presents distinct advantages. It allows schools to do more than focus solely on the
already complex task of teaching skills for resolving conflict, peer conciliation and the prevention of violence. Through the implementation of the three primary domains; curriculum, school organisation and community involvement, schools are able to teach, learn, model and advocate for peaceful practices, skills and knowledge.

A holistic approach to peace education as opposed to stand-alone peace education programs is both academically and socially progressive as it provides opportunity for a more peaceful future in addition to providing for core learning outcomes through best practice pedagogical methodology and school organisation. A school characterized by a structure and curriculum that is inclusive and student centred provides for real world opportunities through critical inquiry, designed and regularly evaluated by those equipped to appraise and deliver it. In addition, appropriate community involvement offers students learning opportunities whilst positioning the school as a partner to industry and a significant stakeholder in the lifelong learning environments of our community. A holistic approach to peace education through the domains of curriculum, school organisation and community engagement offers current students the opportunity to experience peaceful, world-class learning for life. This approach also allows for these same students to access new skills and understandings as resilient, global citizens equipped with the skills and attributes required to deal with ever changing environments and needs.

How do we balance developing resilience, determination and leadership in our students with the attributes of a global citizen tuned to the urgency of social justice and human rights? The curriculum we teach, the pedagogy we employ and the way we organize our schools and society offers us a both the methodology and an opportunity to promote peace whilst maintaining benchmark indicators in core educational areas. If current students are to become global citizens prepared to learn throughout life and contribute effectively to peace, democracy and institutional structures that demand justice and equality then we need to clearly teach and model necessary skills in today’s classrooms, schools and communities; we need Peace Promoting Schools.

References


Questions of culture: Activating cultural rights and the problem of essentialism/constructivism

Rachel Busbridge
University of South Australia

Abstract: Cultural rights, now a widely accepted component of human rights discourse, are becoming an increasingly important issue for many across the globe. As societies become more culturally diverse, questions of culture become all the more prominent and pressing if we are to live together peacefully. Activating cultural rights has thus become a crucial task for politics. This, however, is a task that is far from self-evident, not least to do with the complexity of the category of ‘culture’.

This paper explores some of the challenges involved with invoking the category of culture in a political context. In particular, the paper focuses on the theoretical difficulties associated with defining ‘culture’ and considers how inadequate conceptualisations may affect the task of living together peacefully. Considering the work of theorists concerned with cultural politics, it is argued that theorisations of culture are often haunted by the opposing spectres of essentialism and constructivism, resulting in either too fixed or too loose understandings of culture. Taking a too fixed or too loose approach to culture, it is further argued, can be theoretically inadequate – as culture is paradoxically both an “essence” and constructed – and practically dangerous, as culture becomes either too prescriptive or too fluid. To conclude, the paper maintains the importance of a subtle and nuanced conceptualisation of culture for the peaceful activation of cultural rights.

Keywords: Culture, cultural rights, political theory

The question of culture has undeniably emerged as one of the most poignant questions of the contemporary era. Having come to the fore of global politics in recent times, the category of culture is regularly invoked to signal ‘difference’ and, perhaps most pertinently, the challenges that often arise out of difference. Certainly, this ‘cultural turn’ (Nash, 2001: 77) can be well understood in relation to the processes of accelerated globalisation that have defined the twentieth century and continue to define the twenty-first. The ‘time-space compression’ (Bauman, 1998: 2) of globalisation has signalled an increasingly complicated world in which culture has developed as a ‘new global force’ (Kalantzis, 2001: 14). On the one hand, cultural differences appear to be diminishing as time and space compress and people are brought closer together. On the other hand, people’s differences are augmented by the close proximity in which they find themselves, as well as by the potential threat of homogenisation that ever looms in the background of globalisation. Arguably, it is this (often not ungrounded) fear of cultural homogenisation that structures the immense hold that the concept of culture has for many (Giddens, 1994; Smith, 2001). In a world dominated by a process that appears to have the imposition of uniformity at its very core, the (re)assertion of culture becomes a means by which to “protect” one’s difference and thus one’s sense of self.
It is in this context that the notion of cultural rights has become an important part of the increasingly complex fabric of the social world. The right to maintain, protect or defend one’s culture from marginalisation, oppression and potential demise is a right which is fought for fervently and passionately by many groups across the world: certainly, the explosion of demands from minority cultural groups and indigenous peoples indicate just how passionately this right is felt. Similarly, the notion that cultural minority groups have rights to maintain or protect their culture particularly if that culture is being encroached upon has been powerfully taken up in political theory (see Kymlicka, 1995; Taylor, 1994; Tully, 1995). According to a number of commentators, activating cultural rights is one of the most pressing tasks of the contemporary era. Seen as a means to allow people to live more successfully with difference as well as to provide more just conditions especially for the most culturally marginalised groups, cultural rights are also increasingly seen as holding a significant peace dimension. As the recent Fribourg Declaration (2007) asserts, ‘violations of cultural rights give rise to identity related tensions and conflicts which are some of the main causes of violence, wars and terrorism’.

While there are various ways in which cultural rights may potentially manifest - for instance, rights to follow and maintain one’s traditions, values, institutions, practices and ‘ways of life’ (see Kymlicka, 1995) – in the broadest sense the concept of cultural rights refers primarily to the notion of cultural survival (Offord, 2006: 19). This notion of cultural rights as a mechanism to guarantee cultural survival is a seemingly commonsensical one – after all, if certain cultures are threatened with possible demise, why should not there be mechanisms in place to make certain their surviving these threats? – however the idea of ‘cultural survival’ is in fact far more complex and convoluted than may initially appear the case, not least to do with the complexity of the concept of ‘culture’ which lies at its centre.

In this paper, I would like to explore the questions of culture as they arise in relation to the notion of cultural rights, and especially the notion of ‘cultural rights as cultural survival’. Despite the fact that the prevalence of culture-related claims in public and political discourses has to a large extent constituted culture as a taken-for-granted, apparently self-evident term, I argue that culture is an immensely problematic term in itself but especially so when applied to the idea of ‘cultural survival’. Exploring the difficulties associated with invoking the category of culture in a political context, I contend that the theorisation of culture is fraught with philosophical tensions, in particular between older more ‘essentialist’ views of culture and more recent ‘constructionist’ understandings. These philosophical tensions, I further contend, are crucial to explore if cultural rights is to achieve its full potential as a mechanism for justice and peace, for they not only present challenges for theorists but also have potentially negative practical consequences for the successful activation of cultural rights.

**Conceptualising culture**

It is worthwhile to begin by exploring in further detail what the concept of culture entails. Acknowledged in Raymond Williams’ seminal *Keywords* (1983) as one of the most complicated words in the English language, the concept of culture is complicated not only by the vagueness of the very notion itself but also by the variety of interpretations of it. Said (1993: xiii) identifies two main variants of culture. Firstly, culture is understood in the aesthetic sense as relating to ‘all those practices, like the arts of description, communication, and representation, that have relative autonomy from the economic, social and political realms... [and] whose principal aim... is pleasure’. Secondly, and perhaps more commonly in the contemporary context, culture is seen as a ‘source of identity’ and a crucial part of the social relations of difference. As cultures are ‘elusive, complex and contested practices and
attributes which defy simple definitions’ (Langton, 1994), there are numerous ways of understanding culture in this second sense. In essence, however, culture is seen as:

the elusive thread that binds the social world together; [relating] to practices of social meaning, the construction of values and discourses, and ultimately shaping the lens through which we engage with and understand the world (Swanson, 2005: 88).

The emphasis of culture is that it provides shared social meanings and knowledges which guide, influence and shape the ways in which people experience, perceive, interpret and respond to the ‘social realities around them’ (Lederach, 1995: 9).

The most commonly invoked understanding of culture in present times is arguably that of culture as a ‘way of life’ – or perhaps more accurately, as ‘ways of life’. In other words, culture is seen as providing the central conditions for the lives of cultural group members, and is viewed as the intangible ‘thing’ that distinguishes certain groups of people from other groups of people. It is the notion that, as Swanson (1995: 88) puts it, culture ‘shapes the lens’ through which people view and experience the world that is particularly fundamental to claims for cultural recognition as well as the discourses of cultural rights and cultural survival that consider these claims. The desire to protect or maintain a particular culture becomes all the more urgent because cultures are seen as providing the context for people’s identities – anchoring them in a certain time and space. Charles Taylor, a theorist who perhaps epitomises this view, puts it as follows.

The individual possesses his [sic] culture, and hence his identity, by participating in the larger [community] life… our experience of what it is, is shaped in part, by the way we interpret it; and this has a lot to do with the terms which are available to us in our culture (Taylor, 1978: 138).

If a culture is threatened (or perceived to be threatened) it is therefore seen, in turn, as threatening the sense of self and identity of its members, as well as damaging the way in which they live life (see Taylor, 1994).

While the idea of culture as a ‘way of life’ is perhaps sufficiently broad enough to encompass the numerous interpretations of culture, its breadth and lack of specificity once again betray the fundamental elusiveness of culture. What, for instance, do ‘ways of life’ involve? And more poignantly, where is it possible to locate ‘ways of life’? It is this question of the ‘location of culture’, to paraphrase Bhabha (1994), that is especially tricky, and indeed may only inspire impossible answers. As much as exploring the location of culture is a challenging task on the level of theory, it is arguably the case that this task becomes far more difficult when transferred to the domain of politics. By definition, politics is focused on practical ends and this makes the task of illuminating and satisfactorily locating culture one which must be carried out with caution. As one commentator has put it, culture is virtually ‘the term of art in the science of politics’ (Scott, 2001: 93). I would like to contend that the precarious presence of culture in the realm of politics is not simply due to the elusiveness of culture itself, but also because there are two dominant theorisations of the location of culture which create a tension that is particularly thorny for political theorists. It is to this tension that I now turn.

Caught in a dichotomy: Essentialist and constructivist understandings of culture

The dichotomy of essentialism/constructivism is remarkably pervasive in discussions of culture. This binary is of course one which must be negotiated by most theorists of the social,
and particularly by those working in the areas of gender and sexuality (see Costera Meijer & Prins, 1998), and in a large part refers to the age-old questions of nature/nurture.

Essentialism is the idea that groups – for instance, women, Americans, Armenians, lesbians – have a particular “essence” or basic “nature” shared by all members of that group, while constructivism argues that groups are not “natural” but rather socially constructed, created and influenced by a number of social, cultural, historical, political, and economic factors and are hence always changing and always characterised by multiplicity (D. Smith, 2001: 32-4). Constructivism, perhaps best epitomised in Berger and Luckmann’s treatise The Social Construction of Reality (1966), is thus a direct response to essentialism and is in many ways an attempt to address the fallacies of essentialist thinking. While the dynamics of navigating the essentialism/constructivism dichotomy are unavoidably complicated in all instances, I argue that the tension between essentialist modes of thought and constructivist modes of thought is especially robust for theorists of culture. This is because understandings of culture, particularly as invoked in the political arena, tend to oscillate between more traditional essentialist views and more contemporary constructivist views.

Essentialist understandings of culture stem from what Markell (2004: 154) calls early 20th century anthropological conceptualisation of culture. This view sees culture as bounded and homogenised, and identities as fixed and stable, anchored in a discrete culture (Caglar, 1997: 169). In other words, cultures are seen as ‘clearly delineable wholes’ which are congruent with population groups, and are considered to be experienced in pretty much the same way by all members of that population group (Benhabib, 2002: 5). In this sense, a culture is seen as providing its members with a clear and coherent point of identification. For example, if a person is Bolivian, they are considered a part of the Bolivian culture, which in turn provides them with a stable corpus of Bolivian beliefs, symbols and representations which have an affinity with the particular views, understandings and modes of behaviour of that person (see Bayart, 2005: 35). Culture is thus understood as an object, a thing, or perhaps more adequately as a substance, whether this be physical or metaphysical in nature (Appadurai, 1996: 12).

What is common to such essentialist views of culture is that culture is seen in highly spatialised terms – located in a particular space, a particular population, a particular community. Certainly, this conflation between culture and spatiality is one that has a particular hold in the contemporary context. As Said (1993: xiii) declares, culture frequently ‘comes to be associated, often aggressively, with the nation or the state’, an association which is strongly evidenced in the (re)assertion of popular discourses of nationalism. Nations or states are understood as cultural ‘anchoring points’ and are used as shorthand to indicate different cultures, cultural practices, languages and ways of life. What is most important about this conflation between culture and spatiality is that cultural differences are understood in spatialised terms as well. The view that cultures are separate, coherent wholes implies that the frontier of cultural difference is crossed when one moves from one cultural space to another cultural space: for instance, an individual travelling between Australia and India would be considered to have crossed a cultural border. Cultures are hence seen as discrete and each having a particular “essence” which both characterises members of that group and identifies them as different from other groups.

In contrast to the essentialist view of culture which sees cultures as separate, bounded and internally uniform, constructivist understandings of culture point to the ways in which cultures are ‘overlapping, interactive and internally negotiated’ (Tully, 1995: 11). Cultures are

[c]ultures are not internally homogeneous. They are continuously contested, imagined and re-imagined, transformed and negotiated, both by their members and through their interaction with others. The identity, and so the meaning, of any culture is thus aspectival [or constructed] rather than essential: like many complex human phenomena, such as language and games, cultural identity changes as it is approached from different paths and a variety of aspects come into view.

The constructivist view thus paints a far more complex picture of culture than does the essentialist perspective. Challenging the essentialist equation of culture and spatiality, culture is depicted as inherently unstable, forever changing and in fact remarkably open.

Cultural difference, according to this view, is not something which is only encountered when one moves from place to place, but is instead intrinsic to any culture itself. Firstly, this is because ‘cultural horizons change as one moves about, just like natural horizons [therefore the] experience of otherness is internal to one’s identity, which consists in being oriented in aspectival intercultural space’ (Tully, 1995: 13). In other words, because culture is contested, negotiated, imagined and re-imagined, culture is never coherent and never stable – it changes and shifts and is therefore never internally uniform. Secondly, cultural difference is internal to a culture because, as Said (1993: xxix) points out, ‘all cultures are involved in one another; none is single and pure, all are hybrid, heterogeneous, extraordinarily differentiated, and unmonolithic’. He goes on: ‘[f]ar from being unitary or monolithic or autonomous things, cultures actually assume more “foreign” elements, alterities, differences, than they consciously exclude’ (Said 1993: 15). This is an expression of the celebrated notion of hybridity which, as Caglar (1997: 172-3) asserts, challenges the cultural logics of essentialist views to show the ways in which cultural boundaries are crossed on an everyday basis. Certainly, the transnational flows of people, ideas and technologies that characterise the cultural landscape in the era of globalisation lend themselves well to being analysed from the perspective of cultural hybridity.

So why is the tension between essentialism/constructivism so pronounced for theorists of culture, particularly those concerned with cultural rights and the project of cultural survival? Firstly, the notion of cultural survival can be seen as sitting uncomfortably close to essentialist understandings of culture. As critics argue (e.g. Kukathas, 1992, 2002; Shachar, 2000), does not the notion of cultural survival suggest that cultures can persist and endure across time and space? Furthermore, does not the notion of cultural survival lie dangerously close to the idea that cultures are seamless wholes, coherent, fixed and stable? Certainly, this essentialist presumption is perilous, and particularly so in the contemporary era where the notion of cultural hybridity has been widely accepted as an ontological fact and is becoming increasingly relevant in the face of rapid globalisation. Secondly, theorists of cultural rights and cultural survival cannot afford to adopt constructivist views of culture too strongly. While constructivist understandings of culture have gained much legitimacy in recent times and are considered by many to be eminently preferable to essentialist views (see Caglar, 1997; Scott, 2001), there is a significant danger in adhering exclusively to constructivist understanding if one is concerned with the issue of cultural survival. In particular, if the fluidities and multiplicities of culture are taken into account, then the notion of ‘cultural survival’ itself becomes increasingly untenable.

It is thus the case that theorists who argue that it is possible to enforce conditions for cultural survival must walk the fine line between essentialism/constructivism in their understandings...
of culture – it is necessary to avoid an essentialist outlook because it is clear that the notion of cultures as seamless, bounded wholes is not appropriate in the contemporary era, but it is also necessary to avoid subscribing wholly to constructivist understandings, for these can throw into doubt the entire project of cultural survival. The dichotomy of essentialism/constructivism must hence be navigated cautiously lest theorists take a blithe approach to cultural rights; however, it must also be navigated carefully for it is clear that neither an essentialist nor a constructivist perspective can adequately and accurately capture the complexities of culture. Like all dualisms, the essentialism/constructivism divide masks a ‘grey middle area’ (Porter, 2005: 231) – arguably a crucial area to explore in order to consider the slipperiness and subtleties of culture. The persistent invocation of this dichotomy not only results in a persistent tension in discussions of culture and cultural survival, but also potentially diverts discussion from exploring more comprehensively culture’s intricacies.

Practically speaking

The tension between essentialism/constructivism must therefore be negotiated by theorists and negotiated carefully, not only because straying too far into either side can have powerful consequences for the theoretical coherency of cultural rights/cultural survival discourses, but also because the potential practical outcomes of activating cultural rights can be influenced by held conceptualisations of culture. This is a highly important point to make, for it means that questions of culture are not simply questions relegated to the more abstract domains of theory and philosophy, but questions that are also crucially important for those concerned with the more practical ends of politics. I would like to explore the potential practical outcomes of activating cultural rights should a too essentialist or too constructivist understanding of culture be utilised.

First, if a more essentialist understanding of culture is invoked – one which posits cultures as internally homogeneous, bounded, fixed and stable – then there is a strong risk of creating conditions for cultural survival that are too strict and potentially limit members of that culture. Take, for example, the issue of cultural survival for Aboriginal Australians. To view Aboriginal culture in essentialised terms is to risk overlooking the complexities of Aboriginality, and Aboriginal culture and identity for members of that group. In spite of the pervading mainstream stereotypes of Aboriginal culture (see Paradies, 2001), not all Indigenous Australians experience their Indigeneity in the same way. As Cowlishaw (2004: 70) argues, ‘we do not experience the world only as Indigenous or non-Indigenous’. Aboriginality is always and necessarily influenced by and embedded in various other factors, such as gender, age, class, ethnicity, race, location, religion, sexuality, physicality, profession, language and so on. Furthermore, there is no such thing as a common collective Aboriginal identity or culture per se – indeed, as Carter (2006: 66) contends, the notion of ‘Aboriginal’ as a singular identity is both the invention and product of European colonialism. There are a number of different cultural groupings contained within the broader category of Aboriginal ‘such as Koori, Goori, Boori, Yolngu, Yamadji, Nyungar, Nanga, Anangu and Murri, which signify a regional Indigeneity’ (Mudrooroo, 1995: 15).

To posit an internal uniformity to Aboriginality would be to necessarily exclude many Aboriginal Australians, shaping and imposing an artificial Aboriginality to which people must conform to or else be considered as ‘not really Aboriginal’. Certainly, this shaping of some Aboriginal people as ‘authentic’ and others as ‘inauthentic’ is a dominant dynamic in Australian society and one which has significant (negative) repercussions for Indigenous Australians themselves (see Behrendt, 1998; Paradies, 2001; Watson, 1998). Such an approach to cultural survival is arguably not so much survival as it is a form of symbolic
violence, as it cannot take into account the many differences of Aboriginal Australians as well as the ways in which Aboriginality changes from perspective to perspective. Creating what Appiah (1994:162) calls an ‘identity-script’, taking an essentialist approach to Aboriginal culture would likely forge ‘proper’ ways of being Aboriginal, thus resulting in particular expectations and demands. In this sense, the threat of the imposition of cultural uniformity to which the discourse of cultural survival/cultural rights responds is replaced with yet another imposition of uniformity, albeit one with a particularist basis as opposed to a universal one.

Second, if the constructivist view is adopted and the fluidity, heterogeneity and changeability of Aboriginal culture is emphasised, then the point of cultural survival is missed altogether. While it may be the case that experiences of Aboriginality and ways of being Aboriginal change across time and place, it is also the case that nevertheless there is a thread of Aboriginality which holds these diversities together. As much as Aboriginal culture (like all cultures) may be considered ‘constructed-meaning’, it is nevertheless undeniable that Aboriginal culture is still lived and experienced as real by those who are a part of that culture. As Hall (1995: 227) argues, it is impossible to escape the fact that ‘we are all located in a particular place, a particular history, a particular experience, a particular culture’. Although there are no pure or fixed origins of culture, ‘it is no mere phantasm either. It is something – not a mere trick of the imagination. It has its histories – and histories have their real, material and symbolic effects. The past continues to speak to us’ (Hall, 1994: 395).

Furthermore, to push the constructivist understanding of culture too far would discredit the category of Aboriginality that drives claims for justice, recognition and cultural survival from Aboriginal people. While constructivism is a theoretical perspective developed to overcome the fallacies and dangers of essentialism, in the context of claims for cultural survival it has its own fallacies and dangers. Indeed, as Rothenberg and Valente (1995: 413) maintain, the theoretical task of constructivism is often done ‘in the name and in the interest of social collectivities whose integrity and whose standing in the political dialogue depend, at some point, upon the existence of the taxonomy to be discredited’ (emphasis added). To emphasise the diversities of culture over the similarities, fluidity over consistency, fragmentedness over coherency is to gloss over the importance of the notion of cultural survival for many groups in the contemporary global context.

Neither view of culture – essentialist or constructivist – is thus appropriate in the practical context. If held at the centre of understandings of culture, both essentialism and constructivism can have potentially negative consequences when it comes to successfully activating cultural rights. The tension between essentialism/constructivism, I hence argue, must be teased out particularly in the context of practical political claims: not only because both essentialist and constructivist understandings are partial in that they miss something crucial about culture, but because both are dangerous in that their practical outcomes may negatively impact upon the members of the cultural community that is concerned with survival.

Conclusions: Towards a messy middle ground?

It is beyond the scope of this paper to consider ways to move beyond this pervasive tension between essentialism/constructivism. However, I hope that by teasing out the theoretical difficulties, as well as the possible practical outcomes, of adhering too strongly to either essentialist or constructivist understandings of culture to have made a case for why the careful theorisation of culture is an important component of the task of activating cultural rights. Certainly, the identification of tensions in dominant ways of thinking is a crucial step in re-
imagine new ways to approach difficult topics. Identifying the tension between essentialism/constructivism in dominant modes of understanding culture is undoubtedly important, for it allows ‘a survey which brings to critical light the unexamined conventions that govern the language games in which both the problem and the range of solutions arise’ (Tully, 1995: 35). Moreover, it offers the prospect of more clearly engaging the grey area between the dichotomy, where culture manifests as not simply an essential or constructed ‘substance’ but rather a domain pervaded by power struggles, in which claims for justice and peace are played out. As Levi and Dean (2003: 29) point out, ‘cultural survival is a relative concept; it is not about cultural stasis’. It is perhaps in locating claims for cultural survival in the context in which they are invoked that the ‘messy middle ground’ between essentialism/constructivism is approached, and the real possibilities for activating cultural rights emerge.

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Reading for peace? Literature as activism – an investigation into new literary ethics and the novel

Shady Cosgrove
University of Wollongong

Abstract: Literary ethicists like Dorothy J Hale and narratologists like James Phelan have argued that the reading process makes literary novels worthy of ethical investigation. That is, it’s not just a book’s content – which may debate norms and values – but the process of reading that inspires the reader to consider other points of view. This alterity, new ethicists argue, can lead to increased empathy and thus more thoughtful decision-making within the ‘actual’ world. In fact, Hale (2007: 189) says empathetic literary training is a ‘pre-condition for positive social change’. This may work well theoretically, but what practical issues does it hold for social activists? How useful can literature actually be in the face of dire social issues? Can we ‘read’ our way out of poverty and aggressive military intervention? And what would it mean to develop an activism based on reading and empathy? This paper will examine these questions using a framework based on the work of Hale and Phelan. (Hale, 2007)

Keywords: literary ethics, social activism, reading, writing

Introduction

The devout reader is selfish, they care nothing about what’s taking place outside the book that’s gaping open in front of them. They’ll lose sleep without considering how tired they’ll be the next morning. They’ll fob off friends and family. They’ll commit to their imagination before they’ll commit to their own world. So how can literature lead us to activism and indeed peace-based social change?

There’s little argument about the importance of literacy for activating social change. Paulo Freire argued passionately for that in his ground-breaking text Pedagogy of the Oppressed. But that seems fairly straightforward. After all, literacy is critical for engagement and engagement is one of the cornerstones of political activism, especially on a grassroots level. The new literary ethicists are interested in the specific use of the literary, not literacy (though literacy is obviously a prerequisite for the literary), and the literary’s effects on the ethical. That is, how can reading novels affect our capacity for empathy and thus, our capacity for social change?

Considering the self-involved nature of reading – reader and text – this may seem preposterous to political activists. Indeed, I was deemed a political traitor in my family when I decided to major in English instead of Spanish and International Studies at university. My sister was living and working in war zones in Latin America, driving ambulances and escorting union leaders who’d received death threats. I wanted to read Jeanette Winterson’s The Passion, a somewhat romantic version of warfare. Though this raised questions for me in terms of the ethical position of an author who writes about war with language that is beautiful, it was hardly the same thing as going into hiding in San Salvador when the FMLN was battling for the capital.
The issue here is whether or not we can use the literary as a vehicle for social change. The new literary ethicists certainly think so. Gayatri Spivak links literary reading and ethics when she writes: ‘If he (Paul Wolfowitz) had had serious training in literary reading and/or the imagining of the enemy as human, his position on Iraq would not be so inflexible (2002: 23).’ The inference here (as Dorothy J Hale notes) is that English majors have an ethical edge over political science majors and Wolfowitz (and indeed Iraq) would have benefited from his literary training. First I’ll explore how new literary ethics reach that conclusion, and then I’ll look at the practicalities of this: that is, how – or indeed, if – we, as social and peace activists, can use this to advantage.

Overview of new literary ethics

James Phelan and Dorothy J Hale are two of the leading theorists in new literary ethics, however the field dates back to Wayne Booth’s *The Rhetoric of Fiction* (1961). Later work by Martha Nussbaum (1983, 1986 and 1990) and J Hillis Miller (1987) strengthened the field, despite a tepid response from structuralists. The idea of an ethics of representation suffered under structuralism (the fictional character as ethical conduit was seen as romantic, if not naïve), however poststructuralists have proved keen to chart this territory, including Geoffrey Harpham (using post-structural theory), Judith Butler (using gender studies and psychoanalytic theory) and Gayatri Spivak (using Derrida’s theoretical work and the post-colonial) (Cosgrove, 2007: 1).

New literary ethics are founded on the idea that ethical choices are integral to both the reading and writing processes. Despite the prominence of reader-response theory, considerable attention is often paid to the text as ethical construction and the author as constructor. That is, the author must choose what stories to tell, what settings to use, which characters to represent, and how to do so. Obviously, there are choices to make and those choices are ethical. Whose stories get told and what ‘realities’ get represented are packed with political and ethical decisions (here I think of Jean Rhys’s *Wide Sargasso Sea* responding to Charlotte Bronte’s *Jane Eyre*). However, new literary ethicists would argue there is also an ethics of reading that takes place. As Phelan (1996: 262) writes: “the ethics of reading involves some dialogic relation between the reader’s values and those of the text.” So that emphasis can be placed on reader engagement with the ethical offerings of a text. Any novel with plot points and characters (that is, things happening to ‘people’) is going to involve some level of ethical engagement as readers question or support the actions and decisions made within the text. It is inevitable that there will be moments of collusion and moments of discrepancy between the reader’s values and those represented within the text. And here I emphasise that I’m specifically concerned with the literary as opposed to genre fiction. Within this context, the literary must A) engage with the human condition; B) be multi-layered (ie symbolism and metaphor must be present); and C) operate with interrelation between form and content. (For a deeper discussion of this, see Cosgrove 2007: 2)

However, literary ethicists are concerned with more than the response of a reader to the values of a particular text. As Hale notes (2007: 189), there is a difference between looking at the ethical value of novels and the ethical value of ‘the novel’. And critical to this idea of the ‘ethical novel’ is how it supports reader engagement with the Other. That is, novels offer textual access to other points-of-view, other headspaces. Indeed, this is something authors frequently play on within individual texts – for instance, the multiple points-of-view in Rhys’s *Wide Sargasso Sea* or Winterson’s *The Passion*. These narratives are unsettling because the idea of a unified, consistent textual reality is questioned by opposing narratives. However, I
would argue that any work of literary fiction can be unsettling, whether or not it uses multiple points of view, because it offers readers access to a world not their own. The text itself is the opposing narrative. The ‘unified’ consistent reality under question is the reader’s.

However the reader is not a blind vessel that voraciously consumes whatever it is given to read. The reader must decide if he/she will engage with the stories, the points-of-view, on offer. As Hale (2007: 189) writes:

to open a novel is to open oneself to a type of decision-making that is itself inherently ethical. For the new ethicists, the novel demands of each reader a decision about her own relation to the imaginative experience offered by novels: Will I submit to the alterity that the novel allows? An affirmative answer launches the novel reader into a transactional relation with another agent, an agent defined by its Otherness from the reader.

I take this to mean that the reader must decide if she will agree to read the novel on offer. That is, she must decide if she will ‘believe’ the story, and in so doing, submit to the Otherness of a different point-of-view than her own. And, for the duration of reading, forget herself in favour of another. The reader’s shopping list or work stress must be put aside if she is to engage with the ‘reality’ of the novel. This foregrounding of a Self, different from that of the reader, is a poignant point for those interested in social activism.

This alterity, or access to otherness, is the basis of the new literary ethicist arguments: that empathy and thus more thoughtful decision-making come from ‘submitting’ to an othered position – that is the characters, the points of view on offer within the text (Cosgrove, 2007).

Hale (2007: 189) says empathetic literary training is a ‘pre-condition for positive social change’. While I see connections between literary reading, empathy and social change, I’m wary of the idea that social change is inevitably connected to the literary for the simple reason that this would mean those unable to read would be unable to enact positive social change. This also implies that positive social change was born with the novel. One of the difficulties in positing an activism based on reading and writing is the undeniable issue of class – that is, who has a room of one’s own where he/she can read/write? This line of thought can lead us to the ludicrous conclusion that those with material means are ‘better’ social activists because of their access to reading and writing. Obviously this is problematic and issues of class are undeniable, however I don’t think we should dismiss the connections between reading, empathy and social change.

Is literary reading always going to work towards the greater good? This generalisation seems fraught (I think here of Brett Easton Ellis’s American Psycho) but Pavel (2000: 532) states: “all fiction and poetry insofar as they provide, to use Aristotle’s expression, the imitation of an action, significantly contribute to normative inquiry, controversy, and interpretation.” If we consider the greater good to be one where normative inquiry, controversy and interpretation are encouraged, then yes, all literary reading will work towards the greater good. And certainly American Psycho gave attention to the novel as a site for normative inquiry, controversy and interpretation. However some theorists disagree. As Hale notes (2007: 188), D.A. Miller sees the novel as an instrument of normativity and Nancy Armstrong sees the novel as something that projects an idea of the “universalised ‘individual subject’”. That is, Miller sees the novel as something that informs subjects of normative values and supports their continuation and Armstrong is wary of the individualised sense of self that is projected via the novel. While these concerns are valid, I think it’s important that we don’t overlook the possible ways we can use literary ethics within the practical realm of activating
human rights and peace. That is, theory is critical as long as it can bridge practice, harking back to Freire’s notion of praxis.

**Practical issues for a social/pacifist activism based on empathetic reading**

But how useful can literature actually be in the face of dire social issues? Can we ‘read’ our way out of poverty and aggressive military intervention? George W Bush is married to a former librarian so perhaps the case isn’t looking good for literary ethicists. Do we all write books with multiple points-of-view with the aim of establishing sites of complex ethical enquiry? Or is an ethics of literature inevitable because of the “multiple kinds of ethical engagements that texts make possible” (Phelan 1996: 262). One of the difficulties with an activism based on literary ethics is that empathetic reading is not a quantifiable thing. At what point are we trained in literary empathy? How many books would it take to make an ‘empathetic reader’? And are we talking canonical texts or counter-canonical ones? If you skimmed part of *Moby Dick* are you less empathetic than someone who read each whaling section twice? The situation becomes ridiculous.

Hale (2007: 189) states that there is a difference in examining the ethical value of literature and putting forward an ethical theory of the literary novel. That is, an ethical theory of the novel is interested in the role of reading as opposed to the ways that specific novels have affected specific social contexts. However, there’s little doubt that reading and writing are potent processes for activists to consider. Imagine what the United States might be like if Harriet Beecher Stowe had never written *Uncle Tom’s Cabin*. Think of a western literary world without Ralph Ellison, Mark Twain, Virginia Woolf, Fyodor Dostoevsky or Charles Dickens and it seems obvious that literature affects the world. Though pinning down what, exactly, that affect is, proves a tricky business. Dickens’s work and social problem literature, in particular, were “predicated on the assumption that readerly emotion would lead to ethical behaviours. If readers cried for fictional suffering, Dickens and many of his contemporaries believed, then they would try to ameliorate the actual suffering they encountered around them. (Harrison, 2008, 262). Some theorists like Suzanne Keen (2006, 1997) are sceptical of the idea that the feeling responses that novels trigger are necessarily ethical. Others like Nussbaum (1997, 1995, 1990) argue that novel-reading has the potential to make us better, more empathetic citizens (for a thorough overview, see Harrison, 2008). Mark Vonnegut (2008: 6) weighs in on the side of literature as affective:

> Reading and writing are in themselves subversive acts. What they subvert is the notion that things have to be the way they are, that you are alone, that no one has ever felt the way you have. What occurs to people when they read Kurt is that things are much more up for grabs than they thought they were. The world is a slightly different place just because they read a damn book. Imagine that.

So if we assume that reading and writing can affect readers and writers, how can social and peace activists harness new literary ethics to advantage? Do we put reading on the political agenda in the general hope it will foster more empathetic thinking? It sounds vague but that’s one strategy. Do we recommend more reading in Australian elementary and secondary schools? Again, that’s a possibility to explore, however I think it’s a heavy burden to expect schools to carry by themselves without external support. I work with English high school teachers in the Illawarra and they fret about the lack of enthusiasm that students show for reading. If we’re going to advocate more reading in the school system, I would argue that we need to have government support for reading and the literary across the board. Maybe this is coming. In his first weeks in office, Prime Minister Kevin Rudd introduced two prizes of
$100,000 each for non-fiction book of the year and fiction book of the year. While I’m wary of prizes and the problematics of judging (what criteria are we to judge a ‘book of the year’ by?), this is one of the richest prizes in the world and sends a clear message that the literary is to be valued. Or does it? Within months of this prize being announced, the NSW writers centres have been under attack as the Ministry of the Arts reviews its funding (apparently state values aren’t in step with our national ones). Hopefully our writers’ centres will survive, but what guarantee do we have that increased reading will lead to increased empathy? I admit that I’m wary of a cultural rationalism based on economic rationalism. That is, unless it shows clear profit margins, it’s not worth pursuing – unless we can quantify empathy, we shouldn’t be bothered with it. Obviously it’s not that simple.

Another issue that comes up with an empathetic activism based on reading is the question: is it more useful to campaign publicly or to leave our placards at home and snuggle up in front of the solar heater with a good book? Michael Eskin (2004: 561) says:

… if this most recent resurgence of critical-philosophical interest in ‘ethics and literature’ is to be credited with innovative force and significance, these latter must perforce be of an iterable kind, consisting in revisiting, displacing, and (re)inscribing extant reflections on the ethical significance of literature and the interface between the two discursive genres in a language and key attuned to the philosophical, theoretical, cultural, and sociopolitical developments and challenges of the present and recent past.

I take this to mean that if this return to ethics and literature is to actually matter, we must revisit, displace and (re)inscribe our existing thoughts on the two genres of ethics and literature, taking into account the philosophical, theoretical, cultural and sociopolitical realities that we’re facing (and of course, in order to do that, we have to take account of the past). That is, an ethics of literature cannot be considered separate from the world where writing and reading happens. So while reading can open readers to alternative points of view, training us in empathetic reasoning, it is not a final destination for activists. Perhaps we read and through that process become more empathetic, but that empathy must then translate into action/reactions in the world beyond the text: reading alone isn’t the answer. Reading can lead to empathy but that empathy must then be employed in the philosophical, theoretical, cultural and sociopolitical realm beyond the text for it to constitute social action. This counters Mark Vonnegut’s assertion that the world is a different place because someone reads a “damn book”. However, I would argue the world is a different place after someone reads that book because of his or her concrete actions/reactions (whether conscious or not) that take place after reading the book.

Here I’m reminded again of Paulo Freire (1972: 28) and his discussions on praxis in Pedagogy of the Oppressed as a tool for liberation: "This can be done only by means of the praxis: reflection and action upon the world in order to transform it." That is, praxis is the combination of being critically engaged and acting upon that engagement. Reading the literary, reading the novel, provides a platform where reflection or critical engagement can take place. It gives readers impetus to consider other imaginings of the world and that is critical to praxis, however it does not operate alone as praxis. Reading provides a site for reflection and that must take place with action. I acknowledge this is an uneasy dichotomy. In keeping with Vonnegut’s earlier assertion, an argument can be made for reading or reflection as action. However, I find this line of thought problematic when searching for effective, practical strategies for peace activists because one can read or ‘reflect’ to themselves as an insular process without committing to the next step of affecting change in the world. My argument here is that literary ethics offer a concrete place for Freire’s reflection – the novel – but it must be partnered with action (even on the miniscule or unconscious level) for praxis to
take place. I find it interesting that in the years since Paulo Freire wrote *Pedagogy of the Oppressed*, book clubs have replaced consciousness-raising groups, often meeting in people’s living rooms.

Reading also provides grist for the imagination and this connects with Randall Allsup’s (2003: 157) definition of praxis, which varies slightly from Freire’s: “Praxis … is not simply the capacity to imagine alternative scenarios, but is instead the slow burning fuse of possibility and action.” Critical to Allsup’s idea of praxis is the capacity to imagine alternative scenarios and alternative points-of-view and reading, novels especially, can help facilitate that. Novels can offer readers access to experiences and situations that may be new to them. They also offer the sense that things are “up for grabs” (Vonnegut, 2008: 6). But Allsup’s point is that imagining other/new situations is not the end point: it is just the beginning. The creative work of imagination will show what may be possible but action must follow. Otherwise, the imagination operates within a vacuum.

Reading can also play a pivotal role in peace education as it provides experience in interpretation. In Martha Greene’s ‘Education and Disarmament’, (1982: 129) she argues that ideas surrounding peace education need to be revisited and implemented.

> to talk of nations or structures instead of people; to use words like ‘victory’ and ‘defeat’; to talk about a ‘great war’; to deal uncritically with ‘heroism’ and ‘martial law’: all this is to distort and to falsify, if attention is not drawn to the interpretive process itself.

As Allsup (2003: 165) notes, imperative to Green’s ideas of peace education is the notion that “[u]nderstanding reality … requires interpretation.” Reading, and book clubs as I hinted at earlier, provide a site for this interpretative practice.

And finally, it’s not just the reading process, but the writing process that engenders empathy. Regardless of the published product, the author who attempts a new voice, a new point-of-view, a new character (whose actions must be consistent and yet surprising for the reader to ‘believe’ in her) the negotiation with alterity seems inevitable unless the character is based specifically on the author. While I’m wary of universalising creative experience, I’ve found writing fiction to be bound with my ability to consider outside points-of-view. So perhaps we need to support NSW writers’ centres, not just because they might lead to cultural capital and Australian publications, but because reading and writing support our ability to empathise, something critical to the Australian value of ‘peacefulness’ (as stated in the guide for those undertaking the Australian citizenship test).

In summary, new literary ethics can support social and peace activism. Reading and writing the novel can lay critical groundwork for imagining alternative realities and worlds. It also can facilitate empathetic learning and provide a platform for critical reflection, all necessary aspects of peace activism. However, I agree with Freire that it’s important to pursue action with reflection and while reading may prove a crucial component in facilitating this reflection, the text is not the end point. Its strength lies in building empathy. As Allsup (2003: 167) notes: “Moral education—peace education—and the arts are joined by the empathetic … To have hope, we must disavow the indifferent, the fixed, the silent. Praxis requires us to act…”

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The Gap Between Human Rights and Political Rationalities in Australia: Homelessness as a Breach of Human Rights Obligations in Law and Practice

Emily Schindeler
Queensland University of Technology

Abstract: The mid twentieth century saw the emergence of a new international discourse on human rights. Now well into the twenty first century, there remains a significant gap between the prevailing socio-political rationalities of successive Australian Governments and the fundamental principles shaping human rights conventions. By documenting the divergent pathways of these two discourses it is possible to demonstrate the congenital basis for the failure of Australian Governments to deliver on its obligations as a signatory of the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and International Covenant Rights of Children. Using the right to shelter as an exemplar, this paper reveals the fundamental conflict between the historic and contemporary social and political rationalities, consequent policy and legal frameworks, which underpin the failure to meet internationally endorsed human rights amongst Australia’s homeless.

Keywords: homelessness, human rights, Australia, housing, discrimination, governing populations

People who experience homelessness in Australia have been vilified, criminalised, medicalised and pathologised. They have been counted, labelled, classified and managed. What they have not been is housed.

Discrimination against people who are experiencing homelessness is not an artefact of the 19th, 20th or 21st century. Legal regulation limiting the rights of people living in homelessness can be dated back to prior to the 14th century when the first English Poor Laws were enacted. However, it is not the fact of homelessness which has been and remains the centre of discourse both historically or in Australia, but rather people who are experiencing homelessness. This is critical because it places the individual at the centre of the problem and therefore posits the solution with the remediation of the individual. Not even the tacit acknowledgement of structural factors ameliorates the primary concern with the failings of the family, and of the individual. Classified as the deserving and undeserving, people who are homeless have been judged by successive Australian Governments as worthy of assistance or unworthy and deserving of reformation, discipline or punishment.

In this paper I wish to tackle two questions:
• How it is that in a nation as prosperous as Australia, in which the number and continuing reformation of government funded programs makes them difficult to count, and which is a signatory of international covenants protecting human rights that this has not translated into any practical meaning for the homeless in Australia?
• What changes are needed to the prevailing political, social, civil and economic rationalities to turn this around and achieve a human rights agenda, not just for the homeless but for those living in poverty more generally?

Since relatively early in the 21st century, a limited but vocal number of contemporary Australian legal, social and academic authors have written on the nexus between homelessness and human rights (for example, Lynch 2003, 2005; McRae and Nicholson 2004; Otto 2002; 2003) concentrating on the failure of Australia to meet its obligations under the numerous international agreements to which it is a signatory. This includes the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and International Covenant Rights of Children. Citing available statistical evidence, the failure of public and social housing to cope with demand, discrimination by statute, such studies demonstrate the numerous ways in which the homeless are denied the rights articulated in such Agreements. Acknowledging and excluding the specific right to housing and security, people who experience homelessness also experience numerous barriers to the exercise of basic rights accorded to the population at large. Further than denial of rights, is the making and enforcing of laws intended to effectively criminalise homelessness itself.

However, despite the articulate and evidence-based nature of such arguments, they have failed to gain any real traction within government or the broader Australian population. By adopting the language of human rights as a basis of argument there is an implicit suggestion of a collective acceptance of a universal and legitimate claim of entitlement by all people. This then raises the question as to the relationship of that assumption to the prevailing (and sometimes shifting) political, legal, cultural and economic rationalities that shape the extent to which such rights are accepted or likely to be realised. This is at the most basic the foundation for understanding the inherent barriers to be cleared before the promise of human rights can begin to be realised.

Examination of the language of Australian Government discourse, the laws that are enacted and the policy and programs designed to shape implementation reveals rationalities which are fundamentally antithetical to those upon which the notion of universal human rights are grounded. It then becomes possible to understand why any argument for action will fail unless it is preceded by a fundamental re-orientation in the way the state, and all the various interests, understand the role of Government and its relationship to the population.

The second dimension relevant to this discussion was highlighted by former U.S. President Dwight Eisenhower in early January 1961. Eisenhower’s reference to the risk of the growing influence military / industrial complex in setting the agenda is generally well known. But what is often left off is the warning that followed. Eisenhower went on to warn,

"Today, the solitary inventor, tinkering in his shop, has been overshadowed by task forces of scientists in laboratories and testing fields. In the same fashion, the free university, historically the fountainhead of free ideas and scientific discovery has experienced a revolution in the conduct of research. Partly because of the huge costs involved, a government contract becomes virtually a substitute for intellectual curiosity... The prospect of domination of the nation's scholars by Federal employment, project allocations, and the power of money is ever present and is gravely to be regarded."
A Brief Glimpse Into the Origins of Contemporary Thinking

Because a dominant influence on contemporary Australia is its historic roots in English law, values and culture, it is important to acknowledge the impact of this origin. Throughout the last six centuries, a definitional debate has focused on establishing a distinction between those persons who are or are not eligible for public favour and assistance. As early as 1388 the Statute of Cambridge sought to differentiate between the impotent poor (those who were incapable of work such as the aged or infirm) and the able bodied. The 1531 Poor Laws gave birth to the term vagrancy. In assigning places where the deserving could beg, the legislation did not create or acknowledge any obligation of the state, other than as the ‘keepers of order’. The establishment of the criminal offence of vagrancy simultaneously created the identity of the criminal, by way of being homeless or, in other words homeless and therefore criminal. The introduction of the workhouse for the idle and the poor house for the old and disabled, which typified the four centuries 1400-1800 is well known. Through this period Government created and became the enforcer of a growing number of regulations.

The notion of the deserving and undeserving, idleness as a crime, and a focus on rehabilitation by labour that characterised the English precedent, strongly influenced Australian policy. From early colony vagrancy laws, to post federation state and local laws have effectively criminalised the homeless. By prohibiting begging, public drunkenness, sleeping in public spaces and the like, anyone without shelter was, and remains, constantly vulnerable to being charged with petty crimes, reinforcing the linkage between the homeless and crime. Similarly Australian policy and program responses have been consistent with the early depiction of the poor in general and people who are experiencing homelessness as undesirables as idlers, as being deficient and needing of rehabilitation. This is well illustrated by the introduction of mutual obligation requirements as a condition to accessing income support, with no regard to the limited capacity of those experiencing homelessness to comply.

Legal Frameworks- Government’s Relationship to the Population

Section 51 of the Australian Constitution established the power to provide for the welfare of select deserving groups. Seven years after federation the Invalid and Old Age Pensions Act 1908 launched the first national income support / pensions. However it fell to the states and private charities to provide for other less deserving citizens including widows, orphans, and the unemployed and unmarried mothers. Between 1941 and 1944 the Government led by John Curtin enacted legislation, which extended the availability of relief to include children and the unemployed. However, the link between moral failings and poverty was enshrined in the provision which stated assistance could be refused to women who were ‘sexually active, suspected of involvement in prostitution, or deemed to lead ‘dissolute lives’, and who were, therefore, not considered to be amongst the deserving poor. The first Commonwealth State Housing Agreement, established in 1945, provided the first national rental rebate program, but only for families on a basic wage, a predecessor of the current Government’s rhetoric of support for working families. Neither the unemployed nor the homeless were eligible for such assistance.

The Social Security Act of 1947, which brought this earlier legislation under one roof, maintained the concept of deserving and undeserving. Despite the acceptance by the Commonwealth Government, of a role in the provision of income support payments, this legislation, and subsequent amendments, employed eligibility criteria based on narrowly defined merit, with age, disability, marital status, and race or ethnicity forming the basis of this meritocracy. From its inception then, access to Commonwealth Government funded income assistance has been determined on the basis of established eligible target populations,
rather than the circumstance of poverty, homelessness or relative disadvantage. This framework remains the basis for Australian income support programs. Equally it is relevant to highlight that the nature of income support which is provided to eligible people is not, nor has not been, linked to what is deemed a liveable wage. That is to say, income support is inadequate to lift the majority of recipients out of poverty itself, leaving even those who are eligible for such support living beneath the poverty line and at risk of homelessness.

Both national and state anti discrimination legislation, as with income support, housing programs and the like, is also targeted, limiting protections to a narrow band of people based on the possession of particular characteristics such as age, gender, disability and ethnicity. They do not, however, provide any protection against discrimination based on socio-economic circumstances – that is they offer no explicit protections for people who are experiencing poverty including those who may be homeless. Again this serves to exacerbate the level of homelessness through explicit discrimination by private housing providers.

**Emergence of Homelessness in Political Discourse and the Homeless as a Problematic Population**

It was not until 1974 that the term ‘homeless’ first appeared in Australian Parliamentary debate. Since that time, the Australian Government has pursued a process of defining, counting, describing, and regulating a population group that is known by the label of homeless. However this has not been a benign process. It has had the force of division, and active discrimination. Further the research community has contributed to this discourse and the justifications that have underpinned national policy.

Through the creation of a class of subjects (a population), it has become possible to ascribe individual or group traits and characteristics, which are grounded in underlying assumptions about the nature of people who experience homelessness. By formulating the problem in terms of particular characteristics of individuals (and the group), such as mental illness, substance use and idleness, attention is focused on the failings of the individual rather than on any structural factors that contribute to homelessness. Government strategies and policies are then directed towards reforming these social pathologies and reforming consequential behaviours.

In an environment in which there is a fundamental expectation, and belief, that individuals are (and should be) self-responsible, autonomous and enterprising in meeting their own health and wellbeing needs, social and economic problems are seen as a limitation of the individual. In this way any individual or population group who do not appear to comply with community standard of behaviour are perceived as deviant, requiring strategies to regulate, monitor, reform or manage such deviancy. The outcome of this process is the reproduction of the individual as a client or as a criminal. Once the label of deviancy, client or criminal is applied, there is a consequent need and ability to generate the knowledge required to justify such a label. By labelling and naming behaviour or conduct as deviant, such norms or standards continue to be legitimised. This in turn informs the nature of response which is adopted.

Social scientists, and it must be said the service sector have contributed to the development and perpetuation of such discourse through the creation of typologies that link personal characteristics with a label. The result is the power to cloak the discourse of condemnation, stereotyping and stigmatisation in academic clothing.
The packaging up of ascribed traits deemed to be associated with people who are homeless is well demonstrated by citing the Commonwealth Advisory Committee, in *Working Toward a National Homelessness Strategy* in which it was asserted that,

Homeless people are more likely to be unemployed, rely on welfare benefits and support, experience ill-health, engage in injurious behaviours such as drug taking and unsafe sex and participate in crime, than the general population. All these characteristics of homelessness put an inevitable cost burden on the health, justice, criminal and welfare systems.

The notion of social pathology is then inscribed in the national image and community culture and homelessness is accepted from a commonsense perspective as an inevitable outcome of individual failure or deviancy.

**Pathologising the Homeless**

A search of Government funded research between 1980-2007 reflects the ongoing emphasis on understanding homelessness as an outcome of the individual flaw, that is there are some individual characteristics, which render them unable, or unwilling, to provide for their own housing. An examination of such research found that the focus on the epidemiology of the homeless serves to underscore the discourse of deviance. The implicit assumption upon which such investigations are based is that it is possible to produce the data required to demonstrate that homelessness, as a condition, and people who experience homelessness as a population group, is consistent with such symptomology as mental illness, drug and alcohol abuse, criminal behaviours and individualised troubles such as emotional and physical abuse, irresponsible gambling and relationship breakdown. As a result it is concluded that the homeless require rehabilitation to enable them to re-enter the broader community of housed and employed citizens. Importantly the dominant discourse starts from the unsubstantiated premise that there is a causal relationship between the individual’s homelessness and ascribed deviant factors.

Despite acknowledgement of structural influences such as high unemployment rates, limited stock of low cost housing and poverty, such studies have inevitably concentrated demonstrating linkages with this variety of individual flaws and failures and more recently the ubiquitous terminology of ‘complex problems’. Further, such research offered up the language of homeless careers, pathways in and out of homelessness and iterative homelessness, which further positions homelessness as a reflection of individual functionality.

There are complementary streams of research that seek to determine, and demonstrate by inference a causal relationship between specific events which trigger a person becoming homeless. This research emphasises a relationship between a person experiencing homelessness and breakdown in familial relationships, eviction, leaving institutions (e.g. prison, hospital) and lack of education. Poverty, and the role that government may play in alleviating such poverty, rarely enters the discussion. While the identification of trigger events may have some merit, the failure to move beyond such research makes it fundamentally complicit in the pathologising of the homeless and fails to meaningfully impact on policy responses.

Finally it is essential to acknowledge how broader social and institutional policies and programs of government directly contribute to and serve to promote the pathology of the homeless. The move to de-institutionalisation of mental health services and re-institutionalisation in the prison system has been well documented. This has been
accompanied by a decrease in the capacity of health and medical care options. The combination then of the restructuring of the mental health system, and the lack of capacity of the community resources effectively enabled the creation of a vulnerable population within an unresponsive social, economic or physical infrastructure environment.

Welfare or Housing?

Australian Government policy and program responses to homelessness have historically, and continue to be viewed as welfare rather than a housing issue. The positing of welfare programs, funding and service priorities outside of the national government’s housing or even income support portfolios best reflects this. From the Homeless Persons Act through the five iterations of the Supported Accommodation Assistance Program, the public and social housing programs, Australian Government action has remained on a welfare approach. Each program, irrespective of portfolio, has defined eligibility criteria which differentiate between the deserving and undeserving. These key strategies and programs do not offer a long-term action plan, or resources, to address the underlying structural and economic factors that underpin homelessness – poverty and the cost of housing. They are, rather predicated on the ongoing discourse of homelessness as a result of individual failure rather than any broader systemic or structural factors.

It would be amiss not to put the spotlight on the recently released Government Green, Which Way Home: A New Approach to Homelessness, whose purpose is to advise the development of a national homelessness strategy. Again, this document continues the discourse of remediation with no linkages to either the fact of poverty or the lack of housing options. And to put a not too fine a point on it, is being conducted in isolation from the Government’s affordable housing strategy which to be consistent with current political jargon, focuses on the ‘working families’.

Australian National Housing Policy is not about Homelessness

The notion of housing rights has played no role in the national debate or Australian housing policy. Public housing programs have maintained a consistent grounding in the dichotomy of the deserving and undeserving, eligible and ineligible, which is embedded in both a commitment to economic rather than social objectives.

The first national housing commission reported in 1942 the failure of the private market to provide adequate responses for people on low incomes, which led to the first Commonwealth State Housing Agreement (CSHA) and direct funding to the state housing authorities. However, consistent with the prevailing social and economic policy, State Housing Authorities adopted a moralist orientation. Governing of the population, that is the creation of good habits, the support of family and moral standards were explicit ingredients in the neophyte public housing policy. Over the following decades, the CSHA continued to see a key role of public housing policy as helping low income families to move into private ownership, whether through purchase of their public housing or through financial assistance.

Not surprisingly, the 1975 Australian Commission into Poverty (the Henderson Report) found that public housing did not provide an effective response for the poor. It reported that of less than one third of public housing tenants was poor, that is below the poverty line. One outcome of this Henderson Report was the introduction by State Housing Authorities of income eligibility criteria and application of market rents. The intention was to encourage those on moderate incomes to leave public housing and to reduce demand for public housing
by restricting access to those on lower incomes. This represented the beginning of a quantum shift for public housing from housing the working class to ‘the welfare poor’. By March 2000, some 80% of public housing tenants were recipients of income support benefits. However again this was not an unfettered system. Eligibility criteria, limited supply and rationing of resources meant that only the ‘deserving’ or priority list of candidates received, or continue to receive a look in.

By the mid 1990’s the Labor reform agenda under Hawke and Keating, consolidated a policy framework based on the belief in the superiority of the private market in meeting social needs. This rolling back of the state in practice represented a general shift of responsibility for goods and services to the private sector.

From the launch of the 1995 Keating Community and Nation policy commitment through the Howard Government’s 1996 slashing of infrastructure funding, there was a drastic reduction in the supply of public housing and the application of increasingly targeted and restrictive eligibility provisions across all State housing programs. Families, the elderly, and disabled were identified as the target population to be considered as ‘deserving’ of highest priority. Over the last decade the shift to social housing delivered through the community sector has become the primary provider, but again regulated by restrictive criteria of eligibility and terms of tenure.

Although there has been debate regarding who should, or should not, be eligible for assistance (whether through the various forms of housing or financial assistance), there has been a consistent underlying belief that there is a legitimate basis for making such a determination. The outcome has been a fundamental rationalization by which national housing policy and its consequent impact on state public housing programs has been at opposite poles to that of the notion of either access to housing as a right or as a national responsibility.

Where to from Here?

Australian homeless population has historically been, and continues to be, viewed as a result of some individual flaw. In a country in which housing, and in particular home ownership is a significant cultural icon, being without housing is the ultimate in disenfranchisement from political, economic, social and cultural life. The placement of national responses to those who are homeless within the welfare sector, with demand management achieved through application of restrictive eligibility and assessment requirements, maintains a long standing chasm between ‘the right to housing’ and Australian policy and practice. At the same time, the challenge remains to the research community in terms of the extent to which they wish to remain part of this dominant discourse or a voice to open up alternative ways of understanding homelessness, the homeless and how we respond as a community.

So where does this leave us? If the way we think determines the way we act, and the language we use reflects and reinforces a way of thinking, then the starting point needs to be focused on changing our language and our way of thinking. This will not be an easy process and will challenge the well established discourse in which rights are doled out based on a notion of merit.

A call to action should begin by promoting the adoption by Parliament of the human rights agreements to which Australia is a signatory and to remove discrimination from current legislation. However neither of these strategies is likely to be achieved or translate into practice in the foreseeable future. What is needed is a concerted and highly deliberate focus
on changing the fundamental discourse which underpins the national perspective on human rights. This new discourse needs to articulate the role of government in ensuring the achievement of such rights as a fundamental obligation of government.

References
‘Evil’ and the Politics of Human Rights

Justin Frewen

Abstract: Since the advent of the Bush Administration to the Whitehouse, the fight against evil has been a major theme. As Peter Singer points out, between taking office in January 2001 and June 16, 2003, Bush spoke about “evil in 319 separate speeches, or about 30 percent of all the speeches he gave.” Although this is not the first time that the spectre of evil has been raised as menacing the democratic ‘north’ it has certainly become far more present in global political discourse. But what effect does depicting the principal global struggle as being a struggle between ‘good and evil’ have for those who want to promote a worldview based on human rights? Can human rights truly be promoted in an era where the ‘war on terror’ has prominence? Will those living in regions where ‘evil’ is located risk being viewed as expendable in this struggle and therefore doomed to suffer the ravages of further conflict and degradation in their human rights? And, finally, could an Arendtian-derived approach to evil provide greater opportunity for the promotion of human rights?

Keywords: Evil, Human Rights, War on Terror

Introduction

The thesis of this paper is that the ideological arguments and rhetorical devices underpinning the particular concept of evil evoked by the Bush Administration and its allies have served as part of an overall drive to rally support for the attainment of their international goals, including the mobilisation of support for the ‘War on Terror’. At the same time, the stigmatisation of the enemy in this ‘War on Terror’ as being evil and hence beyond redemption has also contributed to the weakening of the protections provided by international human rights obligations. To illustrate this argument, this paper will begin by outlining the manner in which Bush and his administration have employed the concept of evil; the second part will then examine how human rights such as the prohibition on torture have fared in the shadow of the ‘War on Terror’. The final part of this paper will sketch out Hannah Arendt’s concept of evil and how it might prove of value in the current international context.

Evil According to Bush

Since the turn of the millennium and ascent of George W. Bush to the US Presidency in January 2001, the discourse of ‘evil’ has made a dramatic return to the international arena. (Northcott, 2004; Rengger & Jeffrey, 2005; Singer, 2004; Bernstein, 2005) This is not to suggest that the ideological mantra of evil as a label for one’s enemy had ever completely disappeared. (Guardian 2008) Rather it is intended to highlight its (re-)emergence to prominence through the discourses of the Bush administration and major global supporters such as the ex-British Prime Minister Tony Blair who have continually referred to their struggle against the forces of evil, as in the ‘War on Terror’, as being imperative for the survival not only of their respective nations but humanity as a whole. (Bush, 2001a; Bush 2001b; Bush, 2002a; Blair, 2001)
This recent preoccupation with evil echoes Arendt’s prediction, pursuant to World War II, that “[t]he problem of evil [would] be the fundamental question of post-war intellectual life in Europe”. For a considerable period it appeared that Arendt had been a false prophet. Although the Holocaust had bequeathed the legacy of a “permanent scar on the European psyche,” global concern with evil appeared to have declined. However, since the 1990s, the Rwandan genocide, Srebrenica and September 11 have rekindled “interest among writers, scholars and intellectuals” in the phenomenon of evil. (Rengger & Jeffery, 2005: 3-4)

Arguably it was the September 11 2001 attacks on US targets that truly propelled the concept of evil into the forefront of international relations. While no-one would deny the impact of 9/11 on the American psyche and the major debate it provoked amongst the US public and global community as to why the US had been so targeted, the Bush administration was not slow in deciding how to respond in order to further its international policy objectives. Consequently, a new US policy, the ‘War on Terror’, was launched by Bush and his administration, in which they declared that the US would pursue the evil terrorists wherever they might be based. (Clarke, 2004; Woodward, 2003; Young, 2003)

On the very day of the attacks, Bush spoke of how thousands of people had had their lives “suddenly ended by evil, despicable acts of terror”. Moreover, America had been subjected to this violent assault upon its citizens on account of its status as “the brightest beacon for freedom and opportunity in the world.” However, such actions on the part of terrorists would not

...keep that light from shining. Today, our nation saw evil -- the very worst of human nature -- and we responded with the best of America... America has stood down enemies before, and we will do so this time. None of us will ever forget this day, yet we go forward to defend freedom and all that is good and just in our world. (Bush, 2001a)

However, Bush’s recourse to a discourse of evil was not brought into being by the terrorist attacks of September 11th, however much it might have received fresh impetus from the events of that fateful day. Indeed, since becoming President, Bush has made extensive use of the term ‘evil’ to portray people or policies to which he has been opposed. As Singer writes “Bush’s tendency to view the world through the prism of good and evil is especially striking” with his having “spoken about evil in 319 separate speeches, or about 30 percent of all the speeches he gave between the time he took office and June 16, 2003.” (2004: 2).

Categorise the struggle that faces the US as being one pitting good against evil is one that runs through the Bush administration. Vice-president Cheney has couched the struggle between good and evil as a global one, concerning all of humanity:

This is a struggle against the evil of a few. That is why people in every part of the world and of all faiths stand together against this foe. We cannot know every turn in the battles to come, yet we know our cause is just. We have seen enemies like this before, and we have defeated them before, and we will defeat them again. (2001)

Indeed, such a worldview appears to a great extent to hold sway in the Republican party as the defeated 2008 presidential candidate John McCain stated with respect to the war in Iraq during a joint 2004 appearance with Bush:

It's a big thing, this war, a fight between two ideologies completely opposed to each other.... It's a fight between a just regard for human dignity and a malevolent force that defiles an honorable religion by disputing God's love for each and every soul on Earth.
It's a fight between right and wrong, good and evil. It's no more ambiguous than that. (Bumiller, 2004)

As clearly stated by McCain it would appear that what is of primary importance is the representation of this conflict as one between the forces of good and evil, irrespective of the human actors themselves. Further evidence of this can be seen in how Bush has tended to use the word “evil” as a noun rather than as an adjective suggesting:

… that Bush is not thinking about evil deeds, or even evil people, nearly as often as he is thinking about evil as a thing, or a force, something that has a real existence apart from the cruel, callous, brutal, and selfish acts of which human beings are capable. (Ibid)

In this respect, Bush argues that it is important we are not distracted by the seeming irrationality of those who implement acts such as 9/11 as, behind their apparently senseless actions there is a real evil that somehow animates and guides these terrorists in their fight against the good represented by the US and its allies.

Yet while the killers choose their victims indiscriminately, their attacks serve a clear and focused ideology, a set of beliefs and goals that are evil, but not insane. (2005)

Such a mindset makes it virtually impossible to try and objectively assess or understand the actions and/or policies followed by the ‘other side’, as if one is on the side of the righteous one’s actions must be right and free from criticism as they bear within them the intention of promoting good. Similarly, if one is on the side of evil, one’s actions must by definition be wrong and immoral. As Bush bluntly stated in a June 2002 speech at the West Point Academy

Some worry that it is somehow undiplomatic or impolite to speak the language of right and wrong. I disagree. Different circumstances require different methods, but not different moralities. Moral truth is the same in every culture, in every time, and in every place... We are in a conflict between good and evil, and America will call evil by its name (Ibid: 1)

Human Rights

Following September 11th and the initiation of the “war on terrorism... virtually all international relationships and policies have been opened up for redefinition”, with states now being judged on their stance with respect to the US and its struggle against ‘evil’. (Reitan 2003: 52) On the one hand this has led to a situation where several “bilateral relationships” have been transformed as erstwhile “strategic interests”, that include human rights and democratisation, now having reduced importance in US dealings with states such as Pakistan, Russia, China and Uzbekistan. (Ibid) At the same time, the “zero-sum thinking... in Bush’s ultimatum” has generally led to increased tensions worldwide as the global community of nations has been put on warning that

Every nation in every region now has a decision to make. Either you are with us or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime. (Merskin, 2005: 379)

In such an international environment it is easy to see how human rights norms and covenants might be negatively impacted upon. States deemed to be on the ‘right’ side in the war against terrorism may have human rights abuse allegations peremptorily dismissed, as their support is
valued more highly than observance of their human rights obligations. Such a situation could lead to serious problems for those trying to promote the observance of human rights globally.

This is going to be a trying time for those who promote human rights and for those who advocate humanitarian intervention. That decent 1990s impulse to do good in Bosnia and Kosovo, even at the price of alienating Russia and China, was already, before Sept.11, giving way to a foreign policy based on an unsentimental notion of our national interest. Now the calculations will be even colder. (Reitan, 2003: 51)

While many might well question the genuineness of the “impulse to do good” with respect to the interventions and their aftermath in Bosnia, Kosovo and elsewhere, (Chandler, 2006; Chandler, 2002; Mandel, 2004) it is unquestionably true that the promotion of human rights, at least in certain states, is in risk of becoming another instance of collateral damage. (Douzinas, 2007: 117-120) However, such a situation would appear to fly in the face of the whole philosophy of human rights. As Pogge writes:

First, all human beings have exactly the same human rights. Second, the moral significance of human rights and human -rights violations does not vary with whose human rights are at stake; as far as human rights are concerned, all human beings matter equally. (2008: 57)

At the same time, throughout his presidency George W. Bush has strategically “wielded” the issue of human rights to tap into the “myth of America as the synecdochic representation of freedom in the world”. Indeed, amongst the justifications for the Iraq invasion put forward by the Bush administration, was “at least in part to defend the <human rights> of Iraqi citizens.” (Stuckey & Ritter, 2007: 647) Therefore, just as the accusation of evil has been wielded by the Bush Administration as an ideological hammer against its opponents, so has the US’s promotion of human rights been held up as a shining example of the positive role the US plays globally.

One of the principal justifications espoused by Bush Snr for military action against Iraq in 1991 was the purported murder of Kuwaiti babies by Iraqi soldiers, who upon entering the main hospital there, removed babies from their incubators callously leaving them to die. However, this story had in fact been put together by the largest PR firm in the world at the time, Hill and Knowlton, based in the US and working on behalf of the exiled Kuwait government. (Rampton & Stauber, 2003: 69-74; Kellner, 1992: 67-71). Of course, as Kellner observes, depicting one’s enemy in such a manner has a long history:

Rape and the murder of babies are two primal images of evil, that have often been employed in propaganda campaigns. For instance, World War I propaganda campaigns often featured stories or images of German rape and murder of babies. (Ibid: 71)

It is perhaps unsurprising therefore that the current Bush administration also made use of allegations that the Hussein regime operated rape rooms and engaged in large scale torture of its own citizens. (Ben-Porath, 2007: 197; Stuckey & Ritter, 2007: 657)

However, after the US occupation of Iraq, the spotlight was turned back on the US. Abu Ghraib prison outside Baghdad, ironically previously a place of torture under Saddam, became the focal point for accusations of torture on the part of the US forces. Photos made their way to the international media and people around the world were appalled to see the US engaging in the kinds of acts they had declared so reprehensible when committed by the deposed regime. (Danner, 2004; Greenberg & Dratel (eds.), 2005; Strasser & Whitney, 2004)
As noted by Ben-Porath:

The Abu Ghraib scandal undermined the dichotomy that set the moral foundations for the intervention in Iraq. Whereas the horror that was captured in the imagery of the rape rooms put the United States clearly on the side of good and Saddam’s Iraq as a land savaged by an evil regime, the question of savagery was blurred by the revelations of perverse cruelty employed on America’s behalf. (2007: 196)

The negative consequences of these revelations were aggravated by efforts within the Bush administration to ensure that the interrogation practices identified would escape classification as torture. A memo from the ex-Assistant Attorney-General Bybee, since repudiated by the Administration, “virtually ensured that such interrogation practices could not be defined as torture” through a narrow redefinition of “torture as physical pain equivalent to ‘serious physical injury such as organ failure, impairment of bodily function or even death’.” (Ramsay, 2006: 106) Bybee argued that “only the most extreme acts are impermissible” with “lesser acts of cruel, inhuman or degrading treatment” not violating the UN Convention. He even went further arguing that the

...President as Commander in Chief could override the prohibition on torture and, if authorised by the President, interrogators could escape prosecution by the Justice Department... Interrogators could violate the prohibition on torture if they believed it necessary as a lesser evil to prevent a direct or imminent threat to the US and its citizens. (Ibid)

Bybee’s conclusions aroused widespread objection from a number of bodies including the UN High Commission for Human Rights who declared there could be “no doubt that the prohibition on torture and cruel, inhuman and degrading treatment is non-derogable under international law” while the UN Special Rapporteur on Torture censured “the use of the necessity defence and the methods approved” as “international and regional human rights mechanisms” jurisprudence was “unanimous” in declaring such acts in violation of the ban on “torture and ill treatment.” (Ibid) A Human Rights Watch report also observed that in the past the US itself had “denounced the same methods as torture when used by other countries” (Ibid)

Such efforts on the part of the Bush administration have been accompanied by a disturbing trend amongst ‘liberal’ commentators, involved in the area of human rights, to try and justify the application of torture techniques in at least certain instances. (Steiner, Alston & Goodman, 2008: 243-50)

Writers such as Ignatieff and Dershowitz have argued for the possibility of torture by democratic states when threatened by non-democratic forces and terrorists. (Ignatieff, 2004a; Igantieff, 2004b; Dershowitz, 2002; Dershowitz, 1989)

While Ignatieff holds that torture can never be upheld as a general practice and should only be availed of in a situation such as the ‘War on Terror’, given its potential corruptible influences on a liberal democracy, he does argue for its supervised application with

The problem [lying] in identifying the justifying exceptions and defining what forms of duress stop short of absolute degradation of an interrogation subject. (2004a: 141)
Dershowitz bases his reasoning on a ‘ticking bomb’ analogy whereby, as with Ignatieff, when one is faced with a choice between two evils the lesser one should be chosen. As Brecher summarises his argument:

First, there are some extraordinary cases where interrogational torture is the least bad option, namely variants of the ticking bomb scenario. Second, since torture is going to remain present in the real world anyway, it is better to drop the hypocritical pretence that it is something “we” don’t do and legalize the use of interrogational torture in relevant cases. (2007: 15)

To illustrate his argument, Dershowitz puts forward a sample scenario where we are confronted with a terrorist who has knowledge of where a bomb is going to go off causing significant loss of life but is adamantly refusing to divulge its exact location. While an initial visceral response might favour coercing the required information from such an individual, it is important to examine the validity of this example. As McCoy highlights, the likelihood of catching a terrorist with such information is “so slender that the scenario seems an improbable foundation for law, diplomacy, and national security.” (McCoy, 2006: 192) Therefore, while one might agree with Dershowitz that it is better for society as a rule that “hypocritical pretence” should be dropped on the part of the authorities, this is an insufficient argument for the introduction of torture as a legally recognised practice.

As Rejali writes:

If one wants to chastise the hypocrisy of others as one argues for torture warrants, then one has to prove that torture works. (2007: 523)

Given such arguments put forward by scholars such as Ignatieff and Dershowitz, it appears permissible to openly discuss whether the absolute prohibition on torture can now be ignored. Although US involvement in torture globally, whether directly or indirectly, has a lengthy historical pedigree, (Otterman, 2007, McCoy, 2006) it is particularly worrying that intellectuals of international standing are now advocating for the inclusion of torture as a weapon in the arsenal of the democratic powers. Their writings which have created a re-opening of the debate on the legitimacy of torture, that had been regarded as closed for some 200 years, (Brecher, 2007: 3) risk providing mainstream support across society for the position of the Bush administration.

**Evil: An Arendtian Approach?**

While, Arendt might have predicted the critical role ‘evil’ would play in international relations, it is almost certain she would be shocked by the crude manner in which it is currently being applied. Indeed, Arendt might even be tempted to see uncomfortable similarities between the dehumanising portrayal of the ‘enemy’ in the ‘War on Terror’ and Nazis depictions of Jewish and other undesirables during the Third Reich. (Knopp, 2005; Klemperer, 1998; Klemperer, 1999; Kershaw, 2001) Before proceeding to an analysis of Arendt’s writings in this area, it should be emphasized that this paper is not trying to draw a simplistic comparison between the Bush administration and the Nazis or in any way equate their respective actions, but rather to draw out how an inability to try and understand the ‘standpoint of somebody else’ can lead to unnecessary or, as Adi Ophir terms it, “superfluous evils” being visited upon people. (Ophir, 2005: 11-12)

Arendt’s observations of Eichmann trial in Jerusalem in 1961 led her to believe that he was at best a trite and somewhat monotonous individual whose most distinguishing feature was not
stupidity, wickedness, or depravity but “thoughtlessness”, resulting in “his inability to judge in those circumstances where judgment was most needed”. (D’Entrèves, 2005: 248) For Arendt, it was this “inability to reflect, to think freely and critically about one's situation and one's deeds” which served as “the true mark of evil in its contemporary or "totalitarian" form.” (Steinberger, 1990: 803)

Arendt’s analysis of Eichmann proved highly controversial as it flew in the face of “two centuries of modern assumptions about intention”, which identified “evil and evil intention so thoroughly that denying the latter is normally viewed as a way of denying the former.” (Neiman, 2002: 271) If Eichmann was incapable of thinking “freely and critically”, how could it be said he had been acting intentionally in an evil manner? Arendt was therefore believed by many to be claiming that Eichmann was not guilty through her denial of “malice and forethought”. (Ibid: 271-2). Central to this hostility which arose over Arendt’s depiction of Eichmann’s trial was her use of the concept “banality of evil”, which she applied to the manner in which Eichmann had acted in contributing to the slaughter of the Jewish populations of Europe. However, as pointed out by Seyla Benhabib, the use of terminology such as the “banality of evil”, while it may have been “greatly misleading… did not mean that what Eichmann had helped to perpetrate was banal or that the extermination of the Jews, and of other peoples, by the Nazis was banal.” (2005: 74) Indeed, it would take

either a great deal of hermeneutic blindness and ill will or both to miss her meaning in the usage of this term, even if one many disagree with the assessment of Eichmann’s psychology. The phrase the “banality of evil” was meant to refer to a specific quality of mind and character of the doer himself, but neither to the deeds nor the principles behind those deeds. (Ibid).

In effect, Eichmann’s thoughtlessness could not be used to excuse his active participation in the evils of the Nazi system. As Neiman writes, Eichmann’s “harmless intentions did not mitigate his responsibility.” (2002: 272).

In The Human Condition, Arendt argues that this “matter of thought, and thoughtlessness – the heedless restlessness or hopeless confusion or complacent repetition of ‘truths’ which have become trivial and empty... seems to be among the outstanding characteristics of our time.” (Arendt, 1958: 5; See also Arendt, 2002) For Eichmann, this “curious, quite authentic inability to think” left him unable to think from the “standpoint of somebody else.” (Arendt, 1994: 49)

In the case of Eichmann, this “curious, quite authentic inability to think” left Eichmann unable to think from the “standpoint of somebody else,” (Arendt, 1994: 49) Eichmann was totally unable to understand in any intelligible manner the horrors he was inflicting upon the Jewish people whose death convoys he organised. It is interesting to note that the one time he was attended the executions of Jews he claimed his inability to cope with what was happening. As he recalled:

I cannot tell [how many Jews entered], I hardly looked. I could not; I could not; I had had enough. The shrieking, and... I was much too upset... I then drove along after the van, and then I saw the most horrible sight I had thus far seen in my life. The truck was making or an open ditch, the doors were opened, and the corpses were thrown out, as though they were still alive, so smooth were their limbs. They were hurled into the ditch, and I can still see a civilian extracting the teeth with tooth pliers. (Arendt, 1994: 87-88)
Whenever the distance he had placed between himself and the Jewish community was breached, his conscience appeared to be touched and he started to think, even if only in a very rudimentary manner and clearly without any very great understanding or compassion, from their standpoint. In this sense the failure of Eichmann to relate to the Jews on their own terms can be traced at least partly to the fact that:

Opinions are based on experience, which shapes and limits the perspective of the possessor. We come to understand the opinions of others when we grasp their point of view. In the realm of human affairs, reality (and so by extension, truth) is multiple. (Dolan, 2005: 265-6)

Given Bush and his administration’s depiction of their antagonists as ‘evil’ and apparent unwillingness to consider the possibility of their enemy possessing a credible alternative worldview worthy of any effort of comprehension, there is a disturbing resemblance between their management of the ‘War on Terror’ and Arendt’s estimation of Eichmann’s actions. This failure or lack of willingness to try and understand the ‘other’ has resulted in the adoption of policies such as those in Guantánamo. (Rose, 2004; Ratner & Ray, 2004) and the use of ‘rendition’, whereby alleged enemies are captured and transferred to jurisdictions where the rules governing their treatment are, to all extents and purposes, non-existent. (Grey, 2007; Bergen, 2008)

In effect, the ‘other’ risks becoming dehumanized on account of the evil that Bush and his administration attribute to them. As Lara writes:

this group – these “others” – must be cast out from any idea of community and excluded from the human family, from the country, and from political recognition, etc. Exclusion from the moral universe is produced almost immediately. And when victims lose their connection to the moral universe, then of course, “compassionate treatment removes normal restraints against aggression. (2007: 147)

However, on the contrary, when one makes the attempt to relate to the ideas and arguments of the other, and so try to understand the viewpoint of the other, one effectively enters into discourse with them. As Levinas explains, “To be in relation with the other face to face – is to be unable to kill.” (2006: 9) Such an approach could bring many benefits globally to those who currently find their human rights being disregarded or ignored due either to being identified as the evil enemy or to being trapped where the alleged ‘evil’ is located. While justifications may be proffered that the deaths of civilians are primarily due to the recklessness of the evil enemy in taking refuge amongst them the end result is the same, as their hopes for a peaceful life are now gone and their human rights effectively denied. (Brown, 2006; American Civil Liberties Union, 2008; USA Today, 2007; Human Rights Watch, 2007)

The approach adopted by Bush and his administration has led to a situation where evil has become more or less “a synonym for terror and terror states” with “evil, terror, and terrorism... conflated terms that represent the ways in which political regimes and their beliefs sustain and often fuel contemporary attitudes of fear and hatred.” (Zournazi, 2007: 86) This can only be detrimental to the equal application and preservation of human rights protections to all members of humanity wherever they may live and irrespective of their political philosophies.

From this brief discussion of Arendt and evil, we can clearly see how it might be of benefit in combating the Manicheanistic rhetoric of the Bush administration and its allies. Rather than
evil being some abstract force that exists, the potential for evil arises when one fails to try and understand the points of view of those who differ from us. Of course, this is not to claim that all that is required for evil to occur is the absence of mutual empathy between different parties, but rather that the failure to even try and develop one, greatly exacerbates the tensions and alienation between them. In Nazi Germany, the ‘Jewish Question’ was not the only issue or even the predominant one for most Germans as, in fact, the economy, unemployment, social unrest and so forth weighed heavily on their minds. (Bessel, 2005: 48-68; Rees, 2005: 37-8)

**Conclusion**

The proselytising efforts of Bush and his administration with respect to the elimination of evil are not without precedent. In the US itself, such evangelical endeavours have long had currency. In the early 20th century, Woodrow Wilson declared that “America had the infinite privilege of fulfilling her destiny and saving the world” while prior to his election as President, Nixon wrote how “our beliefs must be combined with a crusading zeal, not just to hold our own but to change the world... and to win the battle for freedom.” (Jewett & Lawrence, 2003: 4) Such expressions of US exceptionalism and faith in its ability to best understand and respond to the needs of all the world’s people is perhaps best captured by the concept of ‘Manifest Destiny’, used to justify wars against both native Americans and Mexicans. As the writer of an 1845 editorial explained:

> It is a truth, which everyman may see, if he will but look, - that all the channels of communication, - public and private, through the schoolroom, the pulpit, and the press, - are engrossed and occupied with this one idea, which all these forces are combined to disseminate: - that we the American people, are the most independent, intelligent, moral and happy people on the face of the earth. (Ibid: 59)

This messianic belief in America’s manifest destiny has continued into the present. In an era where the epithet of evil is applied as a rhetorical device to demonise the enemy, the threat to human rights is an ominous one. If the enemy is deprived of their humanity what restrains us from treating them as abominably as we believe they deserve? Furthermore, in the struggle to promote good over evil it becomes easy to blur our moral conscience as to what is and is not permissible in such a conflict. How many deaths of innocent civilians can be regarded as acceptable to achieve our objectives? Can we ignore our international human rights’ obligations, such as those relating to torture for example, in order to save ourselves and, by extension, the world?

Even more to the point, as Jack Donnelly points out with respect to the potential negative impact September 11th has had on human rights:

> More generally, appalling as these events were, it would be a further tragedy if they diverted (already scarce) international attention and resources away from more important and widespread moral and humanitarian concerns such as malnutrition, grinding poverty, genocide, pervasive repression, systematic political misrule, and the regular indignities and human rights violations that most people suffer daily in most of the contemporary world. (Cited in Bowring, 2008: 58)

It is up to all of us to reject the simplistic rhetorical devices and constructions employed by Bush and his allies in casting their enemies as agents of evil. As Arendt argued when confronted by the appalling reality of the Holocaust “we must begin by resisting the urge to make shocking, outrageous, and unprecedented realities “comprehensible” in terms of
reductive commonplaces”. (Dietz, 2005: 87) We should not take the easy way out and try to force events or situations into ideological categories and worldviews in order to justify some preconceived idea of morality. Instead we need to face up to the reality of the world today as we encounter it, no matter how awful certain aspects of it might appear, and attempt to analyse them on their own merits, regardless of where this might lead. Such an approach is imperative if we are to ensure that human rights are not offered up on the altar of political expediency with their application and effectiveness suffering progressive debilitation through the backdoor introduction of ‘prohibited’ practices such as torture.

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The Hidden Costs of Injured Dignity: An exploration of one effect of Workfare policies

Yvonne Hartman
Southern Cross University

Sandy Darab
Southern Cross University

Abstract: This paper explores one effect of Workfare policies that were designed and operationalised under the Howard Government. We conducted a qualitative, empirical study in two regions of New South Wales in the second part of 2007 which investigated how WorkChoices and the Welfare to Work reforms affected residents. Our analysis revealed a common theme was that of injured dignity. Here we examine how this sense of injured dignity is produced and how it manifests amongst our participants. The findings validate Dean’s (2004) view that Workfare policies focus upon a perceived failure of welfare recipients to be independent, whilst ignoring that humans are mutually interdependent beings. These policies recreate and reinforce the old division between the deserving and the undeserving. Injured dignity is then experienced as internalised shame and, as a psychic wound, it is largely hidden. We argue that the disrespect experienced by our participants in the Workfare process is a transgression of their inherent dignity from which human rights flow. Because these injuries are invisible, both their immediate costs and the long term consequences are incalculable. We conclude by recommending that existing policy be changed in ways that will acknowledge dependency without dishonour.

Key Words: injured dignity, Workfare, deserving/undeserving

Introduction

This paper explores one effect of Workfare policies that were designed and operationalised under the Howard Government. We conducted a qualitative, empirical study across two regions of New South Wales which aimed to explore the nexus between WorkChoices and the Welfare-to-Work reforms and their impact. Our analysis revealed that amongst those affected by the welfare changes, also known in the literature as Workfare, a very common theme was that of injured dignity. Here we examine how this sense of dignity is produced and how it manifests amongst our participants. We begin by examining the relationship between dignity and human rights, before going on to a consideration of Workfare policies in general and the Australian version in particular. We argue, following Dean (2004), that these policies centralise work as the only legitimate means to dignity and focus upon the failure of welfare recipients to be independent, whilst ignoring that humans are mutually inter-dependent. Our
transcripts revealed that the denial of autonomy and respect are fundamental transgressions to the dignity from which human rights flow. We conclude by recommending that existing policy be amended in ways that will acknowledge dependency without dishonour.

**Dignity and Human Rights**

The whole edifice of human rights discourse rests upon the notion of human dignity. Kant understood autonomy as the foundation of dignity (Brenner 2006, p. 478) and this is also recognised by the Charter of Fundamental Rights of the European Union (Dean 2004, p. 14). Additionally, in common parlance, dignity is defined as being worthy of respect, whilst respect is understood as acknowledgement of a person’s equal worth. This assertion of equality is called into question by the indisputable existence of social inequality, hence the need for a charter of human rights.

Therefore, human rights are a social construction and an historical achievement not a ‘naturally’ occurring phenomenon. Rights are constructed in keeping with the prevailing discourses and practices of the socio-economic, political and cultural milieu, and are reconstructed when there is an historic shift in the way society is organised and social life experienced (Glucksmann 2006, p. 71). Rights emerge from the dialectic relationship between an *a priori* set of doctrinal rights and the exercise of agency. Doctrinal rights are based on secular and religious principles that inform moral norms and customs from ‘the top down’. The exercise of agency ‘from the ground up’ shapes claim-based rights through challenges to hegemonic moral norms (Dean 2004, p. 197). The concept of rights is fluid; rights emerge, expand or are sidelined, and as we will go on to argue, but as Glucksmann (2006, p. 71) points out, any change occurs only as the result of intensive human action.

By Dean and colleagues’ (2005, p.12) account, there have been three waves of such action which has shaped our contemporary concept of human rights. The first was shaped by the French and American Revolutions and the Declaration of the Rights of Man – 1789 and the Declaration of Independence, respectively. Both declarations emphasised that men are created equal and have ‘a set of inalienable rights’ (Yale University 2008; University of Nebraska 2008). The second wave emerged after the disasters of the Second World War in the form of the United Nations Declaration of Human Rights (UNDHR) and involved acknowledgement of *dignity* as a fundamental dimension of human rights (United Nations 2008). The preamble calls for the ‘recognition of the inherent dignity…of all members of the human family’ and for a reaffirmation of faith ‘in the dignity and worth of the human person’. Dignity is explicitly acknowledged in three of the 30 Articles of the UNDHR, beginning with Article 1 which states ‘all human beings are born free and equal in dignity and rights…’. In the other Articles, dignity is directly tied to the right to work and welfare. Article 22 articulates the social and cultural right to social security as ‘indispensable for his [sic] dignity and the free development of his personality’. Article 23 sets out protection against unemployment and the right to work for a rate of pay sufficient to facilitate ‘an existence worthy of human dignity’ (United Nations 2008).

The third wave of conceptualising human rights is associated with the social, economic, cultural, political and technical processes of globalisation that have impacted upon contemporary forms of social organization and relations (Dean et al 2005, p. 12). In this rendition, the concept of social rights is restricted by third-way welfare discourse that emphasises human development. Since the shift to the global economy, capitalist welfare states have stressed work as a social good from which no one should be excluded (Andrews...
Dean et al. (2005) argue that there are varying ideological interpretations of rights. A solidaristic view of rights stresses their inalienable aspect as something that is conferred upon all by virtue of membership of the human race. Therefore, in this conception, rights are unconditional, a birthright – something you do not have to do anything to possess. In contrast, the liberal interpretation stresses contractualism whereby particular freedoms must be traded, thereby introducing the notion of conditionality. There are three objections to this approach. Firstly, responsibilities tend to trump rights and contest the notion of entitlement. Applied to social rights, it can be argued from the solidaristic perspective that this does not accord humans their dignity if we take into account Article 22 of the UNDHR.

Secondly, Morris (2006) argues that Workfare reforms that centre upon contractual policies are accompanied by status issues because of differing conditions imposed upon varying claimant groups, according to their merits or demerits. According to her, vulnerable groups like sole parents and the long-term unemployed are negatively stereotyped by policies which stress responsibilities over rights. If one cannot meet one’s designated responsibilities, the label of undeserving claimant will ensue.

Finally, the liberal view of rights centralises the autonomous individual whose dignity flows from the ability to be self-sufficient. To be dependent is to be like a child and therefore robs the adult of their self-determination. What this view ignores, however, is any recognition of inter-dependency and the embeddedness of human subjects within communities. Scheff and Retzinger (2000) agree, stating that the focus on individualism disguises ‘the web of personal and social relationships that sustain all human beings’. They go on to assert that the myth of the self-sustaining individual generates shame which is suppressed or hidden. As Dean (2004) reminds us, we are all both recipients and givers of care at various stages in our life trajectories. Therefore, to insist upon independence when it is not possible is to insinuate failure, which is further reinforced by the plethora of rules and regulations attendant upon the receipt of income support payments.

The contractarian view has been the most influential in developed nations over the last two decades. It underpinned welfare reforms in these states and Australia is no exception. We now turn our attention to how this has manifested in welfare policy in Australia.

**Workfare Reforms**

The underlying rationale of post World War II welfare policy was the prevention of exploitation of the weakest members of an unequal society (Goodin et al. 1999), coupled with an attempt to redress gross inequality through full employment (Burgess and Campbell 1998). The processes of globalisation and the concomitant rise of neoliberalism during the late 20th century saw the provision of welfare come to be governed by a new rationality, that of obligation and the active subject, as noted above. Recipients were no longer to be treated as passive dependents but encouraged to become active participants in ending their reliance on the state. Thus in 1999, the Howard Government commissioned the Reference Group on Welfare Reform (2000a, 2000b) to review the welfare system. The resulting report outlined a set of reforms consistent with the new discourses of dependency, participation and mutual obligation. This gave rise to a new policy package, *Australians Working Together*, which, according to its own publicity, offered a “balanced package of incentives, obligations and assistance to help Australians take charge of their own future, while still supporting those in
greatest need” (FACS 2003). This is now known as welfare reform and was implemented in stages since the package was announced in 2001.

The latest round of reform was the most far-reaching. It contained five elements of reform: payments, obligations, compliance, services and helping employers. Briefly, this involved the extension of the mutual obligation principle to sole parents whose youngest child is seven years of age and those with disabilities who applied after 1 July 2006, and their reclassification as Newstart claimants (unemployment benefit); changes to the compliance regime which introduced payment suspensions for periods of up to eight weeks; and increases in services designed to assist people into work – for example, extra training and child care places (Darab & Hartman 2007).

From 1 July 2007, parents and people with disabilities who receive income support payments are now required to undertake 15 hours paid work per week and register with a Job Network provider or undertake approved activities (Centrelink 2007). In terms of their activity requirements (mutual obligation), many aspects are left to administrative discretion and parents or partially incapacitated job seekers could be required to seek as many as ten jobs a fortnight, accept a ‘suitable’ job involving up to 180 minutes travel time per day and queue at Centrelink offices each fortnight to report income (ACOSS 2006). Thus these policies centralise work as the only legitimate social contribution.

The end result is an income support system which is characterised by complexity and harsh penalties. Payments have differing eligibility rules, rates of payment and activity requirements according to the age, health and parenting status of the recipient. Moreover, failure to comply with requirements can leave a person without any income whatsoever for a period of months at a time. This appears to depart significantly from the spirit of the social rights conferred by the UNDHR. It was within this context that we commenced our investigation of the effects of work and welfare policies introduced by the Howard Government

**Methodology**

In this empirical study, participants were recruited across two regional areas of NSW. Regions were defined in relation to the areas designated by the ABS (2006a; 2006b) National Regional Profile series and shared in common the theme of ‘rural crisis’ (McManus & Pritchard 2000). Each region has higher rates of unemployment than the state average and incomes that are 16 per cent lower than the average income in capital cities (ABS 2007).

Recruitment targeted people who had been affected by the latest work and welfare reforms instituted by the Howard Government. In total, 33 individuals participated in semi-structured, taped interviews of an average duration of 40 minutes. Interviews were conducted between July and December 2007. Questions related to any changes experienced because of the reforms and how they felt about these changes. Pseudonyms were used and identifying details changed to ensure anonymity and confidentiality.

We used a triangulation of methods which included in-depth interviews, documentary research and participant observations (Burgess 1984). Interviews were transcribed, team coded, and in accordance with grounded theory methods, relationships between categories and dominant themes were identified (Glaser and Strauss 1967). Injured dignity was a concern for 19 of the 33 interviewees and was most frequent among income recipients.
Discussion

Our analysis revealed the experience of injured dignity to arise from processes which are either related to a denial of autonomy and/or respect. It must be noted that these categories often intersect and overlap. For example, the denial of autonomy is in itself, a matter of disrespect. We are making an artificial separation here for the purposes of presentation, however it is not always possible to disentangle these threads, so that some of the data presented here are applicable to either category.

Denial of Autonomy

Kant argues the relationship between autonomy and dignity is as follows: autonomy is the capacity of human beings to establish universal law by means of their will and its orientation to reason. This capacity ‘transforms them into ends in themselves and lifts them above every price befitting to a mere means’ (Brenner 2006, p.479). Thus for Kant, ‘autonomy is the basis of dignity’ (1974 in Brenner 2006 p. 479 ). In our study, we found much evidence of the denial of autonomy which, if we follow Kantian reasoning, is an injury to dignity. The transcripts reveal that the denial of autonomy is achieved through the exercise of disciplinary power in two main ways: overt coercion and the subjection of participants to a regime of accountability and requirements that participants themselves labelled as ‘jumping through hoops’. We now examine these two themes.

Coercion

Coercion reflects the unequal power relations through which responsibilities and mutual obligations are forged. Centrelink has the legitimate authority to force their clients to comply with their requirements by means of threats to their material security. For example, Neville is a small businessman in receipt of parenting payment who clearly recognises this:

They (C’link) really gave us a hard time and if you question them or say anything, they just say well we’ll cut you off. That’s all they say…it’s demeaning how they have treated us since these changes, that’s how I feel.

Note how Neville describes the denial of dignity by stating that being threatened with non-payment is demeaning. The threats are very explicit at times. Bob, a 63 year old in very poor health on Newstart, relates how his new Job Network provider dealt with his chronic incapacity:

They said I had to get a doctor’s note and have it down there by the close of business on the following Monday or I would be penalised. They would put the note back to Centrelink to penalise me.

Mustang Sally is an 18 year old homeless jobseeker. She expresses the overt coercion very succinctly:

If you stuff up, Centrelink comes down on you like a ton of bricks but if they stuff up, nothing happens, you just lose out.

Income support recipients actually possess certain rights, such as the right to challenge Centrelink decisions, but they are often unaware of these. This illustrates the way in which disciplinary regimes make participants feel powerless to obtain redress.
Jumping Through Hoops

The participants described the embodied experience of disciplinary power as ‘jumping through hoops’. This refers to a range of activities and compliance exercises demanded by Centrelink and the threat of loss of payments. Just accessing the system itself presents a series of obstacles, for example in terms of registering and applying for jobs. Rhonda is a sole parent, student and part-time worker who said that she could not approach the farmer directly for a seasonal job but had to go through Centrelink. She says:

When I did [approach Centrelink], I was told no, I couldn’t go for those jobs unless I chose an employment agency to recommend me and before I could do that, I had to have an appointment where they would make up a CV for me and various other things, so I actually didn’t go for any of those jobs because it was just too many hoops.

Russell, an unemployed married father in his mid 30s, had a series of obligations to fulfil. He was attempting to apply for an apprenticeship and was completing an approved pre-trades course. However, at the same he was also studying to enter university, which was not an approved activity.

…so you are doing it on your own. I have had to ask for time off to attend my exams. I could have been studying for my exams but I couldn’t, because I had to attend these job training sessions and then spend four hours a day looking for jobs that don’t exist.

Both Rhonda and Russell demonstrate attempts to be self-reliant, but they are frustrated by the hoops through which they must jump, which actually reinforces their dependency. Russell expresses this as ‘getting you to toe their line and do a dance for the man’.

Similarly Bill, a mature age student and job seeker, understands both the coercive nature of the requirements which rob him of his autonomy, and the unproductive character of the exercise of hoop-jumping:

I am not happy with the process that is required of an unemployed person that as I said is very patronising. The system whereby people are required to look for work is very draconian and we are treated like children in so much as, this is what we have to do, this when we have to do it. As I say, I could be spending my time more effectively and more efficiently if they left me alone.

So not only is the experience of income support characterised by a series of complicated procedures to be rigorously adhered to for fear of loss of income, it is also indicative of a loss of autonomy reminiscent of the state of childhood, as Bill’s quote illustrates. This is an injury to dignity that even the liberal view of rights would have to acknowledge.

Denial of Respect

If we return to the notion of dignity as the bestowal of respect which acknowledges each person’s worth as a human being, it follows that the denial of respect is an injury to dignity. Brenner (2006) discusses shame as providing a signal of injured dignity. Scheff & Retzinger (2000, p. 96) define shame as ‘the feeling that results from seeing one’s self negatively in the eyes of the other, such as feeling self-conscious, rejected, unworthy or inadequate.’ They distinguish between ‘disgrace shame’ which is the type of shame associated with public embarrassment or humiliation, and ‘discretion shame’ which is more subtle and experienced in routine social encounters, for example modesty or shyness. They theorise that shame is the
master social emotion because it constitutes a threat to the social bond. This is why it is
suppressed by the individual. It is a marker of stigma.

**Visibility**

In her study of jobless families in regional New South Wales, Hartman (2005) showed that
income support recipients retreat from the intrusive gaze of the world, usually by limiting
their social interactions in order manage a sense of stigma. This is consistent with Goffman’s
(1963) notion that the stigmatised individual tries to deal with the tension attendant upon his
or her status by hiding the offending attribute.

Therefore, when the stigmatised person is made visible, this constitutes the injury to dignity.
As Jill, a middle-aged sole parent and part-time worker, explains, ‘lots of people can’t use a
computer. Lots of people can’t read properly. And they make anybody with those failings,
seem like it is a lack of ability. It’s just so humiliating’. Erin went to Centrelink and Job
Network between jobs and found it ‘a horrible experience’. She related how she went to a
new Job Network provider, whose practice it was to ring a bell in the office ‘every time
someone got a job…oh, I thought, how embarrassing, and they were horrible’. The ringing of
a bell draws attention to the jobseeker. The attention is to celebrate the supposed correction
of a deficit—the state of joblessness. But what the bell does is to expose the person’s alleged
deficiency, which the provider has successfully addressed. The above are instances of
‘disgrace shame’.

Another way in which income support recipients are rendered visible is through the
mechanism of the public queue. Denise and Mary both disliked having to queue. Denise
retired from her full-time job in her early 60s thinking that she would qualify for the aged
pension, and be able to be with her 72 year old retired husband. Instead she became a
jobseeker, and spent eight months looking for voluntary work to satisfy her requirements. “I
just ended up a real depressed mess’, she says. She describes her first encounter with
Centrelink thus:

> The first time I had to go in for an interview and had to go back to Centrelink and line up,
it’s very degrading when you’ve worked all your life and done volunteer work as well.
Like, to go through all this for a few crumbs.

Mary says:

> …Put a form in every fortnight, which is the biggest pain, rather than having to ring up
every fortnight, which was really good. You’ve got to go and stand in line and wait for
ages…yep and you’ve got to go and stand in line. They took off ringing up over the
phone.

The fact that Mary mentions the public queuing twice within the space of two pages of
transcript indicates she is uncomfortable with this practice. Both Denise’s and Mary’s
comments call to mind the disciplinary gaze made famous by Foucault (1979). Mary is an
older sole parent who works and does much voluntary work. She sees herself as ‘okay’; her
situation is manageable and she considers herself a respectable person. This is why she does
not like having to stand in line, because to do so is a reminder of dependency, of mendicancy,
in a very public way. The previous method of fortnightly phone calls did not expose her to
public scrutiny or threaten her sense of respectability.

Yet another method of exposure is the requirement to divulge large amounts of very personal
information in order to secure benefits. By declaring the details of one’s private life on a
form – who one sleeps with, how much money one has and so on – the applicant is submitting to government surveillance via an apparatus that makes them feel uneasy. For example, Russell says:

Yes, I found it quite depressing and degrading and plus they give you all these questions. Like proving that you are looking for work and asking you every detail about your assets and that sort of thing. Some things I thought they shouldn’t know.

Lara says ‘I don’t feel very comfortable with the questions they ask’, whilst Neville, describing his daughter’s application for Youth Allowance says, ‘the form was incredible…here’s the form here, this is the guide where they ask you where you go on holidays. Everything like, anything personal, real in-depth to try and find out if you are hiding money’.

These excerpts make clear that the exposure of a perceived deficiency or inadequacy by whatever means is a deep wound to a person’s worth. Denise and Russell both spoke of feeling depressed and degraded, which suggests that the shame has been internalised. Respect is therefore denied through this process.

Contempt

Something that came through in the transcripts very clearly is that many participants articulate a sense of having a low social status. Their dignity is injured when others demonstrate a sense of superiority. Time and again, the phrase ‘people look down on you’ appeared. For example, Sarah, an older sole parent with seven children says:

People tend to look down at you and treat you like you are nobody if you live in Department of Housing or you receive Centrelink payments…once again, probably because I receive Centrelink, live in Department of Housing, they treat you as a second-rate citizen.

Matt, a young man of 22 years, tells the interviewer that he believes Centrelink and the Job Network have stereotyped his Work for the Dole crew. According to them, ‘…we are just coasting through being dole bludgers and getting everything done for us basically. That word is just really, really off-putting and we get looked down on’.

Bob, referred to above, felt his new Job Network provider was contemptuous of him and his circumstances when he went to register:

INT: What was her attitude toward you?
BOB: I agree with what this other lady said, Diane, that she didn’t set up a relationship or a rapport.
BOB’S WIFE: Just looked down at you, yeah.
BOB: Just, this is my job, and she looked down. I was appalled and I came home and told you (to his wife).

Jill says:

At Centrelink you are being treated like you are rorting the system... I have been treated incredibly rudely by people who tell me you should just get more work where you are working.
From the above examples it would appear that injured dignity is experienced as disgrace
shame, which is then internalised. Further proof of this is that the sentiments articulated to
the interviewer were conveyed on the understanding of a guarantee of anonymity. These
thoughts and feelings would not usually be available for public consumption. Goffman’s
(1971) notion of ‘front stage’ and ‘back stage’ presentations of self helps to explain this. He
uses the metaphor of drama to propose that we present our selves as we would like to be seen,
as if on a stage, whilst our real selves are protected, or kept ‘back stage’. In this study we
have accessed the participants’ ‘back stage’ selves but normally these psychic injuries are
invisible. Therefore it is impossible to foresee both their immediate and long-term costs.

Conclusion

The findings validate Dean’s (2004) view that Workfare policies focus upon a perceived
failure of welfare recipients to be independent, whilst ignoring that humans are mutually
inter-dependent beings. Policy changes which foster autonomy, respect and dignity are
imperative if persons are to be dependent without dishonour. Such changes might include the
removal of payment suspensions and arduous requirements that serve no useful purpose.
Finally, a proper recognition of the caring role should be accepted, to reflect the validity of
social contributions other than paid employment.

The policies as they now stand are reinforcing the old division between the deserving and the
undeserving. We have argued that the disrespect experienced by our participants in the
Workfare process is a transgression of their inherent dignity and provides an impoverished
version of social rights. Income support recipients are largely hidden from public view and
they bear their injuries in silence. However, even from the point of view of the human
development approach favoured by a contractarian interpretation of rights, the application of
welfare reform to its supposed beneficiaries may not be building human capital after all.
Rather, the denial of dignity inflicts wounds, the consequences of which are incalculable.

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The living library: some theoretical approaches to a strategy for activating human rights and peace

Rob Garbutt
Southern Cross University

Abstract: Since November 2006 a group of community members from Lismore and its region have involved themselves in a project that aims to create the conditions for peace. Each month the ‘living books’ of Lismore’s Living Library engage with any interested or curious community member by making themselves available to be ‘borrowed’ for half-hour ‘readings’. The ‘living books’ form part of a collection of people who might be subject to stereotyping or prejudice in the local or national community, including in the media. This project aims to dispel negative stereotypes by bringing people together in one on one conversations, and is underpinned by the belief that under the right conditions such conversations have the power to undermine the fears we may have of others. These aims are often outlined in living library literature by appealing to common sense and are rarely, if ever, articulated using theoretical literature from the social sciences or humanities. The purpose of this paper is to begin this theoretical discussion of living libraries and their aims. It begins with a brief survey of the living library idea, followed by discussion of three theoretical threads which may be useful for further research on how and whether living libraries achieve their aims: intergroup contact theory that has developed from the seminal work of Gordon Allport; the connections that have been made between conversation and successful cosmopolitan societies, particularly in the work of Kwame Anthony Appiah and Ien Ang; and research on the politics of representation and listening by a range of thinkers, of whom Susan Bickford and Tanja Dreher are but two.

Keywords: living library; intergroup contact theory; cosmopolitanism; representation; listening.

Living libraries: some background to their development in Europe and Australia

The living library concept is a grass-roots response to discrimination and stereotyping. The first living library was organised for the 2000 Roskilde Festival in Denmark by the Stop Volden (in English ‘Stop The Violence’) non-government organisation (Council of Europe, no date). The project aimed to bring individual young people together in a short conversation that would put a story to ‘difference’. In the words of the organisers participants are encouraged to ‘[m]eet your own prejudice! Instead of talking about it, simply meet it’ (Abergel et al 2005: 9).

In living library projects the living books are members of groups who are subject to discrimination and stereotypes. In a living library session a library of living books makes themselves available for borrowing by members of the public for a thirty-minute or so ‘reading’. Living libraries can take a number of forms and be organised for a range of purposes. Generalist living libraries are comprised of living books representing a range of backgrounds who might give themselves ‘book titles’ according to intersections of, for
example, ethnicity, religion, sexuality or ability. Some living libraries operate on a regular, ongoing basis, while others are organised for one-of special events such as festivals. Alternatively, living libraries can be organised for celebratory or commemorative days, for example for International Day for People With Disability. In all cases the aim is to provide ‘ordinary’ community members with the opportunity for a conversation with a person they may not ordinarily meet in order to dispel negative stereotypes and prejudice.

The success of the project at Roskilde saw a number of other organisations trying this simple, low cost strategy, which since 2003 has been promoted by the Council of Europe. Their handbook Don’t judge a book by its cover! The Living Library Organiser’s Guide (Abergel et al 2005) has been an invaluable starter kit for many living libraries. The idea was also a key component of the Council of Europe’s All Different – All Equal youth campaign against racism, anti-Semitism, xenophobia and intolerance that ran between June 2006 and September 2007 (Salto-Youth Resource Centres, 2008).

In Australia the first living library was launched in Lismore, on the far-north coast of New South Wales, Australia in November 2006. Sabina Baltruweit, a community activist, was inspired by an article in The Sydney Morning Herald titled ‘Library that’s having a lend of us’ (Rennie, 2005). The article told of a living library operating in the Malmö library, Sweden. Concerned at the level of community fear directed at ‘others’ in Australia at this time (on this see Lawrence 2006) Sabina initiated a project in Lismore New South Wales, Australia that involved the Lismore City Council, the Lismore branch of the Richmond-Tweed Regional Library, and a community-led committee. This living library operates monthly and is the first generalist living library to operate on a continuing basis (for more on Lismore’s Living Library see: Baltruweit, McIntyre and Garbutt 2007; Richmond-Tweed Regional Library 2007; ABC TV 2007; Rapley 2007; Williams 2007).

The success of Lismore’s Living Library led to national publicity, which inspired others in Australia to take on the idea. By November 2008, two years after the Lismore project began, there were at least 70 living library projects completed or in progress in Australia (Rendall 2008). In 2007 Lismore City Council, was successful in obtaining a Living in Harmony Partnership grant to develop a National Living Library Strategy for developing and promoting resources and a network of living libraries in Australia (Living Libraries Australia 2008). The organisers of the first living library at Roskilde now also have an international website for living library resources and networking (Living-library.org, no date).

**Theoretical approaches to living library research**

This paper has been written alongside close experience and observation of the development and maturing of Lismore’s Living Library, and of the National Living Library Strategy project. As such it develops from observing and discussing grass-roots experiences with the living library organisers and these discussions define the limits of this paper, as we develop ideas and search for theoretical concepts with can further our understanding of the ways that stereotyping and prejudice can be reduced through community level action. To these discussions I bring my experience as a cultural studies early career researcher of place and belonging (Garbutt 2004, 2005, 2006a, 2006b, 2007, 2008) with the many limitations that implies. As such, we are always interested to hear from others who might suggest further avenues for thinking through our concerns.

Within these limitations, the theory discussed here has the strength that it comes from contact with living library projects and the issues the projects encounter and bring to the fore. Some
theory, such as that which has formulated around Gordon Allport’s writings on intergroup contact, has become relevant in the quest for justifying the projects to managers and funding bodies, but also for organisers who want to understand: (How) does this work? The role of theory here is not to prove the success and worth, as organisers understand this through experience, but to provide a framework for organising evidence. This is very much a situation of praxis, of connecting theory and activism.

Other theory is invoked by the projects’ concerns beyond local relationships to broader issues of inclusion, exclusion and belonging in the context of contemporary local-national-global settings. Kwame Anthony Appiah’s writing on cosmopolitanism strikes many chords with living library experiences because of his emphasis on the role of conversation in societies where living alongside ‘others’ is inevitable (Appiah, 2006; Ang, 2008).

Finally in this paper, and in connection with conversation is the importance of attention to other voices. This political question of where, why, when and how attention is paid to various groups in a community and society is a key issue for activist projects. Who are the living library readers? Who will they influence? How do we reach readers? Each of these is a practical question that arises from the activist aims of the living library project. Meanwhile, within the confines of the living library and the individual conversations, listening is a key component of the exchange, as is an unmediated voice to listen to, respond to, and engage with. Listening theory (see especially Bickford) is one area that provides concepts for thinking about a number of issues that relate to the micropolitics of living library projects.

The following sections of this paper expand on each of these concepts, prior to a brief conclusion.

**Intergroup contact and living libraries**

The idea behind the living library is that personal contact between people is very powerful in breaking down barriers—seeing the human being in the ‘other’ and realising that the stereotype never does justice to a person. The saying ‘Don’t judge a book by its cover’ translates this idea into everyday language, and following the Council of Europe’s lead, has become a tag-line for many living library projects (Abergel et al, 2005, and Figure 1).

![Figure 1: Lismore’s Living Library logo](image)

Beyond this common-sense rendering, there is a well-developed body of research to support the idea that personal contact counters the rush to judgement based on stereotypes. This, in essence, is what Gordon Allport demonstrated in his classic study *The Nature of Prejudice* where he concluded that ‘[p]rejudice … may be reduced by equal status contact between majority and minority groups in the pursuit of common goals’ (281). While Allport based his
contact hypothesis on observations of racial and ethnic encounters, subsequent research has demonstrated that this same effect can be observed for a range of marginalised groups (Pettigrew and Tropp, 2006).

Allport’s contact hypothesis is not without qualification (see Valentine 2008 for excellent recent discussion of some limitations, and Allport: 263-4 for his initial writing on this subject). In making his conclusions Allport noted a number of factors that make contact between individuals more likely to result in positive outcomes:

Prejudice (unless deeply rooted in the character structure of the individual) may be reduced by equal status contact between majority and minority groups in the pursuit of common goals. The effect is greatly enhanced if this contact is sanctioned by institutional supports …, and provided it is of a sort that leads to the perception of common interests and common humanity between members of the two groups (281, and see also 489 for an alternative formulation).

Living libraries satisfy a range of these conditions. In living libraries status is reversed between minority and majority groups, as the title of ‘living book’ recognises particular expertise and knowledge by the living library organisation. In the joint activity of a living library conversation, however, the status is shared with both taking responsibility for a common goal which is itself directed towards ‘perception of … common humanity’. Allport’s conclusions also indicate the importance of the living library organisation partners in meeting project goals as their sanction provides legitimacy which is important to many majority group ‘readers’. For example, with Lismore’s Living Library, Lismore City Library and Lismore City Council support provides the conversations with ‘mainstream’ sanctions, as does the local Member of Parliament who is the Living Library’s Patron. This is particularly important for more conservative sections of a community.

Since the 1980s until recently Allport’s focus on majority prejudice has tended to be sidelined as activist movements became more concerned to affirm difference and achieve social change through struggles for the recognition and rights of oppressed groups. However, there has been recent renewed interest in the ways that ‘social contact and encounter’ (Amin 2002: 959) can reduce majority prejudice. This interest was stimulated amongst British academics and policy planners seeking to develop responses to racial disturbances in three northern English cities in 2001 (see for example, Cantle 2005). One cause of the disturbances, it was officially determined (with some significant dissent; see Burnett 2007, for example), were the parallel lives led by various ethnic groups (Cantle: 15), including the self-segregation of the white majority. This, it was argued, led to anxiety and suspicion developing between groups along ethnic lines of difference, with the solution to parallel lives being to create opportunities for intergroup social contact and to developing a sense of interdependence between communities (Valentine 2008: 330). Policy responses were various, and among them was a developing distrust of festivals and celebrations that were seen to reinforce difference (cultural and multicultural festivals for example), in favour of strategies for bringing groups together, especially strategies that included the ‘mainstream’ (Cantle: 81-3). Amongst both sides of politics this was accompanied by an anti-multiculturalism rhetoric and was replaced, critics argued, by a rhetoric of assimilationist integration (Burnett 2007).

These policy directions have found favour in a number of places, including Australia. In Australia the anti-Lebanese/Islamic riot at Cronulla in December 2005 provided the context for similar anti-multiculturalism rhetoric and policy responses that worked to bring multicultural communities together with ‘white’ Australians. Politicians and bureaucrats in
Australia have been careful to avoid reference to majority prejudice or racism in this rhetoric, instead focusing on community harmony.

Community harmony is the conservative expression of renewed interest in intergroup contact. Of more radical intent, with no squeamishness in naming majority prejudice and racism, both academics and activists have sought ‘micro-publics’ of everyday encounter which can forge intergroup interdependence (Amin 2002) and destabilise oppressive cultural formations (Sandercock 2003). Similarly, Sabina Baltruweit, the activist who brought living libraries to Australia, saw the living library as a way of interrupting a politics of fear and division that was prevalent in Australia in the early and mid 2000s by bringing people together. The common goal of living together peacefully has sometimes seen the convergence of conservative and progressive interests in cultural contact, on the one hand in terms of integration of the minority with the mainstream and with the latter interested in creating destabilising ‘micro-publics’ that challenge dominant, mainstream thinking. This, for example, provided the unusual context for the Department of Immigration and Citizenship to partner with Lismore City Council and the politically progressive organisers of the Lismore’s Living Library to develop a national living library strategy by means of a Living in Harmony partnership grant.

New research, then, on micro-publics provides a potentially productive set of ideas for further living library research. Meanwhile, while many evaluations of the effectiveness of living libraries have been carried out by organisers (see for example McIntyre and Garbutt 2007), there is still fundamental work to be done using classic intergroup contact theory to develop a rigorous evidence-base for the role of living libraries in promoting long-term attitudinal change. Further to this, as Valentine argues, creating micro-publics by themselves is unlikely to be scaled up to achieve sustainable social change (2008: 332-334; on this same topic, see also Allport: 507-10). Other strategies are required which address, for example, the sense of majority victimhood which can provide the conditions for wide-scale prejudice; the belief that immigrants are taking jobs, or that particular groups are being unfairly supported by the state, are two examples of this discourse of majority victimhood. In light of such issues, how living libraries can be utilised as one element of a wider program of social change is worthy of investigation.

‘Cosmopolitan multiculturalism’ and living libraries

The critique of multiculturalism discussed above has led to a range of theoretical responses. Initially, the distinction is typically made between multiculturalism as a policy position on the one hand, and as a state of affairs on the other. As a state of affairs—that is that national populations are increasingly multicultural in nature—many authors (for example, Ang 2008, Appiah 2006, Turner 2006) note the reliance of the modern capitalist state on immigration and a mobile workforce to satisfy its labour requirements. The consequence of this, in Ang’s words, is that ‘[l]iving with difference is an unavoidable part of social experience in the twenty-first century, everywhere’ (230).

Within this social context, a range of government policies for working with difference have developed (Turner: 611): from a multiculturalism that works towards integration of new communities with the host society; to a cosmopolitan society which advocates civil social bonds and norms while allowing for difference; to a ‘fragmented pluralism’ where ‘groups retain their internal solidarity, but the society as a whole is fragmented’ (ibid). With such a wide range of multiculturalisms to draw from, critics can choose or construct their targets carefully before launching their attacks.
Multiculturalism, then, is a varied response to a multicultural society that makes sense for many authors and has too much baggage for others. Kwame Anthony Appiah, for example, denigrates multiculturalism for its lack of consistent definition: a ‘shape shifter, which so often designates the disease it purports to cure’ (2006: xi). Despite this, Ien Ang, is able to draw on Appiah’s ideas of cosmopolitanism (his preferred term) to develop the concept of ‘cosmopolitan multiculturalism’ which has a great deal of resonance with those who work with living libraries and are interested in thinking about the purpose and outcomes of such projects.

For Ang, the value of Appiah’s cosmopolitanism is its practical orientation— that we can agree on the terms by which we live together in a multicultural society, even if we may not agree on why (Appiah: 67). Thus, in a multicultural society we don’t have to ‘agree on our values and identities to live in harmony, as long as we agree to make living together work’ (Ang: 230). Ang names this stance ‘cosmopolitan multiculturalism’, a concept that acknowledges ‘that people are different, but also recognises there is much to learn from our differences’, particularly with regard to ways of living together. As Appiah writes ‘in the human community, as in national communities, we need to develop habits of coexistence’ (xvii). For Ang, following Appiah, the principle habit of coexistence is conversation in the older sense of living together or association as well as the contemporary sense of dialogue (Ang: 230; Appiah: xvii). ‘By cosmopolitanising multiculturalism,’ Ang writes, ‘we can arrive at a new, non-assimilationist mode of integration. Conversation plays a central role in this’ (230-231).

It is in this sense that living library advocates can find synergies in thinking about the worth of their projects as well as the outcomes. Whatever the differences being worked with, for example, whether multi-cultural, multi-abled, multi-sexed, multi-sexual or multi-faith, the intended outcome is not assimilation of less-powerful positions in society but of finding ways of coexisting in our differences. Through the practice of conversation, living library participants and organisers are seeking a form of integration that does not leave hegemonic positions undisturbed and unchanged, nor one in which all values are necessarily shared. In this sense, living libraries are ‘laboratories’ of multicultural cosmopolitan practice worthy of greater study and research. By bringing people together who might not ordinarily meet, stereotypes of difference are challenged resulting in the unfixing of difference and norms. Thus, when Ang calls for developing practices which ‘stimulate the density of interactions between the different perspectives that rarely come into contact [and] … whose modus vivendi … is conversation’ (237) living library organisers and participants understand on a very practical level just what she is asking for.

**Voice, representation, listening and living libraries**

Issues of voice and representation begin to connect the philosophical approaches to diversity pursued by Ang and Appiah to the micro-publics of encounter and contact analysed by Allport, Valentine and Amin. However, as Tanja Dreher points out, a wider framework than voice and representation is needed to adequately account for conversation, because too often this puts responsibility to be heard back on those in marginalised positions. Thus, following the work of Susan Bickford and others, Dreher argues for including listening as a focus of research. As Susan Bickford writes (1996: 4), it is necessary to ‘stress both speaking and listening [as] central activities of citizenship’. This implies that listening to a range of voices is a mainstream responsibility for media and the public.
As Dreher notes (2008: 3-4), there is a vast literature regarding increasing the diversity of voices in the media and public life. This literature addresses not only ‘giving voice to the voiceless’ but also issues of representation: who is represented, who represents who, how representation takes place, and the form of the representational narrative (that is, whether narratives are closed, or fluid and complex) (Dreher [drawing on Fuersich] 2008: 4). Living libraries excel as a strategy for giving voice to marginalised groups. Living library conversations allow for direct self-representation, unmediated by third parties. Moreover, such conversations are not closed but allow for individual, and importantly, local complexity in the narrative, at least within the confines of a half-hour conversation. Beyond voice and representation, however, it is self-evident that listening is a key element in living libraries for conversations involve both speaking and attentive listening. Of course it is the quality of the listening that is important here.

Conversations set up around difference initiate a dynamic between two people that from the outset precludes the refusal to hear that is the prerogative of dominant social groups. Living library readers are already willing to listen to new voices, though they may not be prepared for what they are about to hear. From the start they are political conversations, in which attention to each other evokes empathy and compassion, though not necessarily complete agreement (Bickford: 2-3). Speaking and listening are also interdependent. The conversation requires silence from the listener, but also question posing: a response that co-produces the conversation (156). Further, being listened to is also an important experience of the world that is not extended equally to all (157).

A focus on listening, then, provides some key insights into living library conversations that organisers intuitively understand and explicitly convey to ‘readers’ in the form of guidelines of what makes a ‘good’ reader (see for example Abergel et al: 55). Readers, and for that matter living books, are not required to give themselves up to what Bickford (145) calls ‘self-annihilation’, or exchanging one’s views for the other’s. What is enabled, however, is being open to alternative understandings of the world and one’s locale and doing this together across differences. This is not representative thinking about others done alone or within a group of dominant sameness but an interaction of a different order that has an uncertain path: ‘we cannot go anywhere, we do not know what direction to head, without a joint effort’ (148). The journey is risky and personal. As Bickford puts it, drawing on and quoting Merleau-Ponty, ‘[w]hat I come to understand is not simply the other’s perspective, but my perspective in light of his [sic], and his in light of mine—‘I learn to know both myself and others’” (147). The possibility is that at a personal level the type of non-assimilationist integration Ang calls for (above; and 2008: 230-231) can begin in living library conversations; integration based on joint effort and that does not leave dominant groups unchanged. As Appiah puts it, ‘[y]ou enter a conversation, and conversation is about listening as well as talking; it's about being open to being changed yourself, but it's not about expecting consensus or seeking agreement’ (Brooks and Appiah 2006).

Just as living books are courageous in making themselves available to repeated conversations with strangers, readers in living libraries often participate with courageous listening that is open to changing one’s opinion. It is also listening that expands how one listens: whether to views not normally encountered, to ideas one cannot agree with, to complexities that confound stereotypes, with empathy to someone against whom I hold prejudices, or to accents which require effort to understand. These are conversations in which strangers get used to each other’s presences: developing habits of coexistence (Appiah: xvii); of actively making sense of the world we live in together (Bickford: 173).
Conclusion

Research on living libraries, whether in terms of theoretical frameworks for thinking about their operation, or evaluating their effectiveness as one of a range of tools for anti-racism and anti-prejudice work in communities, is in its early stages. In this paper I have attempted to provide a brief sketch of some approaches or lines of enquiry which might be productive. Perhaps the most pressing research need is for evaluations that gauge how effective living libraries are in meeting the aims of reducing negative stereotypes and prejudice. This evaluation requires a range of approaches that could draw on existing methods used by intergroup contact theorists in their research, but that also considers the effect of conversations beyond actual living library events—the ripple effects. Ripple effects that reach those in the community who may not have an immediate interest or curiosity to listen and talk to others outside the bounds of local ‘normality’, or the effect of local media stories in which a wide range of community members are the subjects of positive representations. Such research would not only be valuable for developing the evidence for the degree of effectiveness of this innovative grass-roots anti-prejudice strategy, but in providing practical guidance for organisers on how best to target their work.

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The national question: Federalism and oil violence in the Niger Delta of Nigeria

Victor Ojakorotu
Monash University

Abstract: Crisis in the Niger Delta pre-dates discovery of oil in large quantities at Oloibiri in 1956. Political conflict in the region took the form of agitation for political representation and protection against marginalisation (by majority ethnic groups of Hausa/Fulani, Yorubas and Igbos) in the years before independence. Following the discovery of oil and its eventual significance for the politics and economy of Nigeria as a key contributor to national revenue and foreign exchange earnings, protests and agitation against what the people of the region perceive as neglect, marginalisation, environmental degradation intensified and has today taken full violent character. The conflict further escalated in the late 1990s, now presenting the structure of war between armed groups on the one hand and oil companies and government on the other hand. Integral to the crisis in the Niger Delta and by extension the other problematique in the Nigerian state, inter alia, is the perceived lopsidedness in the country’s federal system. The anomalies in the Nigerian federal arrangement, exemplified for instance by the overarching power of the central government and the lack of real autonomy at the state level, have been a factor in the unfolding of the Niger Delta crisis. The practice of true federalism, which is expected to guarantee local governance structures and communities a measure of control over certain matters that affect them, has been a major issue in the contestations regarding the structure of the Nigerian state. More importantly, the manner in which Nigeria is presently constituted impinges on the situation in the Niger Delta – a region inhabited mainly by those popularly described as ethnic minorities. This paper will examine the nexus between Nigeria’s federalism and the agitations in the oil-rich Niger Delta.

The perceived non-involvement of the people of the Niger Delta in crucial decision-making and policy implementation organs – partly derived from Nigeria’s ersatz federalism – has engendered alienation on the part of the oil minorities thereby leading to virulent expressions of frustration. The paper depicts the ramifications of Nigeria’s geopolitical structure for the Niger Delta in which case the region has been plagued by violence on a grand scale.

Introduction

The political history, experience and organization of the people of the Niger Delta prior to Nigeria’s independence to a large extent shaped their perceptions as to what should be the nature and character of the Nigerian state. Historically, the area known as the Niger Delta today “predates Nigeria’s emergence as a British Colony by at least a decade. British Niger Delta Protectorate and the Niger Delta Coast Protectorate were already well established by the mid-1880s and the late 1890s” (Onduku, 2001:1). Four critical issues have called the Nigerian federalism into serious questioning. The first is minority agitations; second, centralization of power and militarisation; third, revenue generation and allocation; and fourth, constitutionalism and political restructuring. The lapses in the system have given the major
ethnic groups – Hausa/Fulani, Yoruba and Igbo – an opportunity to dominate the minorities within the Nigerian federation. Over time, the skewed nature of Nigerian federalism has continuously been criticized as the fundamental factor in the state’s inability to address a series of internal and ethnic conflicts plaguing the state in recent years. The question of Nigerian federalism centers on issues such as minority interest, state creation, citizenship, local government and revenue allocation.

The Niger Delta became a hotbed of violent socio-political and economic protests occasioned by the degradation of the environment owing to oil exploration and exploitation and the state's inability to respond appropriately to the challenges posed by the accompanying effects. Hence Nigeria, a major oil producing state in Africa, with its oil deposits constituting two percent of world oil reserves and accounting for over eighty percent of its Federal Government revenue and ninety percent of foreign exchange is today seeking ways to address the protracted violence in the Niger Delta. Historically the Niger Delta crisis came to a head in the early 1990s with the emergence of social movements and militant youth groups that came up to challenge the corporate policies and attitudes of the oil multinationals and the state in the region. This was a consequence of accumulated frustration brought about by a long period of negligence and destruction of the region’s ecology, the foundation of the people’s economic wellbeing. The grievances of the region were predicated on some fundamental issues of denial of access to oil revenue, struggle for greater access to resource sharing (popularly known in Nigeria as resource control), environmental degradation, and human rights violations.

Definition of concepts

Ethnicity

Ethnicity is one of the key variables for understanding the complex nature of Nigerian political terrain in the post independence years as Nigerians define themselves in terms of their ethnic identity. This development has played a remarkable role in the country’s political and economic relations in the past forty-eight years. The country is roughly made up of approximately of 250 to 400 distinct ethnic groups. At different times, ethnicity has been equated to mean “tribes” and widely known as “tribalism” in Nigeria’s political discourse, but for the purpose of this research ethnicity refers to a distinct group identity, numerically defined as minority and majority groups. Ethnicity can also be defined as the mobilization of group identity to seek opportunity, cooperation or for the purpose of conflict as it applies in the Niger Delta region of Nigeria.

Resource Control

The key issues of deprivation and marginalization of the ethnic oil minorities gave rise to the struggle by the people of the Niger Delta region to control the resources found in their domain. The monopolization of oil wealth from the Niger Delta by the dominant ethnic groups (Hausa/Fulani, Igbo and Yoruba) has engendered resistance from the minorities that suffer from the serious ecological and environmental damage from oil exploration. This development was heightened in the 1990s with the emergence of a strong civil society that came up to challenge the state and oil multinationals in the region. It should be noted that prior to the increasing importance of oil revenue to the national economy, the regions (along with the major ethnic groups) controlled their resources. Thus, the Yoruba of the Western Region controlled its cocoa and timber revenue, the Hausa-Fulani of the Northern Region
controlled their cotton, hides and skin and groundnuts revenue and the Igbo of the Eastern Region their oil palm, coal and timber revenue!

**Civil Society**

The end of the Cold War has thrown up new issues among which are the concepts of civil society as a key actor in modern African state politics. The ascendancy of civil society is due to the collapse of non-democratic regimes, and an expansion of a political space that made it possible for these organisations to play prominent roles in politics and governance. Civil society has generated a diverse debate in recent years and different positions have emerged regarding acceptable definitions of the concept. Given this disagreement it has been defined in many ways. In this case civil society is an association of people with common interests and actions for the collective good of the society. However, the activities of civil society have witnessed stiff opposition from the state and oil multinationals, in the Niger Delta of Nigeria. Different types of civil society can be identified in the Niger Delta including pan-ethnic groups, ethnic youth groups, communal and ethnic civil groups, and environmental/civil rights groups.

**The politics of federalism and the dominant ethnic groups**

Nigeria’s path to federalism and the concomitant ethnicisation of politics can be traced to the regionalisation policy introduced by the Richards Constitution of 1946. According to Nnoli, the major ethnic groups in each of the three regions then dominated their regions politically and demographically and the inevitable consequences were the regionalisation of politics and the politicisation of ethnicity (Nnoli: 1978). The various inadequacies in the 1946 constitution gave rise to the introduction of the Macpherson Constitution of 1951 which in an attempt to reverse the demerits of the 1946 Constitution, that is regionalization and ethnicisation of politics, adopted a unitary system when the 1951 constitution proved unworkable, a new federal constitution or Lyttelton constitution was enacted in 1954. This marked the beginning of formal federalism in Nigeria.

Like other constitutions before it, the federal constitution of 1954 was not autochthonous and as such did not take into cognisance socio-economic and cultural peculiarities of the Nigerian state and its diverse peoples. By then, the emerging regionalisation and ethnicisation of politics had already taken firm roots, and politics from then on became more conflictual, competitive and antagonistic as the three main political parties of the time, the Northern Peoples Congress (NPC), the Action Group (AG), and the National Council of Nigeria and the Cameroon (NCNC) became regional. From the 1950s, they frequently used nationalists to protect and promote their regional power base, which resulted in the marginalisation and neglect of Southern and Northern minorities (Osadolor 2004: 14). This exacerbated mutual suspicion and rivalry amongst these major ethnic groups and their regions as well as between them and the various minorities within their region.

**The national question in Nigeria**

If the National Question is seen in an entirely secular frame where religion becomes an uninvited guest, where matters of oil, local government and states creation and federal character take such dominating prominence, our troubles are far from over. We must be prepared to redefine the National Question to include the more fundamental issues of social morality, values, etc. We can continue to ignore these issues, like we have always done, but only at our own peril. The earlier this is done the better for all and sundry. A stitch in time, it is said, saves nine (Bugaje 1992:4).

Following Bugaje, Ade Ajayi defines the National Question as
the perennial debate as to how to order the relations between the different ethnic, linguistic and cultural groupings so that they have the same rights and privileges, access to power and equitable share of national resources… (Ajayi: 1992)

The objective principles of the National Question are the establishment of a conducive framework and set of structural principles for the symbiotic existence of individuals and states towards peaceful and sustainable economic growth and development. The term National Question refers to how the Nigerian federalism could be structured to create, nurture and sustain identity and nationality rights within a truly democratic space. It also encapsulates ethnic claims and the fear of the minorities and their agitations. Therefore,

“Under a true federal constitution, each group, however small, is entitled to the same treatment as any other group. Opportunity must be afforded to each to evolve its own peculiar political institution. The present structure reinforces indigenous colonialism— a crude, harsh, unscientific and illogical system (Dosunmu, 1994:93).

The National Question therefore has been ever present in the Nigerian polity in that it has generated serious controversies under the colonial state itself. Though they have been accommodated within the Nigerian system as identified above through various means, minorities have continued to be dominated by the larger majority. Having realized that the Federal Government has been ‘appropriated’ and ‘privatised’ by the dominant groups, minorities continued to call for the creation of more states to accommodate their political interests. The introduction of federal character into the 1979, 1992, and 1999 Constitutions was designed to allay minorities’ fears and put in place a policy of equal access to political power, natural resources and opportunities.

The domination of ethnic minorities by the majority is not unique to Nigeria alone and it is on this note that Akaruuese argues that the United Nations’ principle of equality of all nation-states and non-interference in the internal affairs of any sovereign nation has not helped the matter (Akaruese, 1998: 56). Therefore, many countries have had to contend with the issue of constant push and pull by ethnic nationalities within their states. As Akaruuese (1998:56) argues,

Many minority ethnic nationalities in many multi-ethnic nations have been internally subjected to different forms of deprivation and exploitation such that internal colonialism is accepted as a norm within the different states, based on the principle of non-interference.

Since conflict is a common phenomenon, the conflictual relationship arising from any social interactions in any society is a function of some fundamental factors such as competition, injustice, and struggle for survival, hegemonic tendencies and stratification of the society into classes. Thus, this accounted for the resistance by the minorities in the Niger Delta against the dominance of the Igbo for self-determination and freedom. The same reason could also be advanced for the formation of the Ijaw Peoples Congress (IPC) in 1941. The IPC agitated for the creation of the Rivers Province out of the Owerri Province. This agitation yielded a significant result with the creation of Rivers Province in 1947 (Obi, 2001; Naanen and Peppele, 1989).

Since the independence of the country in 1960, the Nigerian state has had to contend with some major issues which have proved detrimental to the evolution of a stable polity include the allocation of revenue, the delineation of powers among different tiers of government, the
composition of the military and police force, leadership, ethnicity, electoral problems, population census, agitating for state creation, religious intolerance, and the structure of the federation. All these issues have threatened the survival of the country and are linked to access to and sharing of federal revenues on the basis of equity and fairness.

These issues have been given attention since independence with the establishment of a number of commissions. For instance, the principle of derivation was accorded priority by the Phillipson (1946), Hicks-Phillipson (1951), Chick (1953) and Raisman (1958) Commissions, and later the Bimms (1964), Dina (1968), Aboyade (1977) and Okigbo (1979) Commissions. Many principles that have been espoused by these Commissions could have addressed the imbalances in the Nigerian federation if adequately implemented, but the majority ethnic groups have manipulated state affairs to their own advantage thereby leaving the issues identified by these Commissions in a worse state than before. Therefore, the basis for persistent struggle by ethnic minorities to address the National Question was the inequality in the access to resources. As Fashina (1998:88) notes

Another way of appreciating the greater importance of inequality is to ask whether the National Question would have been a major issue if resources were equally distributed among the diverse groups.

The National Question can be viewed from two perspectives: internal and external. Our emphasis in this paper will focus largely on the external perspective, bearing in mind that the country’s internal contradictions reflect on the external dimension. For instance, these two dimensions are linked with the character of the creation of Nigeria by British Imperialism. The internal dimension of National questions in the region could be seen from the relationship between oil and the National Question that informs the struggles between ethnic groups and the government for the control and sharing of oil wealth (Agbu, 2000: 104). Looking at the Niger Delta, the struggles by these ethnic groups in the recent past for the control and access to oil wealth has posed a serious danger for the production of oil. At the external level, the National Question has assumed a global dimension with the sudden resurgence of ethnic minorities’ agitation for self-determination. The dismantling of communism with the gradual triumph and spread of a Western inspired democratic ethos throughout the globe made this possible, and the clamor for self-determination and freedom by minorities not only assumed a new dimension but was taken to greater heights. With this development, Nigeria is not an exception to the global trend and this has made the struggle of the people of the Niger Delta a serious aspect of Nigeria’s National Question (Agbu, 2000: 104). For instance, “the Movement for the Survival of Ogoni People (MOSOP) not only got itself recognised by the United Nations as a representative of an endangered ethnic minority but also took on the Federal Government and the oil multinationals, led by Shell, which are active in Ogoniland” (Agbu, 2000:104); Olukoshi and Agbu, 1995). Therefore the formation of MOSOP in the early 1990s rekindled the agitation for the reconfiguration of the Nigerian federation.

After 1994, violence was synonymous with the Niger Delta with external dimension. However, Onosode believes that the issues of deprivation, ignorance and poverty are central to the inter ethnic/communal wars of the region since people fight their neighbors when they are poor and lack political consciousness (Onosode, 1993:8). However, forces outside the region have been implicated as sponsors of violence, given the frequency of the wars and the sophistication of the weapons used (The African Guardian, 1994). These outside forces also include business people who benefits from the economy of war whether they are indigenes of the region or not.
The key players in the oil violence of the Niger delta

**Foreign oil multinationals**

As Robert Gilpin has commented, since the end of the Second World War, no aspect of international political economy has generated more controversy than the global expansion of multinational corporations (Gilpin, 1987:231). This is so because the impact of their activities on host states are given different interpretations and in most cases their operations in the third world countries are linked to the perennial crisis of underdevelopment. While some view them as “boon to mankind… diffusing technology and economic growth to developing countries, and interlocking national economies into an expanding and beneficial interdependence (Gilpin, 1987: 231)” others view them negatively for they do not always engage in best practices in their areas of operations as the case of the Niger Delta shows.

Historically, the involvement of oil multinationals in the Nigerian economy predates independence with the granting of a mineral oil concession to the Shell-d’Arcy Petroleum Development Company by the colonial government in 1938. The discovery of oil in a commercial quantity by this company evoked the interests of other oil companies in the late 1950s, including Mobil Exploration Nigeria Limited, an affiliate of the American Socony-Mobil Oil Company. Others were to join following the independence of the country in 1960, including: Tennessee Nigeria Inc. (1960), an affiliate of the American Tennessee Gas Transmission; Nigerian Gulf Oil Company (1962), an affiliate of American Gulf Oil Company; and Nigerian AGIP Oil Co (1962), an affiliate of the Italian government-owned ENI (Schatzi, 1969:3-4).

**Civil Groups/Social Movements**

The Civil society is recognised as an agent of transformation in Africa in the post cold war era. Over the years it has been suppressed by authoritarian civilian regimes and military dictatorships but the global wave of democracy has allowed it to emerge as an important actor in politics and governance. This emergence has been met with antagonism from the state, therefore its central role has been to be “the force for societal resistance to state excesses and the centerpiece organizationally, materially and ideologically of the social movements and protests for reforms and change” (Ikelegbe, 1995:151-181). It must be pointed out that it is not only the state that opposed civil society but private corporations also constrain civil society (Ikelegbe, 1995). Therefore, in third world countries like Nigeria “where powerful multinational corporations hold rein, collaboration between them and the state may constitute a situation of double jeopardy in terms of repression of civil society” (Ikelegbe, 1995:151-181). This is precisely what operates in the Niger Delta. The violence in the region predates the independence of Nigeria.

With the agitation for separate states in the 1950s and 1960s that eventually led to the establishment of the Minorities Commission in 1956, right through to attempts by minority group politicians in the Second Republic to organize and wrest political power from the majority (Conflict Trends, 2000:20).

The Niger Delta people through the formation of social movements in the 1990s have strongly drawn the world’s attention to their plight and to their quest for self-determination.

**Nongovernmental organisations**

The international system has witnessed a significant marked increase in the activities of nongovernmental organisations both at the local and international levels. This development is not
unconnected with the dismantling of communism at the global level. The resurgence of NGOs has further strengthened the voice of local people against issues like environment, human rights violations, women’s issue and grass root development. The establishment of NGOs reflects a trend i.e. they “are emerging as a special set of organizations that are private in their form but public in their purpose. “ (Gordenker & Weiss, 1996:24).

Therefore, a plethora of NGOs in emerged in the region in an attempt by the local people to draw the attention of the national and international community to the plight of the people including economic, social political and environmental injustices. The crisis in the region has drawn the attentions of both local and foreign organisations, and civil groups like Pan Niger Delta Resistance Movement, CHIKOKO, the Environmental Rights Action, Movement for Reparation to Ogba (MORETO), and the Movement for the Survival of the Ijo in the Niger Delta (MOSIEND), the Unrepresented Nations and Peoples Organisation (UNPO) in The Hague, The Netherlands, United Nations Human Rights bodies, Greenpeace, Sierra Club, religious organisations, Amnesty International, and a host of others. It is instructive to note that the involvement of these NGOs both at local and global levels further internationalised the Niger Delta crisis.

**The Nigerian state**

Moreover, the involvement of the Nigerian state in oil production is as a result of its unwholesome dependence on oil as a major source of foreign exchange earning. The first initiative of the government was in 1972, when it established its own Nigeria Mining Corporation as a joint venture with the British multinational corporation – Amalgamated Tin Mines. There were also various joint ventures for the exploration of limestone for cement production as well as other minerals. The Nigerian government’s initial interest in oil exploration was restricted to the regulating of the industry through collection of taxes and royalties. However, the country became a member of the Organisation of Petroleum Exporting Countries (OPEC) in 1971, and it implemented the resolution of the organisation. The implementation of this resolution led to the establishment of the National Oil Corporation (NNOC) through Act No. 18 of 1971, and NNOC later became Nigerian National Petroleum Corporation (NNPC) established in 1977 by Act No. 33 (now referred to as Cap 320 Laws of the Federation of Nigeria, 1990). (Poopola, 2002: 195-196). The establishment of Nigerian National Petroleum Corporation did not swing the benefit pendulum in Nigeria’s favor but even gave the multinationals more power than the Federal Government since the government’s benefit was dependent on the fortunes of foreign multinationals. The government had to act in sacrificing the interest of the communities to protect the foreign oil companies.
<table>
<thead>
<tr>
<th>Environmental laws</th>
<th>Provisions</th>
<th>Implications for environment/local people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil pipelines Act Cap 145, 1956, 1958 and 1965</td>
<td>Granted the rights and obligations of licence holders to payment of compensation for economic crops and property damaged</td>
<td>People’s right and authority over their land were denied</td>
</tr>
<tr>
<td>Petroleum Act 1969</td>
<td>Ownership and control of oil and gas is vested in the Federal Republic of Nigeria.</td>
<td>Individuals and communities were deprived opportunity to lay claims to oil and gas in their land</td>
</tr>
<tr>
<td>Land Use Act of 1978 (formerly Decree No.6 of 1978)</td>
<td>All land in Nigeria is vested in the governor and must be held for common interest of all Nigerians</td>
<td>The people have limited control over their land</td>
</tr>
<tr>
<td>The environmental Impact Assessment Act (Decree No.86 of 1992)</td>
<td>Determines the assessment or the impact of oil spillage on the environment</td>
<td>Since it is controlled by FEPA and Department of Petroleum Resources, there is little that people can do to change the policy of the oil companies in that regard</td>
</tr>
<tr>
<td>Federal environmental Protection Agency Act (decree No.58 of 1988)</td>
<td>Gave FEPA authority to issue standards for water, air and land quality</td>
<td>The power to determine standard is beyond the control of individuals and communities.</td>
</tr>
</tbody>
</table>

Table 1: The implications of Nigerian oil and environmental law (compiled by the author)

The framework for oil production that was set by the Petroleum Act of 1969, coupled with other relevant laws, which include the Oil in Navigable Waters Act (Decree No. 34 of 1968), and the Federal Environmental Protection Agency Act (Decree No. 58 of 1988), provide that all minerals in the country belong to the Federal Government. But of particular interest is the Land Use Act of 1978. Needless to trace the origins of the Land Use Act, but is instructive to note that there is nowhere in Nigeria that the Act has had a devastating impact as the Niger Delta region. Section 28 of the Decree provides for the revocation of the right of occupancy, while section 29 provides for compensation payable on revocation of right of occupancy. It must be stated that section 28(2) gives overriding public interest as a condition under which rights of occupancy can be revoked. The Act also “re-defined the legal position on land ownership in Nigeria by vesting the ownership of all land within a state in the state governor. ” (Frynas, 2001). By virtue of this Act, “a community no longer has the right to question the entry of an oil company onto his communal land; the governor can acquire any land on behalf of private or public oil companies…compensation for land must be paid to the governor and to the community. “ (Frynas, 2001). The Land Use Act reduced the oil producing communities into observers in whatever situation they are being subjected to by the government and oil multinationals.
Therefore in case of the Niger Delta, all these Acts and policies of the government were used to prevent local communities from controlling the wealth from oil production. This arose from over reliance on crude oil as a major source of foreign exchange, the politics of the dominant ethnic groups and the protection of the oil multinationals’ interests in the region by the Nigerian state. This also became necessary because of the symbiotic relationship between the Nigerian state and the oil companies will guarantee the required foreign exchange for the state while these companies support state repression because of their profit motive. The ‘unholy alliance’ of these two bodies creates devastating tendencies and woes on the economic and development life of the oil producing region.

**Transition to civilian rule and the dawn of repression and violence**

There was a general assumption that the enthronement of democracy in Nigeria will automatically translate to demilitarisation and development of the Niger Delta with the entrenchment of rule of law and other institutions associated with democratic regimes. While it is true that the Obasanjo administration has improved on its predecessors’ policies in the Niger Delta, the initial action of the government especially the ‘Odi Massacre’ has created a dent in the regime’s policy toward the region. Notwithstanding the Odi episode, in other areas like the Warri crisis, the legal battle between the littoral states and the central government, and the onshore/offshore debacle, the Nigerian state policy towards the local people has improved considerably.

The action of the president in his first month in office established his sympathy for the region through a draft Bill that established the NDDC. The president thus demonstrated the need to urgently address the plight of the region; this effort invariably paid off with the take off of the commission as an intervention agency to facilitate development in the region. Nonetheless, with the NDDC in place, government development efforts are now more streamlined and focused. The inability of the commission to effectively discharge its statutory duties is partly related to its incapability to secure the necessary funding. It was noted by the senate that the foreign oil multinationals were reluctant to contribute the required 3% of their annual budget to the body; on the side of the central and state governments, there are backlogs of its financial commitment to the commission.

The regime of President Olusegun Obasanjo took a giant steps in addressing the Niger Delta question. For instance in 2000, the Niger Delta Development Commission (NDDC) was set up to replace the Oil Minerals Producing Areas Development Commission (OMPADEC). In addition, the revenue derivation formula of the Niger Delta and other oil-producing areas outside the region has been increased to thirteen percent (13%). However, these measures have not gone far enough in dealing with the more fundamental demands for the control of oil resources by the oil minorities. At present, there is a raging agitation in the Niger Delta for control of local resources. The agitators have posited that Nigeria is the only country in the world, which has so cruelly plundered its oil-producing districts without any policy of compensation and repatriation.

Currently, the incumbent president of the Federal Republic of Nigeria (FRN), Alhaji Musa Yar’Adua recently called out the armed forces against militants in the Niger Delta. This was in response to recent attack of Shell’s biggest oil facility in Nigeria (Bonga off-shore oil field) by members of the Movement for the Emancipation of the Niger Delta (MEND). The attack has resulted in further sharp drop in the volume of barrels of oil produced per day. The implication for Nigeria’s economic security is tremendous. In short, Nigeria’s production capacity of the oil decline to 1.8 million from 2.4 million barrels per day. By implication, the
federal government has declared full scale war against militant groups, who owe their origin to a complex dynamic mix of socio-economic, political and environmental factors. It should be recalled that, historical grievances of marginalisation; resource control; degradation of the environment by oil companies and development are at the centre of the crisis in the region.

Over the years the federal government has depended heavily on use of force. For example, since the 1990s, deployment of soldiers against protests groups. The invasion Umuechem several years ago and destruction of Odi by the government of Olusegun Obasanjo reasons related to environmental damage by oil companies remain clear testimonies to preferred approach to resolving the crisis of the Niger Delta. Currently, the Joint Military Task Force (JTF) created and deployed to the Niger Delta, has become the greatest source of insecurity for citizens in the region. Two days after the call by the president for full military action against the militants, two war boats were mobilised against militant camps in the creeks. Unfortunately, the boats were sunk and all soldiers killed by the militants. Consequently, attacks of oil installations by these militants have intensified. As at the time of writing this paper, soldiers had invaded Igbani, at the Bonny area of Rivers State, destroying houses and killing civilians in search of militants.

Will military approach bring about peace in the volatile region of the Niger Delta? Various efforts on the part of the government, through establishment of special agencies for the development of the region have been made. Already, existing Niger Delta Development Commission (NDDC) has accomplished some feats in the area of implementing development projects in many oil bearing communities in the Niger Delta. Its predecessor, Oil Mineral Producing Area Development Commission (OMPADEC) claimed similar success. In reality, poverty still looms among the people. Roads, schools and hospitals are still predominantly absent. These conditions call into question any claim of successes in addressing the development demands by groups in the Niger Delta.

However, a complex war economy has emerged from the crisis, with many benefitting financially. For instance, officers of the JTF now collaborate with armed groups involved in illegal sale of condescend fuel and oil. Nearly all the officers were posted from military bases in the northern part of the country. Many now see their assignment of ensuring security in the Niger Delta as an opportunity to benefit from on-going crisis by collaborating with armed groups in the illegal business of sale of fuel and oil, colloquially called bunker. At other times when such benefits are not in sight, officers become very brutal against civilians whom they frequently emit their anger. For example, last week, the JTF at Mbiama two local boats loaded with condescend fuel ablaze by firing several bullets at their owners, causing severe damage to the water from which community people fetch water for drinking.

The federal government proposed a summit on the Niger Delta on the 17th of July, 2008 and was later replaced with a technical committee. The president declared his intention to honour all recommendations of the summit in order to restore peace in the region. People from the region are generally sceptical about the sincerity of government, given the fact that similar summits have been held in the past without any positive result in terms of development of a comprehensive policy towards the Niger Delta. Besides, credibility of Ibrahim Gambari who was initially nominated as the likely head of the summit is in question. Killing of environmental rights activist late ken Saro Wiwa was by inference endorsed by him when appeals went to him to use his good offices at the United Nations to speak out against trial and eventual state murder of the activist under the regime of late General Sani Abacha.
The complex nature of the crisis now defies easy solution. To worsen it, a military approach is unlikely to restore peace. It can only generate a vicious circle since various armed groups are now already benefiting from the crisis by theft and sale of condensate fuel. Besides, criminal groups have infiltrated legitimate groups seeking justice from the Nigerian state for many years of neglect of the region as well as resource control. The recent development in the region have made it difficult to isolate criminals from legitimate armed groups who have taken issue with both development and environmental damage from oil exploration and production.

Concluding Remarks

It is apt to note that the National Question has been given different interpretations by different government officials, statesmen and scholars. There is no agreement on what constitutes the National Question. It is however instructive to end with Uzochukwu's argument on the subject. He sees the ethnic problem in Nigeria as the National Question around which a great deal of our national problems revolves and in the name of which all sorts of crimes has been perpetrated against the nation (Uzochukwu, 1989:22). Therefore, “the driving force that led to the degree of fusion that engulfed our nationalities in their present configuration was the perceived interest of each nationality in the competition for social and economic amenities and political offices (Uzochukwu, 1989:22).” Suffice to say that all these contradictions impinge on the current struggles in the Niger Delta.

Looking at the challenges posed by the Niger Delta crisis, Nigeria would risk further crisis and tension in the region if the state failed to accept dialogue and rational bargaining with the local people from the region. On the other hand oil multinationals have a role to play in order to guarantee their operations in the Niger Delta. The Niger Delta problem cannot be resolved without dealing with the youths that have been at the forefront of the struggle since 1990s.

Therefore it can be inferred that the roots of the present crisis in the Niger Delta were partially located in the region itself, perhaps long before the country’s independence. It will be right to conclude that the present resistance in the region is partly rooted in historical factors and that it is not a new phenomenon; it has been the case in the region prior to independence and throughout the post 1990 struggles. This should not be taken to mean that the Niger Delta peoples preferred crisis situations to peace; the reality is that they had been marginalised basically because of factors beyond the control of the natives of this region. It is instructive to observe that during the period before crude oil became the major foreign exchange earning commodity in Nigeria, the principle of derivation prevailed in the national economy. That this became reversed in the case of crude oil is because none of the major ethnic majors was home to this black gold.

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Endnote

1. Human Rights Watch, *The Price of Oil: Corporate responsibility and Human Rights Violations in Nigeria’s oil producing Communities*, USA, 1999. This position can be found in Nigeria’s Constitution especially Article 40(3) and Article 42(3) of the 1979 and 1989 Constitutions respectively. The foundation for this Act was laid by section 3(1) of the Minerals Ordinance of 1946. It stipulated that “the entire property in and control of all mineral oils, on under or upon any lands in Nigeria, and of all rivers, streams and water courses throughout Nigeria, is and shall be vested in the crown.” It was on this note that similar provisions continued to be inserted in successive constitutions of the state.
The necessity of a paradigm shift from disease to menopausal women’s health

Margaret T. C. Harris
Southern Cross University

Abstract: The aim of this paper is to highlight the necessity for the integration of postmenopausal women’s perspectives, experiences, and theories into the design and development of good health practices and programmes for women. The Director General of the World Health Organization has emphasized the need for an integration of gender differences and perspectives, and called for the commitment to an allocation of appropriate funding and budgeting for integrating gender perspectives as essential for best health care practice. (Executive Statement, WHO Gender Policy 2002).

My research, utilizing a postmodern/feminist methodology, and discourse analysis, reveals the need for acknowledgment of women’s perspectives, through the midlife transition, in the development of policy and good health practice to move beyond the cultural construction of the scientific, technical, biomedical diagnosis of menopause. Menopause, a normal life cycle process, has been diagnosed by Western scientific reductionist methods as a deficiency disease. This pathological biomedical diagnosis is the dominant paradigm in our culture. I recommend the necessity of alternative perspectives of women’s experiences as a practical and crucial strategy to counteract the dominant negative pathological paradigm. Evidence presented from women’s perspectives indicates the necessity for a shift to an integrated wholistic paradigm, driven by a feminist philosophy.

Keywords: Menopause, reductionist to wholistic, feminist philosophy.

Introduction

What is now emerging at the forefront of science is a coherent theory that offers, for the first time, a unified view of mind, matter and life.

(Capra, 1996. p.1)

The purpose of this paper is to highlight the need for a paradigm shift from a model of power-over, to one of equity, inclusiveness, integration, and power-with. The vehicle of presentation is my research to date on women’s midlife health issue, the phenomenon of menopause. Authors from various disciplines have also acknowledged the need for a similar shift and a multidisciplinary approach to the phenomenon. Through a discourse analysis, biomedical texts have been explored to reveal how the pathological diagnosis emerged, as pathological diagnosis is the process of the scientific biomedical discursive practice. Importantly also, women’s narratives will be referred to as these narratives disrupt the pathologization of menopause and construct alternative imaginings and their words highlight the need for a new inclusive paradigm. Rather than interpreting the biomedical and women’s texts, I will quote the author’s words directly. To position this paper, I begin with Capra who asserts:
The two basic theories of modern physics, quantum mechanics and relativity theory, are forcing us to replace the classical, mechanistic, reductionist view of the world by a holistic, organic and dynamic view. It is suggested that this development may be extremely relevant to Western medicine which has modelled itself after classical physics and should now expand its underlying mechanistic philosophy into a broader holistic and ecological framework. (Capra 1978.p.71)

This statement, defining the development from a mechanistic philosophy, to a broader holistic and ecological framework, is relevant to the topic of this paper and Capra’s framework, I believe, is essential in which to place the menopausal and postmenopausal woman rather than the mechanistic, scientific reductionist view that is the dominant paradigm in our culture.

**The phenomenon of menopause**

Menopause is a normal life course transition within the ageing life cycle. It is a phenomenon of multidimensions and complexity. It includes both negative and positive aspects of a normal life course transition process. The process involves the whole woman, and is inclusive of physical, mental, emotional, intellectual and spiritual aspects. At the same time, the phenomenon presents within the context of her life situation, time, space and place. Therefore, women have connections with, and are also affected by external variables. These factors indicate that each woman will experience difference and diversity of experience.

Significantly, cross-cultural research reveals that definitions of menopause are actually culture bound. Margaret Lock and others indicate that it is defined by the social and cultural context. According to Lock (1983) menopause can be viewed as either a positive or negative event, depending upon the social and cultural context. In our culture, Western biomedical science has defined menopause, the menopausal and postmenopausal woman pathologically. Through scientific reductionist practices menopause has been diagnosed as a disease, an estrogen deficiency disease (Wilson 1966), and an endocrinopathy (Utian 1987/1990). This diagnosis enables the Hormone Replacement Therapy (HRT) to be applied as the appropriate intervention. In our culture this definition causes confusion for many women.

In addition, this scientific reductionist biomedical diagnosis, the dominant paradigm in Western culture, is limited in its representation. This is especially so when the woman’s body is considered dysfunctional rather than normal. This indicates a conflict. How do we correct this conflict and discrepancy? How is this cultural construct challenged? Firstly, consideration of the significance of paradigms.

**Paradigms**

A paradigm is a theoretical model that reflects current social, cultural, and scientific structures and serves to integrate beliefs, values, and attitudes with observation and interpretation. As such, paradigms are an appropriate context for the study of phenomena that are clearly associated with multiple conceptual domains. (Gannon and Ekstrom 1993:276, citing Kuhn 1970).

Over time and throughout history, paradigms of menopause have varied dramatically. Historical and cross-cultural research gives evidence to this. Anthropological research indicates that views of menopause and menopausal women vary throughout cultures and in many cultures, postmenopausal women experience a sense of liberation, where they are granted higher status. As Gannon & Ekstrom state:
The importance of the particular paradigm of menopause in determining the actual experience of menopause is emphasised in a theoretical model proposed by Bowles (1990). According to this model, the beliefs and expectations inherent in the prevailing sociocultural paradigm are responsible for the formation of specific attitudes toward menopause, which in turn influence the actual experience of menopause. (Gannon & Ekstrom 1993. p.276)

It is the reductionist model and its exclusions that define the phenomenon of menopause in our time and represent an historically and culturally located paradigm of this time. This model has set the tone of ageing women as dysfunctional, deteriorating, deficient. This dominant pathological model is underpinned by reductionist methods, objectification processes and a positivist philosophy declaring the universality of menopause as disease, and menopausal and postmenopausal women as chronic patients. These processes contribute to the dominant discursive formations of scientific practices of our time where the normal life-cycle process of menopause has been medicalized. Gannon and Ekstrom (1993) note that because of the obvious negative connotations of medicalization, together with the accompanying dependency on physicians, this medical paradigm limits women’s experiences to their biology only. It ignores understandings regarding context, social, economic and political aspects.

Other researchers and ‘other critical analyses have also contested the character of biomedical models and their exclusions, attempting to revise and supplement this technical picture, in social, cultural and political terms’ (Komesaroff, Rothfield & Daly 1997.p.4). These limitations are increasingly being recognised and questioned, as ‘there is no single discourse of menopause’ (KR&D.p.13). They highlight the value of and the need for a multidisciplinary approach to the experience of menopause. They note:

One of the major strategies of feminist discussions of menopause has been to shift the analysis from a form of technical knowledge to understandings that issue from women’s perspectives, whether experiential, theoretical, cultural, or political. (Komesaroff, Rothfield & Daly 1997.p.3)

Shifting the analysis from a technical knowledge only, to knowledge and understandings that have occurred as a result of feminist’s perspectives and explorations, and women’s own experiences, is important and necessary. A postmodern/feminist methodology was essential to explore this women’s only phenomenon (Harris 2008). In accordance with Grosz, ‘Feminist theory must exist as both critique and construct and it must be positive, creating alternatives, producing feminist, not simply anti-sexist theory’ (1990.p.59). A poststructural critique of biomedical texts, through a discourse analysis, expanded the exploration to search for differences and alternatives that had been marginalized, ignored and rejected in the technical pathological diagnosis only.

**Discourse analysis**

Discourse is the property of language which mediates the interpersonal relationships which must be carried by any act of communication. (Gunew 1990.p18)

Authors Ballinger & Cheek (2006.p.201) and Gunew (1990.p.19) refer to Foucault who stressed the ‘importance of language in mediating socio-political relations, and how something is spoken about reveals a great deal about the operation of power relations’ (Gunew 1990.p.19). Accordingly, Foucault argued ‘that discourse enables what can be said or thought at any point in time, while at the same time operating to exclude or marginalise
other ways of viewing reality’ (Ballinger & Cheek 2006.p.201). In other words, discourse provides the way in which a certain topic, object or process can be talked about. In particular, what and how, terms are used within the frame of the particular discipline to describe the topic of reality. In addition, discursive frameworks ‘constrain the production of understanding and knowledge that might offer alternate views of that reality’. (Ballinger & Cheek 2006.p.202). Ultimately, these frameworks control what can be included and what can be deleted.

Discourse analysis, influenced by postmodern/post structural thought, is appropriate to challenge my health care issue. As alerted by Ballinger & Cheek (2006.p.201), ‘In contemporary health care, medical/scientific discourse has achieved a ‘truth’ status in which many underpinning premises and assumptions about health care are neither recognised nor questioned’. Also, according to Ballinger & Cheek (2006.p.202) ‘the task of the discourse analyst is to make explicit the ways in which discourses operate within particular contexts’. Examples of this now follow.

**Biomedical texts**

Two texts that were instrumental in the definition of disease and revealed menopause as pathological and dysfunctional were Robert Wilson’s, *Feminine Forever* (1966), and Wulf H. Utian’s *The Menopause Manual: A Women's Guide to the Menopause* (1978). Robert Wilson a prominent medical professional was one of the first modern writers to articulate the disease model, and Wulf H. Utian, another highly credible medical professional, in his text recommended and supported Wilson’s diagnosis.

The language in these texts is extremely negative and fear inducing. Harris (2008) refers to this language in more detail. These statements include the following: ‘*With estrogen therapy, the basic handicap of women ... their fast and painful ageing process is overcome*’ (1966. pgs. 19-46). Wilson also stresses that ‘*estrogen, unlike some other hormones, has almost no undesirable side effects*’ (1966. p.56-58).

As Wilson continues there are contradictions evident. The most critical contradiction is his rejection of a body/mind connection. After acknowledging the ovaries and estrogen deficiency as the source of the problem, he noted that the head is implicated also: ‘*The entire endocrine system of the body is arranged like a tightly organized corporation in which everybody takes orders from headquarters. Headquarters is literally in the head*’ (1966. p.64). He referred to this as ‘*evidence of a mind/body link*’ (1966. p66). Wilson also admitted other hormones, FSH and LH were also implicated (1966. p.64), but ignored and dismissed these other hormones, thereby making the ovaries and the loss of estrogen the focus of his diagnosis. The marginalization and rejection of the positive significance of the tightly organized corporation and the role of the headquarters are also a limitation in Wilson’s diagnosis also. However, his recommendations were acknowledged and supported by other influential medical professionals. Utian, another highly credible medical professional, in his text *The Menopause Manual* also recommended and supported Wilson’s diagnosis.

In Wulf H. Utian’s text, *The Menopause Manual: A Women's Guide to the Menopause* (1978) also there are frightening revelations and contradictions. Utian related that after he had visited a major international pharmaceutical company, who were suggesting ‘*a new female hormone*, he ‘*was bitten by a challenge to clarify what menopause really was and to define the proper place of hormone replacement therapy*’ (1978. p.9). Utian named the menopausal woman ‘*the appliance’* (1978. p.15). He then made a decision to open a clinic
where the new female hormone could be applied to menopausal women. He blatantly referred to this decision as a ‘crackpot’ idea. Armed with his crackpot idea, Utian approached the Chairman of the Department of Gynecology at his university to spell out his plans for a menopause clinic. In Utian’s own words:

Ten years previously, I might have been thrown out of the office for presenting a crackpot idea. But Doctor Davey was a scientist at heart and received the idea with enthusiasm, and in the ten years following his decision maintained the same positive support for me as well as the clinic. My own career in menopause research therefore parallels that of the clinic. (Utian 1978. p.9).

Utian also referred to the increase of other hormones GRH, FSH and LH. He too indicated that higher brain centres were implicated but did not address these in relation to menopause, but stated that, ‘The most obvious feature is how much less estrogen is present in the postmenopausal woman compared to a fertile woman’ (p.42). In doing so, he ignored the implications of the high levels of GRH, FSH and LH. Then the following revelation:

The problem about estrogen given for long periods of time, is that it was commenced with a fanfare of trumpets and a blast of promises before the basic necessary research had been completed (p.56).

These texts represent the limitations and biopolitics of the discursive practice of the scientific biomedical paradigm indicating the need for a new paradigm that includes and integrates other sources of knowledge as relevant and critical to the phenomenon of menopause also.

**Summary and biopolitics of menopause**

In summary, both Wilson and Utian define menopause pathologically as a disease, indicating ovary dysfunction, decline, lack and loss. Both authors acknowledged that the brain (headquarters) played a major role in producing large amounts of additional hormones, GRH, FSH and LH, but then marginalized, ignored and omitted this factor from their conclusion and diagnosis. Their main focus was the ovaries and the loss of estrogen only. In addition, Utian admits to his ‘crackpot’ idea and also reveals that sufficient research had not been carried out. And because the diagnosis is objective, reductionist, positivist and limited in nature, it also limits the portrayal of the menopausal woman.

What has emerged from these biomedical men’s texts are the limitations of above model. This limitation can be seen in the underlying philosophy. This is the philosophy of body/mind separation as developed by Rene Descartes and is revealed in both Wilson’s and Utian’s texts, as both admit to the head being implicated in menopause, but then ignore the dynamics of the connection. Scientific, objective, reductionist, technical practices together with Descartes’s philosophy of body/mind separation, although valuable in some situations, I believe in the case of menopause, are psychologically limiting, socially oppressive, and can possibly hinder the positive adult development of the menopausal and postmenopausal woman.

**Descarte’s Cartesian paradigm**

Descartes deletion of a body/mind connection has been described as limiting by various other researchers, as it ‘isolates the body from the essential self and its context’ (Leder 1984. p.37). Descartes separated mind from body and defined the body as ‘merely a machine driven by mechanical causality’ (Leder 1984. p.29). This philosophy of separation was instrumental in
ignoring and deleting the role of any body/mind connection, including any sense of the self as experienced by the human person herself.

According to Elizabeth Grosz, Descartes instituted a dualism. ‘Cartesian dualism established an unbridgeable gulf between mind and matter’ (Grosz 2005.p.48).

This separation of course, has its costs … not only is consciousness positioned outside of the world, outside its body, outside of nature; it is also removed from direct contact with other minds and a sociocultural community. (Grosz 2005 .p.49)

In addition, Elisabeth Porter describes a dualism as ‘an extreme opposite’… and ‘a dualistic framework is stark, it allows for no intermediate positions’ (Porter 2007.p.43-44). More importantly, she describes the ‘extreme ethical harm in divisive dualisms’. She lists four interconnected reasons why dualism is harmful:

1. A dualistic worldview assumes a self-righteous rightness about the dominant position.
2. This worldview is dogmatic and closed-minded.
3. It sets up an oppositional framework that precludes dialogical relationships.
4. A dualistic mindset is exclusivist, so in ethical terms, it works against the reconciliation of difference. (Porter 2007.pgs.44 -45).

Porter also explains that ‘the harm of dualism is a moral harm’ (p.45) as it does not include and respect ‘the other’ and does nothing to support collaborative relationships. This is particularly true in the case of menopause as defined by the biomedical model. Capra (1983.p.138) has stated that Descartes method is useful but the limitations need to be recognized. This is especially relevant regarding the phenomenon of menopause as disease, where the body/mind connection was rejected. As Leder has stated, it is to the overcoming of the ‘mind-body antinomy that the paradigm of lived embodiment may be of greatest interest to medicine’ (Leder 1984.p.38). I believe it is the paradigm of the lived body that we need to turn to as it is more appropriate than Descartes philosophy of the mechanistic body that biomedical western science utilizes to diagnose the phenomenon of menopause.

Strategic and provisional sexual politics

Having explored how the particular discourse of disease was conceived and born from the thinking of biomedical science and how it constructs and sustains the phenomenon of menopause pathologically, other contesting discourses too have been noted, particularly feminist perspectives, which have emerged from postmenopausal women’s experiential narratives and theories. Feminist perspectives acknowledge thinking that is different or alternative to the thinking of the dominant paradigm. These postmenopausal women’s experiences have legitimacy in their contesting the dominant paradigm.

Against the backdrop of the western scientific pathological diagnosis together with Cartesian dualism, postmenopausal women’s embodied experiences and theories provide us with insights and stark revelations that conflict with the pathological diagnosis. These narratives disrupt the dominant paradigm as they present alternatives or, better still and more importantly, additional perspectives and possibilities of the phenomenon. Women’s perspectives, theories, and needs are revealed as they describe their own menopausal process.

Significantly too, these particular women writers are professional women who occupy positions as experts in their fields of practice and they bring understandings beyond the
biomedical diagnosis. (Harris 2008). I refer specifically to Christiane Northrup MD, her training as a medical practitioner and specialist equips her with the knowledge of the biomedical model and hormone replacement therapy (HRT). However, in addition to the technical scientific knowledge, and because she is a postmenopausal woman and has traversed the process of menopause, she has internal knowledge. Therefore she is well equipped to challenge and expand knowledge beyond the pathological deficiency disease model.

**Postmenopausal women’s texts**

Christiane Northrup, MD, Professor of Obstetrics and Gynecology, in her text, *The Wisdom of Menopause* (2001) acknowledged the following:

1. “The brain and the reproductive organs are intimately connected by a complex series of feedback loops (p.50). She named this as the “Hypothalamus- Pituitary-Ovary Connection” (p.50), thereby indicating the mind/body ‘connection’ as relevant. This was the connection that both Wilson and Utian omitted in their reductionist diagnosis.

2. “During perimenopause, GnRH levels begin to rise in the brain, causing FSH and LH to surge to their highest levels ever” (p.49). Both Wilson and Utian, in their diagnosis, ignored the increase in these hormones and focused only on the loss of estrogen.

3. “Those elevated FSH and LH levels stay elevated permanently” (p.49).

In addition, the body/mind connection as penned in Northrup’s words, ‘our brains begin to change’ (p.36) and ‘energy urging us to towards self-actualisation’ (p.53) indicate a powerful, dynamic connection. This is very relevant for women, as the experience of the hot flush is very often the sensation of heat rising. Through Northrup’s own experience, she is highly aware of the significant ovaries/brain connection. This is the same connection that was minimized, marginalized and ignored in Wilson and Utian’s diagnosis of loss and lack. It is a more wholistic representation, where body/mind connections are acknowledged, and where a dynamic process is evident. Rather than pathologizing menopause, Northrup brings our attention to the importance, and significance of this powerful, positive, dynamic, connective phenomenon and impulse. She acknowledges both losses and gains. Northrup’s language regarding the experience gives us further insights. In addition, other women too, have written on their experiences of the phenomenon and indicate identical or similar themes as Northrup’s but each is a representation of their experience and what was important for them in the process of menopause. (Harris 2008).

**Revelations from women’s texts**

What emerges from the postmenopausal women’s text is an underlying wholistic paradigm. Connections and interconnections characterise the writing of these women. Their terminology is inclusive, organic, dynamic, and vital. (Harris 2008). This terminology has been marginalized and omitted and therefore never included in the limited diagnosis of menopause as disease. It has never been, or is not on record so to speak, but is necessary and appropriate to disrupt and intersect with the scientific biomedical knowledge to create new knowledge. This would be in addition to the already existing knowledge (Harris 2008). This omission can be seen as not only a failure of ‘egalitarian aspirations’ (Grosz 1990. p.162), but also an issue of equity failure. Postmenopausal women’s experiences and perspectives have
not been included in the system, as there is no space at all, for their inclusion in the reductionist, objective and positivist scientific paradigm.

A different paradigm of menopause and the menopausal woman is required to enable the consideration of her subjectivity that is, psychosocial factors as well as her spiritual impulses. It is only from postmenopausal women’s writings that we are able to obtain a sense of the lived experiences of women, which acknowledges the place of connection rather than separation, internal connections (mind/body/spirit), and contextual connections. They also acknowledge the gains and the role of increased levels of hormones, not just the losses. (Harris 2008). In this sense there are not binary opposites, but inclusive opposites.

Because postmenopausal women’s embodied experiences reveal additional knowledge regarding a body/mind connection, the necessity of a new paradigm beyond Cartesian body/mind separation is essential to support women’s needs beyond body functions only, as they transit this life cycle passage to a new developmental stage. This separation has denied women and our culture at large, knowledge of a positive wholistic adult developmental process. (Harris 2008). What is essential is the integration of postmenopausal women’s experiences and perspectives, as they and wholistic perspectives into policy development and programmes.

The mentality of women as diseased, pathological and dysfunctional, the episteme of our time has denied the powerful, dynamic and positive impulse and process of the phenomenon of menopause, not only to women, but also to their families, and to our society at large. Unfortunately this episteme of the reductionist model is still dominant in our time. This can be evidenced in the International Menopause Society’s Summary of the First IMS Global Summit on Menopause-Related Issues, March 29-30, 2008 held in Zurich. Although the title of this global summit refers to menopause-related issues, this public release report stresses promotion of HRT as the appropriate intervention. Their summit summary, and knowledge distribution, once again, is primarily the result of a reductionist model. This Summit was supported by ‘unrestricted educational grants received from three pharmaceutical companies, Wyeth Pharmaceuticals, Bayer Schering Pharma and Novo Nordisk Femcare’. (Pines, A. et.al. 2008. p4).

**Women’s human rights**

The positive aspects, experiences and perspectives of this normal life course, as noted and reported by women, have not been formally promoted to other women, or to our society/culture. This is essential. It is important in relation to gender equity and as a matter of policy and good public health practice. The World Health Organization also states their will to ‘promote equity and equality between women and men, throughout the life course, and ensure that interventions do not promote inequitable gender role relations’ (p.2). It is a woman’s right, and essential in the development of policy on this women’s issue, to have the perspectives of postmenopausal women included and integrated in policy design.

The way menopause is constructed is a gender health issue. It makes good sense to integrate women’s theories, concerns, personal positive experiences as well as their negative experiences of the menopausal transition as integral in the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres as described by the WHO. Women should be equally responsible in defining their policies, especially when this is a women’s experience only. As asserted by Grosz, patriarchal philosophies are forced to accept their limits, to recognize that their specific
methods and orientations cannot be universal’ (Grosz 1990. p.170). Women’s own knowledge is different, and in its disruption can intersect and contribute to new knowledge of menopause, the menopausal and postmenopausal woman.

The need for an integration of gender differences and perspectives has been promoted by the World Health Organisation, together with the commitment to allocation of appropriate funding. The necessary commitment has been emphasized as the integration of a gendered perspective in work plans, and budgeting, as well as technical aspects (WHO Gender Policy 2002).

Final summary

Postmenopausal women’s narratives are valuable contributions to the knowledge of the phenomenon of menopause. They are particularly valuable for women readers as they provide for women, vital, diverse and different information not included in the limited scientific biomedical, although dominant paradigm in our culture. In addition, although these writings, I believe, are written to share vital information with other women, they also serve to bring our attention to the insufficiency and obvious lack in the current dominant model. This has the effect of disrupting and intersecting and the current knowledge and bringing our attention to the limitations of the knowledge of our time, and the need for new inclusive knowledge. I am presently working on this disruption and intersection, as my research is still a work in progress. I believe the model that is emerging from this research can have implications for various other health issues also.

What I am proposing is a more wholistic paradigm. This will include a feminist intersection with the reductionist objective, positivist, dominant paradigm of science of our time regarding menopause, to create new knowledge. It will be driven by a feminist philosophy similar to that offered by Grosz:

Feminist philosophy could accept its position as historically grounded in patriarchal texts; yet its future involves a movement beyond this history … It would no longer accept concepts, terms, methods that have prevailed for millennia but would create new ones appropriate to women. (Grosz 1990.p.169).

And of significance also, ‘It would no longer be confined to women’s issues, issues concerning only or largely women, but be free to range over any issue. What makes it feminist is not its object but its perspective’ (Grosz 1990.p.169). This in turn, I believe, could provide an example to our culture of a new episteme of health care. Other appropriate interventions for the phenomenon at hand could then be applied. This disruption and intersection to the dominant pathological reductionist paradigm of menopause is urging my work forward.

Finally, positive constructions of menopause, the menopausal and postmenopausal woman should be considered best practice in all policies and programmes. Of further particular relevance is the recognition and acknowledgment by the WHO concerning ‘the social and cultural conditions of ill health/disease’, these being the social and cultural conditions, including the context of women’s lives, and the environmental factors that contribute to their health or to their illness (Harris 2008). These could all be addressed in a new construct, utilizing a feminist philosophy and a wholistic paradigm.
References


The need for a politicized understanding of human rights

Nick Rose
RMIT University

Abstract: Mainstream human rights non-governmental organisations, such as Amnesty International, make a virtue of their political and economic neutrality: we only seek to advance and protect universal human rights, they say. This position is based on a false understanding of human rights. Human rights make normative claims as to how human societies should be structured, and any such claims are by their nature political. Moreover, human rights are blatantly used by powerful political actors for their own purposes; the US self-identification with the promotion of ‘human rights and democracy’ has long provided the rhetorical justification for its interventionist foreign policy, as well as the moral basis for its claim to world leadership. Now more than ever the human rights community must open its eyes to the ways in which its language is being used and abused for purposes that are inimical to any reasonable understanding of ‘human rights’. Now is the time to say loudly and clearly that the human rights movement will no longer be party to the present system of imperialism that has caused so much suffering. Now is the time to listen to the grassroots movements in the Global South and learn from their alternative, politicized constructions of human rights, grounded in the lived experience of oppression and marginalization, such as La Via Campesina’s Food Sovereignty.

Keywords: Human rights and capitalism; human rights and imperialism; human rights and resistance.

Introduction – an increasingly difficult global panorama

While it’s a modern cliché to say that the pace of change in our globalised world is quickening, this is a cliché with a substantial measure of truth and insight. Yet we must pay attention to the variety of factors contributing to the exponential velocity of change in order to understand the nature and direction of the change itself, and the role that human rights movements might play in developing appropriate responses to it.

On the one hand we have a set of social, political and economic elements, such as the greater global connectivities brought about by the communications and computing revolutions, the impacts of the instantaneous whirl of billions of dollars through capital, currency and commodities markets, and the advent of mass globalised tourism. At the same time, there are the manifestations of what Amnesty International’s Secretary General Irene Khan terms the ‘dark underbelly’ of globalization, such as global organized crime networks, new forms of slavery and human trafficking, international terrorism, and unprecedented flows of legal and illegal migration produced by war, political instability and generalized poverty.

Above all the past three decades have seen a rapid expansion in income inequalities across nearly all nations, and between the Global North and South. Much of this sharp increase in inequality has been produced by a globalised financial system that enables hedge fund managers to pocket annual pay packets in the hundreds of millions of dollars, while
condemning entire populations to misery through financial crises and the packages of economic austerity that follow in their wake.

To all this we need to include rapidly converging sets of anthropogenic environmental, climatic, and geological changes. This convergence embodies almost uniformly negative trends for the short-term stability, and long-term viability, of many human societies as currently organised. Human-produced waste and toxic pollution, combined with rampant habitat destruction, are taking a devastating toll on land and marine ecosystems around the planet. The dawn of the anthropocene epoch has been announced by what many scientists describe as the greatest mass species extinction event since the disappearance of the dinosaurs. On current trends it is estimated that around 50% of all living species will have disappeared by the end of this century, in what would be a calamitous epitaph to industrial civilization.

Nearly every month brings yet more scientific confirmation that human-induced climate change is accelerating. We are told by eminent experts such as James Hansen that in the absence of urgent political and economic action to move rapidly towards zero emissions, or even net carbon absorption economies, we will soon pass tipping points that will trigger climate feedback mechanisms leading to catastrophic, runaway global warming. Global warming is in turn hastening the rate of species extinction; it is also predicted to entrench and intensify expanding inequalities between the Global North and South.

Resource depletion – most especially of fossil fuels – burst into social consciousness during the oil shocks of the 1970s, only to vanish but then re-appear recently as oil prices have more than doubled over the past year. There is a growing consensus amongst many petroleum geologists that the global supply of oil has reached – or is nearing – the peak of production capacity. The significance of this fact lies in the utter dependence of the global economy as a whole – and the economies of industrialized nations in particular - on cheap oil for transport and manufacturing. Oil is used for more than 90% of all transport fuels and there are no readily available substitutes that could maintain the operation of the global economy at anything remotely approaching its current scale.

The scramble for potentially viable alternative liquid fuels has led to the implementation of highly counter-productive ‘solutions’. One is the liquifecation of coal, which uses enormous quantities of water and produces double the greenhouse emissions of ordinary petroleum. Another is the mass growing of feedstock for biofuels. Biofuels are one of the factors that have steeply driven up the prices of basic grains and caused food riots and political instability across many developing countries, threatening millions with chronic malnutrition and starvation. As part of the 2008 Activating Human Rights and Peace Conference 2008, Dayak elder John Bamba spoke movingly on the appalling situation faced by the human and non-human populations, including his own people, in the wake of the burning of rainforests in Kalimantan to clear land for palm oil plantations. This is a particularly graphic and acute manifestation of what is increasingly understood as a competition for land for fuel versus food, described by the United Nations Special Rapporteur on the Right to Food Jean Zeigler as a ‘crime against humanity’.

More generally, permanently high oil prices, and the inflation they generate, will impact most severely on the most vulnerable populations in all countries. They also raise the specter of a new round of geopolitical rivalry and resource wars, as the main powers centres, in what seems to be an emerging multi-polar world, compete with each other for access to, and control over, diminishing fossil fuel resources.
The impacts of severe environmental degradation, accelerated climate change, and Peak Oil all appear to be manifesting much more quickly than conventional thinking has allowed. The message seems plain enough: the era of lifestyles premised upon the cornucopian myth of endless exponential economic growth generated by continual resource extraction, consumption and waste is reaching the limits imposed by nature.

**Theoretical perspectives – systems theory, hegemony, and common sense**

Canadian academic Thomas Homer-Dixon forms part of a growing body of opinion whose adherents argue that the synergistic convergence of these human-induced changes - interacting with the rigidities of complex societies that are culturally and materially wedded to the ideology of continued profit and economic growth as the fundamental social goal – may well lead to some form of civilizational breakdown. Within this systems theory perspective that examines the rise and fall of civilizations over centuries and millennia, it is plausible to argue that such breakdown and even collapse is historically the norm. Homer-Dixon argues that there are reasonably clear cyclical patterns at work, as growth leads to a point where civilizations – understood as city-dominated cultures - exhaust the resource and energy bases that sustain their systems and populations. Anthropologist Joseph Tainter explains this in terms of diminishing marginal returns on continued investments in societal complexity.

Yet the news is not necessarily all bad. In ‘The Upside of Down’, Homer-Dixon argues that a certain degree of breakdown, if it does not result in total collapse or what he calls ‘synchronous failure’, can be beneficial in terms of allowing societies the opportunity for creative simplification and renewal. One might add at this point that major social change in terms of historical epochs has been inextricably associated with significant shifts in human consciousness amongst ‘a critical mass of individuals’. In other words, whilst some form of breakdown produced by the convergence of multiple crises provides the opportunity for significant social change, such change is unlikely to occur without a widespread shift in human consciousness.

This understanding can be further informed from the perspective of neo-Gramscian hegemony theory. In Gramsci’s view, the survival and perpetuation of a particular political-economic system stems in significant measure from the effects of the prevailing ‘common sense’ in a given society, generated *inter alia* from the agglomeration of predominant cultural narratives as well as from the operation of the principal social, political and economic institutions. The daily diffusion and circulation of the prevailing common sense produces sufficient consent or acquiescence in the perpetuation of the current polity to enable the maintenance of the hegemony of the dominant social groups within it. Gramsci theorized that transformative social change was conditional upon the disruption and replacement of this ‘common sense’; hence ‘ideational emancipation’ was a necessary pre-condition for emancipation in practice, and constituted the first element of the philosophy of praxis. The educational role of grassroots activists and social movements in making discursive challenges to contemporary expressions of rapacious capitalism and the new imperialism – in effect, of undertaking the task of constructing a counter-hegemonic discourse that might later form part of a new common sense - assumes particular importance in this context.
Human rights responses – Part 1 (the mainstream)

The big picture then is one where some form of breakdown is likely. If such a breakdown was reasonably contained, and if it is accompanied by a major shift in consciousness in ways that were supportive of the basic goal of the human rights movement – which might be very broadly summarized as working towards the achievement of a dignified life for every person on the planet – then the occurrence of the breakdown could have very positive implications. However at the present moment, there is a significant risk that such a breakdown, if it were to be intensified by the current destructive tendencies towards war and environmental degradation, might well lead to synchronous systemic failure. The consequences of such a scenario would in all probability be catastrophic for most human and non-human populations.

The avoidance of this risk demands pro-active and far-sighted political action, in order to infuse a much greater degree of resilience into our fragile economic and social structures. Yet the paradox is that most representative liberal democracies – above all in the United States – have atrophied to such an extent that they are far more responsive to the needs and priorities of major corporations and wealthy individuals than they are to the wishes and needs of ordinary citizens. One of the most pressing pre-conditions for major social change is therefore the renewal of democratic cultures amongst the major institutions in the liberal democracies. If the human rights movement is serious about the achievement of its stated aims, then democratic political renewal in the capitalist liberal democracies ought to be at the top of its agenda as a task that cannot be postponed, and it should be accompanied by an intensive trans-disciplinary study of the likely trajectory and human rights consequences of current social, political, economic and ecological trends.

What does the movement itself have to say about this historic challenge? If we are referring to what I term the mainstream, doctrinal human rights community, best represented by Amnesty International and Human Rights Watch, the answer is very little or nothing. There are, I suggest, three main reasons for this silence. First, major human rights non-governmental organisations (NGOs) are almost always reactive; most of their interventions tend to occur after widespread human rights violations have taken place. A legalistic mindset, and an institutional focus on documenting and denouncing violations after the fact, militates against forward-thinking analyses that anticipate the likely trajectory and consequences of current trends.

Secondly, because these NGOs conceive of human rights as creatures of law that place obligations on states, their focus is almost exclusively state-centric. Amnesty and Human Rights Watch have belatedly – and somewhat half-heartedly - included the vigilance of economic, social and cultural rights within their missions, and are now urging transnational corporations to be held accountable for human rights violations. Yet overwhelmingly the emphasis remains on states as both the main violators and upholders of human rights. Myopic state-centrism simply does not account for meta-trends such as resource depletion. Crucially, what also gets lost in this framing is any real attempt to understand the significance and potential of grassroots movements that are articulating new conceptualizations of human rights outside the confines of state-made international law.

Thirdly, and most significantly, neither organization – and indeed the doctrinal human rights community more generally – regards it as appropriate or necessary to engage in any type of political economy critique, much less a systems theory or ecological analysis of the type advanced by Homer-Dixon. Instead it is said that human rights can be promoted without having to resort to advocating the advancement of any particular political or economic system as preferable, desirable, or sustainable.
It is my contention that this is a deeply flawed strategy and a dangerous self-deception. Human rights are normative claims as to how polities and economies, and their associated institutions, should be structured. By their nature, and by their history, they are deeply political. The abstract, individualized civil and political rights that were emblematic of Western liberal democracies became universalized in international legal texts at the end of the Second World War, at the same time that the United States was supplanting Britain as the dominant global military and economic power. As Tony Evans and Kristin Sellars argue, it is naïve – and ahistorical - to believe that these events were unrelated; that the Universal Declaration of Human Rights was only ever the response of the international community to the horrors of the Nazi death camps, and that it served no other agenda.\(^1\)

Further, the doctrinal conception of human rights, in which they are seen as creatures of law which belong primarily to individuals and rarely, if ever, to collectivities, is entirely consistent with the atomized and competitive individualism that undergirds contemporary rapacious capitalism. Thus the discourse of the mainstream human rights movement supports the prevailing common sense that solutions to contemporary crises can only be found within the existing system of capitalist markets that are facilitated and enforced by pro-capitalist states. As such this discourse makes no contribution to the necessary shift in consciousness that would pre-figure a rupture in this common sense and create the conditions for transformative social change.

On the contrary, today the human rights discourse is often used as a veil to provide moral legitimacy for military actions that are expressions of what some term Western liberal interventionism, and what others, following David Harvey, call the new imperialism.\(^1\) The conclusion of the Cold War brought with it the articulation of the doctrine of ‘humanitarian intervention’. This was openly welcomed by many human rights advocates, its questionable legality in international law, and its dubious consequences for international relations, notwithstanding.\(^1\) And it is not only governments that wrap their actions in the warm mantle of human rights: in 2006 multinational water corporations embraced the newly formulated ‘right to water’, claiming that the private sector is the best guarantor of this human right in all places and at all times.\(^1\) Currently the biotech companies argue that the best way to feed the world and resolve the global food crisis – in effect, to guarantee the human right to food – is through the universal adoption of GE technology. Yet this technology locks farmers into chains of dependence on multinational corporations for seed and pesticide, while the intellectual property regime is rigorously enforced to make sure the chains encircle greater numbers in their embrace.\(^1\)

Regrettably the doctrinal human rights community has largely closed its eyes and ears to the many ways in which its discourse has been politically and economically sullied. In not undertaking the task of constructing a political economy, or an ecology, of human rights, the doctrinal mainstream has allowed the discourse to be all-too-frequently harnessed to the service of contemporary imperialism and rapacious global capitalism. The hard political questions are deftly side-stepped. For example, in 1977 Amnesty International received the Nobel Peace Prize for its report documenting the egregious physical integrity violations committed by the military junta in Argentina. Yet, as Naomi Klein notes, Amnesty carefully avoided any recognition that such repression was intimately linked to the coercive imposition of the fundamentalist free market ideology developed over the previous twenty years at the Chicago University School of Economics by Milton Friedman and his colleagues.\(^1\)
Thirty years later, Amnesty takes issue with certain operational aspects of the decade-long War on Terror, such as the practices of ‘coercive interrogation’ at Guantanamo Bay or Abu Ghraib. But – just as with the so-called ‘dirty war’ in Argentina - it will not ask whether there actually exists any justification for this War, what its real goals are, and whose interests it serves. I would suggest that the War on Terror is an enormous and horrendously costly political distraction from the converging crises that constitute true existential threats to this and future generations, to say nothing of much of the non-human life on this planet. The true rationale of the War on Terror consists not in the nature or scale of the threat posed by radical Islamists, but rather in the geopolitical, economic and domestic political imperatives that drive contemporary US-led imperialism. If Naomi Klein is right, the dominant disaster capitalist complex of the US surveillance and security industries – epitomized by Dick Cheney and the Halliburton corporation - is actively seeking new wars and other disasters because of the unprecedented opportunities for profit-taking that these human and environmental tragedies provide. A colleague recently described this type of capitalism as a malignant cancer, not without reason, since much of the economic growth on which it depends is generated through activities that contribute far more to the spread of death, destruction and exploitation than to the enhancement of life and dignity.

Since their founding in 1961 and 1978 respectively, Amnesty and Human Rights Watch have achieved enormous success in promoting the idea of universal human rights around much of the world. They have successfully constructed ratification of universal human rights instruments as a key currency of legitimacy for most nation states. Few governmental leaders will openly disavow the provisions of human rights treaties, although in the era of the permanent War on Terror this is less true now than it was perhaps 10 years ago. In the process, the big human rights NGOs have also successfully promoted the leading role of themselves as the vital guardians of these rights. Adopting the critique of Makua Mutua, they have in effect portrayed themselves as the saviours coming to the rescue of the victims of human rights violations carried out by the savages of the human rights trinity – the dictators and authoritarian rulers of Southern nations.

Yet the great paradox of human rights is that mirroring the story of an ever-expanding corpus of international law ratified by ever-greater numbers of states, hundreds of millions of people have been dispossessed of their land and livelihoods and thrown into abject poverty. Concentrations of wealth and inequality within and between nations and regions have never been so vast. The material conditions for the realization of universal human rights – particularly of economic and social rights – are fast receding within the dominant political and economic paradigm, and threatened as never before by the prospect of synchronous failure. There is little sign of any recognition of this within the doctrinal human rights mainstream, which cultivates the myth that the answer lies in better enforcement of human rights laws. Within this narrative, the role of grassroots groups is to lobby their governments to enforce those laws.

**Human rights responses – Part 2 (subordinate groups)**

A different story is told however by the politicized responses from grassroots neighbourhood, indigenous and peasant communities and movements in the Global South. These peoples and movements have long known that they must have recourse above all to their own resources to ensure their physical and social survival and reproduction. Rather than looking first and only to the state to implement its obligations under international law to guarantee their rights, they have reclaimed land, created or rebuilt vital services, and reconstructed livelihoods using the
resources available to them. When the neoliberal and pro-capitalist state, and the national and transnational corporations and institutions whose interests it advances, has sought to coerce them into the market economy, they have often resisted and defended the territories they occupy, and the social spaces they have created. And they have made use of a discourse of human rights, though not a discourse grounded in the abstract individual rights of the international treaties and liberal political theory.

Rather, it is a discourse constructed from a long process of reflection flowing from the lived experience of exclusion, marginalization and dispossession. The rights that emerge from within this discourse thus have an authenticity and a resonance that the abstract formulations agreed in long negotiations and drafting sessions by government and NGO representatives will always lack. They speak to the lived reality of peoples and communities deprived of individualized legal rights. In this way – within the radical tradition of human rights as a discourse and a practice of emancipation, liberation, freedom and autonomy – they enable these peoples and communities to reclaim their dignity – as individuals and as a group - in the very process of constructing and expressing the rights that are most relevant to them.

This discourse – and the praxis which it accompanies - is therefore counter-hegemonic because it enables ideational emancipation and thus contributes to a shift in consciousness. The powerfully transformative character of dignity and respect reclaimed through struggle is well described by Lynn Stephens, in relation to the experiences of ordinary Oaxacans during the uprising in that Mexican state from July-November 2006:

“The women of Radio Cacerola as well as many of the other Oaxacans who joined in supporting [the Asamblea Popular de los Pueblos de Oaxaca, APPO] and the teachers have been forever changed by their experiences during 2006. The opening up of spaces like Radio Cacerola and Radio Universidad and the entry of thousands in a new public discourse of democracy and inclusion has left many with a new-found sense of respect, of “having rights” and of being “someone” who has the right to speak and be listened to”.

One of the best examples of the emergence of an alternative, grounded counter-hegemonic discourse of human rights is the Right to Food Sovereignty that has been articulated by the global peasant movement La Via Campesina over the past decade. Food sovereignty recognizes that global agribusiness, biotech and supermarket chains exercise monopolistic control over a great deal of global food production and distribution. This has proven devastating to the life prospects of hundreds of millions of peasant farmers and rural dwellers worldwide. Thus food sovereignty speaks of the right of communities and peoples to take back control over the food they eat and how it is produced and distributed. It is a discourse that embodies a vision of a radically re-localized and de-centralized political economy of food production, in which there is an enormous shift of power away from the giant food corporations and their supporters in pro-imperialist governments, towards the hands and homes of ordinary people. It contrasts dramatically with the sterile abstraction of the individual right to food, which says little other than that a person ought to have enough to eat, irrespective of the food’s origin or its true nutritional value. The fact that La Via Campesina, with an estimated 150 million members worldwide, is the world's largest social movement, testifies to the mobilizing potential and the emancipative nature of this type of human rights discourse.

For Raj Patel, the articulation of Food Sovereignty as at once both a collective right of peoples and as an individual right is a ‘masterstroke’, since:
“[t]he shape and content of today’s food system is defined not by the many, but by the few. Most people are left experiencing the consequences of others’ choices, whether that be in the home, in the fields, or along the aisles. Across a range of places and circumstances, we are not sovereign. Reclaiming control of the food system requires both an individual and a collective effort, and requires both individual and collective rights. It demands tough democratic deliberation about where the boundaries between the two should be. It’s a discussion that ought not to be pre-empted by its definition, so much as broached by it.”22

In the rapidly changing dynamic that is now manifesting, the utility of a discourse grounded in abstract individual human rights, and reactive, legally-oriented state-centric approaches to secure their enjoyment, must be questioned. There is, I suggest, an urgent need for a well-developed political economy, and ecology, of human rights, grounded in a thorough understanding of the present conjuncture and its likely trajectory. Do we – as human rights scholars and activists - accept that the convergence of multiple contemporary crises presents a grave risk of synchronous failure? If so, then one of the first human rights responses must surely be to assist in the urgent pro-active construction of widespread localized resilience to reduce the chances of any breakdowns becoming catastrophic. By all means, lobby governments and campaign for political action, but the failure of governments to respond appropriately or with sufficient speed does not relieve us of the responsibility to take practical action now in the places where we live.

Here there is much to learn from grassroots alternatives in the Global South. A great many of the member organisations of La Via Campesina have already experienced some version of synchronous failure. Their politicized response of Food Sovereignty inspires not just resistance to the current unjust and unsustainable global order, but also enables the construction of resilient alternative local economies that will, for example, ensure greater food security when – as seems likely - the globalised food production chain collapses under the pressures of oil depletion.

Paralleling this Southern-led movement, grassroots sustainability initiatives in the industrialized countries are likewise turning their attention and efforts to preparations for a radically re-localized life in a post-Peak Oil world. Models like Transition Towns eschew confrontational and oppositional politics, yet their visions of re-localization are deeply political, since they imply the dismantling of structures that have made possible the accumulation of vast wealth for a tiny minority. The discourse of Transition Towns is similarly counter-hegemonic, since it urges groups of individuals to come together and act as collectivities, and it creates a collective imaginary in which alternative, localized economies are flourishing in a de-globalised low energy world. These visions of local resilience and (implicit) redistributive justice represent, in my view, the type of non-ideological politics behind which the human rights movement as a whole can and should throw its weight.

Standing up for human rights also means standing up for the biosphere, and for the planet as a whole. It is now the time to recognize that there are certain socioeconomic structures that are positively destructive of the life chances of this and future generations. As writer and activist Derrick Jensen argues, the time has come to tell those at the centre of imperial power that they have no right to degrade and destroy the earth and its inhabitants, both human and non-human.23 If human rights are to have any significant meaning in the coming months and years, this is part of the truth that they must tell. The pretense that human rights are above politics and economics has long outlived whatever doubtful utility it may once have had, and must be abandoned forthwith.
Endnotes

1. In June 2008 the Stratigraphy Commission of the Geological Society of London officially announced the end of the stable inter-glacial Holocene epoch and the beginning of the unstable Anthropocene. Commenting on the report, Mike Davis writes: ‘This new age…is defined both by the heating trend (whose closest analogue may be the catastrophe known as the Paleocene Eocene Thermal Maximum, 56 million years ago) and by the radical instability expected of future environments…[The commissioners] warn that “the combination of extinctions, global species migrations and the widespread replacement of natural vegetation with agricultural monocultures is producing a distinctive contemporary biostratigraphic signal. These effects are permanent, as future evolution will take place from surviving (and frequently anthropogenically relocated) stocks”': Living on the Ice Shelf: Humanity’s Melt Down, 26/6/2008 (accessed 5.08.08), http://www.motherjones.com/commentary/tomdispatch/2008/06/welcome-to-the-anthropocene.html.

2. E.g., in 2008 the International Union for Conservation of Nature and Natural Resources announced in its ‘Red List’ of threatened species that 48% of primates are now at risk of extinction: see Primates face ‘extinction crisis’, http://news.bbc.co.uk/2/hi/science/nature/7541192.stm, accessed 5.08.08.

3. These remarks were widely reported in October 2007, see http://news.bbc.co.uk/2/hi/americas/7065061.stm, accessed 5.08.08.

4. Mainstream commentaries in the US media now speak of a new ‘Cold War’ after Russia asserted its military and geo-political dominance in the separatist Georgian republics of South Ossetia and Azkhabia, following a Georgian military offensive against South Ossetian rebels in early August 2008: see for example http://www.foxnews.com/story/0,2933,403747,00.html, accessed 14.08.08. However commentators in the alternative internet-based media highlight the US security provocations of Russia over several years, as well as the domestic political interests that an atmosphere of heightened international crisis will serve in the US 2008 presidential elections: see http://www.globalresearch.ca/index.php?context=va&aid=9829, accessed 12.08.08.


8. For Gramsci, ‘the philosophy of common sense…is “the philosophy of non-philosophers”…in other words the conception of the world which is uncritically absorbed by the various social and cultural environments in which the moral individuality of the average man is developed…it is…fragmentary, incoherent and consequential…a chaotic aggregate of disparate conceptions, and one can find there anything that one likes’: Selections from the Prison Notebooks (edited & translated by Hoare and Smith), 1971, International Publishers, New York, 419, 422. Gramsci saw its principal elements as coming from religion, and that there was never one single common sense, but every social stratum had their own: 325-6, 420. Further, “[c]ommon sense is not something rigid and immobile, but is continually transforming itself, enriching itself with scientific ideas and with philosophical opinions which have entered ordinary life”: 326, note 5.

9. Mark Rupert (2005, Reflections on Some Lessons Learned from a Decade of Globalisation Studies, New Political Economy, Vol.10, No.4, 457-478) argues that ‘Gramsci’s political project…entail[s] addressing the popular common sense operative in particular times and places, making explicit the tensions and possibilities within it as well as the socio-political implications of these, in order to enable critical social analysis and transformative political practice’; the ‘philosophy of praxis’ is thus first and foremost a ‘critique of common sense’: 478.

10. The point is well-made by Zehra F. Kabasaka Arat, who writes that ‘The equality and anti-discrimination principles [of human rights texts], when applied to all aspects of life, make certain economic and political organizations incompatible and directly in conflict with the advancement of human rights. While authoritarian politics is often [seen as] a source of violations of civil and political rights, capitalism…is seldom identified as an obstacle for the realization of human rights or as a target of change for the human rights project…. We may argue that the implementation of
full spectrum of human rights call for a social democratic model, if not a substantial democracy...that can be actualized only in a socialist economy. The radicalism embedded in such an argument, however, makes human rights less palatable to some people. This may explain why the study of human rights has been short on political economy and why many advocates of human rights strategically avoid controversy': 2006, 


16. Discussing this episode at some length, Klein comments that “in its ninety-two page report, [AI] made no mention that the junta was in the process of remaking the country along radically capitalist lines. It offered no comment on the deepening poverty or the dramatic reversal of programs to redistribute wealth...It carefully lists all the junta laws and decrees that violated civil liberties but named none of the economic decrees that lowered wages and increased prices, thereby violating the right to food and shelter...': 2007, Shock Doctrine: The Rise of Disaster Capitalism, Allen Lane, London, pp118-121.

17. Klein argues that Israel’s security state serves as the prototype for this dystopian dream, in which ‘winning [the ‘endless worldwide war] is not the point. The point is to create “security” inside fortress states bolstered by endless low-level conflict outside their walls': ibid., 441.


21. Stephen, L., 2007, “We are brown, we are short, we are fat . . . We are the face of Oaxaca”: Women Leaders in the Oaxaca Rebellion, Socialism and Democracy, Vol.21, No.2, pp97-112, 109.


The right to a decent toilet – a right denied to 2.6 billion

Ben Fawcett

Abstract: 2.6 billion people in the villages, towns and cities of Africa, Asia and Latin America live without any safe, private or decent toilet. They use alleyways, rubbish tips, plastic bags, fields, bushes or dirty holes in the ground for their daily needs. This has an appalling impact on both individual and public health, especially that of children, and results in terrible indignity, above all for women and girls. While much is being done to improve sanitation the subject remains taboo and the goal of a toilet for all is a far distant dream. The right to sanitation is recognised in international treaties but few developing countries yet include such a right in their legislation, policies or practice. Acknowledging and then operationalising this right would considerably assist in the struggle to improve the spread of decent toilets, especially for the most vulnerable and marginalised, by better defining responsibilities, improving accountability and empowering those in need.

Keywords: sanitation, public health, operationalising human rights

It is scandalous that, in the 21st century, 40% of the world’s population – women, men and children – have no access to a safe, hygienic, private place to relieve themselves. Most readers of this article regularly use a water-flush toilet, in a private room, which allows them to ‘flush and forget’ their waste, and to do so without fear of disturbance. Excreta are taken away by a sewer, using 15,000 litres per person every year of expensively-treated water to transport it to a waste-treatment plant, or, too often in poorer countries, directly to a heavily polluted river. Such facilities are available to about 2 billion people today, whilst a further 2 billion have access to ‘on-site’ facilities such as septic tanks, composting toilets, pour-flush toilets, ventilated pit toilets, or simple, improved pits. But at least 2.6 billion, living in rural areas and urban slums in Africa, Asia and Latin America, have to rely on river-banks, railway lines, waste-tips, alleyways, plastic bags, fields, bushes, forests, or dirty holes in the ground, or the cover, and danger, of darkness for their daily emissions (WHO and UNICEF, 2008).

This is a scandal that results in disease, death and, perhaps above all, huge indignity for massive numbers of our fellow humans (see Table 1), but it’s a scandal that too few people know about, and far fewer are doing much to alleviate. The year 2008 has been declared the UN International Year of Sanitation, but even such an opportunity has not brought this terrible situation to the eyes, ears, and perhaps above all the noses, of many who were previously unaware of it. Sanitation is a taboo subject – we don’t readily talk about shit. Celebrities are happy to be associated with campaigns to improve water supplies, and charities frequently use images of smiling children taking water from a new pump or well to appeal for funds. But no well-known personalities are keen to be associated with toilets, and charities do little to publicise their work in sanitation. Until politicians, both in the developing countries where the majority of people are afflicted by this situation, and in richer nations who could assist, are faced with the stark reality and forced to face up to the needs of those without a toilet, progress will continue to be painfully slow.
Table 1: The health and social impacts of the lack of sanitation

- 1.5 million children die of diarrhoeal disease each year;
- 133 million cases of roundworm, hookworm and whipworm, causing malnutrition, anaemia, asthma and poor physical and intellectual development;
- Transmission of both bilharzia, of which there are 200 million cases worldwide, mostly among children, and trachoma, the most common cause of infectious blindness, would be greatly reduced by better sanitation;
- Most children in villages in Africa and Asia still go to schools without toilets; girls, on reaching puberty, then drop out of education;
- About 200 million women in India, and many more elsewhere, are forced, by the socially conditioned requirement to not be seen going to relieve themselves, to ‘hold themselves in’ until nightfall, when they risk abuse and attack;
- Adolescent girls and women have nowhere private to manage menstrual hygiene;
- At least 800,000 low-caste dalits in India are still employed in the grossly demeaning task of handling other people’s fresh faeces, and numerous others around the world, from the ‘frogmen’ of Dar-es-Salaam to the baye pelle of Senegal, are required to empty pit latrines. (Black and Fawcett, 2008)

The Millennium Development Goal (MDG) for sanitation was set, belatedly, in 2002: *to halve the proportion of people living without a toilet by 2015*. However, the WHO/UNICEF Joint Monitoring Programme, responsible for assessing progress towards the achievement of the MDG, acknowledges that the goal will be missed by a long distance. Their latest report states that:

‘Based on current trends, the total population without improved sanitation in 2015 will have decreased only slightly since 1990, to 2.4 billion. At the current rate, the world will miss the MDG sanitation target by over 700 million people. To meet the target, at least 173 million people on average per year will need to begin using improved sanitation facilities’ (WHO and UNICEF, 2008).

Most shockingly, one authoritative estimate suggests that the countries of Sub-Saharan Africa will not reach the MDG before 2076 (House of Commons, 2007), and even then huge numbers will still be without even basic sanitation facilities. The problem is worst in the rapidly growing slums of Africa and Asia, where improvements are not keeping pace with population growth, and density exacerbates the public health risks.

A survey of readers of the British Medical Journal in 2007 recognised the ‘sanitary revolution’ as the greatest medical milestone since 1840, ahead of the discovery of antibiotics, the development of anaesthesia, the introduction of vaccines and the discovery of the structure of DNA (Ferriman, 2007). Economists at the World Health Organisation have estimated that the benefits of improved sanitation outweigh the costs by a massive 9 to 1 (Hutton and Haller, 2004). Likewise they suggest that reaching the MDGs for water and sanitation would save the world US$7.3 billion in health-related expenditure every year, and US$750 million annually in the value of adult working days. Appropriate technologies have been developed and tested over the years, and successful methods for promoting the spread of such technologies, and the necessary changes in human behaviour, have evolved and been proven.
Many householders, communities and local non-governmental organisations, and a few
government departments, around the developing world, are gradually improving the situation.

However, even with good understanding of the devastating impacts of poor sanitation,
knowledge of what is needed to overcome this, and clear recognition by experts that
improvements should be made and are economically rational, we do not appear able to
overcome sanitation’s taboo status and to galvanise ourselves into action. Could recognition
of the human right to a decent toilet help to challenge this situation? Several groups are
promoting this approach.

A recent paper by the Centre on Housing Rights and Evictions (COHRE, 2008) has analysed
the situation and suggests that recognising sanitation as a human right, alongside access to
water supplies would:

- Help to overcome the political and institutional neglect that the subject suffers at
  present; it would require that both local and donor governments give sanitation the
  priority that it needs.
- Demonstrate that access to decent sanitation is a legal entitlement; civil society would
  then be able to use the ‘right’ to raise the political profile of the need for better
  sanitation.
- Clarify the role of states in ensuring sanitation for all; improvements need a
  concentrated push by both national and local government, but virtually no government
  has a focused ‘home’ for sanitation, resulting in a lack of serious emphasis, planning,
  clear strategies and accountability.
- Require that information is shared with communities and households in need, and that
development of sanitation is carried out in a truly participatory fashion, resulting in
more appropriate solutions.
- Ensure that access for those currently without sanitation facilities of any kind is
  prioritised, with particular emphasis on the poor, vulnerable and marginalised in a
  non-discriminatory fashion. Funding should go to facilities for those in need rather
  than those with the loudest voice, as is too often the case when rights are not taken
  into account.
- Provide a basis for defining minimum requirements, which would help to ensure that
  systems are affordable, culturally appropriate and sustainable. Sewers are not the
  answer for the vast majority of those without sanitation at present – poor communities
  have neither the financial resources to build and run them, nor the water to keep them
  flowing.
- Help in setting standards for appropriate services, which can then be monitored and
  against which service-providers and governments are then accountable.

The World Water Forum 2009, the next in the series of huge, triennial global meetings, will
discuss the implementation of the right to water and sanitation, under the heading of the
following question: ‘What practical steps should be taken to ensure that users can hold
governments and other actors accountable for ensuring improved access to water and
sanitation?’ (World Water Forum 2009, 2008). Many international treaties and conventions,
drawn up over the past 30 years, recognise, either explicitly or implicitly, that access to
adequate domestic water supplies and sanitation is a human right, as an essential component
of an adequate standard of living. However, while the number of countries that have
explicitly recognised the right to water in national law rose from six in 2002 to at least 24 in
2007, only six of these recognise the right to sanitation. Integration of the right to sanitation
in national legislation, policy and practice is at a very early stage in all countries except South
Africa, where the new government in 1994 moved quickly to recognise the importance of both water and sanitation for all.

One of the most important debates concerning the right to sanitation to be held at the World Water Forum in 2009 will cover the division of responsibility for sanitation between governments, at all levels, and individual householders. There is wide recognition that the household toilet must be managed by household members themselves. Likewise, it is acknowledged that safe disposal of human excreta is an essential public good, for the general benefit of public health; if one person’s faeces, be they from an adult or a child, contaminate the wider environment, there is a risk to all. However, the cost of safe management of excreta, including construction and maintenance of toilets, and disposal of the contents, whether by excavation of pits, pumping of sludge or flow through sewers, and treatment of the resulting waste, may be beyond many of those currently without appropriate facilities. Therefore systems of cross-subsidisation which are seen as fair and equitable, as have been successfully imposed through taxation and charging of tariffs in the industrialised world since the mid-nineteenth century, need to be developed and made effective, particularly in the growing cities of Africa and Asia. Unless such systems are introduced, the most vulnerable and marginalised will continue to suffer poor health and indignity from lack of sanitation.

It therefore appears that acknowledging and operationalising the human right to a decent, safe, affordable toilet should help both to reduce the taboo status of sanitation and to increase the spread of the necessary facilities and systems. However, a new revolution is needed, akin to the sanitary revolution of nineteenth century Britain, which greatly improved public health over several decades. This new revolution is urgent and requires people of dedication and imagination to spread the word, which will lead to the spread of toilets.

References

The Right to the City¹

Susan Bird
Victoria University

David Vakalis
Victoria University

Abstract: This paper is about human rights and activism. It draws on the work of theorist Henri Lefebvre to argue for a right to the city, and explores a spatial regulation of public space. Human rights associated with protest, or activism in urban spaces, include the rights to free speech, movement and association. This paper will interrogate legislation that runs contrary to these rights, in particular the APEC Meeting (Police Powers) Act 2007 (NSW). It examines the experiences of an excluded person under the Act, and asks what qualities are being prioritised in dominant, conservative visions of the city. It calls for an inclusive, diverse and creative public space to challenge urban dystopias.

Keywords: Activism, APEC Meeting (Police Powers) Act 2007, Regulation/Production of Space

Introduction: The Experience of Being Excluded

In September, 2007, following weeks of surveillance in the lead up to the Asia Pacific Economic Cooperation meeting (APEC), David Vakalis, co-author of this paper, was attending a compulsory preliminary court date based on his involvement in the alleged G-20 riots. The court proceeding was put into chaos when the prosecution announced that the G-20 arrestees had an order made against them, excluding them from Sydney during the APEC period. When the Magistrate inquired about the Act which excluded the arrestees, neither the defence nor prosecution appeared to know what the Act was about. A dead, confused silence came over the Magistrates’ courtroom. The exclusion order made against Vakalis by the NSW Police Commissioner had been made in his absence, without his knowledge, in another legal jurisdiction - and worst of all - the order was made based on assumptions of guilt that denied him the presumption of innocence – a central pillar of the Australian legal system.

This paper discusses human rights and activism in the context of the regulation of public space and its contested significance. International human rights laws such as the International Covenant of Civil and Political Rights (ICCPR) enshrine rights connected to the use of public space - such as freedom of speech, movement and right to assembly. These rights allow the street to be used as a vehicle for activism, protest and debate, which are important aspects of a liberal democracy. However, these rights must be balanced against a need for authorities to maintain public order within that space. Certain sections of the covenant may be breached by police or other agents of the state in the attainment of the ‘higher purpose’ of public order.

Since 9/11, heightened fear of terrorism has seen the press and conservative government in Australia draw increasing links between activism and terrorism. This has provided an impetus for the enactment of laws designed to quell the use of public space for activism. One such piece of legislation was the APEC Meeting (Police Powers) Act 2007 (NSW). This
legislation pre-empted public protest in the city streets around the APEC (Asia Pacific Economic Cooperation) meeting in Sydney, September 2007.\(^2\) The Act did this by creating a series of declared and restricted areas which were controlled during the APEC period via the use of roadblocks, cordon and lines of riot police. The Act also allowed for the creation of an excluded persons list, whereby specific individuals, identified by their involvement in community and activist groups, or previous protests such as G-20, were excluded from vast areas of Sydney during the APEC period. The authors contend that the extreme measures allowed by the Act for the purpose of ‘public order’ place too high a value on order over the rights and freedoms necessary in a democratic society. Drawing on the writings of Henri Lefebvre, we argue that a degree of dissonance must be tolerated in the creation of a free city that is accepting of difference. We are critical of aspects of the *APEC Meeting Act* which produced a space of fear and domination in Sydney during the APEC period, and the ongoing legacy of that legislation. Of particular concern is the exclusion of persons from public space.

**Henri Lefebvre and the Production of Space**

Human beings,...are in space; they cannot absence themselves from it, nor do they allow themselves to be excluded from it. (Lefebvre 1991:132)

Visible boundaries, such as walls or enclosures in general, give rise...to an appearance of separation between spaces where in fact what exists is an ambiguous continuity. (Lefebvre 1991:87)

Henri Lefebvre was a Marxist philosopher who created an impressive oeuvre of texts devoted to a philosophy of space. Of these, *The Right to the City* and *The Production of Space* explore (amongst other things) the city as a site of revolution, where the way that space is produced has the potential to shift. Lefebvre’s work is useful in analysing recent laws designed to maintain public order – it exposes the ideology that underpins city space – one which privileges state power over the desires and visions of citizens. Space, Lefebvre argues, has for too long been regarded as an empty container, only filled by the actions of human beings. To Lefebvre, space is produced in a Marxist sense, rather than being a neutral, blank canvas. The way space is constructed and viewed results in multiple spaces that operate on many levels and are imbued with divergent meanings. To state that space is merely a flat, Cartesian plane would be to deny its complexity and its ‘truth’ (Lefebvre 1991:1). To see space in this way is a falsehood resulting from a (capitalist) ideology that denies space its living, fluid existence (Lefebvre 1991: 94). The political impact on space is particularly important to Lefebvre. Lefebvre asserts that capitalism produces a model by which we understand space to be homogenised, repetitious and manufactured (Lefebvre 1991: 74). The generic city is a hallmark of capitalist globalisation (Koolhaas in De Cauter 2004: 11); spontaneity within this space is discouraged.

The invisibility of abstract (capitalist) space makes it difficult to resist. ‘[A]bstract space is buttressed by non-critical (positive) knowledge, backed up by a frightening capacity for violence, and maintained by a bureaucracy which has laid hold of the gains of capitalism in the ascendand and turned them into its own profit…’ (Lefebvre 1991:52) Abstract space ‘asphyxiates’ difference (Lefebvre 1991: 370). ‘What is different…is excluded: the edges of the city, shanty towns, the spaces of forbidden games, of guerrilla war, of war. Sooner or later…the existing centre and the forces of homogenization must seek to absorb all such differences….’ (Lefebvre 1991: 373). To be powerful, the centre must ‘integrate’, ‘recuperate’ or ‘destroy’ anything which contradicts it. (Lefebvre 1991:373)
Drawing on Lefebvre, a number of critical geographers have analysed the urban question or the way that the space of the city is produced. This is increasing urgent as the world’s population marches toward urbanisation. For the first time in history, more than half of the planet’s population now live in cities. This is set to rise to 60% by 2030 (Soja 2000: 3).

Movement to the city is often tied with a utopian vision - one associated with excitement and opportunity. However, running parallel are themes of urban dystopia, where media stories of disorder and an urban crime wave whip up the public into a frenzy of fear (Cohen: 2002). Public space is often represented as a dangerous place, where people are vulnerable to attack. The authors of the ‘broken windows’ theory claim that if disorder is addressed in the minutiae then the fight against crime can be won (Kelling and Wilson 1982). This zero tolerance approach has proved popular with conservative governments tapping into a public fear of anarchy conflating protest and dissent in public space with civil disorder, violence and ultimately terrorism.

Responding to this narrative, Mike Davis (Davis 1992) and Jeff Ferrell (Ferrell 2001) are urban theorists who critique the movement of many cities toward “Disneyfication”. To Davis and Ferrell, the cleansed city is the dystopia, where excitement, creativity and novelty are banished in favour of a faux security. “Disneyfication” is the transformation of cities into simulations of themselves, where the streets are sanitised and visual disorder eradicated. This kind of urban environment is most obvious within the urban fortresses of gated communities (such as Caroline Springs in Melbourne, or Celebration, Florida – a city developed by the Walt Disney Company). These towns or suburbs are constructed off the plan by a single company rather than developing organically over time. The popularity of suburbs or towns of this type reflect a growing desire for order and security in an age of terrorism.3 Anthony Vidler writes that in a ‘post 9/11 world’ people have become so obsessed with security that urban space is becoming less diverse and hence less attractive (Vidler in Mitchell 2003: 3). The diversity that is part of the attraction of the city is whitewashed in an attempt to secure it for normal usage – or that deemed appropriate by the powerful (Vidler in Mitchell 2003: 3). Space here is produced by a capitalist ideology to further its ends. Within these sanitised cities, debate is silenced.

Amongst a dystopian vision of space, and particularly the city as the pinnacle of capitalist space production, Lefebvre maintains a hopeful vision. He writes that there are fissures in absolute space, where resistance is possible. ‘Differences endure or arise on the margins of the homogenized realm...’ (Lefebvre 1991: 373). ‘Contradictions’ within abstract space hold the potential to break through, or even overcome, the reproduced city – and allow for differential space.

Protest is a fissure or eruption of the marginalized into the homogeneous space of the neocapitalist city. It disrupts the normalized function of street-space as a highway for transportation of products and persons commuting to and from their places of work. It opens up the street as a site of class struggle. It also has the power to alter the meaning of space. (Zajko & Béland 2008: 721)

**Space and Protest Policing**

In their article ‘Space and Protest Policing at International Summits’, Mike Zajko and Daniel Béland write that political action in public space usually results in conflict over the use of that space. The street is a space ordinarily used for other purposes, such as transportation and its use for activism can result in clashes with authorities. (Zajko & Béland 2008: 719-20) As Zajko and Béland explain, conflict over space also results because territory is the basis of...
state power. They write that the state’s ‘sovereignty is territorial. Because state power is embedded in a concrete territory and particular spatial routines, contestation over space is a direct challenge to spatial control.’ (Zajko & Béland 2008: 721) Further, ‘If we consider the territorial nature of state sovereignty, it is the maintenance of control over space that is typically the primary objective of protest policing.’ (Zajko & Béland 2008:723)

Drawing on research by John Noakes (Noakes et al 2005) Zajko and Béland write that policing methods in Washington DC have moved away from a confrontational style of policing to a model where devices such as surveillance and the creation of restricted areas have been used for the supposed purpose of reducing the risk of violence occurring at protests at international summits. ‘...[P]olicing in recent years has responded with greater control over space and an increase in new types of repressive tactics’ such as ‘the use of no-protest zones, less lethal weapons and strategic arrests, and an increase in police surveillance and infiltration.’ (Zajko & Béland 2008: 721) While such strategies to combat protest in public space may appear to be softer they may be more intrusive. Pre-emptive tactics are designed not only with a public safety objective in mind, but also to ensure that negative press coverage of police violence does not end up a front-page news story. (Zajko & Béland 2008: 721)

Pre-emptive methods of spatial control were employed by the state in the lead up to the APEC meeting. The NSW government used intimidatory tactics to deter use of public space – including activism - during the APEC period. Imagery and rhetoric, from as early as June 2007, was centred on the presumption that APEC would result in protest - ‘riots, violence, and civil unrest’ (Egan in Snell, 2008: 41). In anticipation of APEC, the NSW Police purchased Australia’s first water cannon. The cannon can hold 12,000 litres of water and ‘cause serious injury’ (Clennell, 2007). Morris Iemma, then the NSW premier, stated that the purchase of the cannon was intended to be heeded as a warning to protestors. This is an example of a tactic used by the state to curb protest pre-emptively and disproportionately. It uses intimidation to control the use of space by using fear to restrict entry into that space.

Further, conservative forces in the government increased anti-terrorism advertising campaigns in the lead up to APEC, where the phrases ‘protestors’ and ‘terrorists’ were used interchangeably. In addition, military and “Darth Vader” style police forces conducted mock terrorism operations (Egan in Snell, 2008). Thirty ‘mobile detention cells’ were created (National Nine News in Snell, 2008: 43) and intrusive surveillance was prevalent. These strategies were an attempt to deter the use of space for protest, and also create a sense that such measures were necessary to ensure public safety.

The APEC Meeting (Police Powers) Act ramped up police powers, and allowed large parts of the city to be put into lockdown. During the APEC period, spatial partitions were enforced by a three-metre high metal fence, buttressed by concrete cordons, running for five kilometres (Powell 2007). The fence was described in the media as the ‘Rabble-proof fence’ (Powell 2007) and in some activist circles as ‘Sydney’s Berlin Wall’. As Zajko and Béland point out, the use of fencing not only causes restriction of movement, but also creates a situation where breaches may be met with force:

‘Spatial partitions such as fences or police lines are used in an attempt to control the movements of the protesters, and deny them access to key areas. Attempts to violate these spatial boundaries are a clear threat to police control and are typically met with immediate repression. In instances where their control over the protest appears threatened, police may respond with a variety of tactics designed to assert authority.’ (Zajko & Béland 2008:723)
Because Sydney became a focus of world attention during the APEC period, maintaining its image as a clean, safe city became paramount. Police and bureaucracy, in their haste to create an ‘aesthetic of authority’ (Ferrell 1994: 178) produced one of fear. The meaning of internationally renowned tourist districts shifted into quasi-military zones, as designated by the Act.

Section 6(1) of the Act defines ‘core declared areas’. These declared areas included parks, roads, Kingsford-Smith (Sydney) airport, railway lines, places of work, residences, tourist attractions (such as the Sydney Opera House) and parts of Sydney Harbour. Further areas could be, and were, added to this list through an order of the NSW Police Commissioner. Declared areas could also be upgraded to restricted areas by the Police Commissioner. Entry into declared areas for members of the general public was relatively unrestricted – although to enter a person had to be willing to submit to search of self, property, vehicle, or vessel, surrender items prohibited in section 3, obey police directions, and not hinder or obstruct police making an arrest.

Restricted areas were more heavily regulated zones. To be within these areas, a person needed to have special justification as set out in section 37(2). To enter a restricted area within the APEC period without such justification was an offence, the penalty for which is up to six months imprisonment. An offence under this section could be aggravated if a person was in possession of a prohibited item as described in section 3. Section 3, which lists prohibited items, includes items which may directly relate to protest – such as spray paint cans and poles of over 1 metre in length (to which a banner may be attached). If aggravated, an offence under this section could result in two years imprisonment. Where an offence has allegedly been committed under this section of the Act, the onus of proof is on the accused. This is in contradiction to centuries of common law jurisprudence compelling the state to prove a defendant’s guilt beyond reasonable doubt. There is also a presumption against bail for some offences committed in restricted or declared areas. Again this overturns the common law presumption in favour of bail. Further, sections under Part 2 of the Act (regarding APEC security areas) are declared to be not open to challenge in any legal forum. (APEC Act, 2007: s8)

Apart from increasing police powers, the Act states that it may be used for other purposes. ‘For other purposes’ is a phrase that allows a wide discretion. Using principles of statutory interpretation, judges might find that the Act could lawfully be used in non-APEC situations such as the 2008 Papal visit for World Youth Day, or other international events.

**Excluded persons**

Perhaps the most bizarre and disturbing sections of the APEC Act are the ones that relate to excluded persons. Section 24 of the Act refers to excludable persons and gives police the power to remove individuals from the APEC security area, those people thus becoming excluded persons who were unable to re-enter for the remainder of the APEC period. More alarmingly, Section 26 provided for the compilation of an excluded persons list prior to the beginning of the period. Specific individuals, who were determined by the Police Commissioner to be dangerous to people or property, were deterred from entering the declared areas and banned from the restricted areas. The Commissioner did not have to give any reason for including a person on the excluded persons list, nor did the Commissioner have to publish the list. Failure to publish the list did not affect the law’s validity.
Some excluded persons (including one of the authors) were sent a letter and maps indicating which areas they were prohibited from entering during the APEC period. However, if not informed of their excluded status, a person could unknowingly enter a declared or restricted area, leaving themselves open to arrest and prosecution. According to David Campbell, the NSW Police Commissioner, those on the excluded persons list should ‘know’ who they were without being told. (Campbell in Snell, 2008)

To fully appreciate how the excluded persons list operates to silence political dissent, it is useful to contextualise our discussion with a brief history which begins in Melbourne on the 18th of November, 2006 – where the G-20 meeting took place. This meeting, which comprised financial ministers and central bank governors from the world’s largest 20 economies, generated resistance in Melbourne’s streets. Although much of this protest was peaceful, the media seized upon images of activists and police engaged in scuffles at the barricades. Protesters were painted by media and politicians as ‘thugs’ (Costello in Australian Associated Press, 2007) and the Salver taskforce was set up to pursue those involved.

A media-hyped witch-hunt followed. State and Federal Police, including the Australian Federal Police (AFP) and the Security Intelligence Group (SIG) became involved in covert surveillance that resulted in the arrest of 24 adults and 4 minors, including one of the authors. Some of the alleged crimes committed include acts as non-violent as yelling “[G-20] – hands off the Pacific.” These charges are still in the process of being heard, but the presumption of innocence of those arrested was disregarded in the creation of the excluded persons list. All 28 of those charged at the G-20 protest in Melbourne became excluded persons under the APEC Act, and were therefore banned from large areas of Sydney.

Recently, Freedom of Information legislation has allowed for the publishing of details of reasons why persons were included on the excluded persons list. Of the 59 people contained within the document obtained, 28 were those persons with charges pending regarding G-20. Their involvement and arrest at the G-20 protests often appears to be the only reason given for exclusion from APEC. This clearly shows that activists were targeted before having a chance to prove their innocence in a legal forum. As NSW Greens member, Sylvia Hale asserted, the excluded persons list was ‘a device created to intimidate people who may wish to attend a protest rally during the APEC summit.’ (Hale in Snell, 2008) Other excluded persons included 11 members of Greenpeace, part of the NSW Police assessment stating that ‘Greenpeace are well known for high visibility protests including the use of banners, graffiti and projections.’ (‘Authorised as an Excluded Person’ Document released under NSW Police Freedom of Information Unit 2008) Other activist groups were also targeted, including Mutiny, Solar Generation and Sydney Environment Collective.

The creation of the excluded persons list is geared toward spatial control by altering which people can be present in public space during a particular time frame (the APEC period). The excluded persons list calls into question the meaning of public space – as public space is in part defined by an individual’s freedom to enter and exit at will. Further, as Don Mitchell argues (drawing on Lefebvre), being present in space is not the same as being able to represent oneself in space. Spaces of representation exist where the citizens of the city have a role in producing its space, and actively contribute to the city. As Mitchell explains, activism within public space is one way in which a space of representation is produced. This kind of space will never be freely given, but must be created through struggle. (Mitchell, 2003: 42)
Resistance

While many were deterred by the state’s actions, there were those inspired to voice their opinion in the face of legislative measures to exclude them. To these people, asserting the right to the city meant breaching the *APEC Meeting Act*. One activist, ‘Lou’, argued that it was important to ‘defy the clampdown’ (*Dateline*, 2007). Lou argued that the Act is:

‘…practically an invitation for civil disobedience … It’s an invitation to say “we know who is on your really stupid list, with your really stupid laws, and I am going to set foot into that zone because your laws are so stupid.”’ The way that you defeat an unjust law is to break it, because it deserves to be broken…’ (*Dateline*, 2007).

Following her comments on *Dateline*, ‘Lou’ was placed on the excluded persons list.

One method of civil disobedience that was used to ‘defy the clampdown’ was the creation of a moving counter-declared area within the Sydney CBD. On 8 September 2007, the day of the mass anti-APEC protest, members from the Construction Forestry Mining Energy Union (CFMEU) and the Municipal Employees’ Union (MEU) were concerned about the safety of some of the excluded persons who were at the march. Their concerns came following a statement by the Police Commissioner warning that excluded persons not deterred from coming into Sydney would be ‘dealt with’ (Robbins, 2007). The unionists from the CFMEU and MEU inside the protest crowd circled the excluded persons, making a ring around them to create a new area in the name of public safety—a counter-declared area for the protection of excluded persons within the declared areas. This allowed excluded persons to be involved in the demonstrations on that day. The creation of a counter-declared area signifies the production of a space of representation within abstract space, where the protesters were able to remap a section of the security zone as a place where dissent could flourish. Within the over-arching governance of the state, the unions used their own (moving) line of bodies, mimicking the police line, altering the meaning of that space to one of resistance.

Resistance to the security zonings was also attempted via the NSW courts. Alex Bainbridge, an organiser of the Stop Bush Coalition’s mass protest, challenged police obstruction of the Stop Bush Coalition’s proposed protest route (*Commissioner of Police v Bainbridge* in Snell, 2008: 26). As a tactic in preventing the protest from being within sight or earshot of the APEC meeting, the Police Commissioner shifted the boundaries of the declared areas to incorporate some of the Coalition’s route. As the route now went through a declared area the judge found in the Commissioner’s favour, forcing the Coalition to accept the route drafted by police (Snell, 2008: 26). In this case, the remapping of boundaries within the city upheld the territorial sovereignty of the state, and successfully ‘papered-over’ dissent.

Also resisting the APEC Act in the NSW court system were four Sydney men (three of whom were G-20 arrestees), who challenged the constitutional validity of the excluded persons list. In their submission, the plaintiffs argued that the exclusion of persons ‘was an unconstitutional restriction of political communication’ (Australian Associated Press, 2007), as they wanted to protest against the war, nuclear proliferation, and *WorkChoices* legislation (*Padraic Gibson & Ors v Commissioner of Police & Ors [2007] NSWCA 251*).

The justices found in favour of the Commissioner and upheld the constitutional validity of the Act, permitting the exclusion of persons. It was seen that the law served a ‘legitimate end’ that was in line with the system of responsible government (Australian Associated Press, 2007a; *Padraic Gibson & Ors v Commissioner of Police & Ors [2007] NSWCA 251*, at 12). Furthermore, it was judged that the Act did not curb freedom of communication because it
only banned a small number of potentially dangerous people from a protest in a limited area, for a limited amount of time (Australian Associated Press, 2007b; Padraic Gibson & Ors v Commissioner of Police & Ors [2007] NSWCA 251, at 10-12).

The court proclaimed that it was ‘relevant and significant that the legislation does not prohibit public protests by any person including persons on an “excluded persons list”.’ (Padraic Gibson & Ors v Commissioner of Police & Ors [2007] NSWCA 251, at 10) However, two of the plaintiffs, Padraic Gibson and Daniel Jones, were allegedly arrested at Hyde Park at the conclusion of the anti-APEC march (Snell 2008: 33). The reason given for the alleged arrest was their presence as excluded persons in a declared area (‘Police Show Force at APEC, 17 Arrests’ 2007). However, Hyde Park was never designated as a declared area (Snell 2008: 33). Soon after the incident, it was reported that Gibson and Jones were making a complaint to the NSW Ombudsman and ‘considering civil court action over their alleged wrongful arrest’ (Braithwaite, 2007).

Conclusion

Today more than ever, the class struggle is inscribed in space. Indeed, it is that struggle alone which prevents abstract space from taking over the whole planet and papering over all differences. Only the class struggle has the capacity to differentiate, to generate differences which are not intrinsic to economic growth qua strategy, “logic” or “system” – that is to say, differences which are neither induced by nor acceptable to that growth. The forms of the class struggle are now far more varied than formerly. Naturally, they include the political action of minorities. (Lefebvre 1991:55)

The city is a space produced mainly by and in the interests of capitalism. Its buildings, roads, dwellings and public areas promote and disguise capitalist ideology. The meaning of the city is multiple and fluid. It has been conveyed as a site of excitement and as one of danger. It is within this space that domination and resistance are most heightened.

As articulated by Lefebvre in The Production of Space, political action by minorities is one way that capitalist domination can be resisted. Where protest takes place, the street becomes a contested space, where the voicing of opinion also becomes a struggle over territory. The symbolism of this struggle has resulted in extraordinary measures to contain it – the APEC Act being a case in point. The APEC (Police Powers) Act 2007 (NSW) is unnecessarily restrictive of rights under the ICCPR, and what Lefebvre refers to as ‘the right to the city’. It creates an abstract space where difference may be asphyxiated. The ideology behind such legislation is linked to state power and the desire of the state to produce a sanitised and homogenised city. Those who fit the category of the ‘ideal citizen’ can enjoy a right to the city. Conversely, those who are ‘different’ may be excluded. If the state’s operation of this legislation is not challenged, the vibrancy of the city and the possibility to provide a space of resistance to hegemonic power will be constrained.

In conclusion, the APEC Act ultimately restricted rights within public space. Vakalis and other excluded persons were banned from exercising their autonomy. Vakalis was prevented from going to Sydney and voicing his opinion with thousands of other demonstrators. The city was turned into a hostile fortress via a physical and legal transformation. However, although many activists both on and off the excluded list chose not to breach the security zone, sites of resistance flourished particularly within the counter-declared area created by the unions. The seeds of Lefebvre’s utopian vision for differential space germinate within the neo-capitalist city.
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Summary Offences Act 1988 (NSW)
Commissioner of Police v Bainbridge [2007] NSWSC 1015
Padraic Gibson & Ors v Commissioner of Police & Ors [2007] NSWCA 251

Endnotes

1. Title inspired by Henri Lefebvre and Don Mitchell. Thanks also to Dr Scott Beattie for his helpful comments.
2. The APEC meeting was an opportunity for activists to get in close proximity to world leaders – who might otherwise be inaccessible and never hear their voice of protest.
3. Although it must be noted that these developments are less popular in Australia than they appear to be in the US, needing an aggressive advertising campaigns to attract customers.
4. The list concludes at (k) – which states that ‘any...things (or things belonging to a class of things) may be prohibited items’ – leaving the list open-ended.
5. The Act states that ‘orders made or purportedly made under the provision of this Part…may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.’ This would seem an extraordinary extension of power for a state parliament. A challenge to the Act in the High Court (perhaps questioning its constitutional validity) may well be successful.
6. The irony of this is that the maps clearly indicated which hotel the APEC leaders were meeting or staying in during the period – allowing protest or other action to be targeted directly at these locations.
7. It has also been recently revealed that undercover police and private security have been infiltrating community groups in Victoria scrutinising individuals involved in events such as the Palm Sunday Peace Rally. See for example Richard Baker and Nick McKenzie (2008) ‘Police Spying on Activists Revealed’ The Age October 16.
8. As required under section 23(1)(a) of the Summary Offences Act 1988 (NSW).
"The Rule of the Lawyers": Low Intensity Democracy and the United Nations in Cambodia and Timor Leste

Michael Morison
Queensland University of Technology

Abstract: Many United Nations (UN) democracy-building initiatives in the developing world have succeeded in creating only ‘low intensity democracies’: fragile hastily constructed replicas of political and legal institutions imported from the West.

In particular, the governments installed in Cambodia in 1993 and Timor Leste in 2001 satisfied the demands of the international community as expressed through the UN, but have proven prone to manipulation, authoritarianism and collapse, particularly when the real, unaddressed issues facing such nations emerge once the international community have withdrawn.

This paper looks briefly at certain aspects of these two missions to establish how the international community can better build lasting democratic institutions, an adherence to the rule of law and a respect for human rights in post-conflict situations.

It concludes that UN peacekeeping, as a vehicle for democratisation, appears not to prioritise initiatives which seek to rebuild civil society groups from community level upwards over the long-term. Rather transitional administrations appear to favour rapid and often inadequate deployment of personnel and resources seeking short-term results. Such short-term outcomes make good public relations stories but leave the communities they are supposed to benefit with little of any substance in the long-term.

“Low Intensity” and “Illiberal” Democracy

In her influential work on concepts of democracy and political transformation, Susan Marks describes the original conception of low intensity democracy as one

in which certain institutions – above all, the holding of multiparty elections and the official separation of public powers - are taken largely to suffice. A signally undemanding standard is set with regards to more far-reaching objectives, such as enhancing respect for human rights, social justice, and civilian control of the military.

Marks further indicates that low intensity democracy “lies in providing some of the institutions and procedures associated with modern democracy, while leaving established centres of power substantially intact.” Such systems may also be described as “cosmetic” democracy” or “façade” democracy.

Those observers responsible for that original conception of low intensity democracy also sought to look deeper into the structures behind the apparent façade. Indicating that
Although they may have formally instituted some of the trappings of Western liberal democracies (for example, periodic elections), in a real sense these new democracies have preserved ossified political and economic structures from an authoritarian past. Not only have they not come close to operating a political structure modelled on actual Western liberal democracies, this is not part of a long-term agenda for the future.5

The reality is that most states which have become test cases for the so-called ‘democratic entitlement’ conform more closely to what Fareed Zakaria has described as “illiberal democracies”.6 That is, authoritarian states which masquerade as democracies, largely through the charade of periodic elections to gain the recognition and patronage of the international community, while at the same time depriving their citizens of many basic rights and freedoms.

Post UN Cambodia and East Timor manifest many of these symptoms of low intensity democracy: multiparty elections which are neither free nor fair; established elites drawn primarily from the historical landscape; limited ability to guarantee human rights or social justice and a too-close relationship between the military and the government. It would also appear that they are both well along the road to becoming illiberal democracies, albeit at different stages of deterioration.

Cambodia


The mission deployed a 15,900 member UN military peacekeeping force, a civilian police monitoring group numbering 3,600 to oversee law, order and human rights, 1000 international staff, 1,400 international officials for electoral supervision purposes and approximately 56,000 Cambodians to register voters. In the process it consumed an overall a budget of US$1.9 billion.

In the aftermath of UNTAC there has been a gradual deterioration in the political and human rights situation in Cambodia. A downturn in political conditions was to be expected in the wake of the UN withdrawal and the establishment of a new multi-party system. Less expected is evidence that the new government has become a perpetrator of human rights violations itself, backed by an observable trend towards authoritarianism.

Monitoring groups such as Amnesty International, Human Rights Watch Asia and the UN Human Rights Commission have each documented a series of human rights violations linked to the government of Prime Minister Hun Sen. These analysts are particularly concerned about developments related to the silencing of individuals and political parties shown to be critical of government action.

Laws are now in force to control criticism of the government by the press and general public, to isolate the ethnic Vietnamese community in order to reinforce the position of native Khmer ruling elites, and to impose a variety of other limitations on civil rights. The government ominously describes these intrusions as ‘social reforms’ necessary for the economic development of the country. One observer has written that
There is a realisation that rapid economic growth may be achieved partly at the expense of human rights, but the increasing use of the rhetoric of ‘cultural relativism’ is designed to deflect human rights criticisms.  

It would appear that the worsening political and human rights situation is part of a broader problem not solved by the UN attempt to implant democracy in Cambodia.

The government continues to be plagued by infighting and official corruption which, combined with the administrative and physical dominance of the military, has blunted the optimism of the Cambodian people generated by the 1993 election. The long-term goal of the UN to bring democratic institutions to Cambodia if anything appears to be receding into the distance.

In his final report as UN Special Representative on Cambodia Justice Michael Kirby referred to ‘worrying evidence of a reversion to autocracy’ in Cambodian government. Outspoken critics of the government, regardless of position are increasingly subject to harassment.

This includes subsequent Special Representatives such as the most recent appointee, Kenyan lawyer Yash Ghai. In his final report released in February 2008, Ghai notes a continued deterioration in the conditions of the rule of law to the point where the current government is able to act with virtual impunity. Hun Sen has emerged as an authoritarian leader who appears to be presiding over an expanding network of familial corruption and cronyism.

As Hun Sen has grown stronger it has become virtually impossible for real opposition to emerge in order to provide credible alternative. Long-standing opposition leader Sam Rainsy, one of the most prominent opposition figures, is often forced into self-exile in France as a result of intimidation by Hun Sen elements.

On a positive note, the Cambodian genocide trials, known as the Extraordinary Chambers of the Courts of Cambodia (ECCC) have so far indicted five former Khmer Rouge cadres for their involvement in the auto-genocide of 1975-79. These include Ieng Thirith, the 76-year-old wife of Ieng Sary, and Nuon Chea, 82, Pol Pot's second in command.

The youngest among the five, Kang Kek Ieu, 65, may be the first to go on trial later in 2008. Also known as Duch, he oversaw Tuol Sleng prison, a converted elementary school where as many as 20,000 people were tortured and thousands killed.

Despite this advance, the most recent election in Cambodia on 27 July 2008, has seen the reinstallation of Hun Sen’s Cambodian Peoples Party (CPP) as expected. Widespread electoral corruption and intimidation of opponents of the CPP, including Sam Rainsy, was yet again a feature of this most recent election.

**East Timor**


This writer has previously documented his own experience working within the mission in regards to a variety of problematic issues, these included: the attitude of the UN to the important Civic Education process; the difficulties created by the use of the US dollar as the national a currency and the use of Portuguese as the national language; the problematic
application of the notion of a “government of national unity”; the failure of UN to incorporated into positions of power young and capable Timorese women and men and the failure to pursue a system of justice for serious crimes committed during the Indonesian occupation and during the 1999 militia violence.  

Continued violence and civil unrest in East Timor suggests that deeper problems at an institutional and societal level were neither addressed by UNTAET during the mission nor in its post-mission planning.

James Dunn, a former UN official in UNTAET who has returned as adviser to president Jose Ramos Horta, noted in the aftermath of the first wave of violence that

(1)he democratic system developed system under UNTAET’s tutelage…was, it must now be admitted, immature When independence came East Timor looked democratic, but the system had shallow roots. The East Timorese evidently welcomed the aims of democracy without fully understanding its political complexities, its frailties in adverse economic conditions like those endured by independent Timor Leste. We gave insufficient attention to factors that were bound to threaten the functioning of democracy – the impact on a weak economy of the diminished foreign presence, with the reduction of the UN mission; the failure to establish a disciplined defence force unswerving in its loyalty to civilian rule. Then there is the time bomb character of continued massive unemployment, and the related urgent need for the new state to develop its fragile economy…

In the meantime East Timor has seen the recent rise and fall of its own authoritarian leader in the shape of FRETILIN leader Mari Alkatiri. A leader who also appeared to be presiding over and burgeoning network of patronage and corruption.

Kim Holthouse, looking behind the distortions created by Western, and in particular Australian, media of the recent crises in East Timor, has asked important questions as to how and why figures such as Alkatiri and Interior Minister Rogerio Lobato emerged as post-independence leaders if their political legitimacy was so weak.

Having been on the ground in East Timor during the election I would suggest that this is because the UN only succeeded in installing, or perhaps re-installing, a pre-existing elite under FRETILIN – which successfully sold itself as the traditional “bearer of the nation”. In relation to so-called the Lorosae - Loromonu (East/ West) rivalry, it is possible that UNTAET, perhaps inadvertently, installed a Lorosae elite, thereby encouraging the alienation of many younger Timorese identifying as Loromonu?

In this context the bipolar nature of the western democratic model encourages the formation of large political blocs in opposition to one another, which consequently tends to encourage the emergence of dominant political parties, thereby alienating smaller interest groups.

From the perspective of the young in East Timor the effect of this alienation has been profound. The young were shut out of meaningful participation in the state and their Bahasa language skills and Indonesian education were devalued, thereby creating a wellspring of dissatisfaction with post-UN East Timor to be tapped to explosive effect.
Questioning the “Rule of Law” model

The democratisation project in this new century is a grand unfolding experiment, the outcome of which remains uncertain, and not particularly promising if it continues on its present course.

Cambodia and East Timor have neither a lengthy history nor extensive experience with democratic government. There is no absolute proof that pure democracy, as defined by the artificial creation of a multi-party system and the conduct of an election, is entirely appropriate for local conditions.

In this context some question whether the democratisation process can, or should, be undertaken at all. The issue of appropriateness is a crucial one often overlooked by outside observers and well intentioned international institutions. In a lengthy and insightful discussion of this important issue of appropriateness, Claus Offe notes in the context of post-communist transformations that

Only a minority of...societies can be said to have at their disposal a repertoire of knowledge and shared experience from their own past, capable of providing political and institutional orientation. Moreover, the transition from state socialism to capitalism and liberal democracy has neither been tried nor accomplished before...the envisaged future was not based on a model drawn from these nations own past, nor was it conceived as a locally born program. The design of the future was imported.14

In some cases the importation of these systems has not taken place because they were either requested or desired but because Western governments saw fit to foist their governmental and legal systems on these countries as rapidly and as comprehensively as possible. US aid agencies in particular make political and legal reform central to the provision of aid. In other words the systems were

...adopted not only because no locally elaborated alternatives existed, but also because exactly this “Western” combination of standards and objectives was presented as a precondition for the badly needed assistance and cooperation from Western…partners of the transformation countries…. Instead of an incremental growth of free economic and political institutions which, in the West, were promoted over an extended period of time by various social and political forces that typically valued these institutions for their own sake...15

The result is an artificially accelerated process which, when combined with so many other revolutionary economic and social changes, may be too much for a political, legal and social system to cope with in a short space of time.

Indeed Offe goes on to suggest that the system and its subjects may never be fully receptive to such a major redesign to their political and legal world view. He believes that while in the short term

...democratic institutions and economic resources can be “transplanted” from the outside world…the civic “spirit” or “mental software” that is needed to drive the hardware of the new institutions is less easily influenced by external intervention. The rise of a robust “civil society” cannot be initiated from the outside.16

On a more specific level some observers have commented that the successful creation of democracy in Cambodia and East Timor may have required more than a temporary western
presence, calling for UN peacekeeping missions to be lengthened into longer term arrangements.

However, post-UN developments in Cambodia and East Timor suggest that full democratisation perhaps called for an impossibly sudden shift in the national psyche towards faith in the aims and principles of western democracy, a system of principles which took root over a period of centuries in a vastly different European context. Such a system has never significantly shaped events in Cambodia and East Timor and is resisted by many of the other governments within the region.

The authoritarian trend in Cambodian and East Timorese politics also points to a broader dilemma faced by the UN in attempting to establish democracies in countries with a differing political and cultural tradition: that there is the very real possibility that no amount of international influence, brought to bear through supervised elections and a comprehensive re-orientation of the state, will automatically create a democratic system.

**The Future of Democratisation**

Therefore, if this process is to be undertaken at all, can it be improved in any way?

UN peacekeeping, as a vehicle for democratisation, appears not to prioritise initiatives which seek to rebuild civil society groups from community level upwards over the long-term. Rather, transitional administrations appear to favour rapid and often inadequate deployment of personnel and resources seeking short-term results. Such short-term outcomes make good public relations stories but leave the communities they are supposed to benefit with little of any substance in the long-term.

James Dunn's comment on contemporary East Timor points to a deep flaw in the democratisation project: that it cannot be done effectively using short-term initiatives and that it cannot be done using a ‘top-down’ approach.

If the international community is to engage in this process at all it must be done appropriately and at a measured pace in order produce effective, lasting and stable results. This means long-term commitments to the rebuilding of civil societies, properly assessed for their relevance to local conditions, practicality of application and genuine ability to contribute real skills to the local population.

This problem not only applies to these particular UN missions but to all democratisation efforts undertaken by the international community. To serve the interests of true self-determination, democratisation must aim towards a ground up approach. This means genuine long-term capacity building by supporting existing civil society groups from village level upwards, as opposed to the rapid imposition of government from the top down.

It also means long-term commitments to justice and reconciliation, to encouraging civil-society groups, to recreating an understanding and respect for the rule of law, to rebuilding legal infrastructure and ultimately to engendering a respect for the diversity of opinions that go to make up a genuine democracy.

On a more fundamental level questions need to be asked about whether Cambodia and East Timor actually wanted the particular model of democracy imposed on them in the first place. There was no large-scale consultation done prior to the mission in this regard.
In this context the international community may need to formulate the process in a completely different way, thereby reversing the model as we currently perceive it. In other words it may have needed to look at how Western democratic structures can to adapt to existing Cambodian and East Timorese systems of government and dispute resolution.

In most cases UN missions consist of structures imposed from above, which emphasise initiatives devised primarily by state actors as expressed through the UN. This often overlooks the crucial role of civil-society groups, social movements, NGO’s and other non-state actors both within and outside the state.

The solutions offered by UN electoral initiatives often appear driven by a legalistic and regulatory mindset which emphasises the imposition of Western-style constitutional framework, Western-style legislative systems and Western-style judicial and policing systems. This could be described as the “law and order” model or the “rule of the lawyers” model.

The irony of the imposition of the “rule of the lawyers” model is that it often results in the installation or reinforcement of a pre-existing elite, thereby alienating large sections of the population, particularly the young. This certainly appears to be the case in East Timor and is probably a major source of its present difficulties.

Balakrishnan Rajagopal, a member of the Third World Approaches to International Law (TWAIL) network of scholars, and a former UN lawyer himself, has observed that

“democratization has supplanted modernization as the discourse of transformation in the Third World…(i)f modernization theory was based on the economic backwardness of the Third World, democratization theory is based on its political backwardness”17.

Seen from the perspective of the developing world the discourse of democratisation, often using the language of human rights and good governance, has sought to position itself as the approved form of liberation or resistance in the developing world. Seen through the prism of classical development theory, democratisation has sought to replace the old development rhetoric of modernisation with a new discourse of democratisation.

This has given rise to a veritable democratisation industry populated by highly paid professionals working for international organisations, multilateral and bilateral aid programs and private foundations seeking to effect social transformation in the third world. This all amounts to a grand experiment the outcome of which is still very much uncertain. Rajagopal further notes that

Whatever may be the immediate purpose in establishing peace operations – such as a desire to secure a cease fire or to enable the transition to a to a post-war phase – the net result of these operations has seen the most intense management of popular resistance, the wholesale modernisation (read westernisation) of political and economic structures in the Third World and a tremendous expansion in the size and power of international institutions.18

The bias, reinforced by international law, towards the West and towards elites as the chief engines of international legal transformation ignores the important role of ordinary people in the democratisation process. The UN must challenge the orthodoxy that says international law
and international initiatives must be seen through the prism of state actors, international norms and international institutions.

In addition to the pivotal role played by civil society groups and the young a new perspective will take into account the grassroots social and political movements which have emerged to highlight the globalising and homogenising nature of international institutions such as the UN. An institution which, ironically, is deeply undemocratic in its own constitution and functioning.

These social movements may also be characterised as sources of resistance, as personified by the thousands of young people who take to the streets of Phnom Penh and Dili demanding change and a political voice. In many ways this resistance expresses a loss of faith or suspicion of the hidden machinations not only of national political entities but of international actors such as the UN. In the future it will be essential to understand international law, human rights, democratisation and multilateral peacebuilding initiatives within the context of these social movements.

It is only by addressing the challenges posed by these movements that we may begin to understand why the democratisation movement is not succeeding in creating stable democracies or engendering a genuine respect for human rights and the rule of law across the globe.

The democratisation efforts of the international community, as expressed through the UN, would therefore benefit from an alteration of perspective. A change from the existing top-down or “rule of the lawyers” approach, to a foundational approach which encourages a respect for the natural growth of democracy from its grassroots origins. An approach which encourages the emergence of, and a primary role for, civil society groups including women and young people, which necessitates long-term involvement and which more closely replicates the natural evolution of legitimate systems of localised representation into national government.

Endnotes
3. Ibid.
4. Ibid.
5. Gills, B et al, 2003: 3.
13. Ibid.
15. Ibid.
18. Note 16 at 137.
19. Note 16 at xiii.
The SIEV X Memorial: Remembering Loss, Recognising Human Rights

Susan Andrews
Australian National University

Abstract: On a Sunday afternoon in October 2006 between two and three thousand people gathered by the shores of Lake Burley Griffin in Canberra to temporarily raise and hold in place a memorial consisting of three hundred and fifty three painted and inscribed white poles. Each named a person who, in October 2001, drowned when their boat sank in the waters off Indonesia on its way to Australia. This tragedy has come to be known as the SIEV X (Suspected Illegal Entry Vessel, unknown) incident. The SIEV X was a small fishing boat carrying refugees mainly from Iraq and some from Algeria, Iran and Palestine, who were seeking to join family members already in Australia. Most of those who drowned were women and children, including newborn babies and their mothers.

In this paper I discuss the SIEV X memorial, its coming to Canberra as an unofficial work of memory and a counter memorial – located outside but implicitly connected to the landscape of official memory in the national capital. The memorial acknowledges personal loss and the importance of collectively bearing witness to traumatic events. Post 9/11 this memorial raises questions about who is human and who is grievable, especially in the context of the so-called war on terror, and Australia’s controversial border security policies. I examine the processes of the memorial’s production and its highly contested installation in the national capital. I reflect on how the memorial, now more permanently, if temporarily ‘in place’ in Canberra, highlighted Australia’s official disregard for our international obligations and human rights laws. The memorial draws attention to the broader politics of human rights issues and the political conditions that allowed such a tragedy to occur. It shows how widespread community activism impacted on the national conscience in the face of Government resistance to the SIEV X issues and the memorial itself.

Keywords: Human rights, asylum seekers, SIEV X, memorials.

Introduction

The SIEV X Memorial (Fig.1) stands in Weston Park overlooking the waters of Lake Burley Griffin in the centre of Canberra. Its three hundred and fifty three white poles trace an undulating line along the hillside down to the lake. It commemorates the 353 asylum seekers - 146 children, 142 women and 42 men - who drowned on the night of October 19 2001, when the small wooden boat on which they were traveling from Indonesia to Christmas Island ran into a severe storm and sank about fifty nautical miles south of the Sunda Strait. There were only about forty two survivors rescued the next morning by Indonesian fishing boats. That small boat and its human cargo, was apparently being tracked by Australian military and civilian intelligence but no contact or assistance was ever made. It is now known as the SIEV X (Suspected Illegal Entry Vessel-Unknown). It was designated ‘unknown’ because it did not actually reach Australian territory and so became officially not knowable, as were the
refugees it was carrying. They were mainly women and children desperate to join their men folk already in Australia.

In this paper I discuss the nation wide community-based project that created the SIEV X memorial in the years following the tragedy, and its final installation in Canberra. I also acknowledge that since the sinking, there have been many individual and collective commemoration ceremonies and related cultural events held around Australia. There is also a SIEV X memorial on Christmas Island itself built by the local community in 2005. I focus on the process leading up to and including the moment in Canberra, in October 2006, when this memorial was temporarily put in place by Lake Burley Griffin, and then returned to be installed for twelve months from 2 September 2007. The first installation was a unique and powerful moment in individual and collective cultural memory that brought together community groups from around the country - those who produced the memorial, as well as many concerned citizens from the wider community. Among the grief it was also a politically charged moment for many people including many who chose to be part of it. Since the project was initiated in 2002 by a group in the Uniting Church, it has drawn support from people from very different political, spiritual and philosophical backgrounds - all concerned about this particular tragedy and what it represented about Australia’s official policies of actively turning back asylum seekers in direct contravention of our obligations under the Universal Declaration of Human Rights, the Refugee Convention and the International Convention on the Safety of Life at Sea.

It is beyond the scope of my discussion to go into the detail of the events of the sinking of the SIEV X and their aftermath. They remain highly contested and shrouded in government obfuscation. From mid 2001 the government had been conducting maritime surveillance between Indonesia and Australia – but “Operation Relex”, as it was called, was not about search and rescue. It was a military operation launched by the Australian Government on September 3 2001 to block the entry to Australia of asylum seekers arriving by boat. As David Marr and Marion Wilkinson claim,
This border protection mind set had, since the arrival of the Tampa [in August 2001], blunted basic humanitarian concerns in both the military and the bureaucracy about the fate of boat people (Marr and Wilkinson, 2003:228).

Some of the survivors of the sinking of the SIEV X talked about struggling to keep afloat for many hours overnight in the rough, oil polluted water, by holding on to bits of wood, and in some cases dead bodies (Zable, 2003:31). They spoke of seeing children dying of thirst and newborn babies and their mothers who drowned:

“Something I witnessed left a strange impression, a baby with umbilical cord still attached to the mother was amongst those who drowned” (Person 1: http://sievx.com/articles/disaster/KeysarTradTranscript.html).

One of the men recollected how he “…held [his] wife and daughter when they fell in the water, then they fell out of my arms and I could not find them until they all drowned and their bodies floated. I did not drown because I held on to a piece of timber …” (Person 2: http://sievx.com/articles/disaster/KeysarTradTranscript.html).

The white, painted timber poles of the memorial are marked with illustrations and the names, where known, of each asylum seeker, along with the name of each community group who created the illustration for that person. Each drowned asylum seeker, along with each of the over two hundred community, church and school groups responsible for producing the art work, are thus symbolically brought together on each memorial pole now located on Australian ground. One particular pole is the work of the students of Our Lady Queen of Peace School in Albert Park, South Australia (Fig. 2).

Fig. 2 Memorial pole for Donya Sobie, November 2007.
Photograph: Sue Andrews
The inscription remembers Donya Sobie, aged 14. It reads:

How do we know when it is dawn? When we have enough light to recognise in the face of a stranger that of our sister.

In the context of the Australian government’s refusal to publicly issue the list of names of those on board the SIEV X, and its refusal to allow any of the survivors to speak at the only public inquiry into the sinking (Kevin, 2004:117), this inscription reiterates a key theme of the memorial project which is to acknowledge and speak the names, to recognise all those who drowned as human beings who have rights and who we must mourn. Just as Judith Butler has asked “in the light of recent global violence…, who counts as human? Whose lives count as lives? And… what makes for a grievable life?” (Butler, 2004, p20), this memorial asks for, perhaps demands, that recognition.

That is, can ‘we,’ as an imagined Australian nation, mourn those who are ‘not Australian’, who did not give their lives in war for the nation, but who nevertheless wanted to ‘become Australian.’ Suvendrini Perera has argued that in the post 9/11 world

the boundaries of national belonging and citizenhood are reconfigured through initiatives like… the ever-expanding measures for ‘Border Protection’ in Australia. Denationalisation and deterrioralisation are the key technologies in the new consolidation of national limits (Perera S, 2002:1).

These strategies produce a place she calls ‘not Australia,’ so that asylum seekers coming to Australia are constructed as ‘non people … the ones whose suffering may not be seen or recognized” (Perera S, 2002:2). The memory work of those involved in the production and installation of the SIEV X memorial sought to re-humanise asylum seekers who the federal government at the time had deemed to be non-human and having no rights. In his speech at the opening of the temporary installation of the memorial, the ACT Chief Minister Jon Stanhope spoke directly to this issue when he said:

The story resonates here because this was an Australian loss. In a sense, although they never reached their destination these were members of our community, because that was what they wanted so badly to be (Stanhope, 2006:3).

The Memorial Project

The SIEV X National Memorial Project was launched in 2002 at Parliament House in Canberra by Steve Biddulph, from the Uniting Church, and Greens Senator Bob Brown. Biddulph and others in the community of the Uniting Church initiated this project and early on established its interpretive framework. He envisaged the memorial as being primarily an appeal to us as a moral and compassionate community, rather than a direct call to political action:

The political and justice aspects of this are important, but that is not our job. What we are doing with this memorial is saying – these lives mattered. And every Australian should know about these terrible events. We need to make sure nothing like it ever happens again (Biddulph, 2006).

Biddulph’s vision for the project has been sustained, but such matters are rarely within the control of the producers of memorials, particularly at a time when, after the events of 9/11, the government was conducting a campaign of fear around issues such as border protection,
terrorism and asylum seekers. As Julie Stephens claims, “the memorial simultaneously encourages and suspends a directly political reading” (Stephens, 2008:44). It asks us to mourn such terrible loss of life and to think about the circumstances of that tragedy and the political context in which it happened. Indeed as the memorial’s designer, Sue-Anne Ware noted, “it evolved into a form of public protest and grieving” (Ware S, 2008:71).

The project began as a nationwide art collaboration, inviting secondary school art classes across the country to submit designs for a national memorial to the 353 dead. The aim was to build a memorial site on the shores of Lake Burley Griffin “to develop Australia’s conscience and awareness of the needs of people fleeing terror beyond our shores” (www.sievx.com), making implicit connections between the shores of the nation, the ocean which took so many lives and the shores of the lake at the heart of the national capital and the site of government. The artwork was brought together in traveling exhibitions held on the third and fourth anniversaries of the sinking, serving to raise awareness about the SIEV X, not just for those involved in producing the artwork, but for the wider community. At the exhibition on the fourth anniversary, at the Canberra City Uniting Church, the memorial shape and design was announced. Mitchell Donaldson, a 14 year old school boy from Brisbane had produced a ‘winning’ design concept – one which gained most enthusiastic support from the public. Mitchell’s design called for the outline of the vessel, with the real dimensions of the boat, formed from poles remembering each person who died. This became the basis of the actual design. It was modified because 353 is a large number of people. So a ‘procession of poles’, incorporating the boat shape, was necessary to fit them in. The impact and scale of loss of life were an important message in the memorial’s role (The SIEV X Memorial: 6). Since its more permanent installation last year, visitors are invited to stand inside this space of the outline of the vessel and to try and imagine being on that small leaky boat with 400 others (Fig.4). Through its material representation of absence it brings the tragic events into our presence. It also asks us, as viewers to identify and empathise with the victims, as well as acknowledge the work of the many students who created the memorial.

Fig.3. The SIEV X vessel section. November 2007. Photo: Sue Andrews
It was hoped that by the fifth anniversary in October 2006, the memorial could be placed in position by the lake for a three week period. However because of jurisdictional bureaucratic tensions between the Commonwealth and ACT governments, permission was only granted to put the poles in place for one day rather than the three weeks that had been requested. As a result the memorial project gained media attention, promoting some hostile reactions as well as wide public support. One of the project coordinators, Beth Giddings, had already noted the challenges of how to remember those people who drowned coming here. “We’re used to the idea of the fallen soldier and we may not yet know how to deal with refugees.” (Giddings, 2005). The president of the RSL foreshadowed exactly this unease when he warned that “it certainly shouldn’t rank alongside the memorials that are already around Lake Burley Griffin – it would be totally out of place [among] what are essentially Australian memorials” (Phillips, 2005), invoking nationalist sentiments about just who can and cannot be officially remembered.

The Raising of the Poles

The raising of the poles of the memorial was the culmination of the nationwide community based process that brought a diverse group of people together for a shared, multifaceted performance of grieving, witnessing and remembrance. In what Steve Biddulph described as a miracle of human collaboration, on the hot Sunday afternoon of 15 October 2006, the 353 poles were brought to the shores of the lake, where nearly 3,000 people gathered. There were speeches from Aboriginal elders, community and church leaders and politicians, and a local Tongan choir sang. Three of the men who had lost family in the sinking were also present, bringing their particular grief and loss into the commemoration ceremony.

Fig 4. Memorial in waiting. October 2006. Photograph: Sue Andrews
Before the official proceedings began the poles were laid out on the ground along the lines of the shape of the memorial to be, as if laying out the dead (Fig.5). We walked around and among them, reading the small pictorial narratives representing connecting threads between an Australian school or community group and each drowned asylum seeker. Then in a solemn and silent procession, to the sound of a slow drum beat, each group walked to their pole, lifted it up and held it in place (Fig.6). Some people held them close, these round white smooth illustrated pieces of timber. Many were moved to tears. It was as if they were holding these absent bodies in their arms. The lake was tranquil and meditative in contrast – marking the tragedy as both real and unimaginable.

This public performance of memory by a diverse group of people on that afternoon by the lake also represented a political statement of commemoration – bringing those drowned refugees into being through a ceremony of recognition and bearing witness. Through our embodied connections with the dead and their relatives, with each other and those not able to be present, a profoundly moving memorial was created. At the end of the afternoon the poles were lowered and the memorial removed, not to be returned until twelve months later, leaving the grassy slope down to the water’s edge empty and quiet in the late afternoon sun, except for the swans and the ducks. Everyone who had participated – officials, politicians, Aboriginal elders, school and community groups, relatives of those who had drowned, hundreds of others who, like me, had encountered the memorial for the first time - carried with them their particular experiences and memories of that day.

In September 2007 permission was granted to install the memorial for 12 months, creating more political controversy in the lead up to the November federal election. The memorial still stands at the lake quietly among the magpies, kangaroos and the passing time of the seasons, visited by those who seek it out and perhaps those who come across it as they visit Weston Park. On the hill by the lake, the poles, many with painted images depicting iconic Australian landscapes and animals (Fig 7), represent absence, loss, and death. They have become ‘stand-ins’ for each drowned refugee, marked with a name and connected to the Australia, and their families, they did not reach.
The memorial poles arranged in a family grouping are especially affecting (Fig 8). These have the victim’s name in Arabic script and a simple stenciled pattern and were created by bereaved husbands and fathers for their family members. The small poles representing children are grouped together with larger poles representing adults.
This memorial draws attention to the violation of the human rights of a group of primarily women and children who were seeking asylum and a safe haven with their families in Australia, and the attempts by government to deny their very existence. All those who participated in its production and installation have ensured that these refugees are humanised and their rights recognised – for, as Judith Butler notes, “if a life is not grievable, it is not quite a life; it does not qualify as a life and is not worth a note” (Butler, 2004:34). The public support for the memorial, and its non-monumental form, posed a challenge to the official silences of the federal government and its attempt to maintain the unspeakability of the events and those who died. It also challenged ideas of who can be mourned by the nation in the same space as the official war memorials and monuments that are a central feature of the Canberra landscape. Rather than commemorating heroic figures of war and conflict, usually men, its subjects are victims, in this case predominantly women and children.

Fig 8. Memorial by lake, March 2008. Photo: Sue Andrews

This is a people’s memorial by citizens for civilians and all the more potent because of that. It is a testament to past events of which many are ashamed, while holding some hope for a better future in relation to our treatment of asylum seekers, especially ‘boat people’. Whatever happens to the memorial later this year is still unclear, but the events so far and its current - albeit temporary - presence are important in keeping the issues on the political agenda. Julian Burnside has reminded us that “human rights are for all people, not just our friends and family. The unpopular, the unworthy, the feared and the despised are all to be treated as human beings, because they are.” (Burnside, 2007:163). The public event of placing the SIEV X memorial in Canberra constituted an important moment of community activism that incorporated personal grief and public witnessing in the context of the local, national and transnational politics of refugees and human rights.6

References
Acknowledgements

Thanks to Judy Singer for suggesting that I present my work on the SIEV X memorial at the Activating Human Rights and Peace conference. And to Gillian Hunt for important conversation about her involvement with the memorial project.

Endnotes

1. Tony Kevin coined the name ‘SIEV X’ and brought the SIEV X disaster to the attention of the Senate Select Committee on A Certain Maritime Incident (CMI). His website includes his speeches and writings on SIEV X. http://tonykevin.com.au/

2. For example: Hannie Rayson’s play Two Brothers, (2005); Version 1.0’s satirical theatre production, A Certain Maritime Incident, which played in Sydney and Canberra in 2004; Song “All God’s Beggars” Lyrics Arnold Zable/Kaveesha Mazzella, Silver Hook Tango,(2007); and the film Hope (2008) directed by Steve Thomas.

3. I thank Dr David Corlett for informing me about this important memorial.


5. For detailed accounts of the political context and of the tragedy itself see Tony Kevin’s book A Certain Maritime Incident. The Sinking of the SIEV X (2004) and his website; David Marr and Marion Wilkinson’s book Dark Victory (2003), survivor accounts on the SIEV X Website and the proceedings of the 2002 Senate Inquiry into this and the ‘children overboard’ affair http://www.sievx.com/testimony/

6. The website of the National Capital Authority lists all the official memorials and their location in central Canberra: www.nationalcapital.gov.au/visiting/attractions/anzac_parade
The Sydney Medically Supervised Injecting Centre Trial: social justice and the politics of disgust

Meredith Kayess  
Southern Cross University

Abstract: The Sydney Medically Supervised Injecting Centre (MSIC) trial targets street-based injecting drug addicts around Kings Cross. Informed by harm minimisation principles, the centre provides (often) socially marginalised citizens a hygienic, medically supervised place to inject drugs (as well as access to a needle exchange, information and training on safer injecting practices, and health service referrals). Humanitarian and social justice values are evident within the trial’s aim to minimize harm associated with public drug injecting. However, things are messier than they appear at first glance. In responding to the crisis of open drug markets and street based injecting around Kings Cross, the Sydney MSIC plays a role in fabricating this problem. The Sydney MSIC problematises potential clients and seeks to sanitise public space, by removing public drug injecting episodes out of sight, to a private, medically supervised space. In this paper I suggest it is not a matter of the Sydney MSIC being either an innovative humanitarian intervention or a regulatory strategy aimed at control and sanitization. Instead, these qualities sit in tension within the public health intervention, posing a conundrum from a social justice perspective.

Keywords: Medically Supervised Injecting Centre, harm minimisation, risk

The Sydney Medically Supervised Injecting Centre (MSIC) tends to be viewed via polar opposite perspectives. Those who oppose the trial cast it as little more than a 'shooting gallery' sending the wrong message by encouraging the desperate in their addictions. And supporters often take up reflex perspectives extolling a benevolent institution, at once value-free and progressive. Both renderings flatten out the complexities of a public health intervention made up of an uneasy coalition of stakeholders. In this paper I contend that as a harm minimisation strategy, the Sydney MSIC has significant strengths and social justice implications. However, while providing medical supervision to socially marginalised citizens, the trial also aims to cleanse public space of these individuals. While driven by good intentions, in responding to 'the problem' of street based drug injecting, the MSIC unintentionally helps represent clients as problematic, chaotic individuals, unable to self-choose, or manage risk. An underlying repulsion towards the practice of self-injecting drugs textures the Sydney MSIC, evidenced by an impulse to constrain, regulate and transform clients. I argue it is not a matter of the Sydney MSIC being either an innovative humanitarian intervention, or a regulatory strategy. Instead, both these aspects of the trial sit in tension with each other, posing a conundrum from a social justice perspective.

This paper is part of a larger research project about the Sydney Medically Supervised Injecting Centre (MSIC) trial. A highly controversial public health intervention, the Sydney MSIC can be viewed as a pragmatic response to a significant public health issue. During the 1990s a safe injecting facility had been mooted as a viable response to the unfolding ‘crisis’ of injecting drug use in New South Wales (Freeman et al. 2005). High rates of heroin overdose (358 opiate overdoses in NSW in 1998), open public drug markets and private
injecting facilities (shooting galleries) in Sydney during this decade characterized this crisis (http://www.injectkx.uca.org.au/theology.html; Freeman et. al. 2005, 173; Zajdow 2006). At the 1999 NSW Parliamentary Drug Summit delegates passed a consensus vote recommending a supervised injecting facility (SIF) to address public health and public order issues caused by public drug injecting conduct, and the NSW Government accepted this recommendation on a trial basis (Freeman et al. 2005, 175; NCHECR 2006, p.2). The Uniting Church's Wayside Chapel was a pioneer in grass roots responses to street based drug injecting around Kings Cross via the (unofficial) safe injecting facility, the Tolerance Room, established in 1999 (prior to the Drug Summit). It was in May 2001 that the Sydney MSIC opened. The establishment of the Sydney Medically Supervised Injecting trial was not without opposition, and it is important to acknowledge the significance of its establishment and ongoing service delivery.

The ongoing trial status of the Sydney Medically Supervised Injecting Centre is a key factor shaping this public health intervention. Relevant 1999 NSW parliament legislation provided for a license to be issued for a medically supervised injecting centre on a trial basis for 18 months. While the Sydney Medically Supervised Injecting Centre maintains clinical records and operational data, it is a separate group of experts who evaluate the trial. The National Drug and Alcohol Research Centre played a key role in establishing evaluation protocols. Evaluators provide quarterly process reports measuring the efficacy of the trial. The Final Evaluation Report delivered October 31 2003 was comprehensive, measuring the trial according to perceived impact on public health, treatment uptake, client health, public amenity, drug dealing, drug associated crime, and economic efficacy (Freeman et al, 2005).

Upon evaluation in late 2003, the trial status of the Sydney Medically Supervised Injecting Centre was extended until 2007. However, in 2007 the NSW government further extended trial status of the centre until 2011, but imposed new provisos. The Sydney Medically Supervised Injecting Centre has been set 'productivity' benchmarks, including the requirement it meet at least 75% of its client load as of 2007 to maintain its funding until 2011. Trial status brings with it stringent independent evaluation processes, and uncertainty coupled with a sense the NSW government is offering a provisional, tentative support for the institution.

For those unfamiliar with the Sydney MSIC, operation figures provide a snap shot of the service since establishment in 2001. The latest Evaluation of Service Operation and Overdose- Related Events undertaken by the National Centre in HIV Epidemiology and Clinical Research (NCHECR) notes that between 2001 and April 2007 the centre opened on average 10 hours a day, on 2,163 days, and facilitated 391,170 visits to inject drugs (NCHECR 2007, p.7). Furthermore, as of April 2007 the centre had 9,778 clients registered to use the service, and averaged around 181 visits a day (NCHECR 2007, p.7). It is a fair assumption that the majority of these injecting episodes are likely to have otherwise taken place in public places around Kings Cross, possibly while alone. The Sydney Medically Supervised Injecting Centre is an innovative and unique service in Australia, providing medical supervision while clients self inject drugs. Notwithstanding variations (such as heroin drought around 2001) the most commonly injected drug in the MSIC since opening has been heroin (62%), followed by cocaine (14%), other opioids (12%), and meth/amphetamines (6%) (NCHECR 2007, p.7). The Sydney MSIC is a clinical setting, looking not unlike a small hospital ward, with stainless steel injecting bays separated by partitions.

The Sydney Medically Supervised Injecting Centre trial is framed by the NSW government as just one strategy aimed at reducing harm associated with drug use in NSW. While unique as a service in Australia, the trial operates in a context long informed by harm reduction approaches to drug and health 'problems'. The precondition of the Sydney MSIC, the contextual shift that made it ‘thinkable’ in policy terms in the first place, can be traced back to
the 1980s when harm minimisation strategies emerged in response to the HIV/AIDS epidemic. (Freeman et al 2005). As such, the Sydney MSIC emerged out of a national and state health policy context strongly (but not unanimously) shaped by harm reduction philosophy. Today our National Drug Strategy combines strategies aimed at supply-reduction, demand-reduction and harm-reduction. Australian academic, Deborah Lupton (1999) notes that harm reduction approaches generally fall into either reducing harm to individuals, or reducing harm to the wider community. A harm reduction strategy, the Sydney MSIC is noteworthy because it aims to do both. This dual purpose is illustrated by on the Sydney MSIC website where it characterizes its ‘key benefits’:

- Reduce the morbidity and mortality associated with drug overdoses
- Reduce blood-borne infections including HIV, hepatitis B, and hepatitis C
- Enhance access for people who inject drugs to drug treatment, health and social welfare services
- Reduce the ‘public nuisance’ associated with drug injecting in streets, parks and other public places such as discarded needle syringes and other injecting paraphernalia (http://www.sydneymsic.com/what_we_do)

To be successful, supervised injecting facilities need to meet the needs of a range of stakeholders with competing demands (Zajdow 2006). In the case of the Sydney MSIC this includes the local community, clients, user groups, politicians, media, drug and alcohol workers, police, local council, the chamber of commerce, and others (Zajdow, 2006). The above 'key benefits' well illustrate the potential tensions for the Sydney MSIC trial as it aims to both enhance access to services for potential clients and reduce 'public nuisance' experienced by the wider community.

A realistic and pragmatic approach characterizes the Sydney MSIC, and is arguably a key strength of the intervention. The Sydney MSIC trial identifies its own service delivery as progressive, value-free, scientifically rigorous, and “transparent, legal and up-front” (Walker 2000). Furthermore, according to then medical director, Dr Ingrid van Beek, the Sydney MSIC aims to provide a “balanced and humane approach to public health and public order issues associated with street-based drug use in Kings Cross” (van Beek 2003, p.5). Medical supervision is represented as providing a professional and scientifically rigorous clinical context. It is significant that unlike Zero Tolerance approaches, the Sydney MSIC does not set abstinence as a pre-requisite to accessing services. Arguably, the use of abstinence as a prerequisite to access health services is normative and exclusionary, using sobriety as a moral goal. Admirably utilitarian in contrast, the Sydney MSIC targets clients when they require support, rather than at an idealised, possible drug-free moment. And from a social justice perspective, it is noteworthy that the MSIC trial does not insist on abstinence, instead bringing high risk conduct- injecting often illegal drugs in public, aseptic, likely hurried and solitary circumstances- into a safer, medically supervised context. In this way, like most harm minimisation approaches, the Sydney MSIC presents as a pragmatic, straightforward option (Keane, 2003). It is important to acknowledge the very strong intention of the Sydney MSIC to provide a respectful, non-judgmental and accessible service to those who self inject drugs in public places around Kings Cross. Arguably, accepting drug injecting conduct and seeking to make it safer has the potential to extend the reach and accessibility of medical services.

An oft-cited benefit of the Sydney Medically Supervised Injecting Centre is its ability to reach socially marginalised individuals who might otherwise be outside the ambit of public health initiatives. According to Dr Ingrid van Beek (founding medical director), the Sydney MSIC widens the public health net by actively targeting the “most marginalized part of the IDU population”, the “heavily heroin dependent, street-based, sex working IDUs who dwell in
Client profile figures from 2007 for the Sydney MSIC substantiate claims the trial reaches some of the more socially marginalized in the Injecting Drug User Community. Figures indicate most clients are male (74%), long term injecting drug users (average of 14 years experience), and older- at an average age of 33 years (NCHECR 2007, p.7). Socio-demographic characteristics indicate 60% of clients are unemployed, 71% had not completed high school, 23% had been imprisoned in the last 12 months, and 24% were in unstable accommodation (NCHECR 2007, p.7 & p.15).

Significantly, recent figures also show that 72% of clients of the Sydney MSIC do not access any other local IDU services (NCHECR 2007, p.15) and 75% do not access any other low threshold service (van Beek 2007, pp). Clearly the centre is reaching long-term and socially marginalized injecting drug users who otherwise may not access health services. From a social justice perspective, the Sydney MSIC evidently helps make health care services accessible and palatable to citizens who might otherwise be outside the reach of other public health strategies.

While it is difficult to measure the exact benefits that accrue from the Sydney Medically Supervised Injecting Centre, it is, I suggest, hard to over estimate the value of a clean, dry, unhurried, light and supervised context in which to self inject drugs. Injecting in public places such as alleyways, public toilets, parks and outdoor stairways can pose significant challenges to drug injection. Trying to avoid observation by passers by might lead to hurried injecting, missed veins and place injectors out of sight of those who could help if required. Perhaps, management of drug overdoses offers one simple indicator of the efficacy of the trial. During the six years it has operated, the Sydney MSIC has pioneered oxygen treatment of opioid overdoses, managing 2,106 overdose-related events on the premises, without any fatalities (NCHECR 2007, p.7). Approximately half of these overdoses would have otherwise happened in public places, very likely resulting in significant morbidity (NCHECR 2007, pp 7-8). To be very clear, during six year of operation, the Sydney Medically Supervised Injecting Centre has averted many likely overdose deaths. Just averting one overdose death justifies the operation of Sydney MSIC. Furthermore, the Sydney MSIC also provides services and referrals to clients. Up until May 2007 the centre had provided drug and alcohol information on approximately 5,000 occasions, advice on drug and alcohol treatment on more than 3,000 occasions, as well as vein care and safer injecting advice on over 21,000 occasions (NCHECR 2007, p.7). The centre clearly manages to be both a ‘gateway’ for further treatment as well as a health service and health education provider for a specific population within the injecting drug using community.

It is also important to note that many of those targeted by the Sydney MSIC are positive regarding its role and benefits. Prior to the establishment of the Sydney MSIC, clients of Kings Cross needle syringe service, K2 were surveyed regarding their preference to use a safe injecting facility (van Beek & Gilmour 2000, p.540). Of the 178 people interviewed, 29% last injected in a public place and 44% had injected alone (van Beek & Gilmour 2000, p.540). It was found that 71% of those surveyed indicated they would have preferred to use an MSIC if available at their last injection, evidencing potential demand from the target population (van Beek & Gilmour 2000, p.541). The survey findings provide hypothetical support for the Sydney MSIC as it had yet to be established, leaving interviewees to estimate what the service would be like. However, actual clients of the MSIC have also clearly articulated their support for the service. The following were transcribed from the MSIC ‘Client Comments Book’ and posted on the Sydney MSIC website:

“Dear staff, to me you have been such a god-send. Our sanctuary, smiling faces, polite conversation, and always helpful. You have made us feel like citizens rather than scummy..."
junkies and you have given us a safe, clean place, instead of sneaking around in the alleyways in unclean surroundings. Bless you all.” Karen 12/04/02

“Since MSIC has opened it has stopped not only myself, but numerous friends from shooting up in people’s front gardens, lane ways etc. If more places like were open the reduction in drug-related deaths and local residential complaints would decrease dramatically as would the spread of HIV, hep A, B, and C etc

To sum it up- harm minimisation, clean using equipment, safe injecting place (with no one to offend) registered nurses to treat overdoses, and because of the fact that they are immediately available can only be of a huge help and decreases the rate of deaths from overdoses, and also the staff advise you when you are mixing drugs” Dean 19/07/01

(http:www.sydneymsic.com/clients_comments)

On the one hand, it is important to note these testimonials have been selected and used by the Sydney MSIC as part of its online ‘spruik’ (only glowing comments are included) and should not be taken as representative of all centre clients. On the other hand, the above client comments are no more biased than any other representation of the Sydney MSIC, while having the distinct advantage of being volunteered by individuals who have accessed Sydney MSIC services. It is noteworthy that the above client comments strongly identify the value of the Sydney MSIC in their lives and to the wider community. The comment from "Karen" names the centre a sanctuary of respect and kindness, while "Dean" emphasises the practical value of this harm minimisation strategy. Any consideration of the Sydney MSIC needs to give fair value to the perceptions and experiences expressed by clients themselves.

Overall, ongoing evaluation of the Sydney MSIC has not supported concerns about reduction of ‘public amenity’ in Kings Cross. Fears that the MSIC would have a 'honey-pot' effect with injecting drug addicts swarming to Kings Cross seem largely unfounded. For example, surveyed local residents who experienced at least one 'public annoyance' related to drug use fell by 14% between 2000 (87%) and 2005 (73%) (NCHECR 2006, p.14). Furthermore, there has been a steady decrease in the proportion of local residents who reported seeing a publicly discarded syringe in the previous month, reducing from 66% in 2000 to 52% in 2005 (NHHECR 2006, p.13). It is important to note that there is no hard evidence the Sydney MSIC caused these shifts. A range of complex factors are at play in Kings Cross, and measuring various indicators does not prove a causal relationship. It is possible these are correlative findings. However, on balance, it seems likely the establishment of the Sydney Medically Supervised Injecting Centre trial has played a role in these shifts, given its prominent role in the area. Importantly for my discussion, public amenity has not decreased since the establishment of the Sydney MSIC, and on some indicators has improved. This demonstrates benefits to the wider community related to the Sydney MSIC.

So far I have summarised key benefits of the Sydney Medically Supervised Injecting Centre. It is arguably a pragmatic response to the difficult social and public health problem of street-based drug injecting, delivering health care services to clients, while reducing associated harms for injectors and the wider community. Before going any further it is helpful to contextualize the Sydney Medically Supervised Injecting Centre trial within contemporary debates about risk discourses.

Risk (and its management) has become a powerful, common sense way to understand, and act upon ourselves. Being common sense can naturalise ‘risk’, making discourses feel neutral, familiar and 'right'. Importantly, we not only construe ourselves via notions of risk, we also
(ideally) act upon ourselves to minimise risks. Sometimes referred to as ‘new prudentialism’, risk strategies are varied, but share a tendency to reduce the responsibilities of the state while loading up responsibilities onto individuals. Deborah Lupton (1999, p.145) argues “responsibilities for risk minimization become a feature of the choices that are made by individuals”. Critics argue individuals tend to be rendered as overly calculative and rational, as if we always consciously calculate benefits and risks of every conduct and then choose to act to reduce the risk (Rhodes 2005; Lupton, 1999). As individual citizens are increasingly made responsible for their own well-being, risk operates as a technology of governance (Lupton, 1999). A risk strategy (harm minimisation intervention), the Sydney MSIC is based upon the assumption that clients are able and willing to identify potential drug injecting risks, calculate degree of risk posed in varying injecting contexts, develop strategies to minimize risk, and rationally choose to employ risk minimizing conduct whether sober or intoxicated. MSIC client drug injectors are required to understand and act upon themselves via the logic of harm minimisation, and as a result the centre presupposes particular forms of “identity, agency and expertise” (Dean 1998, p.139). From this perspective the Sydney MSIC brings risk into being by identifying and targeting those individuals categorized as ‘high risk’ public drug injectors (Lupton 1999).

The notion of risk can operate as a technology of social control by marking out those in need of surveillance and intervention. The Sydney MSIC deploys two types of risk discourse and practice that function as social control: epidemiology and case-management. As a public health intervention monitoring morbidity rates of a specific IDU population, and preventing morbidity from drug overdose, the Sydney MSIC is an epidemiological risk strategy (Dean 1998, pp.143-144). Case management risk tends to use clinical practice to assess individuals and classify their degree of risk (Dean, 1998, p.144). As a case management risk strategy, the Sydney MSIC uses clinical observational techniques involved in medically supervising drug injection to classify ‘at risk’ categories of clients. These techniques include a mandatory client interview to access the service, assessment of client intoxication prior to each visit, maintenance of individual client case notes, staff assessment of client injecting technique, and anonymous operational data recorded as part of clinic management. Mitchell Dean (1998, p.144) argues case management risk strategies are often therapeutic interventions to regulate individuals who pose risks to the rest of the community:

Those judged ‘at risk’ of being a danger to the wider community are subject to a range of therapeutic (eg. counseling, self-help groups), sovereign (prisons, detention centres) and disciplinary (training and re-training) practices in an effort either to eliminate them completely from communal spaces (eg. by various forms of confinement) or to lower the dangers posed by their risk of alcoholism, drug dependency, sexual diseases, criminal behaviour, long-term unemployment and welfare dependency.

The Sydney MSIC targets a very small portion of injecting drug users, explicitly only those who inject drugs in public around Kings Cross, thereby posing a particular ‘risk’ to the wider community. Arguably, the Sydney MSIC performs a disciplinary function via its therapeutic focus on re-training clients regarding their self-injecting techniques. Furthermore, street based drug injectors are literally taken from public space, and public view, to be enfolded in the private confines of the Sydney MSIC while self-injecting drugs. At the heart of the Sydney MSIC is a desire to transform (re-train) clients; and cleanse public space of risky, problematic bodies, that willfully engage in street based drug injecting.

However there are significant potential gains opened up by harm minimisation interventions, including the Sydney MSIC. For example, Moore (2004) argues harm reduction strategies substantially re-work ‘the addict subject’. Prior to harm minimisation strategies, health
Interventions tended to be based upon essentialist notions of the ‘addict subject’ as a slave to addiction, totally governed by bodily appetites, and therefore incapable of rational decision making (Moore 2004, p.1549). Even while services attempted to target ‘addict subjects’ they stereotyped and de-humanised, rendering addicts as ‘dangerous individuals’ who are inherently problematic, and innately abnormal. Moore convincingly argues that in contrast, “under harm reduction policy, the IDU subject is a health-conscious citizen capable of rational decision making and self regulation in keeping with risk-avoidance campaigns” (2004, p.1549). Respected Australian theorist, Helen Keane (2003) concurs, insisting harm reduction strategies, including safer injecting strategies, need to be seen as a radical departure from the idea addicts are less than normal, lacking full subjectivity or moral agency. Naming the Sydney MSIC a hard won success, Keane contends harm reduction strategies “constitute illicit drug users and addicts as people who are able to care for themselves (and others) and make decisions about their bodily practices. This is surely a challenge to the status quo” (2003, p.231). Moore and Keane both offer a valid point. It is important not to overlook the substantial symbolic violence perpetrated by essentialist notions of ‘addict subjects’ as innately immoral, diseased, or hopelessly caught in bodily desires. It is possible the Sydney MSIC disrupts de-humanising, essentialist notions of addicts by assuming they are rational, self-managing, calculative individuals. By recouping injecting drug users into the rest of the population as ‘risk managers’, capable of caring for themselves and others, it is likely the Sydney MSIC challenges strongly held prejudices and stereotypes.

There is also a down side to recouping injecting drug users into a ‘risk-managing norm’. A key function of risk strategies in general, is to extend the potential field of those who can be governed. Risk is a continuum encompassing the entire population, so that all individuals are potentially ‘at risk’, not just a ‘dangerous’ few (Dean 1998, p.146). As Deborah Lupton notes; “the entire population remains the primary locus of risk” (1999, p. 147). By targeting everyone, including those only potentially at risk, strategies have further reach. So while ‘addict subjects’ are recouped into the ‘norm’ as calculative, self-choosing individuals, it is possible to also view this shift as symptomatic of a widening of governance overall. Whether risk strategies regard binge drinking, sun exposure, safe sex or injecting practices, individuals, groups and communities get classified as ‘high risk’ or ‘low risk’. As result, normative distinctions mark out those classified as more and less problematic in terms the risks posed by lifestyle. Risk strategies diagnose the likelihood of potential harms, that may, or may not, manifest in the future, thereby widening the range of targets for intervention. This widening of the potential pool of individuals for intervention re-positions the significance of re-couping ‘addict subjects’ back into the ‘normal’ wider population of self managing individuals.

In responding to a ‘problem’ population, the Sydney MSIC plays an unintentional role shaping the very crisis it seeks to manage. Grazyna Zajdow (2006) suggests that while sincerely arguing the case for safe injecting facility, drug and alcohol workers and the Sydney MSIC unintentionally helped fuel a sense of crisis and moral panic regarding drug markets, street based drug injecting, and private injecting rooms around Kings Cross. In pursuing the need for a safe injecting facility, Zajdow contends the Sydney MSIC (and some supporters) represented potential clients as the worst of the worst, the least trustworthy and most difficult and least open to transformation among injecting drug users (2006, p.415). In this way, potential clients were stereotyped and 'othered' by supporters not just opponents to the Sydney MSIC. For example, the honorable Robyn Parker, a staunch supporter of the Sydney MSIC, characterised centre clients as “on the very fringes of society…at a point where they are almost beyond retrieval”, “caught up in the chaotic vortex of drug addiction”, and in need of many referrals into treatment because they will “fail more times than they succeed” (http://www.sydneymsic.com/Bginfo.tm/drug_summit_legislative_reponse..._the_hon_robyn
The image painted is of addict clients who are chaotic, lost souls on the absolute social margins—tragic figures requiring 'saving', but who may be beyond 'retrieval' anyway. These representations potentially reinforce existing essentialist, dehumanising notions of 'addict subjects', while whipping up cultural anxieties regarding the dangerousness of lost, socially disconnected, and chaotic individuals. While unintentional, this negative portrayal of addict clients still has a social impact, and therefore should be acknowledged when considering the Sydney MSIC.

Rules of service of the Sydney MSIC assume its clients are problematic, in need of regulation, control and direction. Zajdow (2006, p.414) argues that while rules claim to respect clients and assume their autonomy, they actually function to tightly control clients. Both the architecture and strict rules of the centre indicate clients are assumed to lack the personal resources to self-regulate, and as a result in need of firm guidance and control. On its own web site, the Sydney MSIC notes the centre is purposefully organised so that clients are easily controlled via one way flow of traffic in a bunker style building (http://www.sydneymsic.com/what_we_do). The rules that govern the Sydney MSIC also offer an insight into the ways this space is regulated on the presumption of a chaotic client population. To gain entry clients must not be intoxicated, pregnant, underage, in charge of a child; and once they are admitted to the centre clients must wash their hands, inject drugs (no other route of consumption allowed), inject once per visit, self inject, not share or split drug deals with other clients, not assist others with their injecting practice, not mingle or communicate with other clients in the centre, not walk around, not inject into necks. It should be noted these rules are a product of both license conditions and management decisions. Furthermore, whereas many European consumption rooms offer lounge mingling areas, lockers, soup kitchens and even washing machines and dryers, the Sydney MSIC purposefully seeks a 'non cafe' medically supervised atmosphere:

Design features such as one-way flow through the premises and the installation of one to two person-injecting booths worked to minimize client interaction and allow for greater client privacy. These features in particular were believed to reduce the likelihood of intimidation or "stand over tactics" from other clients. MSIC management suggested that had the MSIC adopted the typical European service model with contact cafe, it might have been more difficult to regulate drug dealing on the premises (MSIC, 2003, p.26).

The Sydney MSIC is a very tightly regulated space that aims to de-normalise self injecting drug practices (van Beek, 2004). Such a tightly controlled context is justified on the basis of assumptions regarding the 'difficult', chaotic and disruptive conduct of clients (Zajdow 2006). The Sydney MSIC has repeatedly stated the onerous nature of enforcing rules over and over again in the centre because clients seem unable to self regulate (MSIC 2003). Medical supervision functions via strict rules, a clinical gaze, and hospital like atmosphere, aiming to regulate and control clients who are feared to be disruptive (Zajdow 2006, p.414). Presuming clients are chaotic, unruly, and in need of control unintentionally reinforces stereotypes about injecting addicts.

Some staff of the Sydney MSIC have framed addict clients as deeply problematic, willfully participating in high-risk conduct because of the ways they self inject drugs in the centre. In this sense, clients of the Sydney MSIC are conceptualised as deeply problematic, as 'less than' normal. Staff comments gathered as part of the evaluation report of 2003 are illustrative of this view of clients as so problematic they are beyond transformation. One staff member stated: "[The MSIC was] also not set up for people who are open and amenable to change….it's set up for people who are doing something wrong" (MSIC 2003, p. 30). Some staff member comments classify the risky ness of client injecting practices and hierarchize
clients according to drugs of injection. Opioid injectors are viewed as the most amendable to intervention and so the least problematic. Cocaine injection is described as typically:

“more of an infusion than a bolus…[they are] actually coking and still injecting…[some] try more than 50 puncture sites per injection…[cocaine injectors] can’t pull themselves out of it, they just keep stabbing…” (my italics) (MSIC 2003, p.30).

While injectors of benzodiazepines are described as:

“A person in their own little drug taking world which often ends in a blood bath…trying to find a vein, stabbing….Their visual perception is gone…[they have] tunneled vision, just injecting, injecting….The whole fiddling around thing is unnecessary. [However] it wouldn’t be the same sort of enjoyment if they didn’t spend an hour doing it” (my emphasis added) (MSIC 2003, p.31).

Measured against the implicit ideal of a self-managing, risk reducing individual, clients who inject cocaine and benzodiazepines are viewed as grotesquely undisciplined and chaotic. Trapped in bodily pleasures and experiences of drug injecting, these clients are portrayed as lacking personal insight and the will to control their own conduct, instead, “they just keep stabbing”. The sense of horror and shock that textures staff comments above (complete with ‘blood bath’ and zombie stabbing) is invoked by transgression of harm minimisation norms regarding rationality, choice and consciousness. Indeed, Deborah Lupton argues that risk classifications overlay responsibility, rationality, morality and the calculative so that it becomes ‘immoral’ to engage in risky conduct willfully (Lupton, 1999, p. 146). Staff comments above conjure clients as morally problematic, willfully engaging in risky injecting practices. Texturing this representation is the assumption that self-injection practices are innately problematic.

An underlying repulsion towards self-injecting drug consumption has informed the Sydney MSIC since its inception. While strong and continuous, distaste and repulsion towards self-injection is generally an underlying current, not often openly articulated. There is a hint of this concern in the first operational review of 2003 where it is noted “the nature of the work (i.e. watching clients inject themselves and in some instances overdose) was described as stressful and at times professionally demoralizing” (my italics added) (NCHCR 2003, p.28).

Since opening its doors, the Sydney MSIC has had a policy of employing many frontline staff on a part time basis, and allowing staff appropriate breaks so as to meet occupational health and safety requirements for this stressful work. Debate during the 1999 Drug Summit is another instance where those who supported the recommendation for a safe injecting facility articulated a powerful sense of repulsion. Future medical director of the Sydney MSIC, Dr. Ingrid van Beek (1999) stated:

“I have visited several injecting rooms where they are run in overseas countries. Despite the fact that I have worked out on the streets with drug users for more than 10 years, I found what I saw in each and every injecting room one of the most confronting scenes that I have ever come across. Frankly, I found it almost repugnant and it really brought home the shocking reality of what the drug problem is all about” (http://www.sydneymsic.com/Bginfo.htm/nsw_drug_summit_1999).

A similar, but perhaps more vehement sense of revulsion was articulated by then NSW premier Bob Carr (1999) at the Drug Summit:

“There is no-one more repelled by the whole business of injecting heroin than I …. I speak as someone whose repugnance for the whole business of injecting addictive
poisons into people’s bodies is as repulsive as anything I can contemplate” (http://www.sydneymsic.com/Bginfo.htm/nsw_drug_summit_1999).

These two utterances are noteworthy at a public rather than a personal level, in the sense they articulate wider held values and understandings regarding the conduct of self-injecting drugs. Stop and consider the culturally located nature of this disgust. In our cultural context a professional (doctor or nurse) injecting a patient with (possibly the same) drugs is understood as performing expert techniques in a context of ‘healing’. In contrast, reflex responses can cast self-injection of drugs as repellant, repulsive and 'repugnant'. The act of self-injection involves transgressing boundaries- symbolic, professional and material (the detail of which I do not have space to consider in this paper). It is possible that an underlying distaste towards self injecting practices means the Sydney Medically Supervised Injecting Centre trial at best ‘tolerates' client conduct, and at worst seeks to regulate and transform clients (van Beek 2004, p.24). This poses serious questions about the degree to which the Sydney MSIC is able to accept and respect clients, given a sense of distaste and repulsion may felt towards the key practice undertaken by clients in the centre.

Clients of the Sydney MSIC trial are represented in uneven ways. As a harm minimisation strategy, the Sydney MSIC presumes addict clients are rational, self-choosing, calculative individuals able to manage and minimise risks associated with self injecting drugs. Arguably these representations challenge existing stereotypes of 'addict subjects'. However, clients also presumed to be chaotic and disruptive individuals in need of tight regulation. Some clients are also viewed by some staff as willfully engaging in high risk injecting practices, caught in the thrill of drug injecting. Far from being value-free, the Sydney MSIC has the potential to both disrupt and reinforce already existing social divisions and hierarchies, such as those regarding addicts. It is not a matter of one representation of Sydney MSIC injecting addict clients simply balancing out or erasing the other. Things are messier and more complex than this. The ways these representations of 'addict subjects' contest and inform each other deserves further inquiry.

The Sydney MSIC poses a social justice conundrum. As a low threshold, harm minimization strategy, it delivers services to marginalized citizens without the demand for abstinence or overt value judgments. By addressing IDU clients as self-calculating individuals capable of caring for themselves and others, the centre disrupts essentialist stereotypes of addict subjects as slaves to addiction. At the same time, the MSIC plays a role in the construction of clients as repugnant, chaotic, in need of control and transformation. As a result of its aim to reduce public nuisance related to street based drug injecting, the Sydney MSIC seeks to cleanse public space by literally removing self drug injecting episodes from public view. This raises questions about the role of the Sydney MSIC in wider moral panics about street-based drug injectors. Because the Sydney MSIC is both an innovative strategy with social justice implications, and a technology of social control textured by a sense of disgust, it offers an opportunity to consider the complexities of negotiating social justice in located instances. It is tempting to highlight only the (numerous) 'highlights' of the Sydney MSIC, denying reflex opponents of the trial easy ammunition. However, there is too much at stake not to ask ourselves uncomfortable questions about hard-won, innovative, well-intentioned, and timely projects like the Sydney MSIC. I leave you with the question that has shaped this paper: How do we offer socially just responses to the needs of already socially marginalized citizens when our view is shaped by a sense of disgust, and a desire to regulate and transform?
References


Tourism in the context of human rights, justice and peace

Freya Higgins-Desbiolles
University of South Australia

Lynda Blanchard
University of Sydney

Abstract: Because tourism most frequently concerns the pleasure and leisure pursuits of the world’s privileged, it is seldom placed in the context of human rights, conflict resolution, justice and peace. However, it must not be forgotten that the right to tourism and travel are implicitly enshrined in the Universal Declaration of Human Rights (1948) and are promised by a social tourism movement that has been active in countries throughout the world and promoted globally by the International Bureau of Social Tourism.

While the dominance of neoliberalism since the 1980s has allowed the social welfare aspects of tourism to be overshadowed by its financial market potential, peace and justice advocates should not allow these developments to go unchallenged. This paper reviews tourism’s capacity to contribute to human well-being, human rights recognition, conflict resolution, justice and peace. It will take a critical perspective, challenging the tourism industry’s public relations agendas of peace through tourism and pro-poor tourism whose promise remains unfulfilled in a world of structural inequity and injustice. This analysis develops an understanding of how tourism can be harnessed to achieve important humanitarian goals, including peace, justice and respect for human rights.

Keywords: Right to tourism, justice tourism, peace through tourism

The human right to travel and tourism

Whereas much of the discussion of tourism focuses on its ability to provide fun and/or fulfilment (Butcher 2003) or focuses on its characteristics as an ‘industry’ (Smith 1988), this paper argues that tourism should also be understood in the context of human rights. Since the founding of the modern tourism phenomenon in the mid-1800s, tourism was seen as a potent social force of considerable significance (Higgins-Desbiolles 2006). Fulfilment of the human right to travel is promised by a social tourism movement that has been active in countries throughout the world and promoted globally by the International Bureau of Social Tourism (BITS). However, with the dominance of neoliberalism since the 1980s, the social welfare aspects of tourism have been overshadowed by its market imperatives. A critical human rights perspective challenges the tourism industry’s public relations agendas such as ‘pro-poor’ and ‘peace’ tourism. In a world of structural inequity these agendas remain unfulfilled.

Tourism has been credited with numerous positive impacts, including contributing to self-fulfilment (UNWTO 1999), economic growth (UNWTO 1999), third world development (UNWTO 1980), environmental sustainability (UNWTO 1995) and even world peace (IIPT no date). The positive impacts of tourism are potentially so powerful that the right to travel and tourism have been incorporated in key international documents including, for example, the Universal Declaration of Human Rights of 1948; the International Covenant on Economic,
This year marks the 60th anniversary of The Universal Declaration of Human Rights (1948). As an international standards setter this document has two passages that underpin the right to travel: articles 13(2) and 24. Article 13(2) states: ‘Everyone has the right to leave any country, including his own, and to return to his country’ (UN 1948), which O’Byrne describes as underpinning the human right to travel (2001, pp. 411–413). Combined with article 24, which states ‘everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay’ (UN 1948), this significant international document is credited with situating travel and tourism as part of human rights.

The justification for asserting such new rights can be gleaned from the words of the UNWTO, which declare tourism’s potential value in ‘contributing to economic development, international understanding, peace, prosperity and universal respect for, and observance of, human rights and fundamental freedoms for all’ (UNWTO 1999). Making such important and varied contributions to the human good, tourism and travel are uniquely worthy among ‘industries’ to be accorded human rights status. The Manila Declaration on World Tourism states:

Tourism is an activity essential to the life of nations because of its direct effects on the social, cultural, educational and economic sectors of national societies and their international relations. Its development is linked to the social and economic development of nations and can only be possible if man [sic] has access to creative rest and holidays and enjoys freedom to travel within the framework of free time and leisure whose profoundly human character it underlines. (UNWTO 1980)

In the most recent code promulgated by the UNWTO, the Global Code of Ethics for Tourism, section seven entitled ‘right to tourism’ specifies that ‘public authorities’ should support social tourism initiatives, ‘which facilitate[s] widespread access to leisure, travel and holidays’ (1999).

Tourism for all: the forgotten promise of social tourism

The precepts of modern social tourism were laid early in the twentieth century when the principle of paid leave for workers was adopted. For instance, French trade unions, as early as the implementation of paid leave in the 1930s, were promoting not only the value of tourism for relaxation from work but also for development of the mind and the body (Ouvry-Vial cited in Richards 1996, p. 157). As Higgins-Desbiolles (2006) has explained, the marketisation of tourism in the current neo-liberal era has resulted in a failure to give social tourism initiatives the proper recognition they deserve. Nonetheless, social tourism has a rich history in Eastern and Western European countries and points to the way that the right to travel and tourism could be facilitated for those least able to fulfil it. The basic principle of social tourism is ‘access to travel and leisure opportunities for all’ (International Bureau of Social Tourism n.d.). It is the role of public authorities supported by civil society organisations to ensure that all citizens are able to fulfil their right to travel and thereby to tourism.

One form of social tourism has been developed in the socialist countries. Unlike the tourism phenomenon in capitalist societies where tourism symbolised freedom, choice and individualism, in some of the socialist countries belonging to the Warsaw Pact tourism was geared to serving socialist needs. These ranged from provision of rest and relaxation for the
workers of socialist production in order to enable their future production, to fostering communist solidarity by touring fellow communist countries, to use of tourism as ‘socialist education’ for youth (Allcock & Przeclawski 1990, p. 4).

Social tourism has also extended beyond the socialist and centrally planned economies of Eastern Europe. As mentioned earlier, France has a long tradition of social tourism through the trade union movement. But France has been joined by other Western European states such as Germany, Switzerland, Portugal and the Scandinavian countries in subsidising transport, maintaining ‘social resorts’ and funding youth camps, to name only a few. Two outstanding examples include Reka of Switzerland and ANCAV Tourisme et Travail of France. Even the United States of America, one of the main proponents of neo-liberalism, has social tourism schemes such as the youth camps of the Young Farmers Association, which have been devised for rural youth to enjoy the learning and recreational capacities of tourism.

There is also an institutional structure to promote the values of the social tourism movement. The International Bureau of Social Tourism (BITS) is an umbrella structure for national social tourism organisations to cooperate on the development and promotion of social tourism. It was founded in 1963 in Brussels and now represents members from around the world and also twelve governmental authorities. BITS is also charged with representing the issue of social tourism to such bodies as the UNWTO and the United Nations Educational, Scientific and Cultural Organization. BITS has formulated a strong argument for the right of all to tourism, travel and leisure on its website and exhorts governments in particular to move beyond ‘recognition of the right’ to actual pragmatic programs to enable all to enjoy the exercise of their right (International Bureau of Social Tourism n.d.).

Tourism for all: tourism for the privileged?

A right to travel and tourism is not universally enjoyed. It is estimated that more than a billion people live on ‘less than one dollar a day’ (World Bank 2005). While organisations promoting third world development argue that the concerted efforts over the past three decades have reduced the number of people living in poverty, even members of the World Bank’s Development Research Group freely admit that, while the number living on less than one dollar a day has reduced, the number living on less than two dollars a day has risen and what progress has been made has been ‘highly uneven’ as, for example in the case of sub-Saharan Africa (Chen & Ravaillon no date). While the jury may be out about the success of the poverty alleviation agenda of development, there is no question that only a minority of privileged people from the developed world and the elite of the developing world are able to fulfil their right to tourism and travel. In this divide between the developed and the developing worlds, the former provide the vast bulk of international tourists and the latter increasingly serve as their hosts.

At the moment, the obligation to fulfil the precepts of social tourism is given to governments and this blocks the likelihood that such rights will be truly universally provided, as many developing countries are still unable to meet their citizens’ most basic needs let alone fulfil a right to travel. Therefore the precepts of social tourism cannot be implemented universally until the fulfilment of the right to development is honoured, as demanded in the concept of the New International Economic Order (NIEO) and as outlined by such agreements as the International Covenant on Economic, Social and Cultural Rights.

The New International Economic Order was demanded by the newly independent countries of the developing world as a systemic program to bring just relationships to an increasingly
interdependent but very unequal world. Tourism was an important component of the vision of the NIEO. For example, the Manila Declaration of the UNWTO in 1980 declared in its opening statements:

Convinced … that world tourism can contribute to the establishment of a new international economic order that can help to eliminate the widening economic gap between developed and developing countries and ensure the steady acceleration of economic and social progress, in particular of the developing countries,

Aware that world tourism can only flourish if based on equity … and if its ultimate aim is the improvement of the quality of life and the creation of better living conditions for all peoples. (UNWTO 1980, emphasis added)

Since the fall of the Berlin Wall in 1989, there has been an extraordinary advance in the spread of the ideology of neo-liberalism. According to Stilwell, neo-liberalism’s ‘core belief is that giving freer reign to market forces will produce more efficient economic outcomes’ (2002, p. 21). Such outcomes are not merely economic. In the mid-1990’s Stephen Gill’s paper ‘Globalisation, market civilisation, and disciplinary neoliberalism’ characterised the current era as an attempt to impose a ‘market civilization’ on global society:

The present world order involves a more ‘liberalized’ and commodified set of historical structures, driven by the restructuring of capital and a political shift to the right. This process involves a spatial expansion and social deepening of economic liberal definitions of social purpose and possessively individualist patterns of action and politics. (1995, p. 399)

Stilwell claims that neo-liberals advocate ‘free market’ policies in order to unfetter capitalist economies from excessive interventions by governments in economic matters, the latter being a product of the policies of the ‘welfare state’ supported since the 1950s and which neo-liberals view as stifling economic efficiency. With the rise of the ‘Washington consensus’, these neo-liberal policies now have global reach as developing countries are urged to adopt such policies by international financial institutions such as the World Bank, the International Monetary Fund and the development banks. Stilwell claims that the outcomes of neo-liberalism have ‘reoriented governments:

The economic activities of government are not reduced, only reoriented towards directly serving the interests of business; they become less concerned with progressive income redistribution and the amelioration of social problems arising from the operations of the market economy. The policies certainly create winners and losers whatever their effectiveness in relation to the dynamism of the economy as a whole: the removal of regulations protecting employment conditions predictably leads to more unevenness of employment practices and greater wage disparities; the relaxation of environmental controls leads to environmentally degrading activities; and the withdrawal of redistributive policies leads to growing problems of economic inequality and poverty. (2002, p. 22)

Stilwell (2002, pp. 14–16) demonstrates the interrelationship between economy, society and ecology wherein lie the possibilities of distributional equity, ecological sustainability and the quality of life (see Figure 1). However, this model of political economy is challenged by the current dominant neo-liberal order which overemphasises economic considerations and does not promote equity, sustainability and quality of life. It is within such a context that contemporary tourism now operates. Higgins-Desbiolles (2006) has examined the effects of marketisation on tourism and has argued that it has created a discourse of ‘tourism as
industry’, which serves the ‘needs and agendas of leaders in the tourism business sector’ to the detriment of understandings of the social capacities of tourism.

Tensions are clear. While neo-liberalism demands that the benefits of tourism are allocated according to the ‘invisible hand’ of the market, the discourse of tourism as a ‘human right’ demands a social tourism agenda, which requires continued intervention by governments and communities to ensure that tourism contributes to a better quality of life and an equitable sharing of tourism’s bounties. However, vigilance is required to uncover such tensions. For example, although the Global Code of Ethics for Tourism may idealistically commit to social tourism, it was forged after the demise of communism and the triumph of the ‘Washington consensus’. So, not surprisingly, its preamble states: ‘the world tourism industry as a whole has much to gain by operating in an environment that favours the market economy, private enterprise and free trade and that serves to optimize its beneficial effects on the creation of wealth and employment’ (UNWTO 1999). As a result social tourism is left to the purview of those governments who are wealthy enough to create social tourism programs for their citizenry. We apparently now accept the rhetoric of a universal right to travel and tourism but we demonstrate no eagerness to make it a reality for the majority of the world’s inhabitants who are hemmed in by their poverty. In fact, if the poor and traditional peoples who serve as an attraction in the developing world decided to forsake their slotted role as hosts to the privileged, the scope and regulation of contemporary tourism would have to be seriously rethought. Could the UNWTO and the stakeholders who assisted in the drafting of the much-supported Global Code of Ethics for Tourism be accused of hypocrisy for formulating a provision on social tourism and espousing the right to travel when they know such rhetoric is unrealistic within the current market reality? An investigation of the industry’s rhetoric on poverty alleviation and peace through tourism suggests that such hypocrisy is not just limited to the social tourism sector.
**Pro-poor tourism: Putting the poor first or good PR?**

The pro-poor tourism (PPT) initiative is a recent phenomena. PPT is not a specific product or niche sector of tourism but an approach to tourism development and management that claims to ‘enhance the linkages between tourism businesses and poor people, so that tourism’s contribution to poverty reduction is increased and poor people are able to participate more effectively in product development’ (PPT no date). While pro-poor tourism has only been explored since 1999, case studies are numerous including Wilderness Safaris and Sun City in South Africa, the St Lucia Heritage Trail and the Uganda Community Tourism Association. Pro-poor tourism proponents also recognise the ‘economic benefits generated by pro-poor tourism may not reach the poorest- workers and entrepreneurs are unlikely to be from the poorest quintile’ (Bennett, Roe, & Ashley 1999, p. 36). Mowforth and Munt have provided a brief but insightful critique of the PPT initiative and conclude that it needs to be viewed in its context of promoting the ‘expansion of capitalist relations’ (and the growth of the tourism sector) and how this might ‘undercut “sustainable livelihoods” and exacerbate, rather than alleviate, poverty’ (2003, p. 273). Even a brief analysis of PPT indicates that the pro-poor potential of tourism is exceedingly limited in its ability to make even the slightest dint in global poverty. For instance, Sun International, owner of Sun City and ‘one of South Africa’s largest hospitality companies’, is operating on lands ‘alienated’ from the Batswana tribes and now offers them such PPT opportunities as manufacturing the paper used in their business cards.1

The potential for PPT to make a considerable contribution to the public reputation of the tourism sector is much more impressive. This is perhaps the explanation for why the UNWTO, the World Travel and Tourism Council (WTTC) and the International Institute for Peace through Tourism (IIPT) make PPT central pillars in their policies and publicity. It is not coincidental that the poverty alleviation commitment of the World Trade Organization (WTO) coincided with the virulent protests of the ‘anti-globalization’ movement which has threatened the momentum of the marketisation agenda since 1999 in Seattle. The UNWTO mirrors the WTO in calling its pro-poor agenda ‘liberalization with a human face’. Much like sustainability, the pro-poor initiative could be characterised as good public relations to prevent measures that might be imposed that would have a meaningful and negative impact on the industry’s interests and operations. Perhaps even more importantly, it shows that the institutions of tourism, similar to the institutions of world trade, are quite concerned that their critics are threatening to win the ‘hearts and minds’ of the silent majority and therefore such efforts have to be pre-empted by a ‘simulation of virtue or goodness’, such as a rhetorical commitment to poverty alleviation.

**Justifying tourism: The peace through tourism agenda**

Peace through tourism focuses on the kinds of tourism that are conducive to promoting more peaceful relations. A founder of the peace through tourism movement, Louis D’Amore, described it in multidimensional and positive terms: peace within ourselves, peace with other people, peace between nations, peace with nature, peace with the universe and peace with our God (1988, p.9). The most conventional way to interpret the relationship between tourism and peace is to assert that the cross-cultural encounter of international tourism fosters more harmonious relations. Academic debate on the topic of peace through tourism has centred particularly around whether peace and tourism are related in a causal or a co-relational way (Litvin 1998) and on whether or not tourism contributes to attitudinal change in people who travel between hostile nations (e.g. Pizam 1996). Tourism’s potential to promote ‘human security through international citizenship’ (Rees and Blanchard, 1999) is yet to be explored.
However, a critical investigation of the International Institute for Peace through Tourism (IIPT) suggests an unreflective approach to the topic. Sections of the IIPT website, particularly those on the previous conferences and summits reveal the rhetoric of sustainability and poverty alleviation through tourism (IIPT no date). Yet IIPT global summits and conferences are held in luxury resorts, do not appear to interrelate with local communities (Ndaskoi 2003) and offer little evidence of sustainability options (such as a carbon-offset fee) attached to registrations. This suggests the IIPT is also engaged in the ‘simulation of virtue or goodness’ in its promotion of peace tourism.

An alternative view of peace necessitates distributional equity, ecological sustainability and a good quality of life for all. Following Gandhi’s unequivocal assertion that peace must be ‘based on the freedom and equality of all races and nations’, analysts such as Stuart Rees (2003, p.20) speak of peace with justice other than simply in terms of conflict prevention and resolution. It is this notion of ‘peace with justice’ that informs our discussion. When approaching tourism from such a stance, a key question is how can tourism be harnessed to achieve important humanitarian goals, including peace, justice and respect for human rights?

**Justice through tourism**

Lanfant and Graburn suggest alternative tourism could become ‘the tourism in the promotion of a new order’ (1992, p. 92). Justice tourism best exemplifies this goal. Holden’s description of justice tourism is ‘a process which promotes a just form of travel between members of different communities. It seeks to achieve mutual understanding, solidarity and equality amongst participants’ (in Pearce 1992, p. 18). A useful conceptualisation of justice tourism emerges from the theorisation of the ethics of tourism which has appeared in more recent times (e.g. Fennell 2006; Hultsman 1995; Smith & Duffy 2003). In Hultsman’s attempt to develop an ethical framework for tourism he explores what ‘just tourism’ might mean (1995). He advocates developing a ‘principled’ practice and ‘ethicality’ in tourism (Hultsman 1995, pp. 559-562). Fennell (2006) and Smith and Duffy (2003) provide invaluable insight into the complexities of applying an ethics of justice to tourism in their brief examinations of Rawls’ ‘theory of justice’ (1971). Using social contract theory, Rawls developed a theory of justice suggesting a ‘…fair distribution of power, goods, and so on within and between societies’ (Smith & Duffy 2003, p. 92). Given that tourism can be considered a justice issue (Fennell 2006, p. 102), justice tourism has recently emerged as a phenomenon worthy of further analysis.

Scheyvens describes justice tourism as ‘both ethical and equitable’ and says it has the following attributes: ‘builds solidarity between visitors and those visited; promotes mutual understanding and relationships based on equity, sharing and respect; supports self-sufficiency and self-determination of local communities; maximises local economic, cultural and social benefits’ (2002, p. 104). Scheyvens outlines five forms of justice tourism which include the ‘hosts’ telling their stories of past oppression, tourists learning about poverty issues, tourists undertaking voluntary conservation work, tourists undertaking voluntary development work and revolutionary tourism (2002, pp. 105–119). Kassis adds that at the global level ‘justice tourism is a social and cultural response to the policy of cultural domination as reflected in the globalization of tourism’ (Kassis no date).

The reality tours of the American NGO Global Exchange (GX) serve as illustrations of justice tourism. Founded in 1988, Global Exchange is an international human rights NGO dedicated to ‘promoting social, economic and environmental justice around the world’ (Global
Exchange no date a). Its involvement in tourism is geared towards social justice education and activism:

The idea that travel can be educational, transformational and positively influence international affairs motivated the first Reality Tours in 1989. Unlike traditional tourism, Reality Tours promotes socially responsible travel as our participants build true ‘people to people ties’. Reality tours are founded on the principles of experiential education and each tour focuses on important social, economic, political and environmental issues. When you journey with us you will meet the people, learn the facts first hand, and then discover how we, both individually and collectively, contribute to global problems and how we can enact positive change. (Global Exchange no date c)

The variety of tours offered by Global Exchange are numerous and changing. One recently developed tour is the ‘Beyond Tourism’ tour to Jamaica, which focuses upon the reality of this tourism-dependent economy (Global Exchange no date b). Other itineraries include Cuba, Afghanistan, Bolivia, Venezuela, Chiapas, Mexico, Iraq, Palestine and China.

Specific examples of justice tourism such as Oxfam Australia’s Community Leadership Program indicate that the global change required is not only helping the poor in the developing countries achieve better standards of development but also changing how the privileged in the developed countries live their lives by suggesting ways they might re-orient their consumer and market-driven lifestyles (Higgins-Desbiolles 2008, p.11). Justice tourism can act as a catalyst for alternative globalisation by promoting an awareness of the unsustainability and dissatisfaction that accompanies capitalist-driven consumerism. Such a shift is evident in the observation of a young volunteer tourist who said:

It [the volunteer tourism experience] made me a lot more critical of a consumer’s society. I think there are a lot of things here that are all very nice and convenient and are good for status. But there are a lot of things we just don’t need. (cited in Wearing 2002, p. 250).

Because tourism engenders social and ecological crises as a result of its adverse impacts, it has received vocal and sustained criticism from both the NGO sector and community groups. Protest at a global level emerged at the World Social Forum convened in Mumbai, India in 2004. At this meeting, tourism was put on the agenda of the WSF for the first time as a Global Summit on Tourism was held. The theme was ‘Who really benefits from tourism?’ The summit issued a call to ‘democratising tourism’. One NGO participant, the Ecumenical Coalition on Tourism (ECOT) called for a tourism that is ‘pro-people’ (ECOT 2003). Attendees at the meeting released a statement of concern and formed a Tourism Interventions Group (TIG) (TIG 2004). This group clearly positioned itself in opposition to the processes of capitalist globalisation and corporatised tourism:

We decided to strengthen and uphold the grassroots perspectives of tourism, which positions our interventions against those of the World Tourism Organization [UNWTO], the World Travel & Tourism Council (WTTC) and other mainstream definitions of tourism policy and development. As the [UNWTO] is now a specialised UN agency, we will address its new mandate and take forward civil society engagements to democratising tourism. (TIG 2004)

However, the Tourism Interventions Group also made very clear that it supported the aims of other new social movements gathered at the WSF. They claimed:

Highlighting tourism issues within a multitude of anti-globalisation and human rights movements such as those related to women, children, dalits, indigenous people, migrants,
unorganised labour, small island, mountain and coastal communities, as well as struggles related to land, water and access to natural resources, is crucial to sharpen local struggles and community initiatives of those impacted by tourism. Networking is at the core of future strategising to identify areas of common concern, forge alliances with like-minded individuals, organisations and movements and influence tourism policy agendas. Democracy, transparency and corporate and governmental accountability in tourism will be placed high on the agenda for concerted action and strategic interventions.

We look forward to working in solidarity with local community representatives, activists and researchers from various parts of the world to strengthen our struggle and develop strategies for a tourism that is equitable, people-centred, sustainable, ecologically sensible, child-friendly and gender-just. (TIG 2004)

These references to justice demonstrate efforts to secure a more equitable, alternative form of tourism. It remains to be seen how successful the TIG will be in drawing global attention to the negative impacts of corporatised tourism and the positive potentials of justice tourism in contributing to an alternative global order. But there is little doubt that their efforts will continue to promote a vision that ‘another world is possible’.

Summary

This paper has been concerned with unmasking the rhetoric of the human right to travel and tourism and highlighting some aspects of the reality of its implementation. Current rhetoric about social tourism, pro-poor tourism and peace through tourism propounded by the industry is a public relations strategy. Such a strategy pays undue reverence to the market imperatives for tourism rather than teasing out the social imperatives, such as social justice and ecological sustainability. The inequitable living conditions, in which the interests of business and markets are allowed to override the survival of peoples and the integrity of the environment, and in which contemporary tourism now ‘flourishes’, cannot be ignored. We must begin to consider tourism in the context of human rights and social justice. Examples, such as the reality tours of Global Exchange or Oxfam’s significant volunteer projects give substance to the idea of human rights, justice and peace through tourism. In addressing structural inequalities by ‘promoting social, economic and environmental justice around the world’ (Global Exchange no date a) and confronting poverty by re-orienting consumer and market-driven forces (Oxfam Australia’s Community Leadership Program), such initiatives challenge the tourism industry’s rhetoric of pro-poor or peace tourism. Coordinated analysis and action between human rights advocates and tourism analysts is needed to ensure that future tourism development is geared to fulfilling fundamental human needs, securing equity and justice and thereby assisting in the attainment of peace. From this perspective, tourism may address local efforts to attain human rights and social justice rather than make grandiose claims about the universality of ‘peace’.

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Endnote

Transforming Everyday Conflict in Vietnam

Wendy Poussard
Learning & Action

Abstract: This paper explores some of the ways that everyday conflict is managed and transformed in contemporary Vietnam in a context of rapid social and economic change. Drawing on my PhD research, I explore Vietnamese project managers’ understandings of the dynamics of everyday conflict, and report their ideas about transforming conflict and strengthening cooperation. I illustrate how conflict is mediated and transformed in international development projects and rural villages, and argue that the communication skills which lie at the heart of mediation practice can contribute to conflict transformation and peace-building in a wide range of circumstances in ways that go beyond the settlement of specific disputes, to sustain and strengthen cooperative relationships.

Keywords: conflict transformation, mediation, Vietnam.

Conflict and Social Change in Vietnam

I have worked in international projects in Vietnam since 1986. That was an important year in modern Vietnamese history, the year of doi moi, which means renovation. Doi moi was Vietnam’s glasnost and perestroika, a policy approach that allowed greater openness to the rest of the world and to Vietnamese living overseas, greater personal and institutional freedom for Vietnamese citizens, and the beginning of a rapid transition to a market economy (Borton 2004). The personal and social changes that followed doi moi illustrated that culture is not only complex but also changing, sometimes changing rapidly. Unlike the Soviet reforms, doi moi did not bring an end to communist rule, but everyday life and the relationships between Vietnamese and foreigners were fundamentally transformed. Agence France Presse correspondent Robert Templar described it well: “There really was a renovation of the personal sphere… the wheels of life began to spin faster, and they meshed less often with the controlling gears of the state” (Templer 1998: 4).

In 1998, Vietnam’s Communist Party enacted another policy milestone, the Resolution on the Implementation of Grass-roots Democracy (No29/1998/ND-CP), focusing on the decentralisation and democratisation of local government and institutions. The use of the word ‘grassroots’ to translate the Vietnamese co so may be somewhat misleading, as the decree is directed towards local levels of the Party and State bureaucracy rather than increasing democratic control by local populations (Fforde 2008b:3). Nevertheless, since the decree was implemented, democratisation has become a matter of greater public interest and debate. The transition from a centrally planned economy to a market economy led to many other changes in the state and in society and social transformation was not always experienced as a change for the better. Relationships changed and new kinds of conflicts arose. In neighbourhoods and villages, the transition to a market economy changed what people argued about, and many stories about disputes began to appear in Vietnamese newspapers and magazines (Dung 2000: 8). There have been many strikes and demonstrations by workers over wages and conditions, and it has become increasingly common to see crowds waiting to
deliver petitions, mostly to do with land issues, and complaining of violations of policy or laws by officials (Fforde 2008a).

**Traditional Mediation in a time of change**

A study by Bui Quang Dung (2000) of the Vietnamese National Centre for Social Sciences and Humanities provided a vivid picture of traditional mediation practices in contemporary rural communities and illustrated some of the ways that culture and conflict interacted and evolved in a period of economic transition.

Mediation has been used in Vietnam for many centuries and Dung found that in the hamlets where he conducted his study, a mediator working as a third party was still considered important, and indeed necessary, for settling disputes. Some disputes were resolved in family meetings where a senior male member of the family presided and all members of the family were invited to contribute their views. Hamlets participating in Dung’s research also had ‘reconciling teams’ composed of representatives of hamlet organisations. Members of the reconciling team visited the disputing parties separately and discussed the issue among themselves before deciding on a strategy and appointing a suitable mediator. Only after an agreement was reached separately with each disputing party were the two sides brought together for the official mediation.

Dung illustrated how dispute resolution in rural Vietnam followed a certain procedure and order. The process began by exploring internal solutions in the family, and if the dispute remained intractable, the reconciling teams in the hamlet would play a role. Only disputes which could not be solved by these means were referred to the Commune People’s Committee, who could apply administrative and legal solutions which were not available to the reconciling teams.

Conflict expands in scope as it engages more issues and parties (Arai, 2006:85), but Dung showed how rural communities in Vietnam limited the impact of conflict by solving it themselves at the local level.

Western mediators aspire to ‘impartiality’ and ‘neutrality’ but these principles are not part of the Vietnamese tradition of mediation. Dung’s study showed that Vietnamese traditional mediators considered individual needs and desires in the context of the family and the neighbourhood and tried to convince the disputing parties to come to what the mediator believed to be the correct decision. “For reconciliation, the third person is necessary because he can easily realize who is right and who is wrong”, a woman participant explained (Dung, 2000:25).

Villagers expressed generally positive views of the mediation process: “Although the reconciling team cannot solve 100% of disputes, they are better than having nothing,” an older participant commented. “Two people quarrel with each other. Both believe they are right. For instance, someone’s ducks or chickens go into the other’s garden, and then a dispute arises. They have a row until some reconciler comes to see them. Without mediation, a fly will become an elephant” (Dung, 2000:27).

In the new market economy of individual enterprise, villagers in general felt that economic growth had lessened the number of everyday disputes. Disputes were often about money or land, which has become increasingly scarce due to the increasing population and the privatisation of land previously held in common. Fences were the focus of many quarrels, as
they are in Western countries. “Land has become smaller and smaller”, an elderly woman said. “What will happen to our future generations? Land cannot be born, but children are born every day” (Dung, 2000:13).

Since doi moi, poverty has been greatly reduced in Vietnam, but inequality has risen (Thoburn, 2004). Overcoming or avoiding poverty is still a struggle for many people, but Dung’s study showed that success also has its problems. “If you are not able to make a fortune, you will be blamed as a fool,” one woman said, “but if somebody becomes richer, he will be envied, so it is very difficult to lead one’s life” (Dung, 2000:11). The old tradition in Vietnamese villages was that rich people should care for the poor and that people should help their neighbours without expecting to get paid. But economic transition has brought a growing ambivalence about the old values. Older people and poorer people maintained their expectations about mutual aid as part of the morality of rural society, but young people and middle class people were developing a more commercial culture and expected to be fairly paid for their labour. “It’s so annoying. Doing everything needs money…everything has changed,” an older participant lamented (Dung, 2000: 22).

Villagers said that mediators should sympathize with the people involved in the dispute, and should spend time listening to people’s explanations and opinions. They should be knowledgeable, so that well-educated people would be willing to listen to them and respect their opinions. Although men were much more likely than women to be in designated positions of leadership, participants in Dung’s study considered that women were more able to talk with people about conflict, and were more skilled in mediating and resolving everyday conflicts. “Women are more patient than men, they listen to people’s explanations but men do not…Men often threaten to use the power of the local authority, so it does not help in mediation,” one villager said (Dung, 2000:27).

**Everyday conflict in development projects**

I have worked in international aid projects for more than twenty years and in my experience conflict has been a part of every project, and a part of the everyday experience of development workers and managers. Everyday conflict has not attracted much attention or interest in development theory, and there has been little investigation of conflict within, or caused by, international projects (Barbarini 2006). Avoidance and denial are common responses to conflict that limit people’s ability to use and transform conflict creatively, and to explore the patterns of conflict within and between cultures (Augsberger 1992:18). In war zones, it is recognised that humanitarian aid can support peace or exacerbate conflict (Anderson, 1999), but in peacetime and in peaceful countries, the contentious nature of aid projects is seldom acknowledged. Everyday conflict is not usually mentioned, or taken into account, in project design, project management strategies, or in recruiting, training, and supporting project staff.

My PhD research explores the landscape of everyday conflict and cooperation in international projects in Vietnam. My research was an opportunity for me and for other development practitioners in Vietnam, to share and reflect critically on our experiences of conflict and cooperation, and to identify meanings, strategies and opportunities that might help us to transform conflict, build and sustain cooperative relationships, and work more effectively for constructive change.

I chose to locate my research in Vietnam because I have an ongoing connection and commitment to Vietnamese people and communities. However, development practitioners and
researchers working in Vietnam often have difficulty in collecting qualitative data. In my experience, research tools designed to evaluate development outcomes often produced only general and formulaic answers. Researchers have reported that they found it difficult to progress beyond generalities because “people were reluctant to talk about everyday practices that may run counter to given policies or social norms” (Scott, Miller and Lloyd, 2006:33) or found that their attempts at assessment were frustrated by the reluctance of Vietnamese professionals to provide any feedback that could be construed as critical of others (Dau and Kauffman 1997). Bearing these lessons in mind, I tried to choose and devise research methods that would engage the interest and sympathy of Vietnamese colleagues, and create conditions in which they would feel motivated to share their views.

In the first stage of the study, I conducted one-on-one interviews with ten Vietnamese project managers and ten non-Vietnamese project managers working in Vietnam. Eight of the Vietnamese managers chose to be interviewed in English, and two in Vietnamese, using a translator. I asked each of them to tell me about the best project they had been involved in and then about the worst project. These questions established a relaxed “story-telling” atmosphere, put participants in charge of the content of the interview, and grounded the discussion in the real-life experience of participants. Participants were able to determine the scope and specific content of the discussion.

I then asked what conflicts arose in projects and how they were managed, how conflicts should have been managed, and how managers thought international cooperation could be improved. I did not define what I meant by ‘conflict’ or have any conscious preconceptions about what Vietnamese managers might experience or identify as conflictual. In the interviews, I used communication techniques used in mediation: non-judgemental language, open-ended questioning, active listening (for facts, deeper content and feelings) and I prompted participants, as mediators do, to clarify and expand their stories.

**Causes and consequences of conflict**

Quotations in the following pages are from interview transcripts in the author’s possession.

All the Vietnamese managers whom I interviewed said that they had experienced conflicts or ‘not exactly conflicts but very difficult problems’ in their projects, or knew about conflicts in other projects. They described different levels of conflict from overt ‘fights’ to concerns for which ‘perhaps conflict is too strong a word’. Conflicts related to financial management and to project management styles, differences in the interests, philosophy or expectations of project stakeholders, clashes of personality and cultural misunderstandings. Some of the conflicts described were between Vietnamese and foreigners, and some between Vietnamese individuals or organisations. Difficulties in the relationship between the project team (typically composed of both Vietnamese and foreign members) and the “counterpart” (the Vietnamese ministry or government authority which is the owner or official recipient of the project) were often mentioned or implied.

Reported negative consequences of conflict included project delays and even, on rare occasions, project closure. Because of conflict, some projects were not as effective as had been expected or hoped. For some project managers conflicts involved headaches, irritation and embarrassment and these negative feelings made their work more difficult and less satisfying. In some cases team leaders and staff left projects because of conflict. “I don’t like conflict”, one manager said, “but I can disappear easily”
The Government of Vietnam has expressed concern from time to time, about delays in project implementation and the disbursement of project funds. Typically, the causes of delay have been identified as the complexity of the legal framework of international projects, the incapacity of Vietnamese consultants, and differences in language, living styles, viewpoints, cultures and working routines between international and Vietnamese consultants ‘which are believed to increase ineffectiveness’ (Vietnam News Service, 2006).

In my research, managers’ stories showed that conflict sometimes disrupted projects, but sometimes improved project outcomes. Some managers described conflicts that had been successfully resolved. They described how their strategies for resolving or transforming conflict had improved working relationships and project outcomes, for example by providing additional information, explaining unfamiliar concepts, demonstrating their work in practical ways to government officials and technical agencies, encouraging Vietnamese government counterparts to join in project activities, and organizing project work schedules to allow enough time and opportunity to deal with problems, and respond quickly to conflicts and concerns.

Conflict sometimes had positive outcomes for individuals as well as for projects. Through experiencing conflicts, managers said they had gained skills and strength of character. One manager told me that “sometimes we fight. But I think ‘so far so good’…It doesn’t mean we have a failure…Sometimes we bitterly swallow the difference, but we have something bigger that we come together to achieve. We train ourselves. We have to open ourselves, open our eyes, open our ears to listen and make our own decisions”.

Navigating Sensitive Issues

Interviewees said that conflict is an interesting and useful subject for managers in aid projects and also managers in other kinds of international cooperation such as joint venture companies. But conflict in international projects is a ‘sensitive issue’ and should be discussed with care and discretion. Managers used the phrase ‘sensitive issues’ to describe things that Vietnamese people might not want to talk about openly, because their comments might be regarded as critical of people in authority or of national policy, or because they might damage institutional or organisational or personal relationships. The word ‘sensitive’ suggests an element of risk and the possibility of harm, and embraces issues of appropriateness, protocol, privacy and confidentiality.

“To avoid conflict and negative consequences, sensitive issues need to be talked about in a sensitive way,” a manager explained. “Foreigners should pay attention to how Vietnamese people need to say things… If something is sensitive to others, we need to be aware of that. …For example, in our project, most people don’t want to say the words ‘human rights’. If you want to, you can study some aspect of human rights in Vietnam, but just don’t write down that the study is about human rights.”

The complexity of everyday decision-making, where the Communist Party is the ultimate authority at every level of government, is only partially visible or comprehensible to outsiders. Foreigners sometimes do not understand the importance of confidentiality in what may seem to them very normal, very casual things. “Even in my own organisation,” a senior manager said, “if someone tells me their thoughts, I just speak them as my own thoughts. If I said ‘this person said that’ the person would get not-good feedback.” This seems counter-intuitive for Westerners, especially researchers, whose ethical training is to be meticulous.
Practicing and strengthening cooperation

As well as describing conflicts, frustrations and sensitivities, Vietnamese managers talked passionately (and more optimistically than their international colleagues) about their experiences of international cooperation. Their positive experiences included a sense of responsibility and achievement, dynamic and productive relationships, practical and tangible project outcomes, friendships, shared philosophies and understandings, and opportunities for learning. “Now the team is confident,” one manager told me… “They don’t need to think about team-building any more because they have got it! Other people can see it! Even when they are offered better positions in other projects or organisations they stay, because there is a good team here”.

Managers expressed ambitious goals reaching far beyond the required project outcomes. “If we change only in small ways in the community, it is impossible to change the whole society. Change needs to be comprehensive, both from the top down and the bottom up” a young manager told me enthusiastically. Managers espoused development principles such as ensuring the sustainability of project outcomes, and building the capacities of communities and service providers. “The money is important but the method is more important”…“The philosophy is the most important point”, they said. Managers also linked their work in international projects to issues of patriotism and national pride. Because international cooperation adds to Vietnam’s resources and skills, “by working with international projects, I thought I could work well for my country”.

Managers identified many ways that cooperation could be strengthened, for example by sharing information and involving stakeholders in decision-making. They pointed out that cooperation depends on both sides. “Both sides must have the spirit of cooperation.” Vietnamese managers must “have skill, knowledge and enthusiasm for working with the project” and be willing to “look beyond their traditional thinking”. Foreigners must learn to be “sensitive to the cultural context of Vietnam”. “Characteristics of good cooperation are frankness and patience,” a senior manager said… It is good that foreigners are frank. They speak what they think. But what they think is not always correct.”

Vietnamese managers were optimistic that cooperation could improve over time, as Vietnamese and foreigners learned to appreciate and accommodate one another’s different styles. This cultural fluency could be learned, they said, by both individuals and organisations: “International organisations who stay for a long time in Vietnam know how to deal with Vietnamese institutions. They learn to be patient and know how to read the momentum of the project…they will know when to step back and when to step forward”. But “it takes time and experience for people or for organisations to learn these things, so it is difficult for newcomers to adjust”. If both sides, Vietnamese and foreigners, work to achieve common objectives, “then we can negotiate, know how to manoeuvre, not to impose, not to reject, and satisfy our common objectives”.

Exploring common views and differences

In the second stage of data-gathering I developed a survey, drawing on research by Sandra Billard on the use of surveys as tool for participatory and cooperative inquiry. In the survey participants were involved both in generating new data and interpreting results (1998:2). The
survey addressed three areas of inquiry: causes of conflict, ways of strengthening cooperation and attitudes about conflict. The findings indicated whether a larger sample of thirty-five Vietnamese managers agreed or disagreed with opinions expressed in the in-depth interviews, and which issues they considered most important.

A set of ten statements in each area of inquiry was provided to each participant. Each statement was a direct quotation or point of view expressed by participants in the earlier in-depth interviews. Survey participants were asked to indicate whether they agreed or disagreed with each statement, and to rank each set of statements from most agreed to least agreed. Quantitative survey data was coded into SPSS to generate findings on the frequency and strength of agreement.

As well as making these quantitative responses to the survey, participants were invited to add their views on issues of conflict and cooperation or on any aspect of the content or process of the survey, adding to the knowledge base of the study and adding further quantitative and qualitative data to the research process.

The majority of survey participants agreed with all of the ten causes of conflict presented to them. The most highly-ranked statement was that conflict is caused when people in a project do not communicate effectively. This was the statement that Vietnamese participants agreed with most strongly. Other highly-ranked causes of conflict were that conflict is caused when foreigners do not understand the way things are done in Vietnam, or when project partners have different objectives.

The most highly ranked statement about ways to strengthen cooperation was that ‘project planning should involve those who will implement the project and those who will benefit’. This statement was ranked more highly, by a clear margin, than other well-supported suggestions that managers should share information more openly and should be more sensitive to the cultural context of Vietnam. Views on how to improve cooperation were more disparate than views about the causes of conflict. As participants pointed out, it is easier to agree about the causes of conflict than to agree what should be done. A lot depends on the context, and measures that would strengthen cooperation in some projects would not be useful or appropriate in others.

The most strongly agreed statement reflecting managers’ attitudes about conflict was that “conflict in international projects is sometimes useful”. Other highly-ranked statements were that “conflict in projects should be avoided as much as possible” and that “people in projects often agree to things that they are not really happy about”. Although they agreed that conflict in projects should be avoided as much as possible, most participants nevertheless thought that conflict in projects is inevitable, and sometimes useful for testing and clarifying ideas, solving problems and developing personal strengths and skills. This data set showed the least agreement among participants and also elicited the highest number of written comments: “Conflicts are not always bad - they enrich the project by bringing in new initiatives.” “Sometimes conflicts are chances for cooperation and relationships to be improved.” “It is not only the duty of leaders and managers to resolve conflict, but also the duty and the right of other people in the project.”

There were interesting gender differences among Vietnamese managers in all three areas of inquiry, but the differences are most notable in the data on attitudes to conflict. For example, survey results indicated that Vietnamese women were more likely than Vietnamese men to agree that conflict in international projects can be useful. 100% of women and 73% of men
agreed with this. Two thirds of Vietnamese men, but less than one third of women agreed that Vietnamese people do not like to talk openly about conflict.

**Relationships and values**

International projects, for all their shortcomings, create physical, temporal and social spaces for developing cultural fluency. Within these spaces, insiders and outsiders have a chance to cooperate in a process of constructive change, and to transform some part of the social world and of themselves. In ranking the relative importance of causes of conflict, and ways to strengthen cooperation, managers generally ranked issues about relationships and values above more technical issues of project funding, timing and location. Development is often theorised and evaluated in terms of inputs and outputs, systems and techniques, but Vietnamese responses to the interview and survey in this study showed that they regarded relationships, values and feelings as important elements of development cooperation. This is consistent with other research findings showing that “the process and role of relationships is a critical area of development effectiveness” (Chapman and Kelly, 2007:8) and that, even in commercial construction projects, most of the problems are human and management problems, not technical in nature (Nguyen, Ogulana, Quang and Lam, 2004).

Findings of my study emphasized the importance, and the complexity, of cultural fluency in international cooperation. Vietnamese managers pointed out that working with farmers is different from working with teachers, and that every village has its own geography and culture which outsiders (even Vietnamese outsiders) must learn if they are to live or work there. Culture can be understood to include many types and levels of difference including nationality and gender and political and ideological difference, and to play a role in every aspect of conflict, and every aspect of cooperation as well.

Cultural fluency is not just a matter of becoming aware of specific national or ethnic differences, but a continuous effort to understand the ways that others do and see things. For this task, the principles and communication skills practiced in mediation are particularly appropriate: active listening, an empathetic exploration of the needs, interests, goals and concerns of others, and a focus on constructive change. “When someone else makes a genuine effort to see the things the way another sees them, authentic dialogue becomes more possible, Le Baron writes, and “this is true regardless of whether the conflict is interpersonal or played out on the international stage” (2001:4).

**Holding opposites together**

Neil Jamieson proposes a way of understanding Vietnam in terms of the interaction of two operating principles, yin and yang, which provide a model, or a metaphor, for Vietnamese society. Yang characteristics include hierarchy, competition and rules for behaviour based on social roles. Characteristics of Yin include greater egalitarianism and flexibility and more emphasis on feeling, empathy and spontaneity (1995:12).

When I compare the findings of my research with Dung’s account of mediation in rural villages, it seems that a proper order and familiar way of doing things is important both in the international project and in the village. Some people described the proper order in the language of yang, expressing the need for clear agreements about roles and responsibilities, the importance of leadership, and formal structures to ensure effective communication, address issues and concerns and reach consensus. Others used the language of yin, to describe...
the proper and familiar order of things in terms of shared philosophy, common purpose, and empathy.

When I first talked with Vietnamese managers I heard these ways of talking as two separate discourses, but as I read and re-read the interview transcripts, the two styles no longer seemed to contradict each other. They fitted together, each informing and moderating the other. In telling their stories, Vietnamese managers demonstrated their capacity to hold together apparent opposites, formality and spontaneity, conformity and innovation, conflict avoidance and conflict transformation, conflict and cooperation.

References
Voices for Hope: Story Telling and Human Rights

Janie Conway-Herron
Southern Cross University

Abstract: Telling stories about human rights gives personal testimony to the lives that we lead and the ways in which we lead them. It can point to the fact that as human beings we are capable of treating each other cruelly and point to the psychology of an ego or egos made brutal by the lure of power and the dreadful situations for those people made powerless by them. They remind us too of the all-important need for a defence against such treatment. The right of any human being to be treated fairly, the right to free speech. This is important because it is this recognition and vocalising of a dissenting voice that can cause people to be imprisoned and abused. It is also important to remember that this type of abuse is happening right now all over the world. This paper aims to give testimony to the powerful spirits of those who have maintained their right to voice an opinion that might go against the grain of the powers that be and engage with the type of storytelling that articulates the grey area, the in-between space between the opposition of right and wrong that forces us to look at humanity itself.

Keywords: narrative and human rights; silence and the act of giving voice; global/local

Human Rights must be theorized in a way that privileges stories and the lived experiences of individuals and peoples. It is as these stories are personally engaged with, reflected upon and lived out by becoming part of our lives that we are most likely to find the resources to respect others (Langlois, cited in Schaffer and Smith, 2004, p. 223).

I wish my country could be peaceful and calm and have true democracy, then I wouldn’t have to live in a human zoo any more. I could return to Karenni State. This is my dream: to live a free life in our motherland and have the opportunity to study at university and travel (Lo, 2007, p. 17).

My first impressions of going back home after forty-eight years was that my people and the white people still lived in a divided society, and never had any social interactions whatsoever! The hospital wasn’t segregated anymore but there was still a segregated cemetery. I remembered they used to rope the Kooris off at the picture theatre. And the only baker in town had a racist crow, with a silver chain around its feet on the counter. When us mission kids went in to buy bread for the mission, the crow called out, ‘Mum!’ There’s black fellas in the shop!’ … How racist can you get, teachin’ a crow to be racist (Langford Ginibi, 2007, p. 194)!

Storytelling and human rights facilitate one another in a chain of enabling and legitimising processes. Together they link the seeding of human rights discourses and transnational political movements with the global commonality of the rights of the human being to live a life that Schaffer and Smith describe as ‘a collective moral commitment to just societies in which all people live lives characterised by dignity, equality, bodily inviolability and freedom’ (2004, p. 2). Human rights discourses have provided a platform for people, whose liberty and right to lead a dignified existence have been denied, enabling them to voice their dissatisfaction and to demand a right to have their stories heard. These stories of personal
suffering also draw attention to the fact that as human beings we are capable of treating each
other cruelly as well as attesting to the psychology of an ego or egos made brutal by the lure
of power and the plights of those people made powerless by them. They remind us too of the
all-important need for a defence against such treatment and of the right of any human being to
be treated fairly. This is important as well, because the recognition and vocalising of a
dissenting voice can often be the direct cause of people being imprisoned and further abused
in an effort to silence them. This chain of abuse is happening right now, all over the world. It
is important to maintain our awareness of this and not keep it at a distance as if it is not
applicable to our own lives.

Personal story as a framework for giving testimony versus the power of fiction to be able to
draw on more universal principals of human suffering is also something we need to
understand in looking at narrative and its connection to human-rights. In a world where we
are assaulted everyday by headlines and television broadcasts attesting to the rising death toll
in the myriad wars around the globe it is easy to feel powerless enough to inure ourselves to
the personal plights of the people involved. Fiction, with its power to be personal and
universal, subjective and objective at the same time, often represents a more intimate sense of
the world than the news headlines, drawing readers into a more empathetic engagement with a
particular situation. Toni Morrison won the Pulitzer Prize and the Nobel Prize for Literature
with her novel *Beloved*. Dedicated to the sixty-million people who died as a result of slavery
in America, this account of the desperate efforts of a slave mother to save her children from
experiencing the things she has endured in her lifetime, subjectively reconstructs lives lived in
slavery, reframing the African-American experience for all time. As Morrison says in an
interview with Bonnie Angelo;

> I was trying to make it a personal experience. The book was not about the institution,
Slavery with a capital S. It was always about these anonymous people called slaves. What
they do to keep on going, how they make a life, what they’re willing to risk, however
long it lasts, in order to relate to one another—that was incredible to me (1994, p. 257).

Morrison uses the powerful trope of rememory to bring her characters out of silence and into
the telling of their stories, Rememory as storytelling incorporates encounters with memory via
stories that refuse to give way to forgetting; that continue to resurface and not be relegated to
silence. But when writing against dominant cultural perceptions of one’s own subjectivity, the
truth-telling factor of the personal account is fraught with complexity, for if the story is
connected to the teller it can be life threatening and yet if the storyteller is disguised behind
fiction this can detract from the truth-telling power of the eyewitness account. In the labyrinth
of fact versus fiction, narrative as testimony is of utmost importance; but one needs to read
between the lines. It is amazing the lengths that people will go to, to tell their stories, even
under the most desperate of circumstances. These powerful spirits have maintained their right
to voice an opinion that goes against the grain of the powers that be and engage with the type
of storytelling that articulates the grey area, the space between the opposition of right and
wrong that forces us to look at humanity itself. Their stories inscribe a place where silence
and the powerful, celebratory act of giving voice rub against each other and cause friction. It
is the place where stories that are founded on a sense of witnessing have produced a kind of
storytelling that resists vociferously the silencing that goes hand-in-hand with human rights
abuses. It is an important place for all of us to understand.

The Universal declaration of Human Rights was adopted by the United Nations in 1948; the
year I was born. In 2008, after turning sixty I look back on my long-abiding passion for
human rights and notice a retrospective sense of nostalgia in me for some naïve time when I
imagined a global sense of human rights was possible. Growing up in post-war Australia in an
ostensibly white, middle-class family I was imbued with the euphoric possibilities of a peaceful utopian future, while the shadow of human tragedy and the horror of war were never far away from me. Storytelling played an important role in harnessing my early passion for human rights. Stories that explained things that I sensed had come out of suffering began with my attempts to understand the sadness of my father’s family in grieving the loss of my uncle who died in the Middle East after detonating a landmine during WWII. He was an ambulance officer, not a soldier, and he died trying to save lives. On childhood visits to my grandparents’ house, Uncle Frank’s picture would be taken out and my grandfather’s tears would embarrass me while my grandmother’s stoic silence made me wonder what exactly had happened in that not-so-distant past. Over the following years a growing awareness of my Jewish background – not immediately apparent because of my father’s change of name from Aarons to Conway after the war – made the holocaust stories all the more poignant. During the war both Dad and his brother refused to anglicise their names even though my grandmother pleaded with them to do so. As a young girl I pored over post-war stories of the atrocities inflicted on the Jewish peoples in Europe wondering what life might have been like if my family had lived in Europe. I read *The Diary of Anne Frank* and was horrified by what had happened to Anne, while I was safe and warm in my own home. Like many Australians of the time, my family placed their faith in WWII being the end of all wars and imbued me with a visionary hope of world peace. The horror of what happened in Hiroshima, they said, in their desire to make me feel safe and free from harm, would ensure that there would be no more war.

Now in 2008 the naïve optimism of my 1950s childhood is replaced by a more sober wisdom and I have come to understand the extent of the hypocrisy behind such hope. While my family came from a variety of cultural backgrounds Jewish, Gypsy, Scottish and English, we passed as white Anglo/Australian and that’s how we presented ourselves. While my Jewish background was known, it was not celebrated or practiced in my home and my Gypsy grandmother, surrounded by a largely white Australian sensibility, kept her background a secret. At the same time as I enjoyed my relative freedom and optimistic hope for the future, gross abuses of Indigenous human rights were going on in Australia. Until 1967 Australia didn’t even recognise Indigenous Australians as citizens let alone accord them basic human rights. As I have come to understand that white Australia has a black history, the unsettling nature of this knowledge has fed a growing desire to know more. It has been the stories told by Aboriginal people of their lives, lived parallel to mine but under such shockingly different conditions, that have changed the way I, and many other Australians I know, have come to view the history of human rights in Australia.

The basis for storytelling as the seed for human rights activism involves personal witnessing as authentic account, but the way this witnessing manages to gain momentum depends on the cultural and political contexts that the stories are told in. Acting as counter histories to dominant cultural perceptions, they are put together in a range of ways across a spectrum of circumstances. As Schaffer and Smith describe, they are the ‘formerly untold tales of those who have not benefitted from the wealth, health and future delivered to many others by the capital and technologies of modernity and postmodernity’ (2004, p. 17). They come from individuals and communities as well as collective movements and are heard around the world in multiple acts of giving voice and resisting the silencing of domination. These narratives are collected by members of non-government organizations, who cross borders and risk their lives to garner statistics on human rights abuses, and gathered into anthologies of people’s personal stories. They are told through plays put on by theatre companies working with people who have undergone the pain and torture of human rights abuse; they are written by novelists, filmed in documentaries, posted on websites, collected for hearings, tribunals and courts cases and discussed in forums and conferences. In each telling, and in every story, the
subjects of the story and the subjectivity of the storyteller are fragile, subject to a range of situations that could make them even more vulnerable. The collective testimony these stories represent can be powerful manifestations of giving voice but they can also create circumstances where a life of suffering traps the storytellers in the trauma of their own telling.

Aboriginal author Ruby Langford Ginibi’s autobiography Don’t Take Your Love to Town, published in 1988, has gained popularity in Australia over time, and is taught in schools and universities around Australia, as well as overseas. Despite the powerful counter celebration of Indigenous survival that were part of the 1988 bicentenary, many non-indigenous Australians were shocked by the gritty realism of the book, the harsh conditions that Ruby was forced to bring up her children in and her explicit descriptions of the conditions that have lead to so many Aboriginal people being in gaol and the resultant high rate of deaths in custody. In the introduction Ruby describes the novel as being ‘[a] true life story of an Aboriginal woman’s struggle to raise nine children in a society divided between black and white culture …’ (Langford Ginibi, 1988, Acknowledgements).

In an interview with Janine little she describes the novel as ‘[p]ulling the guts out of me literally’ (cited in Little, 1994, p. 104) after she had had a stomach operation. For Ruby colonisation has all but destroyed her people’s heritage and culture and she is adamant that her novels are based in truth rather than fiction that she is, ‘A true story teller … I’m not interested in fiction. Don't need to be because I'm too busy writing the truth about my people …’ (ibid, p. 109). The importance of Ruby’s storytelling is intrinsically tied up with the rights of Aboriginal people in Australia.

We've got this whole wonderful human resource, our Aboriginality, that this country has never ever used, to promote our stuff, to lift us up, but they've used it to their own advantage, for their own gain, and they've been taking from our culture ever since they colonised this land’ (Langford cited in Little, 1994, p. 104).

In 1997 the Human Rights and Equal Opportunity Commission’s (HEREOC) Bringing Them Home Report, sent reverberations around the country and across the world. The report contained overwhelming testimony from victims of the stolen generation about the way consecutive governments had colluded in the forced removal of Indigenous children from their families and communities and the practice of placing these children in a variety of institutions and foster homes. Non-Indigenous Australia was shocked by the revelations and the implications it had revealed yet, for decades previously, a growing number of books like Ruby’s have given autobiographical accounts of lives lived under the racist restrictions of successive Australian governments. It seems it was the extent to which these things had happened and the perceived veracity of a government report that shocked the Australian people most, but it’s risk-taking stories like Ruby’s that have paved the way for Indigenous stories to be received by white Australians.

In the last two decades of my sixty-year history global events have lead to genocide on such an enormous scale around the world that it is almost unfathomable. Massive migrations of people have precipitated a diaspora that will affect world cultural and fiscal dynamics for generations to come. At the same time the discourses of terrorism, drugs, war and invasion have threatened to overwhelm any commitment to human rights and social justice laid down in the 1948 declaration. My mother often said, ‘wisdom is a small voice crying in the wilderness’ when expressing her frustration with the way the world was. The possible triumph of that small voice still appeals to me. Universal declarations are contingent on the hopes of many small voices. In fact, in this age of late capitalism, the rights of the human being is the one universal left that is safe to assume for all.
The conjunction of storytelling and human rights is a transformative one, involving a complex tapestry of production, dissemination and reception, enabling and constraint that evolves out of concerns for who is telling the story, to whom and how. Implicit in this consideration is the context in which the story is told, the time and place it comes from, the history of its dissemination and whether it is heard or not heard. Schaffer and Smith describe the 1990s as ‘the decade of Human Rights’ (2004, p. 1) and they quote Michael Ignatieff’s claim that ‘human rights has become the dominant vocabulary in foreign affairs’ (ibid, p. 3). They go on to describe this same decade as being ‘the decade of life narratives, what commentators refer to as the time of memoir’ (ibid, p. 1). Their work maps the interlocutions of the complex ways these stories ‘bear witness to a diversity of values, experiences, and ways of imagining a just social world and of responding to injustice, inequality and human suffering’ (ibid, p. 1) and they contend,

Storytellers take risks. They hope for an audience willing to acknowledge the truthfulness of the story and to accept an ethical responsibility to both story and teller. There is always a possibility, however, that their stories will not find audiences willing to listen, or that audiences will ignore or interpret their stories unsympathetically. Questions arise: In what venues transnational, national, local, personal—do stories find audiences? (ibid, p. 6)

But, under repressive regimes, storytelling can be a matter of life and death. In 1988 when I was in my last year as an undergraduate student in Australia and engrossed in the bicentennial protests, students in Burma were launching a demonstration that was synchronised across the country called shiq lay-lone or four eights. At ‘eight minutes past eight in the morning, on the eighth day of the eighth month of the year’ (Larkin, 2004, p. 13) thousands of people took to the streets across the country to demonstrate against more than three decades of poverty and military oppression. The brutal military response was overwhelming, more than 3,000 people were killed, while thousands more fled the country. According to Emma Larkin ‘the date of the uprising has become a whispered mantra in Burma, denoting a tragic turning point in the history of the country which can only be remembered secretly, behind closed doors,’ (ibid, p. 13).

The Burmese military has been responsible for the systematic harassment, torture and imprisonment of the mainly ethnic minority villagers whose homes stretch along the northern and eastern borders of Burma and the far reaches of the Irrawaddy delta so recently affected by devastating cyclones. The neglect of the Burmese junta in disallowing any form of outside assistance is just one recent event in a long history of domination. Burma is the third largest source of refugees in the world after Afghanistan and Iraq, between 1995 and 2005 the flow of refugees into Burma’s neighbouring countries has increased up to eight hundred percent. In the last year the number of Burmese refugees in Thailand increased by three percent to 138,970. Burma also has the highest number of child soldiers in the world and between 100,000 and 150,000 children under the age of five die each year from preventable diseases, still the world continues to turn away from the plight of the Burmese people (Altsean Burma, online).

In February 2007 I travelled to Thailand to run writing workshops with Burmese women refugees on the Thai/ Burma border. The workshop participants were ethnic women who have had their lives upended by the Burmese military regime and the writing they did in the workshops contributed towards the anthology, Burma Women’s Voices for Hope. These women risked imprisonment not only by attending the workshops in Thailand as stateless citizens, but also, if recognised as the storytellers, they risked the lives of their families back in Burma. In the workshops the connection between storyteller and author was a risky
business in itself and yet if these stories are read as fictional they lose the truth-telling power so eloquently described by Ruby Langford Ginibi. In the workshops I explained through an interpreter that they could tell their stories by creating a narrator other than themselves. A Karen woman from one of the workshops outlined a story about a village head who has to make a terrible choice. When the military sets up base near a village they decide to hold a beauty quest. They ask the village head to choose the most beautiful young girls and send them to military headquarters for training to become beauty queens. Everyone knows they will be exploited by the military once they go. Forced into sexual and domestic subservience, their lives will never be the same. In this story, the village head sends a girl to the barracks who later commits suicide. The story was to be told in hindsight in past tense, from the village head’s point of view at a point of regret after the young girl had died. In our conversations about the story I assumed that the village head was a man but the group promptly corrected me, letting me know that the village head was a woman. Most of the males had been killed off or joined the resistance forces in the jungle. The women make all the decisions, they told me. But, if you are an older sister and you decide to run away from this situation you know your younger sister will have to go in your stead. I didn’t ask if the story came from personal experience, yet I understood at a deep level from that moment on, the profundity of the project we were all undertaking. In a previous edition of *Burma Woman’s Voices* there are some poems written by women in gaol and smuggled out. All writing implements had been taken away from them but they scratched the poems into the plastic bags that their relatives bought food in, when they returned they swapped the bags and the relatives smuggled the poems out. The poems are poignant reminders of the lengths to which these women would go, risking so much for the opportunity to tell their stories.

When I returned to Australia from the Thai/Burma, I heard about the military invasion of Indigenous communities in the Northern Territory mounted by the Howard government. At first I was unable to comprehend that this invasion was happening in my own country and the cynical ease with which it turned on the notion of well-needed aide. A few weeks later at an Indigenous film festival in Lismore I watched the movie *A Sister’s Love* that Rhoda Roberts and Ivan Sen made about the brutal murder of Rhoda’s sister Lois. Many people attended who knew Lois. The film was a powerful testament once again to the possible brutality of human kind and the racism that’s so prevalent in this country. There’s a scene in that movie where Lois is looking for a house that might hold a clue to who her sister’s torturers were. As images of the streets of my hometown, Lismore flickered past on the screen I recognised them as being around the corner from my own home and the brutality of these events became so painfully close I could hardly bear it. I left the theatre with a new awareness of the social geography of the place I call home, not because I had been in denial about such a possibility, but now I knew where this had happened, my sense of place had inexorably changed.

Now we have a new government in Australia and the Prime Minister’s act of saying ‘Sorry,’ gives some hope that things might change for the better; that at least there is movement forward, for Indigenous stories to be heard in a more empathetic environment and for positive changes to be implemented. For me there is at least some hope of a greater sense of equality for Indigenous Australians. I am grateful that I can have this feeling about the country I call home and it is my sincere wish that Aboriginal Australians share this hope with me. The Burmese people’s hope that some day they will live in a democratic country lies in their hearts and is heard through the stories they tell. But they are still surrounded by the brutality and indifference of a succession of military governments that have ruled over their country since the Universal Declaration of Human Rights was first introduced in 1948.
August eighth, 2008 marked the twentieth anniversary of *shiq lay-lone* and ironically the opening of the Olympic Games in China. The Buddhist cultural significance inherent in the importance of the date and timing of the games indicates inextricable links between the two countries and yet all appeals to China to put pressure on the regime have failed. As Human Rights Watch activist Brad Adams asks in his article ‘Hope Vetoed’,

… why doesn't the world react more strongly? Aside from the times when Burma lands itself on the front pages, most of the rest of the world really doesn't care. There are no geopolitical interests in Burma. It has some natural gas and oil, but not enough to lead to international gamesmanship or posturing. Just as important, when the world does wake up to the chronic human rights disaster facing Burma's people, or a humanitarian disaster such as Cyclone Nargis, China is there to block concerted international action (Adams, 2008, Online).

It is sad to realise that the United Nations itself is a stumbling block in terms of drawing attention to Human Rights. As Adams points out, ‘[i]n January 2007 … China (and Russia, in the hope of Chinese solidarity on Kosovo) vetoed a US and UK resolution demanding action on human rights. After the September uprising in Burma it made it clear it would continue to exercise its veto’ (ibid).

For China, the sovereignty of Burma is all-important, as is its own sovereignty; what happens inside Burma stays inside Burma, what happens inside China is also China’s business. This sovereign right of a nation to remain silent points to the intrinsic link between silencing and giving voice in relation to human rights. As host of the games China has been at pains to keep all criticism under wraps and so impositions and restrictions on media freedom have lead to a generalised cover up around abuses of migrant construction workers working on Games sites, the arrest and imprisonment of Chinese citizens critical of the games on state subversion charges, as well as moves to rid Beijing of any visible vulnerable or poor. At the same time world attention has been drawn to the situation in Tibet with protests being dealt with by violent dispersal of protestors, door-to-door searches, arbitrary detention and torture in what Human Rights Watch observers say is a repetition of similar abuses by Chinese authorities in other ethnic minority areas in China (Human Rights Watch, 2008, Online). The Chinese ability to block sanctions on countries responsible for human rights abuses and silence debate stands in ‘stark contrast to the Chinese government’s commitment to improving human rights in advance of the Games’ (ibid, Online). When a nation as strong as China can veto global consciousness the strong conviction that lead to the 1948 Universal Declaration of Human Rights seems to be in jeopardy. What can we do? On the website for Altsean Burma to commemorate the twentieth anniversary of the 1988 student uprising there’s a report that begins with the statement ‘[w]e won’t forget we won’t give up’ and implores the international community to ‘support democratic reforms and national reconciliation in Burma’ (Altsean Burma, 2008, online). Implicit in this statement, ‘we won’t forget we won’t give up’ is the importance of memory as a tool against the kind of forgetting that is brought about through the silencing of peoples subjected to human rights abuse.

African-American writer, bell hooks, writes in *Narratives of Struggle*, of being ‘paralysed by the fear that [she] will not be able to name or speak words that fully articulate [her] experience of the collective reality of struggling black people’. Of being ‘tempted to remain silent’ (1991, p. 53) She writes of the danger of forgetting and the global struggle by people of ‘memory against forgetting’, (ibid p. 54) where memory finally makes them a subject of history. It’s this struggle of memory against forgetting that makes the intersection of human rights and storytelling so important in the continuing struggle to enshrine the right of the human being to live a reasonable and relatively ordinary life, safe and free from harm. This
right is founded on Toni Morrison’s notion of rememory that gives voice to lives lived. As Schaffer and Smith contend the extension of human justice, dignity and freedom is dependent on ‘the willingness of those addressed to hear the stories and to take responsibility for the recognition of others and their claims’ (2004, p. 5). It is in this connection between human rights and storytelling that the enabling capacity of the story to both the teller and the receiver opens up the possibilities for true reconciliation and understanding, where the assertion of the rights of the narrating communities connect with the articulation of a powerful and ultimately hopeful act of giving voice; an act that resonates around the world with a simple message of the right to peace and dignity for all.

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Endnote

1. See also Conway Herron (2007) Narrative and advocacy: Burma's identity through its women's voices. Australian Folklore, 22, pp. 57-72.
What can Hannah Arendt’s theorising add to equity policy activism in higher education institutions?

Uschi Bay
Deakin University, Geelong Waterfront campus

Abstract: Human rights theory is based on universalistic moral perspectives that regard each individual as a bearer of rights. These rights are often legislated nationally and implementation mandated for institutions including higher education institutions. Arendt contests this kind of governance and ruling. Arendt argues for an agonal politics. Arendt theorises politics and power as something that cannot occur in isolation; it is through ‘acting in concert’ with others that a political community is constituted. Arendt advocates for a public space where people can take care of the ‘public things’ between them to work out how to live together. In this paper I reflect on my role promoting equity within Australian higher education institutions and explore what Arendt’s theorising can add to re-thinking this kind of human rights work. Arendt argued that re-valuing politics would pave the way to a ‘new appreciation of human plurality’ (Villa 1996: 17). I will argue that the ‘Fair Chance for All’ (1990) equity policy promoted a form of identity politics within higher education institutions. I argue that Arendt’s theorising can effectively disrupt identity politics and offers a corrective to the way human rights legislation and related institutional policies tend to focus on specific target populations.

Keywords: Arendt, political action, higher education institutions

Introduction

Hannah Arendt was one of the most striking, original and significant political theorists of the twentieth century. Hannah Arendt is rightly treated as a major political thinker (Canovan 1992; Disch 1994; Villa 1996; Levinson 2000; Walsh 2002). Arendt did much to reinstate some of the central preoccupations of the great western tradition of political theory. She added significant concepts to the political lexicon “plurality”, “natality” and “publicness”. Arendt’s treatment of core ideas like “politics” itself and “freedom” are distinctive (Beiner 1982; Disch 1994; Villa 1996). I argue that Arendt’s theorising of politics, plurality and power ‘as acting in concert’ can add much to an understanding of higher education institution equity policy activism.

I briefly outline Arendt’s thinking about power, political action and freedom in this paper in reference to her work on The Origins of Totalitarianism (1951, 1958) which set the agenda for Arendt’s later political thought (Canovan 1992). I draw on Arendt’s (1958) possible models for political action in The Human Condition and her account of freedom and authority in On Revolution (Arendt 1963) to highlight Arendt’s contribution to re-thinking equity policy activism in higher education institutions. Before I turn to Arendt’s theorising I will briefly outline the broad parameters of the higher education equity policy ‘Fair Chance for All’ (1990).
A fair chance for all equity policy

The Australian Labor Government’s ‘Fair Chance for All’ (1990) policy proposed that various disadvantaged groups in Australia were under represented in their access to and participation in higher education, and consequently were denied the opportunity of making a full contribution to the life of their community. These “disadvantaged” groups were identified specifically as: people from socio-economically disadvantaged backgrounds, Aboriginal and Torres Strait Islander people, women in particular non-traditional areas of study, people from non-English speaking backgrounds, people with disabilities and people from rural and isolated areas (DEET 1990: 2). Equity practitioners were employed by higher education institutions to prepare equity plans and programs for students.

The ‘Fair Chance for All’ (1990) equity policy had five components:

… an overall objective; clarification of the commonwealth responsibility; the objectives, targets and strategies for each identified disadvantaged group; the requirements of institutions to develop plans that reflected institutional circumstances and arrangements for monitoring institutional performance (Wright 2000: 2-3).

These five components largely pre-determined the situation to be addressed. The equity policy set the objectives and determined the people to be involved (the target populations) and broadly the “accountability” methods higher education institutions were to use. In this sense the ‘Fair Chance for All’ (1990) policy was a “top down” policy. There was encouragement for higher education institutions to particularise their plans to the specific needs of their region(s), but the five components directed much of the equity practitioners’ work towards complying with requirements laid down by the then Department of Education, Employment and Training (DEET 1990).

The requirement for higher education institutions to develop equity plans to a large extent directed the work of the equity practitioners towards finding, collating and representing statistical information about “excluded” student population groups. The legislative framework that supported the equity policy implementation in higher education institutions included the Commonwealth Racial Discrimination Act (1975), the Sex Discrimination Act (1984), and the Disability Discrimination Act (1992). Equity practitioners were also responsible for ensuring that higher education institutions complied with the requirements of these Acts at both federal and state level. Equity practitioners prepared annual reports to federal Human Rights and Equal Opportunity Commission in relation to measures aimed at ameliorating institutional indirect and direct discrimination. Equity practitioners consulted with the state Equal Opportunity Commission and replicated the Commissions complaints based procedures within higher education institutions.

The ‘Fair Chance for All’ (1990) equity policy was understood by most equity education practitioners as aiming to facilitate social justice. The then Federal Minister for Employment Education and Training (DEET), John Dawkins, introduced the ‘Fair Chance for All’ policy as a social justice policy:

All Australians have the right to access the services and benefits our society offers and to contribute to our social, cultural and industrial endeavours. This Government is committed to the achievement of a fairer and more just society, and is working towards the removal of the barriers which prevent people from many groups in our society from participating fully in the life of our community (1990: iii).
The ‘Fair Chance for All’ (1990) policy was to promote a fairer society. Clarke (1997) claims that the social justice flavour of this Policy was advocated by equity practitioners.

The ‘Fair Chance for All’ (1990) equity policy was a largely top-down policy initiative that set up relations of command both within higher education institutions and between higher education institutions and the federal government department (DEET). Arendt’s theorising contends that a ruling and command based models for ordering relationships tends to govern politics out of existence. Arendt argues that revaluing political action ensures plurality, freedom and the capacity of people to disclose “who” they are. Equity policy practitioners sought to transform power relations but were regularly engaged in ruling and command relations when aiming to implement equity policy within higher education institutions. Ruling and command relations appear contrary to the relations equity practitioners were seeking to develop in higher education institutions. Arendt’s revaluing of politics adds much to re-thinking equity policy activism in higher education.

Revaluing political action

What alerted Arendt to the importance of keeping politics alive was her experience and analysis of totalitarianism. In the Origins of Totalitarianism (1951) Arendt sets out to firstly understand and then explain how a totalitarian politics emerged in the twentieth century. Totalitarianism is an exercise in total domination. It does not invoke political processes so much as use violence to produce non-political consequences like mass murder or large-scale state terrorism. According to Arendt the totalitarian project meant that people were ‘deprived of individuality and of freedom’ (Arendt 1951: 428). Arendt argues that totalitarian propaganda offered a deterministic view of the world and of history, linking the past and the future, in a way that made the present inevitable, and as such promoted a single prescription for the one way of life.

Arendt argues that human beings have such great resources that they ‘can only be fully dominated when [they] becomes a specimen of the animal species man’ (Arendt 1951: 428). Arendt argues that the concentration camps operated as experiments in reducing human beings to animals. This process began when the inmates were stripped of

\[
\text{… juridical personality as bearers of rights and put outside the law… (Canovan 1992: 59).}
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In the concentration camps all that then ‘remained of humanity was sheer individuality, and that too was systematically destroyed by bestial treatment’ (Canovan 1992: 60).

Juridical rights are critical to people but they must be recognised and acted on within specific political communities. Stateless people are people who on the basis of their sheer humanness alone may not be able to gain access to juridical rights. In higher education institutions the rights to a non-discriminatory environment on the basis of gender, race and/or disability were enshrined in legislation, however it is within political communities that these rights are enacted. Arendt claims that we need to embrace political action if we seek to ensure that people are recognised and related to as fully human.

Arendt’s analysis of totalitarianism shows the suppression of political action. Arendt (1951) effectively illustrates that where there is violence there is little space left for politics. According to Arendt ‘power and violence are opposites; where the one rules absolutely, the other is absent’ (1969: 56). Violence can destroy power and in consequence destroys all legitimate power. For Arendt, power is the essence of government not violence, as power is a function of human relations. Arendt’s analysis of totalitarianism shows the suppression of
individuality and of freedom. This highlights the importance of political action as that which maintains the capacity for human distinctiveness and for freedom.

At the heart of Arendt’s political theory is a fully explicated account of political action conceived as free action that requires, if politics is to flower, a way of existing that is based on ‘being together that is in process, or in becoming’ (Fagan 2001: 5). It is ‘[s]peech and action [which] reveal [humanity’s] unique distinctiveness’ (Arendt 1958: 176). It is through these distinguishing activities that ‘human beings appear to each other, not indeed as physical objects, but qua [humans]’ (Arendt 1958: 176, italics in the original).

For Arendt, political action means the disclosure of “who” somebody is in contradistinction to “what” somebody is. This self-disclosure through speech and action often reveals a “who” that is clear and unmistakable to others and yet remains hidden from the person himself or herself. In this sense, political action is often self-surprising (Arendt 1958: 179). Arendt’s understanding of political action is a singularly striking and challenging one. For Arendt, action lies outside the relational category of means and ends. In this sense Arendt is aiming to rescue the notion of acting from the “instrumentalisation of the world”, which treats utility as the sole criterion of value.

Usefulness and instrumentality

The “Fair Chance for All” (1990) equity policy indicates that ‘disadvantaged’ groups are an under-used resource. For instance this quote from the ‘Fair Chance for All’ policy states:

People from disadvantaged groups form a large and diverse pool of under-used resources. They should be encouraged into higher education and contribute their skills to developing a more highly skilled and efficient workforce (DEET 1990: 7, my italics).

This claim positions “excluded” or “disadvantaged” groups as:

…valued resources of the state, their end is not the positive enhancement of the life of individuals but the augmentation of the national estate (Dean 1991: 34).

The problem however is not instrumentality itself, but what it means for human beings to be valued as the means to achieve an end. When ‘usefulness and utility are established as the ultimate standard for life and the world of [humans]’ (Arendt 1958: 157), it devalues human being. As Hansen explains:

… [f]rom Arendt’s perspective, the modern state provides a powerful testament to the suppression of ‘for the sake of’ by ‘in order to’, the reduction of meaning to utility (1993: 53).

For Arendt, the process of empowerment conceived as acting upon another to “conduct their actions toward an appropriate end” is totally anti-political and thus not cotermous with freedom. Once, the “appropriate end” of empowerment is determined by experts, the purpose or meaning of empowerment is taken for granted and no longer open for political debate. All that tends to remain is instrumental action on the part of many “responsibilised actors”.

This is a model of politics that is based on fabrication or labour (Arendt 1958). The process of fabrication ‘is itself entirely determined by the categories of means and ends…. To have a definite beginning and a definite, predictable end is the mark of fabrication, which through this characteristic alone distinguishes itself from all other human activities’ (Arendt 1958: 176, italics in the original).
The concern for Arendt is that ‘when this fabrication is applied to politics, which is concerned with dealings between plural persons, it is other people who become the material to be dealt with violently and sacrificed to the end that is to be achieved’ (Canovan 1992: 73).

Instrumentalism where action is undertaken for the sake of the “in order to” (Villa 1996), according to Arendt makes political action meaningless. The managerialism introduced into higher education institutions at the same time as the equity polity tended to favour an instrumentalist approach to University governance. The Equity policy process sought to make specific positions within the University responsible for various equity outcomes and obligations within higher education institutions. Ironically many of these outcomes were not within the particular position or job-holders’ agency or control. The instrumental focus on outcomes in the Equity Policy development tended to lend an air of unreality to the whole initiative, as it tended to displace the political and attempted to order any antagonisms.

Politics was often understood as synonymous with higher education institution’s governance processes. Further representation in these governance structures, directly or indirectly by a member of a particular equity target group was presented as meaning that “disadvantaged” groups were participating politically in the governance of the institution. Beiner asserts that in liberal societies today ‘political membership is restricted to only the most formal and attenuated expressions, such as the symbolic ritual of voting’ (1984: 371). This narrow notion of politics means that political action is not valued in and of itself. It is when people demand a “worldly space” in which to ‘exercise active freedom that is not freedom from politics but freedom for politics, that political action might come into play’ according to Beiner (1984: 369, italics in the original). By defining politics as governance processes and political action as representation on formal committees the Equity Policy making process delimited politics in ways that made transforming power relations in higher education institutions highly unlikely. Arendt considers the instrumentalisation of politics as an aspect of the way modern power operates. The instrumentalisation of policy making is thus an issue equity activists need to contest as part of the process of altering power relations.

Arendt in re-thinking “action” wanted to find a certain way of being in the world which values speech and action as defining of the “unique distinctiveness” of human beings (1958: 176). This emphasis refocuses the importance of the development of these policies and plans in ways that engage people within higher education in dialogue and on-going deliberation. The demands to formalise plans and policies tended to become meaningless when this pressure suppressed the value of speech and the importance of deliberation and debate. Arendt’s revaluing of the political as speech and action is an important corrective to an instrumental and ruling approach to equity within higher education institutions.

**Plurality**

For Arendt, politics is essential for the protection of plurality while the exercise of power is dependent on the human condition of plurality (Gordon 1999: 204). Arendt refers to the human condition of plurality as a fact of human existence, as well Arendt acknowledges plurality has a ‘more tentative status as a political condition’ to be achieved (Levinson 2000: 92). Levinson says:

As a human condition, plurality is a given, but as a condition of politics, plurality is in the paradoxical position of making politics possible at the same time as politics is its own condition of possibility (2000: 92).

Plurality is a distinctive category which Arendt added to the political lexicon (Disch 1994). It is the plurality of people in an authentic public realm which creates a space for ‘reality to
appear in its manysidedness’ (Canovan 1992: 117). Firstly, plurality means that humans, not a person, ‘live on the earth and inhabit the world’ (Arendt 1958: 7). On this most basic level, the fact that people exist on this earth together acknowledges the sheer multiplicity of human beings.

Plurality also refers to diversity because Arendt says:

…we are all the same, that is, human, in such a way that nobody is ever he same as anyone else who ever lived, lives, or will live (1958: 8).

Arendt’s notion of plurality is crucial for untangling some of the knots that identity politics has enmbedded equity policy practitioners in.

‘Plurality [also] names the web of interconnection, the “web of human relationships which exists wherever [people] live together” (Arendt 1958: 184, cited in Disch 1994: 32). According to Disch, plurality in defining a fact of human existence also means that ‘the possibility of community is never simply given or essential to human beings but must, rather, be built by speech and action’ (1994: 32, my italics). Arendt adds to equity practitioners thinking the notion that the higher education institution as a collective of many people can comprise a political community. ‘Community’ in this sense, is an event, a being-in-common, a happening as it comes (Fagan 2001: 2-3). Arendt’s notion of plurality attempts to underline for us that when we belong to a higher education institution, we need to build it as a political community through speech and action.

‘The experience of plurality is an experience of both equality and of distinction; we are all human, and we are all separate individuals’ (Canovan 1992: 206). This point highlights for me that equality in this public space is not necessarily a state that we attain once and for all time, but is an on-going political achievement. In this sense, equality is built by speech and action in a political community that is striving to realise this principle through a ‘being-in-common’ that is always becoming.

Arendt thinks it is vital that people express opinions from their own perspective to make available the common world to each other. Arendt was forceful in her view that opinion rather than truth counts and is ‘the stuff of political life’ (Villa 1996: 94). Arendt understood opinion not as:

… the expression of subjective bias or arbitrariness, rather, it signifies the politically essential fact that “ the world opens up differently to every [person], according to [their] position in it”. It is precisely the variations implicit in the “it appears to me” that underlies the presencing of the common world (Villa 1996: 94).

It is only through political interaction that the “common world” or political community is created out of the multiplicity of opinions and perspectives (Levinson 2000: 90).

**Political identities and interests**

Arendt is said to ‘offer key insights into the power… of solidarity’ without reliance on essentialist or exclusionary notions of identity (Allen 1999: 97). Solidarity is understood from a liberal political viewpoint to require common interests based on our social or political identities. This liberal view puts common or shared interests before politics, whereas in Arendt’s view politics and policies create those interests and the political identities. Arendt redefines solidarity by shifting the locus of the possible common purpose that inspires
collective action from the ‘inner selves of political actors to an “articulated” common interest in the world’ (Disch 1994: 38).

It is the:

... possibility of a common interest that accomplishes the contradictory task of uniting individuals and separating them in an “articulate way” [and] departs in important ways from liberal and communitarian understandings of interest (Disch 1994: 36).

For Arendt, ‘interests are not private bargaining chips, defined with reference to individual goals and traded competitively on the political “market”. In contrast to the communitarian ideal, the “inter-est” is not a common cause that in some way expresses the authentic beings of its disparate participants and harmonises their wills (Disch 1994: 37). Arendt calls this “inter-est” an “in-between” which suggest that there is a commonality. At the same time, her insistence on argumentation suggests that commonality does not mean concord. The public realm, according to Arendt, is an:

... area in which there are many voices and where the announcement of what each ‘deems truth’ both links and separates men, establishing in fact those distances between men which together comprise the world (1978: 30).

The ‘Fair Chance for All’ (1990) equity policy constituted the political identity of the disadvantaged or “excluded” groups and assumed their political interests as increasing their participation in higher education to prevent future poverty and economic and/or social exclusions from society. This starting point is challenged by Arendt’s theorising of the public space and plurality. Disch contends that ‘common interests are relative to a particular situation. But the terms of that situation are not [to be] given in advance, and neither are its members designated in advance’ (1994:39). The equity policy did both, it predetermined the common interests for particular groups and indicated in advance who the groups were. Those who seek to fight relations of subordination need to be cautious of the effects of such predeterminations and articulate and challenge the effects of identity politics. One of the strategies equity practitioners used to give equity policy making credibility was to employ equity workers who visibly embodied the underrepresented identity groups identified as disadvantaged in higher education. Employing “indigenous” workers to speak on behalf of pre-determined discursive political identities potentially encourages that person to relate to them selves as that political identity, without unpacking how this “political identity” itself has been fabricated over time. Thus the demands for individuals to speak to and for a particular political identity have to be questioned on an on-going basis. According to Honig’s reading of Arendt,

... a political community that constitutes itself on the basis of prior, shared, and stable identity threatens to close the spaces of politics, to homogenize or repress the plurality and multiplicity that political action postulates (1992: 227).

Arendt assumes that ‘there is no critical leverage to be had from inside formed identities’ (Honig 1992: 231). Arendt values plurality as the condition of public life and encourages political action based not on inherent essentialist essences or identities but on the points of disagreement that might galvanise people into action around a particular phenomenon or event related to oppressive power relations.

Arendt attempted to rethink politics by taking into account human plurality in ways that ‘recognises politics as something that happens in the space between plural’ people (Canovan
Power is then understood ‘not [as] something an individual can possess on his own… Instead it is something that ‘springs up in between [people]’ when they act together’ (Canovan 1999: 208).

Solidarity can be based on a community of action. Solidarity is after all a modality of power (Allen 1999: 112). One need not “be” a member of a particular disadvantaged group to join a collective effort to resist subordination. Solidarity does not have to be based on essentialist notions of identity nor on the “lived experience” of oppression. Collective political movements can be ‘held together not by a shared identity, but by the shared commitment of distinct individuals to work together for the attainment of a common goal’ (Allen 1999: 112). Power, in relation to solidarity, then is based on ‘those who pledge to work together to fight relations of subordination’ (Allen 1999: 113).

**Public freedom and principles**

Arendt argued that:

… inwardness as a place of absolute freedom within one’s own self was discovered in late antiquity by those who had no place of their own in the world and hence lacked a worldly condition which, from early antiquity to almost the middle of the nineteenth century was unanimously held to be a prerequisite for freedom (1961: 147).

Locating freedom inwardly means that one can be a slave in the world and yet still consider oneself free. Arendt claims that the ‘entire modern age has separated freedom and politics’ (1961: 148). Arendt says the ‘raison d’etre of politics is freedom, and its field of experience is action’ (1961: 146). Arendt argues that:

[People] are free - as distinguished from their possessing the gift for freedom - as long as they act, neither before nor after; for to be free and to act are the same (1961: 153).

Freedom is conceived of by Arendt not as an inner human disposition or subjective state, rather freedom is the ability of people to ‘begin; for to be human and to be free are one and the same’ (1961: 167).

Arendt suggests that performative metaphors best capture the sense of freedom in action. The accomplishment of freedom is like ‘flute playing, dancing, healing, and seafaring’ (Arendt 1961: 153). This metaphor reinforces her point that political action is public and needs an audience. It cannot occur in isolation. Political action is not instrumental by seeking a determined outcome. Rather, it is about freedom, the kind of political freedom which ‘is something disclosed in the togetherness of [people] in a condition of human plurality’ (Beiner 1984: 354, italics in original). What is disclosed are principles like ‘honour or glory, love of equality or virtue, distinction or excellence…but also fear or distrust or hatred’ (Arendt 1961: 152).

Arendt insisted that:

Principles do not operate from within the self as motives do … but inspire, as it were, from without; and they are much too general to prescribe particular goals, although every particular aim can be judged in the light of its principle once the act has been started. For, unlike judgment of the intellect which precedes action, and unlike the command of the will which initiates it, the inspiring principle becomes fully manifest only in the preforming act itself…. In distinction from its goal, the principle of action can be
repeated time and again, it is inexhaustible, and in distinction from its motive, the validity of a principle is universal, it is not bound to any particular persons or any particular group. However, the manifestation of principles comes about only through action, they are manifest in the world as long as action lasts but no longer (1978: 152).

Arendt understands the focus of politics is the world and this demands certain virtues, whereas the focus of morality and conscience is upon the self and this focus can miss the importance of preventing harm to others.

In higher education institutions the annual equity plans specified who was responsible for certain aspects of the equity policy, strategy and monitoring. However plans do not acknowledge the complexity or frailty of human affairs. The equity policy and plan reflect a level of agreement and closure that was not possible in reality, as reality is far more complex and chaotic. Such closure is also not desirable, as it denies plurality, dissent and the on-going need to augment and begin again. Perhaps a statement of principles about how we might relate to each other in higher education institutions that is regularly debated might be better at not governing politics out of existence.

**Being present, belonging and the common world**

For Arendt, the common world is ‘the entire pragmatic web of relationships in which human beings are caught up, the total interplay between people, things, and relationships’ (Biskowski 1993: 879). As such the world is both the formal condition for political action and the object of political action. It is something held in common by plural subjects, something that both relates and separates individuals from each other, ‘the way a table separates and relates the individuals who gather around it’ (Arendt 1958: 22). In this way,

> [t]he world provides action with context, meaning, a space to appear, and the possibility of remembrance, as well as a common point of reference and orientation (Biskowski 1993: 881).

A non-political condition as Arendt indicated with her work on totalitarianism, deprives people of a place in the world, a complete loss of political status. For Arendt, belonging to a political community is what provides us with the opportunity to act politically. Being denied a presence within the political space requires redress through having a political opinion and taking political action (Herzog 2004: 41). ‘One does not acquire a political presence and then begins to act. It is through actions that one reveals oneself as a political agent’ (Herzog 2004: 43). Arendt fears that when:

> … political spaces are absent, the distinct perspectives our locations allow become indiscernible, and, again, both plurality and commonality are at risk and with them our political agency and the capacity to thoughtfully effect the conditions of our lives (Orlie 1997: 86).

**Conclusion**

Arendt offers an account of political action as free action that requires a way of existing that is based on ‘being together that is in process, or in becoming’ (Fagan 2001: 5). This is in sharp contrast to the instrumentalist way higher education equity policy promoted acting upon another to conduct their actions toward an appropriate end. For Arendt, an instrumentalist approach to politics is a form of ruling that is totally anti-political and thus not coterminous with freedom. Once, the “appropriate end” of equity policy is determined by policy experts,
the purpose or meaning of the policy is taken for granted and is no longer open for political
debate. All that remains is for equity practitioners to guide the many “responsibilised actors”
in the higher education institution towards these predetermined ends. Thinking with Arendt,
equity practitioners can contest this ruling relation and promote political communities within
higher education institutions that value a multiplicity of opinions and perspectives (Levinson
2000: 90).

Australian higher education equity policies identify various ‘disadvantaged’ groups and some
higher education institutions promote representation of these groups on governance
committees as a way to meet these groups’ interests. According to Arendt, this instrumentalist
understanding of identity and politics governs politics out of existence. Equity activism can
courages political action based not on inherent essentialist essences or identities but on the
points of disagreement that might galvanise people into action around a particular
phenomenon or event related to oppressive power relations. Arendt’s theorising shifts our
thinking from the current identity based politics of much equity activism in higher education
to a notion of collective political movements that can be ‘held together not by a shared
identity, but by the shared commitment of distinct individuals to work together for the
attainment of a common goal’ (Allen 1999: 112). Power, in relation to solidarity, then is
based on ‘those who pledge to work together to fight relations of subordination’ (Allen 1999:
113).

When political action is governed out of existence, plurality is also not valued. Equity
activists in valuing plurality need to facilitate with others “worldly spaces” to ‘exercise active
freedom that is not freedom from politics but freedom for politics’ (Beiner 1984: 369, italics
in the original). According to Herzog, we do not ‘need to acquire a political presence to begin
to act. It is through actions that one reveals oneself as a political agent’ (2004: 43). This
notion opens political action to all who seek to work together to fight oppression. Arendt’s
revaluing of political action, freedom and power is interrelated with the flourishing of human
plurality. Arendt’s theorising assists equity practitioners to reframe equity policy
implementation by promoting a new approach to equity activism in higher education
institutions that values political action.

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When is Transitional Justice Successful? An Econometric Approach

Christopher Warburton
John Jay College of Criminal Justice

Abstract: The literature on transitional justice extensively recognizes democracy and economic liberalisation as evaluative criteria for successful transitions from war-ravaged societies to peaceful and just societies. Transitional justice, unlike retributive justice presupposes that forgiveness/reconciliation and liberalisation are capable of cultivating mores for lasting political stability. This paper finds that post civil-strife or transition countries with low income concentration have generally turned out to be more stable than countries with relatively high income concentration. High income concentration has traditionally been identified as a source of civil conflicts. Unlike other studies, this study empirically tests the relationship between economic liberalisation (openness) and income concentration as a measure of successful transition in post conflict societies. Using data from the World Bank and the Central Intelligence Agency, we evaluate a sample of fifty-six post-conflict and/or transition countries and find a statistically significant difference between the levels of income concentration in politically stable and unstable countries with exposure to transitional justice procedures. Logistic and Ordinary Least Squares estimates indicate that economic liberalisation positively affects the odds and likelihood of reducing income concentration in the sampled countries. We conclude that successful transitional justice algorithms are ultimately contingent on the level of income concentration and the extent of state-society integration.

Keywords: Transitional Justice; Conflicts; Income Concentration

Introduction

The literature on transitional justice extensively recognizes democracy and economic liberalisation as evaluative criteria for successful transitions from war-ravaged societies to peaceful and just societies. Transitional justice, unlike retributive justice presupposes that forgiveness/reconciliation and liberalisation are capable of cultivating mores for lasting political stability. This paper finds that post civil-strife or transition countries with low income concentration have generally turned out to be more stable than countries with relatively high income concentration. High income concentration has traditionally been identified as a source of civil conflicts. Unlike other studies, this study empirically tests the relationship between economic liberalisation (openness) and income concentration as a measure of successful transition in post conflict societies. Using data from the World Bank and the Central Intelligence Agency, we evaluate a sample of fifty-six post-conflict and/or transition countries and find a statistically significant difference between the levels of income concentration in politically stable and unstable countries with exposure to transitional justice algorithms. Logistic and Ordinary Least Squares estimates indicate that economic liberalisation positively affects the odds and likelihood of reducing income concentration in the sampled countries. We conclude that successful transitional justice algorithms are ultimately contingent on the level of income concentration and the extent of state-society integration.
Transitional justice algorithms are measures that are implemented to correct widespread human rights abuses, which are the result of violent civil conflicts or oppression, in order to attain lasting peace. They take into consideration the rights of victims and accused. Posner and Vermeule (2003) observe that all transitions have multiple goals. These goals may however be classified under broad political and economic headings. The definition of transitional justice coalesces around reconciliatory reforms that are consistent with liberal and democratic changes to generate stability in troubled states by affirming the rights of victims and accused.

The objective of attaining lasting peace for post conflict societies makes transitional justice an attractive alternative to the much more punitive retributive justice, which gives primacy to the punishment of war criminals for breaches of peace or atrocities. The conciliatory potential of restorative justice is seen as an attractive alternative. The debate is far from settled as to which form of justice must be desired for optimal result or success. South Africa and Colombia are seen as pertinent justification for the restorative form, unlike the retributive approach of the Nuremberg trials, the international criminal tribunal of Rwanda, and former Yugoslavia.

A major problem is that, dealing with conflict resolution imposes different challenges for countries in crisis. At least five questions are salient to the form of justice that should be meted out: (i) What causes crimes against humanity and how should societies deal with such crimes? (ii) What mechanisms are there to correctly identify the accused? (iii) Should societies impulsively punish the accused? (iv) Should societies forgive and forget atrocities in favor of lasting peace? (v) Can positive effects of transitional justice be sustained? For justice to be meaningful or successful, these questions must be completely or adequately answered. Contemporary paradigms for transitional justice take reparations seriously. The revised set of basic principles includes restitution, compensation, rehabilitation, and satisfaction and guarantees of nonrepetition.

The anomaly of dealing with contradictory and expedient demands, which are so characteristic of war-torn societies in desperate need of the cessation of hostilities, imposes real considerations of multiple solutions to equilibrate peace/politics and justice. Of course, hostilities are driven by passionate disagreements, which more often than not, are integral to the enjoyment or affirmation of fundamental liberties with serious economic undertones—the right to have food, water, shelter, clothing, education, property, and a choice of government that will be responsive to such fundamental needs.

These disputes are timeless, but it was not until 1924 that the Permanent Court of International Justice (PCIJ) provided a workable definition of a dispute within the framework of international law. It was then defined as disagreement “on a point of law or fact, a conflict of legal views or of interests between two persons.”

Civil hostilities necessitate transitions from war to peace or from authoritarianism to democracy. These transitions require radical and amorphous readjustments for which emphasis on the brand of justice rather than the accomplishment of justice may be wrongheaded. The effects of failed retributive justice are not any different from those of failed restorative justice. But the complexities and heterogeneity of global societies, and the resolve to protract hostilities because of unrelenting resentment (attributable to loss of value) further endanger the prospects of a successful universal paradigm.
Posner and Vermeule (2003), and Boettke and Coyne (2006) identify the core tools of transitional justice as follows: (i) Trials for war criminals; (ii) The institutionalization of truth commissions; (iii) Reparations; and (iv) Purges and lustrations [penalties barring the continuation in office in order to safeguard reforms]. These algorithms are generally cathartic, restorative, and punitive with significant marginal social opportunity costs to the affected societies. Scarce resources which are so vital to alternative uses are expended on administering justice. Such expenses may be subsidized when the administration of transitional justice is exogenous. Yet there may well be collateral advantages or positive externalities when the administration of justice is endogenous. Boettke and Coyne allude to the cost benefit analysis. To the extent that the ultimate aim of transitional justice is to obtain lasting peace, it is essential to evaluate the mechanisms or procedures which are directed towards the achievement of that objective.

The rest of the paper is structured as follows: In Section II we provide a brief review of the literature in the context of an appraisal of the history, types, cost of administration, and efficacy of transitional justice. The methodology of this study, which involves the data, model specification, estimation, and inference are provided in Section III. We discuss the empirical findings, conclusion, and policy implications in Sections IV and V.

**Literature Review**

This paper draws inspiration from others: Doyle and Sambanis, 2000; Posner and Vermeule, 2003; and Boettke and Coyne, 2006. Doyle and Sambanis address the issue of peace-building and cessation of civil-war hostilities based on strategies that are responsive to conflict induced factors. They observe that broad parameters that fit most conflicts can be identified and that civil wars arise when individuals, groups and factions discover that they are alienated by a policeman, judge, soldier or politician.

They investigate the proposition that the probability of successful peace-building is a function of a country’s capacities, the available international assistance, and the depth of war-related hostility. They use cross-sectional data to test an interactive model by focusing on civil wars since 1944 but which ended by 1997 so that they can measure peace-building outcomes at least two years after the end of hostilities. Civil war is defined, *inter alia*, as an armed conflict that causes more than one thousand deaths overall and at least in a single year.

The stimulus variables are operationalized as interactive proxies. For example, the level of hostility is defined by the log of deaths and displacement, the type of conflict, the number of hostile factions, the level of ethnic divisions, and the outcomes. Local capacities are operationalized in terms of socioeconomic indicators of development, such as real per capita gross domestic product (GDP), energy consumption, and natural resource dependence. International capacities are measured in terms of the strength and mandate of peace operations and the amount of economic assistance rendered to the warring countries. International capacities are accorded primacy to see how United Nations (UN) operations influence the probability of peace-building success. The authors controlled for the cold war or the decade during which the war started. The regressand is measured in terms of success or failure within two years after the cessation of hostilities. One of the significant findings of the study is that international and local capacities and hostility are significant determinants of peace-building.

Posner and Vermeule (2003) argue that there is an inherent error on the part of theorists who try to separate regime transitions from the wide variety of transitions that occur in the legal systems of consolidated democracies. They contend that ordinary justice is far from settled. It
is highly fluid because of routine adjustments to policy shifts caused by economic and technological shocks and changes in the value judgments of citizens and legal elites. “These jarring discontinuities” predictably create transition problems for consolidated democracies with a hostile past.

According to Posner and Vermeule, theorists err when they engage in a wholesale condemnation of transitional justice measures. Ordinary justice in consolidated democracies has developed a range of pragmatic tools for managing transitions which include trials, purges, and reparations to accomplish valuable forward-looking goals without illiberal repression. They observe that transitional justice may not be retroactively detrimental or inherently illiberal because transitional justice is continuous with ordinary justice to give retrospective measures significant forward looking justifications. Consequently, there is no reason to treat transitional justice measures as presumptively suspect, on either moral or institutional grounds.

Political transitions can be analyzed by looking at the methods of transitions. The literature identifies four major types: (i) Transitions which are led by the elite of the old regime; (ii) Transitions that are forced on the elite by an opposition; (iii) Transitions that are bargains between the elite and opposition; and (iv) Transitions that are exogenously imposed by a foreign nation. Huntington (1991) alludes to post World War II democratization as a second wave (1943-1962) when states that were defeated and occupied by Western powers experienced democratic reforms. This process led to the decolonization of India and states in Asia and Africa. The literature presents problems of marginal social costs (economic opportunity costs) in close proximity to methods of transitional justice.

Boettke and Coyne consider reconciliation and vengeance as a function of opportunity cost. They contend that societies aiming to transition from a totalitarian order must not let the demands for retribution bankrupt the future; meaning that individuals who have suffered injustices in the past cannot allow the pursuit of justice to erode the social system of exchange and production. A transition is therefore successful, in their view, when a decisive break with the previous [oppressive] regime results in the simultaneous minimization of the costs associated with the administration of justice. As such the administration of justice is a net benefit that contributes to the overall transition to liberalism.

The Boettke-Coyne analysis provides an economic rationale in the literature that underpins the political argument for the continuity of justice, some justice is better than none. Successful optimal/transitional justice therefore remedies a justice gap/shortfall, the gap to be filled by political and economic considerations.

Greater gains can be realized through the irreversibility of commitments or the inability of governments to renege on previously announced policies. For Boettke and Coyne, this is an indication of potential success for necessary investment in sustainable social change. They conclude that reconciliation around an ethic of forgiveness is more important than monetary retribution for sustaining liberal order, and that public discourse rather than acquiescence can provide alternatives to adverse status quo for the consolidation of social and economic changes.

David and Yuk-ping find evidence in support of financial compensation in the Czech Republic. They contend that the evidence indicates that the most powerful predictor of positive outcomes of reparation is financial compensation. “Money facilitates inner healing by providing respondents with medical care and compensating part of their economic loss, thus
relieving some physical and psychological consequences of imprisonment. Money also symbolizes social acknowledgment and entails justice, thus enhancing sociopolitical redress” (2005, p. 421).

Kelsall (2005) affirms the importance of financial compensation in poverty-stricken Sierra Leone and other areas of the world. A notable feature of witness testimony in Sierra Leone was that when asked by the Commissioners for their recommendations, some victims pointed to their dire individual and collective economic plight, and urged the government, or the Commission itself, to come to their assistance to provide resources for medical facilities, the welfare of their children, and their education.

This study extends the literature on transitional justice in substantive ways. It brings additional insight to the debate on transitional justice by concentrating on how income distribution may affect successful transitional justice beyond reparations or tentative political agreements. It makes a fundamental argument that because income concentration is positively correlated with instability, lasting solutions must adequately consider a precondition for instability, severe income inequality. Arguments for reparations in victims’ testimony underscore the importance of social justice.

We argue that high income concentration or economic deprivation is a strong proxy of hostility, and that political and economic liberalisation by themselves, cannot effectively ensure social justice or stability. Liberalisation is normally associated with international intervention, although the contributions of international actors to the reconciliation process are conventionally expected to be less intrusive. For example, Portugal consolidated liberal democracy in the context of European integration and the decline of socialism at home and abroad. The process did not have a truth commission but in the early years of the revolution there was an informal agreement between the political right, which wanted to criminalize the activities of the radical left, and the radicals. In Guatemala democracy weakened the state and its institutions by producing peace accords that did not resolve the root causes of conflict (poor living standards).

The studies on liberalisation and income inequality generally have inconclusive results. Milanovic (2005) finds that liberalisation increases inequality. Lundberg and Squire (2003) report that liberalisation leads to mild inequality. Dollar and Kraay (2002) could not find a significant relationship between the two variables. Calderon and Chong (2001) find that although liberalisation can lead to equality in poor countries, it is insignificant for the rich countries. Ravallion (2001) and Barro (2000) find that liberalisation intensifies inequality in poor countries. Higgins and Williamson (1999) could not find a significant relationship. On the contrary, other studies, including those of Wei and Yu, 2001; and Julien, Nicolas, and de Melo, 2006 have shown that openness reduces inequality. The study of Julien et al (2006) underscores the ambivalence in the literature. Using tariffs as a measure of openness, they find that trade liberalisation is positively correlated with inequality in countries that: (i) are well endowed with highly skilled workers and capital; (ii) are well-endowed with mining and fuels; and (iii) have a work force with a very low level of education. The study also shows that trade liberalisation is associated with a decline in inequality in countries that are well endowed with primary-educated labor. In East Asia, trade was vigorously pursued to increase productivity and reduce long-term poverty (Rodrigo, 2001). Dollar and Kray (2004) find that increases in international trade and foreign direct investment (FDI) are potentially vital mechanisms to reduce global poverty.
Sustained state-society integration is therefore an urgent requirement for sustained transition. The evidence in support of equity that is induced by liberalisation is conflictive, for which much more vigorous options will be required for durable peace. This paper presents a proactive structure to forestall instability. It also provides a basis for appraising successful transitional justice algorithms.

Three criteria are considered for analyzing successful transitions: (i) Political ideology in post conflict societies; (ii) Economic liberalisation (openness); and (iii) Income distribution, which together with political ideology constitute a proxy of state-society integration. The empirical design is discussed in the next section.

**Empirical Design**

We estimate three models to test the following propositions/hypotheses: (i) Economic liberalisation does not increase the probability of reducing income concentration (logit model); (ii) That high average income concentration is not significantly different from average low income concentration (analysis of variance, ANOVA, binary model); and (iii) That when income per capita and economic liberalisation are controlled for, there may not be a significant difference between high income concentration and low income concentration (analysis of covariance, ANCOVA, model). The White heteroskedasticity consistent covariance matrix is used to estimate the third model.

The logit model, log of odds, model to be estimated is of the form:

$$\frac{P_g}{1-P_g} = e^{a + \beta g} ; \quad (1)$$

where $P$ is the probability that an event (low income concentration) might occur. Low income concentration is measured by the Gini coefficient, $g$; $e$, is an irrational number (2.71828), the base of a natural logarithm; $a$, is the probability of income concentration when economic liberalisation does not take place; and $\beta$, is the parameter which defines the odds of reducing income concentration.

The dependent variable of Equation 1, (income concentration) is dichotomous, where 1 is for Gini coefficients below the sample average (42.9) and 0 otherwise. This sample mean is consistent with general empirical observations. The model is not susceptible to the usual ordinary least squares (OLS) interpretation because in explicit form, it defines an odds ratio. The fit between the mathematical model of the data and the actual data (loss function) is estimated by maximum likelihood. When the logit is positive, the odds that low income concentration is likely to occur increase. The odds decrease if the logit is negative. The logit function is a bounded function which tracks the probability of an event occurring as the function moves from negative infinity to positive infinity. The standard derivation of this function is provided in the appendix.

Taking the natural log of both sides of Equation 1 gives a symmetric solution. The log of the odds of obtaining low income concentration is exactly the opposite to the log of the odds of obtaining high income concentration. To solve for the probability of obtaining low income concentration when liberalisation changes incrementally, Equation 1 can be re-written as:

$$P_g = \frac{e^{a + \beta g}}{1 + (e^{a + \beta g})} ; \quad (2)$$
The following ANOVA model tests whether there is a significant difference between high and low average income concentrations without controlling for covariates for the two categories of countries:

\[ g_i = a + \beta D_i + u_i ; \]  

(3)

where \( g_i \) is the time-insensitive cross-sectional Gini coefficients for the sampled countries; \( a \) is the intercept parameter for high income concentration; \( \beta \) is the differential intercept coefficient; \( D_i \) is a time-insensitive binary variable for low income concentration; and \( u_i \) is the usual stochastic error term which is assumed to be normally distributed with a mean of zero and unit standard deviation.

To determine the significance of differential income concentration we control for the effects of per capita income, and economic liberalisation on income distribution. This also provides an opportunity to evaluate the effects of economic liberalisation, and per capita income on income distribution. The following model is estimated:

\[ g_i = a + \beta D_i + \beta GDP_i + \beta O_i + u_i ; \]  

(4)

where \( GDP \) is gross domestic product per capita; and \( O \) is openness, the measure of economic liberalisation.

**Sampling, Operationalization of Variables, and Data**

The sample for this study is a combination of fifty six countries in which there has been an exposure to conflict, peacekeeping efforts, and/or transitional justice in the distant past (the 1940s) and the twenty-first century. The much more recent transitional endeavors are associated with the International Center for Transitional Justice, which is a twenty-first century creation. The studies of Posner and Vermeule, and the peace-keeping work of Doyle and Sambanis provide helpful information for the sampling of fifty-six countries with exposure to peacekeeping and/or transitional justice. These studies collectively give a wide range of geographic representation of countries from Africa, Latin America, Europe, Asia, and America.

Openness or economic liberalisation is measured in terms of the average volume of trade in goods and services as a percentage of GDP from 2002 to 2005. Openness is a proxy variable which is used to evaluate the effect of economic liberalisation on income distribution. Openness as a trade-to-income ratio has a considerable appeal (Romer, 1993; Temple, 2002; Gartzke and Li, 2003; Carbaugh, 2007; Goldin and Reinert, 2007). We use the average exports and imports of goods and services as a percentage of GDP from 2002 to 2005 (compiled by the World Bank) to estimate trade liberalisation for the countries in the sample.\(^{13}\) By using a four year average we minimize the effects of potential serial correlation (normally associated with time series data) while accounting for a reasonable measure of dynamism to estimate the loss function.

Intuitively, with fewer restrictions on international exchange and fairer trade arrangements, the freedom of individuals, households, and businesses to trade across national boundaries increases considerably, and with that, the prospects of employment and profits. International exchange therefore has a tremendous potential to reduce economic preconditions for income inequality, poverty, and civil upheaval. It cannot however be understood as a panacea for
inequality and all the economic ills of underdeveloped economies because of the inextricable role a regime or state has to play.

For example, international trade may increase the wages of skilled workers relative to unskilled workers when structural unemployment is not given adequate consideration. The notion that the abundant factor benefits from liberalisation is based on internal mobility and international immobility.

The Gini index has been used extensively as a measure of income concentration/distribution after its debut in the 1910s (Pasis, 1972; Gunther and Leathers, 1974; Braun, 1988; Russell and Chaudhuri, 1992; and Wei and Wu, 2002). Bourguinon and Morrisson (2002) report that the persistence of world poverty over a long term can be attributed to an increase in global inequality within and among countries. We use the most recent Gini data available from the closely correlated World Bank and Central Intelligence Agency (CIA) data bank. The Gini index ranges from 0, where there is no concentration (perfect equality) to 1, where there is total concentration (perfect inequality). Perkins, Radelet, and Lindauer (2006, p. 196), observe that in practice, values measured in national income distributions have a much narrower range, ordinarily from about 0.25 to 0.60. The mean and median of the range approximate the sample average of this work. Countries with Gini coefficients above the sample average of 42.91 are classified as high income concentration countries and those with coefficients below the sample average, as relatively low income concentration countries.14

The “index measures the degree of inequality in the distribution of family income in a country. It is calculated from a Lorenz curve, in which cumulative family income is plotted against the number of families arranged from the poorest to the richest. The index is the ratio of (a) the area between a country’s Lorenz curve and the 45 degree helping line to (b) the entire triangular area under the 45 degree line. The more nearly equal a country’s income distribution, the closer its Lorenz curve to the 45 degree line and the lower its Gini index…”15 Rather than using decomposable indices of the Generalized Entropy variety,16 preference is given to the Gini index because of its conventional usage and the econometric need of obtaining reasonably consistent measures for econometric analysis. We are cognizant of the fact that attempts at modifying the Gini ratio, have not generally received widespread appeal.17

To control for variances in population and inflation, GDP per capita at constant US dollars in 2000 is used to measure national income. This variable is central to examining the effects of a regime or distributive policies on income concentration. With effective distributive measures, a marginal increase in per capita income should be inversely and significantly related to income concentration. The empirical findings are reported next.

**Empirical Findings**

Data for this research show that the probability of reducing income concentration as a result of an incremental increase in economic liberalisation is about 53 percent when the Logit function is evaluated at the average value of openness (see the first regression of Table 1 and Equation 2). The third regression (on Table 1) reflects the chance-effect of openness as insignificant (probability value of 0.3737), after controlling for per capita income and income concentration. This finding is reasonable because a much more robust effect of openness on income concentration is largely contingent on distributive policies or regime type.
The Logit estimation result is at variance with the functional specification of assorted models provided in Table 4, and the third regression in Table 1. This finding is not entirely surprising. Table 4 shows that there is no shortage of Econometric models. These models occasionally lend themselves to estimating problems associated with assumptions about error distribution, correlation, heteroskedasticity, and omitted variable bias. Descriptive analysis of the data provided in Table 5, indicates that it is not unusual for countries with high liberalisation to have low and high income inequality. Similarly, the sample shows that countries with a low level of liberalisation also have high and low income concentration. In Belgium; Denmark; Hungary; Ireland; Jordan; and Tajikistan liberalisation is high and income inequality is low (see Table 2). In some others, like the United States of America (US); Peru; Brazil; Bolivia; Colombia; Mexico; Central African Republic; Uganda; and Zimbabwe, liberalisation is low and income concentration is high.

It is striking to note however, that irrespective of the level of liberalisation, the majority of the Latin American and African countries have a high level of income concentration. Such a concentration is positively correlated to the occurrence of atrocities (see Table 3). Relatively stable countries experienced their transitions much earlier and income is less concentrated; for example: Germany; France; UK; US; Australia; and Denmark. Transition occurred in these countries as a result of the end of colonialism, despotism, or the Second World War. Major transitional demarcating events do not presuppose the perpetuity of stability. Stability is highly contingent on a sense of social justice; be it entitlement to land or equal opportunity to survive.

Countries on the upper extreme of income concentration are highly prone to experience atrocities; for example, Sierra Leone, Central African Republic, South Africa, Zimbabwe, Bolivia, and Rwanda. By contradistinction, the consolidated democracies with market economies on the lower extreme of income concentration tend to be relatively stable for the periods under review. Liberalisation in the US is normally seen as a paradigm for transition in troubled countries, but the US, like most countries of Africa and Latin America, still has to grapple with high income concentration, poverty, and social justice—the major causes of instability in the underdeveloped economies.

The diagnoses for instability and war are usually prescribed to include reconciliation and forgiveness. Are these diagnoses efficacious? Not when the state and market algorithms fail to deal with historical memory of a bitter past, or fail to integrate different social classes, religious orientation, and ethnic groups around forward-looking policies which promise society a better quality of life.

In the US the throwback to the memory of slavery and civil war seems to be unrelenting, with occasional calls for reparations. Such a feeling creates a group identity founded on the consciousness of a common tradition/past, a precondition for the strife that is so common in underdeveloped economies. The war left a legacy of unforgettable hatred between races, which continues to permeate US national political discourse. Some Americans are still intolerant in political and racial matters and such intolerance occasionally results in violence.

The degree of openness of the US economy to international trade is not exceedingly exemplary for a number of reasons. Quite apart from the complaints of developing countries that the US government protects farmers, it is a large economy that could thrive on intra-national trade because of a paradox of size. Carbaugh maintains that large countries tend to be less reliant on international trade because many of their companies can attain an optimal
production size without having to export [much] to foreign nations. Small countries tend to have a greater measure of openness and dependence on international trade (2007, pp. 9-10).

In the second regression of Table 1, we test the proposition that the difference between high and low income concentration is not significantly different. The results show that there is a significant difference, although on average income distribution in countries with low concentration is about 17.5 percent less than in countries with high income concentration. This difference remains significantly unchanged (16.6 percent) when openness and per capita national income are considered to be covariates of income concentration (see the third regression).

In the third regression, we fail to find a significant relationship between per capita national income and income concentration. This failure is indicative of a distributive problem. An increase in per capita income does not significantly translate into a reduction of income concentration. Both models show that about 66 to 68 percent of the variation in income distribution is being explained by the predictor variables.

A number of countries are of interest to these findings and the central question of this paper, although some of them are evidently poor. Most African and Latin American countries continue to have problems with liberalisation and state-society integration (reconciliation and responsive governments); some of which have been struggling since the 1970s, or 1980s. For example: Argentina; Colombia; Nicaragua; Peru; Ethiopia; Nigeria; Burundi; Sierra Leone; and South Africa.

Fragile reconciliation is evident in Burundi and Rwanda, where Hutus continue to be suspicious of Tutsis and vice-versa. In Sierra Leone the outcome of transitional justice is yet to be determined after the conviction of war criminals and the conduct of the 2007 elections. Conflicts usually occur because of an underlying desire of one group to aggrandize (dispossess other groups of assets), or gain political and economic power at the expense of others by using the tools of coercion—a total breakdown of state-society integration—which more often than not result in genocide.

In Africa, Ghana comes across as a country with great optimism for transitional justice. A new constitution restoring multi-party politics was approved in 1992 and Lt. Jerry Rawlings, after serving two terms, was constitutionally prevented from running for a third. International trade in goods and services constitute about 48 percent of its GDP, which is above the sample average of 37.9, and income concentration for 1999 (seven years after the new constitution) was 30 percent.

In an unlikely scenario of liberalisation and state-society integration, which bypassed the traditional paradigm of transitional justice in Ghana, Tajikistan utilized a reintegration before demobilisation and disarmament strategy to provide an example of a successful peace building process, a rare example of post-war stability. Inadequate disarmament rates were disregarded, but integration of opposition fighters into military and law enforcement units was relatively swift. This created high levels of trust among the former fighters and commanders.

The quick provision of incentives, such as comprehensive amnesties and the offer of government positions and economic assets created stakes in the peace process for a number of actors. In this way, the case of Tajikistan runs counter to key elements of what has been termed the “post-conflict reconstruction orthodoxy.” Although the country is the poorest of the former Soviet bloc, it is making a remarkable transition from the vestige of communism.
Table 2 shows that international trade in goods and services accounts for about 66 percent of its GDP, with a relatively low income concentration (32.64); a far more superior record on liberalisation, income concentration, and state-society integration compared to Russia and other countries in a transition dilemma.

The quest for equity causes concerns about negative growth—the potential for equity to compromise growth potential. This study finds that it is possible to have equity and positive growth. Table 6 shows a positive relationship between equity and growth after a ten year period.20 The original study was done by the Canadian Council on Social Development in the 1990s. Much more recent data (ten years later) show that there is no significant difference in the relationship between the level of income concentration and per capita GDP growth. For example, Australia, Germany, and Denmark reduced income concentration without a significant change in growth potential. For the UK income concentration remained unchanged with marginal improvement on growth. Only the US shows a phenomenal change in income concentration and growth potential. Countries that are representative of three socioeconomic models—liberal, social market, and social democratic, challenge the trade-off proposition.21

Concluding Remarks and Policy Implications

This study argues that successful transitional justice is optimal and sustainable justice. Success is highly contingent on integration and the ability of warring parties to make enduring peace and reduce income concentration. Enduring peace depends on state-society integration and the commitment to execute rather than reverse prior arrangements for stability, while guaranteeing improved welfare.

Data indicate that crisis-prone countries generally have high income concentration which is usually a symptom of the inability of states to bridge the state-market gap. The difference between high income concentration and low income concentration is estimated to be significant, and filling a “justice-gap” is equally as important as filling a state-market gap for any reasonable measure of transitional justice or stability to be sustained.

The relationship between economic liberalisation and income distribution is ambivalent, but the probability that openness generally has a chance of reducing income inequality is unequivocal. Reliance on democratization and liberalisation is inadequate and tenuous, for which the root causes of instability must be factored into consideration for the attainment of lasting peace.

Regression analysis shows that an increase in per capita national income does not have a significant effect on income distribution when income concentration and liberalisation are controlled for. This chance-effect can be made more robust by effective distributive measures which define a truly transitional regime.

The Tajikistan model and failure or potential failures of reconciliation in Africa and Latin America raise interesting issues for policy makers and international organizations. Should state-society integration proceed in tandem with demobilisation and disarmament? How can models of transitional justice be made more flexible to obtain lasting justice? What assurances or mechanisms are there to maintain trust and irreversibility of commitments?

International organizations or the agents of reconciliation and peace must vigorously pursue monitoring programs to ascertain the credibility of reconciliation agreements and the institutionalization of viable economic programs as investments in the peace process.
Symptoms of trouble beyond the immediate cessation of hostilities are poverty, high income concentration and deprivation of opportunity. Warring factions and intermediaries must pointedly address these salient economic factors with equal intensity as demobilisation, reconciliation, compensation, and liberalisation. Successful transitional justice entails the management of fragile peace settlement, which must ensure equitable/fair distribution of wealth; the lack of which is the very basis for the persistence of turmoil and human insecurity in troubled nations.

**Appendix: The Standard Derivation of the Loss/Criterion Logit Function**

Logit = \{P_g / (1- P_g )\} = e^{a + \beta_0} \tag{i}

Let \( z = a + \beta_0 \), the natural log. Then:

\[ p = E(y = 1|x) = \{1/(1+e^{-z})\} \tag{ii} \]

Dividing numerator and denominator of (ii) by \(-z\)

\[ p = \{e^z / (1+e^z)\} \tag{iii} \]

Taking the derivative of (iii) [quotient rule, \( \{g (dk/dz) – k(dg/dz)\}/g^2 \)]

\[ g = (1+e^z); \quad \text{and} \quad k = e^z \]

\[ \{(1+e^z)* e^z - (e^z * e^z)\}/(1+e^z)^2. \tag{iv} \]

By simplifying (iv), the slope of the sigmoid/criterion function is obtained:

\[ e^z/(1+e^z)^2 = p(1-p). \tag{v} \]

Recall (iii), so that \(1-p = 1/ (1+e^z)\). \tag{vi}

Therefore \( p(1-p) = e^z/(1+e^z)^2 \)

We obtain the second derivative of the slope for inflection by the product rule:

\( (d/dp = f dg/dp + g df/dp) \); where \( f = p \); and \( g = (1-p) \).

Solution = \( p*1 + (1-p)*1 = 1 - 2p =0 \quad P=1/2 \tag{vii} \)

The sign of first derivative is irrelevant for inflection. Set the second derivative = 0 to see that at inflection (.5 or 1/2), as the function moves from \(-\infty\) to \(\infty\), probability moves from 0-1.
**Table 1:** Probability of Income Inequality and its Covariates ¶

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>(i) Binary Low Income Concentration (sensitivity) @ Average (38.5)</th>
<th>(ii) Income Concentration (ANOVA)</th>
<th>(iii) Income Concentration (ANCOVA)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(p-value)</td>
<td>(p-value)</td>
<td>(p-value)</td>
</tr>
<tr>
<td>Openness</td>
<td>0.02 (0.22)</td>
<td>0.53</td>
<td>…</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.66</td>
<td>…</td>
<td>-0.04 (0.37)</td>
</tr>
<tr>
<td>High Income</td>
<td>…</td>
<td>51.42 (0.00)**</td>
<td>53.24 (0.00)**</td>
</tr>
<tr>
<td>Concentration</td>
<td></td>
<td>(0.00)**</td>
<td>(0.00)**</td>
</tr>
<tr>
<td>Low Income</td>
<td>…</td>
<td>-17.54 (0.00)**</td>
<td>-16.60 (0.00)**</td>
</tr>
<tr>
<td>Concentration</td>
<td></td>
<td>(0.00)**</td>
<td>(0.00)**</td>
</tr>
<tr>
<td>Per Capita GDP</td>
<td>…</td>
<td>…</td>
<td>-0.0001 (0.109)*</td>
</tr>
<tr>
<td>F-statistic</td>
<td>…</td>
<td>107.81 (0.00)**</td>
<td>37.40 (0.00)**</td>
</tr>
<tr>
<td>R²</td>
<td>…</td>
<td>0.67</td>
<td>0.68</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>…</td>
<td>0.66</td>
<td>0.66</td>
</tr>
<tr>
<td>Number of Observations</td>
<td>56</td>
<td>56</td>
<td>56</td>
</tr>
</tbody>
</table>

**Notes:**

¶ All regression results are estimated by Eviews 5.1. Note that the average value for high income concentration is the intercept value for regressions (ii) and (iii), and that the values for low income concentration are the differential intercept coefficients for both regressions. The White Heteroskedasticity-Consistent Standard Errors and Covariance estimator is used for regression (iii).

*Denotes significance at the 90 percent level of confidence.

** Denotes significance at the 95 percent level of confidence (or better).

Hypotheses that the variables and/or models are not significant are rejected.
<table>
<thead>
<tr>
<th>Country</th>
<th>Openness</th>
<th>GDPpc</th>
<th>GINI</th>
<th>Low Income Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>33.14907</td>
<td>1424.445</td>
<td>26.5 (2005)</td>
<td>1 ++</td>
</tr>
<tr>
<td>Argentina</td>
<td>20.84386</td>
<td>7235.961</td>
<td>48.3 (2006)</td>
<td>0</td>
</tr>
<tr>
<td>Algeria</td>
<td>32.43085</td>
<td>2004.233</td>
<td>35.3 (1995)</td>
<td>1 +</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>17.93469</td>
<td>408.4284</td>
<td>31.8 (2000)</td>
<td>1 +</td>
</tr>
<tr>
<td>Belgium</td>
<td>81.70084</td>
<td>23396.73</td>
<td>25 (1996)</td>
<td>1 +++</td>
</tr>
<tr>
<td>Bolivia</td>
<td>28.53672</td>
<td>1032.57</td>
<td>60.6 (2002)</td>
<td>0</td>
</tr>
<tr>
<td>Bosnia &amp;H</td>
<td>54.25023</td>
<td>1525.953</td>
<td>26.2 (2001)</td>
<td>1 +++</td>
</tr>
<tr>
<td>Brazil</td>
<td>14.82375</td>
<td>3519.412</td>
<td>56.7 (2005)</td>
<td>0</td>
</tr>
<tr>
<td>Burundi</td>
<td>19.08987</td>
<td>107.2671</td>
<td>33.3 (1998)</td>
<td>1 +</td>
</tr>
<tr>
<td>Cambodia</td>
<td>64.97876</td>
<td>353.61</td>
<td>41.71 (2004)*</td>
<td>1 +++</td>
</tr>
<tr>
<td>Cameroon</td>
<td>21.08102</td>
<td>726.8771</td>
<td>44.6 (2001)</td>
<td>0</td>
</tr>
<tr>
<td>Canada</td>
<td>37.57528</td>
<td>24429.46</td>
<td>33.1 (1998)</td>
<td>1 +++</td>
</tr>
<tr>
<td>Chile</td>
<td>35.34651</td>
<td>5342.278</td>
<td>54.9 (2003)*</td>
<td></td>
</tr>
<tr>
<td>China</td>
<td>29.91072</td>
<td>1271.719</td>
<td>46.9 (2004)*</td>
<td>0</td>
</tr>
<tr>
<td>Colombia</td>
<td>21.14686</td>
<td>2074.795</td>
<td>53.8 (2005)</td>
<td>0</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>47.90384</td>
<td>4273.437</td>
<td>49.76 (2004)*</td>
<td>0</td>
</tr>
<tr>
<td>Denmark</td>
<td>43.85512</td>
<td>3095.03</td>
<td>23.2 (2002)</td>
<td>1 +++</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>45.24859</td>
<td>2503.825</td>
<td>51.64 (2004)*</td>
<td>0</td>
</tr>
<tr>
<td>El Salvador</td>
<td>35.32361</td>
<td>2108.453</td>
<td>52.36 (2002)*</td>
<td>0</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>23.62224</td>
<td>129.453</td>
<td>30 (2000)</td>
<td>1 +</td>
</tr>
<tr>
<td>Germany</td>
<td>35.07911</td>
<td>1294.11</td>
<td>28.3 (2000)</td>
<td>1 ++</td>
</tr>
<tr>
<td>Ghana</td>
<td>48.35536</td>
<td>273.2228</td>
<td>30 (1999)</td>
<td>1 +++</td>
</tr>
<tr>
<td>Greece</td>
<td>24.86493</td>
<td>12114.17</td>
<td>35.1 (2003)</td>
<td>1 ++</td>
</tr>
<tr>
<td>Guatemala</td>
<td>23.3356</td>
<td>1724.352</td>
<td>59.5 (2005)</td>
<td>0</td>
</tr>
<tr>
<td>Hungary</td>
<td>65.69499</td>
<td>5354.19</td>
<td>26.85 (2002)*</td>
<td>1 +++</td>
</tr>
<tr>
<td>India</td>
<td>18.41219</td>
<td>531.2195</td>
<td>36.8 (2004)*</td>
<td>1 ++</td>
</tr>
<tr>
<td>Indonesia</td>
<td>29.11</td>
<td>890.67</td>
<td>34.8 (2004)</td>
<td>1 +</td>
</tr>
<tr>
<td>Ireland</td>
<td>78.62492</td>
<td>2873.22</td>
<td>35.9 (1996)</td>
<td>1 +++</td>
</tr>
<tr>
<td>Italy</td>
<td>25.21517</td>
<td>19471</td>
<td>36 (2000)</td>
<td>1 + +</td>
</tr>
<tr>
<td>Japan</td>
<td>11.44363</td>
<td>37769.97</td>
<td>38.1 (2002)</td>
<td>1 ++</td>
</tr>
<tr>
<td>Jordan</td>
<td>63.79414</td>
<td>1949.945</td>
<td>38.84 (2003)*</td>
<td>1 ++</td>
</tr>
<tr>
<td>Lithuania</td>
<td>56.91296</td>
<td>4312.16</td>
<td>36.03 (2003)*</td>
<td>1 ++</td>
</tr>
<tr>
<td>Malaysia</td>
<td>107.6451</td>
<td>4187.638</td>
<td>46.1 (2002)</td>
<td>0</td>
</tr>
<tr>
<td>Mexico</td>
<td>29.12494</td>
<td>5098.11</td>
<td>46.06 (2004)*</td>
<td>0</td>
</tr>
<tr>
<td>Morocco</td>
<td>36.55708</td>
<td>1331.819</td>
<td>40 (2005)</td>
<td>1 ++</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>39.2011</td>
<td>844.5092</td>
<td>55.1 (2001)</td>
<td>0</td>
</tr>
<tr>
<td>Nigeria</td>
<td>44.26751</td>
<td>428.1094</td>
<td>43.7 (2003)*</td>
<td>0</td>
</tr>
<tr>
<td>Paraguay</td>
<td>48.52911</td>
<td>1331.054</td>
<td>58.36 (2003)*</td>
<td>0</td>
</tr>
<tr>
<td>Pakistan</td>
<td>16.27443</td>
<td>559.6574</td>
<td>30.56 (2002)*</td>
<td>1 +</td>
</tr>
<tr>
<td>Panama</td>
<td>65.65</td>
<td>4129.52</td>
<td>56.08 (2003)*</td>
<td>0</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>49.16702</td>
<td>634.3534</td>
<td>50.9 (1996)</td>
<td>0</td>
</tr>
<tr>
<td>Peru</td>
<td>18.95712</td>
<td>2202.652</td>
<td>52.02 (2003)*</td>
<td>0</td>
</tr>
<tr>
<td>Philippines</td>
<td>51.37658</td>
<td>1072.393</td>
<td>44.53 (2003)*</td>
<td>0</td>
</tr>
<tr>
<td>Russia</td>
<td>29.00989</td>
<td>2205.05</td>
<td>40 (2002)</td>
<td>1 +</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>30.04515</td>
<td>206.5462</td>
<td>62.9 (1989)</td>
<td>0</td>
</tr>
<tr>
<td>South Africa</td>
<td>27.72691</td>
<td>3248.377</td>
<td>59.3 (1995)</td>
<td>0</td>
</tr>
</tbody>
</table>
Table 2: Data on the Economic Indicators\(^{\Psi}\) (continued)

<table>
<thead>
<tr>
<th>Country</th>
<th>Openness</th>
<th>GDPpc</th>
<th>GINI</th>
<th>Low Income Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td>27.89883</td>
<td>15265.17</td>
<td>32.5 (1990)</td>
<td>1 ++</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>66.10207</td>
<td>212.9904</td>
<td>32.64 (2003)*</td>
<td>1 +++</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>39.8</td>
<td>940.37</td>
<td>30 (2004)</td>
<td>0</td>
</tr>
<tr>
<td>Thailand</td>
<td>66.40245</td>
<td>2286.202</td>
<td>41.98 (2002)*</td>
<td>0</td>
</tr>
<tr>
<td>Turkey</td>
<td>30.36826</td>
<td>3118.523</td>
<td>43.64 (2003)*</td>
<td>0</td>
</tr>
<tr>
<td>Uganda</td>
<td>19.89196</td>
<td>261.3188</td>
<td>45.7 (2002)*</td>
<td>0</td>
</tr>
<tr>
<td>United States</td>
<td>12.0949</td>
<td>35925.02</td>
<td>45 (2004)</td>
<td>0</td>
</tr>
<tr>
<td>Vietnam</td>
<td>66.3056</td>
<td>488.6671</td>
<td>34.4 (2004)*</td>
<td>1 ++</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>32.3746</td>
<td>475.6765</td>
<td>56.8 (2003)</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>28</td>
</tr>
<tr>
<td>Mean</td>
<td>38.5</td>
<td>42.9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>S. Deviation</td>
<td>20.0</td>
<td>10.9</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Sources: Central Intelligence Agency (CIA) and the World Bank.

Notes:
\(^{\Psi}\) Data on openness and GDP/pc provided by the World Bank are transformed into average values for 2002 to 2005.
* Gini data from the World Bank.
+ Low income concentration with below average trade liberalisation.
++ Low income concentration with either trade liberalisation or emerging democratic institutions.
+++ Low income concentration with trade liberalisation and emerging democratic institutions or consolidated democratic institutions.

Table 3: Relationship between Gini Coefficients and Transitions or Atrocities

<table>
<thead>
<tr>
<th>Country</th>
<th>Gini(^{\Psi})</th>
<th>Transition</th>
<th>Country</th>
<th>Gini</th>
<th>Atrocities*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>0.26(^{\Psi})</td>
<td>Y (1945)</td>
<td>Sierra Leone</td>
<td>0.63 (1989)</td>
<td>Y (1991-2001)</td>
</tr>
<tr>
<td>Australia</td>
<td>0.34</td>
<td>Y (1850)</td>
<td>CAR</td>
<td>0.61 (1993)</td>
<td>Y (2002-2003)</td>
</tr>
<tr>
<td>Netherlands</td>
<td>0.29</td>
<td>Y(1848)</td>
<td>Bolivia</td>
<td>0.61 (2002)</td>
<td>Y (1967-1982)</td>
</tr>
<tr>
<td>UK</td>
<td>0.34</td>
<td>Y (1689)</td>
<td>South Africa</td>
<td>0.65 (2005)</td>
<td>Y (1960-1994)</td>
</tr>
<tr>
<td>US</td>
<td>0.38(^{\Psi})</td>
<td>Y (1776)</td>
<td>Brazil</td>
<td>0.57 (2005)</td>
<td>Y (1964-1984)</td>
</tr>
<tr>
<td>France</td>
<td>0.26(^{\Psi})</td>
<td>Y (1789)</td>
<td>Zimbabwe</td>
<td>0.57 (2003)</td>
<td>Y (1965-present)</td>
</tr>
<tr>
<td>Germany</td>
<td>0.31(^{\Psi})</td>
<td>Y (1945)</td>
<td>Rwanda</td>
<td>0.47 (2000)</td>
<td>Y (1990-1993)</td>
</tr>
</tbody>
</table>

Notes:
\(^{\Psi}\) 1995 disposable income. Years of transition and atrocities are provided by author except for Denmark, US, France, and Germany.
\(^{\Psi}\) Years of transition provided by Posner & Vermeule (2003).
* Atrocities: Human rights abuses may be ongoing irrespective of dates of institutional findings or observations.
### Table 4: Mixed Empirical Evidence for Liberalisation, Per Capita Income, and Inequality (Source: Gourdon et al)

<table>
<thead>
<tr>
<th>Authors</th>
<th>Period</th>
<th>Sample</th>
<th>Econometric</th>
<th>Liberalisation</th>
<th>Inequality Index</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milanovic</td>
<td>1988-1998</td>
<td>Unbalanced panel 322 observations</td>
<td>GMM (Generalized Method of moments)</td>
<td>Trade/GDP Nominal $ (WYD)</td>
<td>Decile Avg. Income to Total Avg. Income</td>
<td>Inequality</td>
</tr>
</tbody>
</table>
### Table 5: Descriptive Statistics on Liberalisation and Inequality

<table>
<thead>
<tr>
<th>High Liberalisation (&gt;=0.385)</th>
<th>High Liberalisation (&gt;=0.385)</th>
<th>Low Liberalisation (&lt;0.385)</th>
<th>Low Liberalisation (&lt;0.385)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Inequality (&lt;=0.429)</td>
<td>Low Inequality (&lt;=0.429)</td>
<td>High Inequality (&gt;0.429)</td>
<td>High Inequality (&gt;0.429)</td>
</tr>
<tr>
<td>Belgium</td>
<td>Costa Rica</td>
<td>Albania</td>
<td>Argentina</td>
</tr>
<tr>
<td>Bosnia Herzegovina</td>
<td>Dominican Rep.</td>
<td>Algeria</td>
<td>Bolivia</td>
</tr>
<tr>
<td>Canada**</td>
<td>Malaysia</td>
<td>Bangladesh</td>
<td>Brazil</td>
</tr>
<tr>
<td>Cambodia</td>
<td>Nicaragua</td>
<td>Burundi</td>
<td>China</td>
</tr>
<tr>
<td>Ghana</td>
<td>Paraguay</td>
<td>Germany</td>
<td>Chile</td>
</tr>
<tr>
<td>Hungary</td>
<td>Panama</td>
<td>Greece</td>
<td>Colombia</td>
</tr>
<tr>
<td>Ireland</td>
<td>Papua New Guinea</td>
<td>India</td>
<td>El Salvador</td>
</tr>
<tr>
<td>Jordan</td>
<td>Philippines</td>
<td>Indonesia</td>
<td>Guatemala</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Sri Lanka</td>
<td>Italy</td>
<td>Mexico</td>
</tr>
<tr>
<td>Tajikistan*</td>
<td>Japan</td>
<td>Peru</td>
<td></td>
</tr>
<tr>
<td>Vietnam*</td>
<td>Morocco</td>
<td>Sierra Leone</td>
<td></td>
</tr>
<tr>
<td>Russia</td>
<td>Pakistan</td>
<td>South Africa</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Russia</td>
<td>Turkey</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rwanda</td>
<td>Uganda</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Spain</td>
<td>United States</td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Notes:**
- ¶ Time sensitive inequality measure
- ** Borderline High Liberalisation
- * Borderline Low Inequality

### Table 6: Equity and Growth Ten Years Later

<table>
<thead>
<tr>
<th>Country</th>
<th>Gini *</th>
<th>Growth **</th>
<th>Gini φ</th>
<th>Growth (Avg. 2003-5) ψ</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>0.26</td>
<td>2.3</td>
<td>0.24 (2005)</td>
<td>1.6</td>
</tr>
<tr>
<td>Australia</td>
<td>0.34</td>
<td>2.2</td>
<td>0.31 (2006)</td>
<td>1.7</td>
</tr>
<tr>
<td>Netherlands</td>
<td>0.29</td>
<td>2.1</td>
<td>0.31 (2005)</td>
<td>0.55</td>
</tr>
<tr>
<td>UK</td>
<td>0.34</td>
<td>1.7</td>
<td>0.34 (2005)</td>
<td>1.96</td>
</tr>
<tr>
<td>US</td>
<td>0.38</td>
<td>1.7</td>
<td>0.45 (2007)</td>
<td>2.4</td>
</tr>
<tr>
<td>France</td>
<td>0.26</td>
<td>1.0</td>
<td>0.28 (2005)</td>
<td>0.82</td>
</tr>
<tr>
<td>Germany</td>
<td>0.31</td>
<td>0.9</td>
<td>0.28 (2005)</td>
<td>0.82</td>
</tr>
</tbody>
</table>

**Notes:**
- * Gini coefficient 1995 and GDP per capita growth 1990-98 by Canadian Council on Social Development
- φ Central Intelligence Agency Worldfact Book
- ψ World Bank
References


Endnotes

1. Restorative justice has been explored in detail by Minow, 1998; Gilman, 2003; Braithwaite, 2001; and Zehr, 1990. See David and Yuk-ping, 2005; for discussions on retribution and reconciliation, pp 405-407. See also the work of Uprimny and Saffon at: http://global.wisc.edu/reconciliation/library/papers_open/saffon.pdf

2. Retribution is generally at odds with forgiveness. The Nuremberg, Rwandan and Yugoslavian trials were intended to punish the Nazi; Hutu; and Serbian war criminals.
3. See Mavrommatis Palestine Concession Case, *Greece v UK* (1924) P.C.I.J., Ser A. No. 2 at 11. See also Greenwood and Lauterpacht, *International Law Reports*, vol. 37, p.178. Some disputes are normally classified as justiciable and others as non-justiciable. Contemporary writers tend to make classifications based on the disposition of the disputing parties. Whatever the subject matter of a dispute, if the disputing parties seek respect for, or justification of their legal rights, a dispute may be classified as justiciable. If on the other hand, one of the disputing parties renounces its claims to legal rights and demands satisfaction of his interest, which may require a change in an existing legal situation, the dispute is non-justiciable. See Brierly, *The Law of Nations* (6th ed.), 367. See also Merrills, *International Dispute Settlement* (3rd ed.), 155-9 and 233-8.

4. These penalties include punishment of collaborators for a given period of time (lustrations).


7. The first wave of democratization experienced reversals in the form of consolidation of authoritarian rule after the 1848 revolutions.

8. International actors can play a significant role in transition processes by creating a positive climate for change, and acting as catalysts for change. The international community may use quiet diplomacy, diplomatic pressure, conditionality regimes (e.g. military assistance or aspirations to be members of international organizations), and targeted assistance to civil groups, or the conduct of elections. Dominant international groups include the European Union (EU); the United Nations (UN) and/or any of its specialized agencies (e.g. the International Monetary Funf, IMF); and North Atlantic Treaty Organization (NATO). For a comprehensive analysis of international contribution and methods, see Barahona de Brito, Saaf and Altunish: “Political Liberalisation and Transition to Democracy: Lessons from the Mediterranean and Beyond Morocco, Turkey, Spain and Portugal.” 33-45.

9. Lack of precision may be attributable to inconsistencies in forms of measurement of inequality such as households, individuals, and consumption for cross-country analysis based on pooled data. See Srinivasan and Bhagwati (1999). We note that income distribution is also sensitive to deliberate political choices.

10. This mean is consistent with general empirical findings. Although the theoretical range of the Gini coefficient is between 0 and 1, the practical values in national income distributions range from 0.25 to 0.60; the mean and median of which is 0.425—see Perkins, Radelet, and Lindauer, p.196.

11. The likelihood is a conditional probability, the probability of obtaining low income concentration, $g$, given the degree of economic liberalisation, $o$; i.e. $P(g|o)$. The likelihood is estimated by numerical analysis; specifically by quadratic hill-climbing which adds a correction matrix to the Hessian. Quadratic hill-climbing pushes the parameter estimates in the direction of the gradient vector to improve on the local quadratic approximation of the function. See Eviews 5, *Quantitative Micro Software*, p.933.
12. Note that Equation 2 is equivalent to: \(1 / (1 + (e^{a + \beta_0}))\). For a detailed discussion of the logistic regression model see Gujarati’s *Essentials of Econometrics*, pp 501-509, and *Basic Econometrics*, 593-607.


14. See Table 2 for classification. Note that although the income classification is time sensitive, it does not detract from the econometric analysis or inference in this case. The standard deviation of the mean is 10.9. This standard deviation is considered unacceptable to quantify low income concentration.


16. Members of the Generalized Entropy (GE) class of measures have the general formula:
\[
GE (\alpha) = 1/ \alpha^2 \left\{1/n \sum (y_i/Y)^\alpha - 1\right\};
\]
where \(n\) = number of individuals in the sample; \(y_i\) = individual income; \(Y\) = mean income; and \(\alpha\) = weights given to different incomes at different parts of the income distribution. GE measures range from 0 to \(\infty\). See also the Atkinson class of measures.

17. See Braun for alternative measures and the Paglin modification.

18. Note that income inequality in the US increased significantly after 1995, although reference is made to consolidated democracies as a group.


20. The original study was done by the Canadian Council on Social Development.

21. For a detailed analysis, see the report by the Canadian Council on Social Development.

**Acknowledgement**

I am grateful to Richard Culp for his helpful commen-tary on this work, and Marian Bobian for her structural support. I take full responsibility for its contents.